

# Presentation to Portfolio Committee on Justice and Constitutional Development

## Progress on TRC Cases



**National Prosecuting Authority**  
South Africa

17 September 2024

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# Introduction

- ❖ NPA is committed to ensuring justice for apartheid-era crimes and finality of matters so that families can find some closure
- ❖ Multi-pronged approach towards dealing with TRC matters
  - ✓ Prosecutions to ensure accountability for alleged perpetrators
  - ✓ Inquests
  - ✓ Missing persons – identification and return of remains

# Introduction (cont.)

- ❖ In the last few years, the NPA has focused on:
  - ✓ reopening and pursuing priority cases;
  - ✓ enhancing its internal capacity and processes both to ensure effective handling of these cases and to prevent any undue political influence.
- ❖ Since 2021, a TRC Component has been created to prioritise and drive progress on TRC matters, working closely with DPCI.
- ❖ This presentation sets out progress in dealing with TRC matters.

# Background

## *TRC Component*

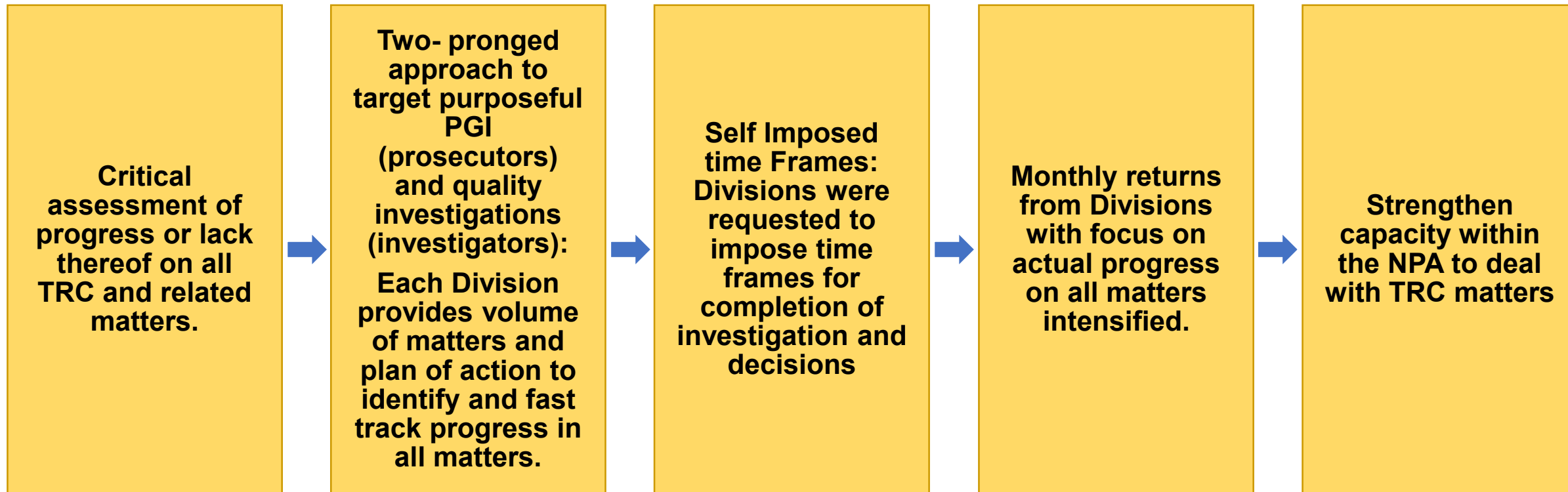
- ❖ Prior to September 2021- TRC matters were overseen by Priority Crime Litigation Unit (PCLU) - a component within the NPA, whose mandate it was to deal with amongst others, prosecutions arising from the TRC.
- ❖ As of 6 September 2021, TRC component created within the office of the Deputy National Director of Public Prosecutions (DNDPP) Adv RJ de Kock, to prioritise and drive progress on TRC matters.
- ❖ Appointment of a Special Director, a National TRC Coordinator and administrative capacity to assist.
- ❖ A total of 59 TRC matters were migrated to the Divisions by PCLU in 2019.

