

# Court tells NPA to stop playing victim and do its job of punishing apartheid crimes

Prosecuting authority told it had duty to resist political interference

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- We live in the real world and we live in the postZuma era, so we know that the idea that a state institution, mandated to act without fear or favour and purely in the interests of justice and the will of the people it serves, is a fairy tale.



But tell that to the National Prosecuting Authority (NPA), which this week was informed by a full bench of judges in the South Gauteng

High Court that it has serious questions to answer about its lack of action and failure to deal with executive interference in its mandate to prosecute cases arising out of the work of the Truth and Reconciliation Commission (TRC).

The NPA, while acknowledging that political interference did occur, wants us to believe that it did the best it could under the circumstances. Now, with the court's decision to dismiss the stay of prosecution application by former security cop Joao Rodrigues, implicated in the death of activist Ahmed Timol, and with the recent decision to reopen an inquest into the death of Dr Neil Aggett, the prosecuting authority would have us believe it is back on track to help families finally obtain the justice they have spent decades searching for.

In a response to questions from the Sunday Times, the NPA's head of communications, Bulelwa Makeke, said: "... political interference is now a thing of the past. There are efforts to give more attention to these matters, notwithstanding the massive attendant challenges, including the long time that has elapsed since these crimes were committed and some of the evidence not being admissible in court.

"The finalisation of the Ahmed Timol case is a positive step. The NDPP [national director of public prosecutions] recently submitted a request to open an inquest in the Neil Aggett case, which the former minister of justice & correctional services [Michael Masutha] approved, and the process is under way.

“More resources in the DPP [Directorate of Public Prosecutions] divisions have been deployed to work with the PCLU [Priority Crimes Litigation Unit], to enhance the capacity to deal with these matters in their respective jurisdictions.”

All well and good, but the judgment handed down in the Rodrigues matter is scathing in its indictment of the NPA, noting that ... “the NPA cannot, as it seeks to do, portray itself purely as a victim of the political machinations of the time. Whatever form the political interference took, the NPA was enjoined in terms of both its constitutional and legal responsibilities to act on behalf of society and protect the public interest.”

This is in light of documents submitted that include communications between then NDPP Vusi Pikoli and former minister of justice Brigitte Mabandla in which Pikoli made it clear that he felt that the executive prevented him from doing his duty with regard to TRC cases. The Rodrigues ruling, handed down on Monday, continues by pointing out that: “The NPA had a duty to assert its authority and independence and resist the political interference. It cannot be acceptable for it to simply have allowed, as it did, the manipulation of the criminal justice system in the serious manner that occurred.”

The NPA’s argument that it did its best to prosecute cases until it came up against the bureaucratic brick wall placed in its way by the Mbeki administration holds no water for the judges, who went on to say: “Rather than simply succumb to it, it was incumbent upon the NPA to have brought this interference into the open.

“Victims of those crimes where investigation and prosecution was being suppressed certainly had the right to know what was happening and why such cases were not being prosecuted. Society as a whole had an ongoing interest in the work of the TRC and the follow-up that the government had committed itself to.

“Parliament, which ultimately represents the legislative authority of the state, had a right to know when the letter and spirit of legislation that it had passed was being deliberately undermined. None of this occurred and the NPA must accordingly accept the moral and legal consequences of this most serious omission and dereliction of duty on its part.”

When the Rodrigues matter resumes later this month we will be in a strange situation in which the NPA is essentially acting like a husband in a divorce settlement who is in an “open relationship” with their spouse and wants us to believe that they’re not to blame for any infidelity and can we just move on and get things over with?

The judges in the Rodrigues matter have made it plain that whatever else happens with the Timol case, the NPA has questions to answer about why the delays and political interference in the prosecution of apartheid-era crimes were allowed to happen. The NPA is not guilty of the crimes perpetrated but its inability to deal with the obstacles placed in its way have had very real consequences for the people it is supposed to represent — Aggett’s main torturer, Stephan Whitehead, died before the announcement of the reopening of the inquest into Aggett’s death.

Timol’s main interrogators also escaped justice in spite of their existence being known to the NPA for years. Older cases now up for consideration are equally hampered.

For NPA officials to claim they are victims too is disingenuous and insulting to the families of those killed in the struggle against apartheid. And while it may seem an unnecessary sideshow, it is now evident that it is incumbent upon President Cyril Ramaphosa to call to

account those who have delayed justice in these matters and follow the advice of the judges in the Rodrigues matter who recommended that the NPA essentially investigate itself and account for its lack of action.

The judges observed: “The conduct of the relevant officials and others outside of the NPA at the time should be brought to the attention of the national director of public prosecutions for her consideration, and in particular to consider whether any action is warranted

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“Finally, there must be a public assurance from both the executive and the NPA that the kind of political interference that occurred in the TRC cases will never occur again. In this regard they should indicate the measures ... which will be put in place to prevent a recurrence of these unacceptable breaches of the constitution.”