



FOUNDATION FOR  
**HUMAN RIGHTS**

## PROPOSED NEW APPROACH TO APARTHEID ERA PROSECUTIONS

Foundation for Human Rights

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## I. Purpose of this Memorandum

In nearly 20 years since the winding up of the Truth and Reconciliation Commission's amnesty process there has been little progress in the pursuit of serious apartheid era-crimes. These were the cases in which the offenders were refused amnesty or did not apply for amnesty. Several hundred such cases were referred by the TRC to the NPA (the TRC cases). Both a moral and legal obligation were placed on post-apartheid authorities to ensure that offenders in these cases faced justice. It is a matter of record that political interference blocked virtually all these cases from proceeding. This is not disputed by the National Prosecuting Authority (NPA).<sup>1</sup>

The policy of decentralisation adopted by the NDPP in February 2019 involved transferring the TRC cases from the Priority Crimes Litigation (PCLU) Unit to the provincial offices of the various Directors of Public Prosecutions (DPP). This approach has failed to advance the TRC cases. Indeed, we cannot point to any tangible progress in any of the cases in the last 18 months. The cases are to varying degrees stagnating in various offices without any discernible effort to prioritise them.

This memorandum proposes that only a dedicated and focussed capacity will be able to salvage the TRC cases and deliver justice to long suffering families. To this end we have carried out comparative research to assess the track records of countries that adopted a dedicated capacity against those which opted against any specialised approach. In particular we describe and analyse:

- Four case studies with special prosecution units mandated to deal exclusively with crimes of the past (Argentina, Germany, Bosnia and Herzegovina and Uganda);
- Two case studies (UK and Peru), where no specialised prosecution units were established.

The need for a dedicated capacity is borne out by this study. Those countries with specialised units delivered credible results, whereas those with no dedicated focus have a lacklustre record. It is no coincidence that those countries which achieved a measure of success also enjoyed considerable political support for the efforts to secure justice for past crimes. Whereas those that failed were hampered by a lack of political will, or indeed outright political obstruction.

The memorandum also notes a worldwide trend of closer cooperation between prosecutors and investigators and calls for prosecution led investigations into the apartheid era cases on the back of a coherent prosecutorial strategy. The memorandum concludes with a set of recommendations.

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<sup>1</sup> See supplementary affidavits of T P Pretorius SC and C R Macadam in *Rodrigues v NDPP & Others* 76755/2018) [2019] ZAGPJHC 159; [2019] 3 All SA 962 (GJ)

## II. Special Unit or Department within the Office of the Prosecutor

Specialised prosecution units are established for different reasons. Most often, these units are established to investigate and prosecute complex criminal cases that present a threat to national security or financial stability, such as terrorism or money laundering. Other categories of cases that have warranted specialised attention include transnational crimes and crimes that target vulnerable groups, such as children and victims of human trafficking. In addition, crimes that are structural or endemic in nature require focussed attention, such as corruption). Finally, specialised units have been established to deal with crimes that rise to a certain gravity threshold, such as crimes against humanity, since their investigation and prosecution is required under international law.

While there are many reasons underpinning the establishment of specialised units, they are set up to overcome similar challenges. The rationale behind the establishment of specialised prosecutorial units includes the need to:

- Concentrate and centralise national efforts under one organisational entity in order to facilitate coordination, exchange of information and leads; and to establish clear lines of responsibility and accountability.
- Have motivated, well-capacitated and skilled investigators and prosecutors with the necessary expertise.
- Promote specialised and focussed attention on identified cases without being unduly distracted and diverted onto other matters.
- Foster closer cooperation between investigators and prosecutors.

Human Rights Watch (HRW) found that as a result of the creation of Specialized War Crimes Units in Germany, France and the Netherlands, “... *the cooperation between police and prosecutors has significantly improved over the years, further enhancing the units’ ability to handle cases effectively.*”<sup>2</sup>

The specialised units established within police and/or prosecution services differ in mandate and composition.<sup>3</sup> Some countries have established specialised units to deal with the cases

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<sup>2</sup> Human Rights Watch. 2014. Lessons in specialized war crimes units. Available: <https://www.hrw.org/report/2014/09/16/long-arm-justice/lessons-specialized-war-crimes-units-france-germany-and>