# Background (cont.)

- ❖ Increased joint accountability sessions between the NPA and DPCI during 2024 have contributed to an increase in the level of engagement, progress and joint accountability.
- ❖ Intense accountability sessions within all the Divisions was an opportunity to ensure that challenges are addressed, skills transfer takes place and both prosecutors and investigators are held to account.
- ❖ Since September 2021, 104 **new investigations** stemming from the TRC have been re-opened.
- ❖ A total of 126 cases are presently under investigation.

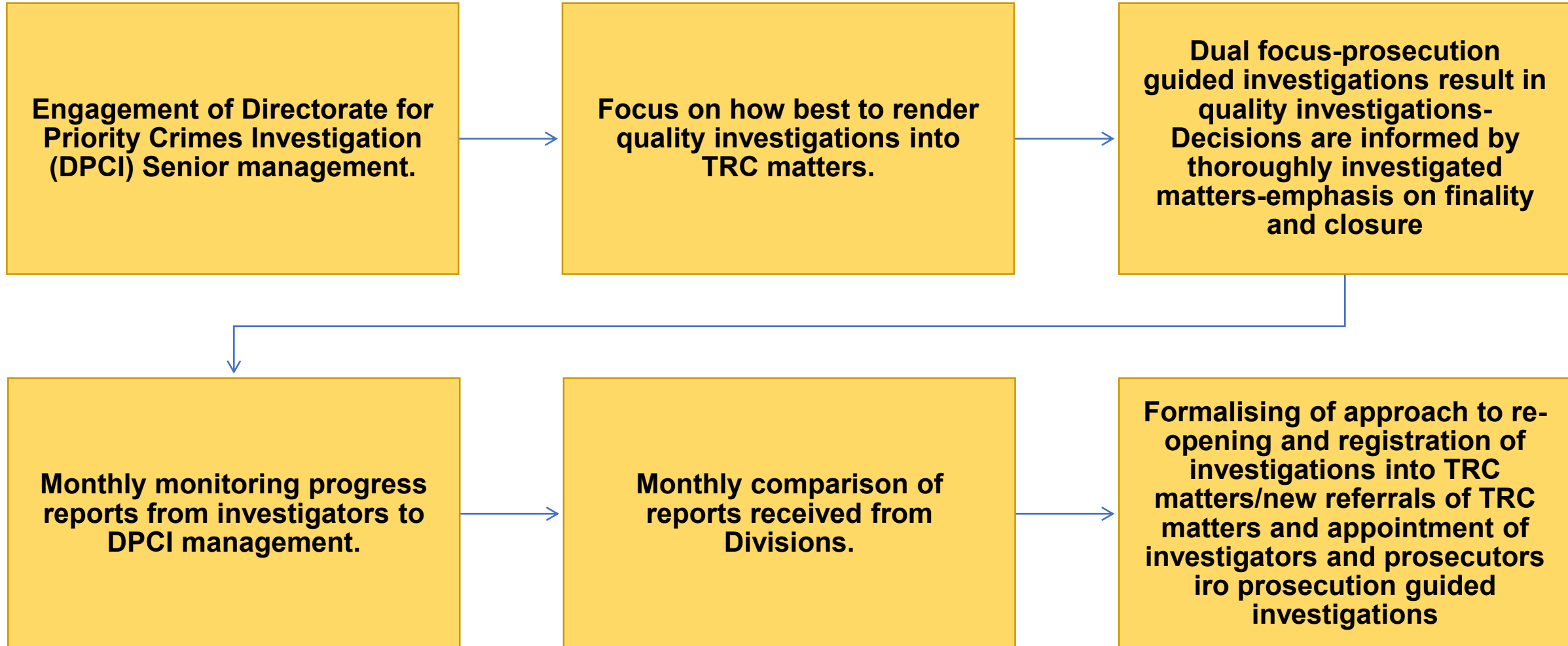
# Action Plan

## *DPP Jurisdiction on Matters*



# Involvement of DPCI

## *Focus on Investigation*



# NPA/DPCI Meetings

**Appointment of a National TRC Coordinator for DPCI to enhance the support with the TRC component.**

**Needs identified: upskilling of both investigators and prosecutors-one action plan-common objectives.**

**SWOT analysis: Identification of strengths, weaknesses, opportunities and threats: Challenges of investigating cold cases (i.e., no dockets, no inquest records, declassification of records, National Archives, Universities etc.)  
Experience sharing and exposure.**

**Adoption of best practice, platform provided for prosecutors and investigators to meet, division by division, and account to DPPs and DPCI senior management with both coordinators to assist in expediting progress-introduction of Joint Accountability sessions with NPA and DPCI. Joint accountability on the same platform.**

**Rolled out fully in 2023 and 2024 as part of the NPA/DPCI Annual Operational Plan (AOP).**

# Capacity

- ❖ Dedicated capacity has ensured that both prosecutors and investigators are dedicated only to the progress on TRC matters.
- ❖ The appointment of TRC investigators and prosecutors was informed by the volume of matters within Divisions.
- ❖ The prioritisation of TRC matters also resulted in the appointment of Deputy Directors of Public Prosecutions (DDPPs) to oversee and guide the TRC portfolios within the office of the DPPs.
- ❖ Where there is no dedicated prosecutor/s, DPPs have appointed prosecutors (from permanent staff) to assist on TRC matters.
- ❖ In some Divisions, where there is no dedicated prosecutor, DDPPs oversee these matters.

# Current Dedicated Capacity: NPA/DPCI

<p>➤ <b>NPA: Total number of dedicated TRC prosecutors appointed in divisions: 16</b></p> <ul style="list-style-type: none"> <li>❖ DPP: Kwa-Zulu Natal 3</li> <li>❖ DPP: Western Cape 1</li> <li>❖ DPP: South Gauteng 3</li> <li>❖ DPP: North Gauteng 2</li> <li>❖ DPP: Limpopo 1</li> <li>❖ DPP: North- West -</li> <li>❖ Other: Head Office 2</li> <li>❖ DPP: Mthatha/Makhanda 4</li> </ul>	<p>➤ <b>Total number of dedicated TRC investigators appointed in Divisions: 29</b></p> <ul style="list-style-type: none"> <li>❖ Central Region: Head office, Gauteng, Mpumalanga, Limpopo and North-West 13</li> <li>❖ Coastal Region: Kwa-Zulu Natal. 4</li> <li>❖ Eastern Region: Eastern Cape. 6</li> <li>❖ Western Region: Western Cape. 3</li> <li>❖ Karoo Region: Free State and North-West. 2</li> <li>❖ TRC coordinator 1</li> </ul>
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# NPA personnel assisting on TRC matters

<b>TRC Nodal Points within all Divisions to oversee TRC Portfolio</b>	<b>Total number of TRC Nodal Points: 10</b> <b>Total number of senior state advocates assisting: 5</b>
DIVISION	11
DPP: FS	DDPP guiding on all matters. No dedicated prosecutor.
DPP: MAKHANDA	DDPP guides prosecutors.
DPP: EC	DDPP guides in two divisions: EC and Makhanda
DPP: NW	DDPP and senior state advocate assisting
DPP: KZN	DDPP overseeing all matters.
DPP: MPUMALANGA	ADPP and three DDPPs oversee and guide investigations
DPP: NC	Two DDPPS and three senior state advocates assisting
DPP: JHB	DDPP guides prosecutors.
DPP: PTA	DDPP guides prosecutors.
DPP: LMP	DDPP guides prosecutors.

# Volume of matters within the Divisions

Division	Total matters under Investigation
DPP: WC	11
DPP: FS	3
DPP: MAKHANDA	12
DPP: MTHATHA	5
DPP: NW	11
DPP: KZN	24
DPP: MPUMALANGA	7
DPP: NC	5
DPP: JHB	21
DPP: PTA	13
DPP: LMP	14
<b>TOTAL</b>	<b>126</b>

# Categories by Division

NO	DIVISION	A	B	C	Total
1	KZN	6	3	15	24
2	JHB	14	1	6	21
3	LMP	9	0	5	14
4	PTA	6	0	7	13
5	MKHANDA	3	0	9	12
6	WC	2	0	9	11
7	NW	5	0	6	11
8	MP	5	1	1	7
9	MTHATHA	0	1	4	5
10	NC	2	0	3	5
11	FS	0	0	3	3
					126

# C - Category matters

DIVISION	VOLUME OF MATTERS	NAME OF MATTER FINALISED	VOLUME OF MATTERS IN C CATEGORY
WESTERN CAPE	11	INQ- MR HARON	9
FREE STATE	3		3
MTHATHA	5		4
MAKHANDA	12		9
NORTH- WEST	11		6
KWA-ZULU NATAL	24	INQ-DR H HAFJEJEE INQ-Z SOKHULU S V WESLEY MADONSELA	15
MPUMALANGA	7		1
NORTHERN CAPE	5		3
JOHANNESBURG	21	INQ-DR AGGETT MR E DIPALE	6
PRETORIA	13		7
LIMPOPO	14		5
<b>TOTAL</b>	<b>126</b>		

# Accountability Sessions

## *Purpose of Joint Sessions*

Primary purpose of joint NPA/DPCI accountability sessions is to upskill prosecutors and investigators, develop strategies to expedite investigations and decisions, share best practice adopted by other divisions, update on legal challenges, identify and target cogs in the process and, most importantly, to ensure accountability.

It is important for NPA and DPCI to work together towards one action plan. Joint accountability by both prosecutor and investigator on the same platform.

Dates are jointly identified by both coordinators and communicated to all DPPs and DPCI, months in advance. Attendance is compulsory.

Sessions are held over 2-3 days- informed by the volume of matters in each division. Agendas are circulated prior to sessions.

Sessions involve the DPP, DDPPs (TRC Portfolio), Provincial Heads of various divisions of DPCI, both National coordinators, all dedicated TRC prosecutors and TRC investigators. The DNDPP and SD, when available, also attend the sessions.

# Accountability Sessions (cont.)

## *Content of Sessions*



The first day of the session comprises of critical and honest assessment of progress for the specific Division, discussions and updating on the latest legal developments and challenges on all TRC matters - criminal and inquest court roll. Best practice in other Divisions to overcome such hurdles are shared.



Next two days go to the core purpose of the sessions. Both the investigator and prosecutor present each individual matter. All investigations discussed and assessed. Challenges as well as solutions are mooted. Common perpetrators, persons of interest, modus operandi etc. Constructive criticism with a view to a strong case formulated.



Any challenge/s that cannot be resolved, through the normal channels of investigation or through the office of the DPP or Provincial Heads, are escalated to National coordinators for their intervention e.g. access to stakeholders etc.

# Accountability Sessions (cont.)

<b>Divisions</b>	<b>NPA/DPCI Accountability Sessions-2024</b>
NPA/DPCI	All TRC Nodal Points, NPA and DPCI-Annual operational plan shared for 2024-February 2024.
NPA/DPCI	Northern Cape-4-5 March 2024
NPA/DPCI	South Gauteng-13 March 2024
NPA/DPCI	Mpumalanga-15-17 May 2024
NPA/DPCI	Eastern Cape-21-23 May 2024
NPA/DPCI	Western Cape-4-5 June 2024
NPA/DPCI	Free State-18 June 2024
NPA/DPCI	KZN-24-26 June 2024

# Accountability Sessions (cont.)

Province	Date of NPA/DPCI Accountability Sessions-2024
NPA/DPCI	North Gauteng-3-4 July 2024
NPA/DPCI	Limpopo -1-2 August 2024
NPA\DPCI	South Gauteng-21 August 2024
NPA/DPCI	Eastern Cape-3-4 September 2024
2022	5
2023	11

# Skills sharing and in-house training

Date	Skills Development / Training
27 June 2024	Crime scene reconstruction and simulations
30 July 2024	Mutual Legal Assistance and Extraditions
2 July 2024	Orientation session on TRC matters: North West Province
9-11 April 2024	Preparation of memoranda: North West Province
6-7 August 2024	Preparation-for re-opening of inquest in the death of Mr Booï Mantyi
15 August 2024	Virtual meeting both NPA and DPCI-Electronic case management system (ECMS) input on creation of data base for uploading data on TRC matters.

# Forthcoming Sessions

	Proposed Date	Province
1	19-20 September 2024	Eastern Cape-Preparation for North-Crest Five inquest proceedings.
2	8 October 2024	OWP-All Divisions and DPCI-pertaining to protection of witnesses and processes to be followed
3	9 October 2024	Specialist forensic pathologist- All Divisions and DPCI-wounds, injuries, suspicious deaths
4	22 October 2024	MPTT – Exhumations , role of MPTT and collaboration between TRC and MPTT

# Engagements: Apartheid Era Victims Family Group (AVFG)

- ❖ Families led by AVFG approached the Head of NPS to engage with prosecutors and investigator officers to support the progress and efforts in building trust. Families needed accountability, transparency and closure.
- ❖ The AVFG was formed to ensure that the voices of the families are heard. Both the NPA and DPCI adopted a victim-centred approach.
- ❖ NDPP June 2022 directive that prosecutors actively engage with families and keep families updated on progress on their matters. It was the first time that families had access to prosecutors and investigators.
- ❖ Regular engagements and updating of families ensures that when decisions are finally taken, be it a prosecution, an inquest, or to close the matter (because all leads have been exhausted), families are aware that the investigator and prosecutor have explored every possible avenue before arriving at their decision.

# Engagements: AVFG (cont.)

- ❖ Over the duration of more than a year and a half, a relationship of trust has been solidified between AVFG and both the NPA and DPCI.
- ❖ All information pertaining to potential witnesses or avenues to be investigated, are relayed to investigating officers to assess and investigate.
- ❖ Where families are aggrieved by any issue, this is communicated to the office of the DPP first.
- ❖ In the exceptional case that the challenge is not resolved, the NCO'S are engaged to resolve the challenge.
- ❖ The same process is followed with other stakeholders whilst ensuring that both the NPA and DPCI remain impartial and objective in their approach to all matters.

# Stakeholder engagements

## AVFG/FHR: 6 Divisions

Date	Division	Stakeholders
26 September 2022	DPP Johannesburg	AVFG/DPCI/prosecutors and investigators
7 November 2022	DPP Pretoria	AVFG/DPCI/prosecutors and investigators
15 February 2023	DPP Western Cape	AVFG/DPCI/prosecutors and investigators
17 April 2023	DPP Northern Cape	AVFG/DPCI/prosecutors and investigators
1 June 2023	DPP Eastern Cape	AVFG/DPCI/prosecutors and investigators
24 July 2023	DPP KZN	AVFG/DPCI-prosecutors and investigators
30 January 2023	National Office	NPA/DPCI/FHR

# Stakeholder engagements (cont.)

Date	Division	Stakeholder/s
2 August 2023	DPP KZN (Head office)	AVFG/DPCI/prosecutors and investigators
28 September 2023	NPS Head/AVFG	Family representatives/AVFG
30 January 2024	NPS Head/FHR	Legal representatives

# Engagement with other stakeholders 2024

Date	Stakeholder	Purpose
23 February 2024	Department of Public Works	To obtain original plans pertaining to State owned buildings for reconstructions of crime scenes.
22 February 2024	South African National Archives	To access the inventory of information, to assist in investigations of TRC matters
18 July 2024 and 27 August 2024	Department of Justice	To partner with the TRC department in upcoming matters and access to information to aid investigations-psychological counselling for families
23 July 2024	State Security Agency	To access the inventory of information to assist in investigations of TRC matters.
Date to be confirmed	Department of Justice	Follow up meeting
12 September 2024	Department of Public Works	Meeting with DG-Public Works
To be confirmed	State Security Agency	Meeting with management

# Noteworthy Developments

## FIRST CONVICTION WITH EVIDENCE POST 2021



KZN – 8 November 2023

STATE versus Wesley Matiri Madonsela

GUILTY = MURDER

SENTENCE = Ten Years Imprisonment

# Noteworthy Developments (cont.)

<b>Name of the Matter- Finalised with a decision</b>	<b>30 matters finalised</b>
Re-opened inquest of Mr Ernest Dipale	Original court finding of suicide by hanging overturned.
Re-opened inquest of Dr Hoosen Mia Haffejee	Original finding of suicide by hanging overturned.
Re-opened inquest of Mr Abdullah Haron	Original finding of death resulting from a fall downstairs, overturned.
Inquest: Mr Zama Sokhulu	Proceedings finalised, matter referred to NPA for decision.
Re-opened inquest of Dr Neil Aggett	Original finding of suicide by hanging overturned.

# Noteworthy Developments (cont.)

Name of the Matter on the Criminal Court Roll	Date of hearing
S v Mfalapitsa and another (COSAS Four)	20 November 2024-Trial
S v Coetzee and another (Ms Simelane)	14-18 October 2024 for further evidence in the s 77(3) application.
S v Marais and three others (Mr Nyoka)	Trial date-August 2024
S v Botha and others	12 November 2024-State attorney-legal representation
S v Botha and others	12 November 2024-State attorney-legal representation
S v Schoon and others	7 November 2024-state attorney-legal representation

# Noteworthy Inquests

Name of the Matter	
Cradock Four	Inquest-re-opened-2-20 June 2025-challenge with legal representation
Chief Albert Luthuli	Inquest re-opened-awaiting appointment of judge
Mr Griffiths Mxenge	Inquest re-opened-awaiting appointment of judge
Dr Rick Turner	Inquest to be held-Judge to be appointed
Highgate Hotel	Inquest to be held-27 January to 7 February 2025
Mr Booi Mantyi	Re-opened inquest-Judge to be appointed
Mr Moss Morudi	Inquest to be held-Judge to be appointed
Northcrest Five	Inquest to be held-Judge to be appointed

# Noteworthy Inquests (cont.)

Name of the Matter	
Mr Oupa Ronald Madondo	Inquest proceedings underway-5 and 6 November 2024
Mr Mthunsi Vlemeseni Njakazi	Inquest proceedings underway-August 2024
Messrs Nzuzza and Ramotlo	Inquest to be held-shortage of capacity
Mr Vusumuzi Meshack Msani	Inquest to be held-shortage of capacity
<b>Mr Vusumuzi Mbatha</b>	<b>Inquest to be held-shortage of capacity</b>
Mr Tutu Shezi	Inquest to be held-shortage of capacity
Messrs Charles Ndaba and Mbuso Shabalala	Inquest to be held-shortage of capacity

# Noteworthy Inquests (cont.)

<b>Name of the Matter</b>	
Mr Bhekani Sibusiso Mbokazi	Inquest to be held
<b>INDICTMENTS</b>	
Indictments to be served pending verification of addresses of perpetrators	3
<b>MEMORANDA FOR INQUESTS AND RE-OPENING OF INQUESTS UNDERWAY</b>	10

# Challenges

- ❖ **Documents:** TRC acknowledged that files and documents had been destroyed in the normal course of events or as part of deliberate policy to conceal information. Documents are necessary to fully investigate the matter. All avenues are exploited to locate documents.
- ❖ **Lack of dockets, inquest records:** destruction of records and exhibits after a fixed period -loss of evidence.
- ❖ **Experts:** Expert evidence is important to gainsay versions of alleged suicides, falling downstairs, accidental deaths etc. State pathologists who are assisting, are overwhelmed with their normal duties, resulting in expert reports taking a lengthy period to be finalised.

# Challenges (cont.)

- ❖ Witnesses / Accused / suspects / persons of interest are **deceased or old**. Witnesses **unwilling or afraid** to co-operate with the investigating officers and the NPA.
- ❖ **Delay tactics** by accused persons and last-minute applications by legal counsels result in matters remaining on the court roll for lengthy periods of time.
- ❖ Hacking of cellphone communications between investigators and prosecutors- this is under investigation.

# Missing Persons Task Team (MPTT)

- ❖ The TRC recommended that a Task Team be established in the NPA to continue to trace the fate and whereabouts of those who disappeared in political circumstances and to recover their remains where possible. This recommendation was accepted by government.
- ❖ The Missing Persons Task Team (MPTT) has recovered the remains of 180 individuals inside South Africa. The identified remains have been returned to their families at special ceremonies hosted by the Justice Ministry across the country.
- ❖ The MPTT also conducts Symbolic Reburials or spiritual repatriations with families in cases where the remains of the deceased cannot be located. Eleven (11) such symbolic reburials have been conducted, in partnership with the TRC Unit in the DoJ&CD.

# Missing Persons Task Team (cont.)

❖ The MPTT has **special projects** that focus on groups that faced specific forms of political repression and deaths. These are:

**1. Gallows Exhumation Project:**

This project aimed to recover and return the remains of political prisoners who were sentenced to death and executed on the Gallows between 1960 and 1990. This project is approaching conclusion and only nine hanged political prisoners remain to be recovered.

**2. Exile Repatriation Project**

Hundreds of families whose loved ones went into exile and never returned reported them as missing to the TRC. Government further accepted the TRC recommendation that Community Reparations be implemented for specific communities severely impacted by political violence. The exile community is precisely one such group.

# Missing Persons Task Team (cont.)

## 2. Exile Repatriation Project (cont.)

In 2021 Cabinet approved a National Policy on the Repatriation and Restitution of Human Remains and Heritage Objects. An Inter-Departmental Implementation Plan was similarly approved in 2023.

The MPTT is a key implementing partner in the Exile Repatriation Project and conducts the (a) data collection, (b) grave mapping, (c) exhumations and (d) confirmation of identity.

The Exile Repatriation Project is being launched on 27 September 2024 with the exhumation and repatriation of the remains of nearly 50 exiles currently being conducted by the MPTT in Zambia and Zimbabwe. A Homecoming Ceremony will be hosted for the families by President Ramaphosa at Waterkloof Airbase and Freedom Park.

# MPTT Recent cases

- ❖ The MPTT recovered the last of the Mamelodi 10 and the remains were handed to the families and Mamelodi community by the Justice Minister and NDPP in 2023.
- ❖ Spiritual repatriations (symbolic reburials) were conducted in the case of four Mamelodi activists who were abducted and killed by the Northern Transvaal Security Police and whose remains could not be recovered.
- ❖ A spiritual repatriation was also conducted with the family of Bellington Mampe at the Worcester Prison. Mr Mampe died in political custody in 1963, and his burial site could not be located.
- ❖ The remains of two hanged PAC members were handed to their families in Soweto and Wolmarans respectively in 2023.

# MPTT Recent cases (cont.)

- ❖ The MPTT is currently preparing for the exhumation of a young activist shot dead by police in Knysna in 1986. In addition, potential burial sites have been identified in the Matatiele area for excavation in the search for a missing MK member.
- ❖ The MPTT also assists the TRC Component in the NPA and DPCI in the form of research, family tracing, exhumations and DNA tests. For example, the MPTT assisted with the exhumation and forensic examination of remains believed to be those of Mr Thabo Mosala, who died in detention in 1976 and was reportedly buried in the Matatiele area of the Eastern Cape.

# Concluding remarks

- ❖ Since 2019, the NPA has been committed to dealing with TRC matters and this report shows the progress that we have made over the past few years, and that we continue to make.
- ❖ We adopted measures to ensure that there is no recurrence of undue political interference in the prosecution of TRC matters and we appointed senior counsel to review and assess the measures.
- ❖ In June 2023, Adv Ntsebeza SC submitted his written opinion on the TRC component and TRC prosecutions, to the NPA. It has been released and published on our website.

# Concluding remarks (cont.)

- ❖ The opinion found that the measures adopted and implemented by the NPA to deal with TRC matters – namely, the structure and checks and balances that form part of the TRC component - are largely adequate.
- ❖ The NPA has abided by its recommendations and submitted the report to the former Minister of Justice and Correctional Services, to consider the remainder of the recommendations.
- ❖ Measures taken are part of the NPA's strategic objective of having the requisite financial and operational independence to deliver on its constitutional mandate. We continue to engage the Department of Justice and Constitutional Development to deliver on parliamentary commitments made in Nov. 2023.



**National Prosecuting Authority**  
South Africa

# Thank you

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