<sup>3</sup> Schurr, J. and Ferstman, C. (Ed.). 2010. Strategies for the effective investigation and prosecution of serious international crimes: The practice of specialised war crimes units. *International Federation for Human Rights and REDRESS*. Available: [http://www.eurojust.europa.eu/doclibrary/genocide-network/KnowledgeSharing/Strategies%20for%20the%20effective%20investigation%20and%20prosecution%20of%20serious%20international%20crimes%20\(REDRRESS-FIDH%20report,%20Dec%202010\)/2010\\_REDRESS-FIDH\\_Strategies-investigation-prosecution-international-crimes\\_EN.pdf](http://www.eurojust.europa.eu/doclibrary/genocide-network/KnowledgeSharing/Strategies%20for%20the%20effective%20investigation%20and%20prosecution%20of%20serious%20international%20crimes%20(REDRRESS-FIDH%20report,%20Dec%202010)/2010_REDRESS-FIDH_Strategies-investigation-prosecution-international-crimes_EN.pdf)

based on the principle of the universal jurisdiction, such as France,<sup>4</sup> the Netherlands<sup>5</sup> and Canada.<sup>6</sup>

In other countries, specialised units have been established within police and/or prosecution services to deal exclusively with “crimes of the past”. Their mandates have been limited to certain serious crimes arising from defined historic periods.

### III. Case Studies

#### 1. Specialised Units focused exclusively on Crimes of the Past

##### A. Argentina

###### Context:

Many dictatorship-era crimes were committed in Argentina. The first democratically elected President of Argentina, Alfonsín, created a National Commission on Disappeared Persons (known by its Spanish acronym, CONADEP) and tasked it with investigating the fate of the desaparecidos (disappeared persons). In 1984, CONADEP released its report, *Nunca Más* (“Never Again”), which listed the victims and detention centres where individuals were murdered and tortured by the security forces. The findings of the CONADEP were then used in several criminal trials.

The Office of the Public Prosecutor created specialised units in different jurisdictions to deal with crimes against humanity.<sup>7</sup> At the federal level, there is a specialised unit established by the Argentinean Attorney General: the Office of the Prosecutor for Crimes against Humanity (PCCH)<sup>8</sup> established by (Resolution PGN<sup>9</sup> No. 1442/13) – formerly known as the Fiscal Unit for Coordination and Follow-up of Causes for Violations of Human Rights committed during State Terrorism (Resolution PGN No. 07/14 respectively). In 2013, the Attorney General merged the PCCH with the Fiscal Unit.<sup>10</sup>

The three hearings or *Juicio a las Juntas Militares* (Trials of the Military Meeting Members) throughout 1985 was a landmark for justice in Argentina. The trials concerned crimes against

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<sup>4</sup> Open Society Justice Initiative. Briefing Paper: Universal Jurisdiction Law and Practice in France, 2019 February. Available: <https://trialinternational.org/wp-content/uploads/2020/05/Universal-Jurisdiction-Law-and-Practice-in-France.pdf> See also: Human Rights Watch. 2014. Lessons in specialized war crimes units.

<sup>5</sup> Open Society Justice Initiative. Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands, 2019 April. Available: <https://trialinternational.org/wp-content/uploads/2020/05/Universal-Jurisdiction-Law-and-Practice-in-the-Netherlands.pdf>

<sup>6</sup> Open Society Justice Initiative. Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands, 2020 April. Available: <https://trialinternational.org/wp-content/uploads/2020/05/Universal-Jurisdiction-Law-and-Practice-in-Canada.pdf>

<sup>7</sup> Lessa, F. 2019. Investigating Crimes against Humanity in South America: Present and Future Challenges. *Policy Brief*. Latin American Centre, University of Oxford. Available: <https://www.lac.ox.ac.uk/files/lacpolicybriefenglish0pdf>

<sup>8</sup> Ministerio Público Fiscal. Procuraduría de Crímenes contra la Humanidad (PCCH). Available: <https://www.mpf.gob.ar/lesa/>

<sup>9</sup> Procuración General De La Nación (Attorney General of the Nation)

<sup>10</sup> Carbó, Resolución PGN 1442/13.

humanity (including murder, torture, and illegal detention) and were held at Argentina's National Criminal Court of Appeals. This Court handled 280 carefully selected cases from the 709 cases prepared by the Office of the Public Prosecutor.<sup>11</sup> The Prosecutor's "*never again*" closing argument remains etched in the minds of many Argentines.<sup>12</sup> The trial of the junta members led to the conviction of former presidents Jorge Rafael Videla and Roberto Eduardo Viola, Admirals Emilio Eduardo Masera and Armando Lambruschini, and Brigadier General Orlando Ramón Agosti. More than 800 witnesses were presented, covering some 700 individual complaints taken from CONADEP's case files.<sup>13</sup>

### Operations:

The long experience in specialised investigation and prosecution of serious human rights violations<sup>14</sup> resulted in the issuing of various policies and guidelines by the Attorney General, such as PGN Resolution No. 13/08 which provides guidelines for the investigation of human rights violations.<sup>15</sup> Over time the focus of the investigations expanded from a narrow focus on military and security personnel to include perpetrators from within government more generally as well as business people.<sup>16</sup>

The main functions of the Office of the Prosecutor for Crimes against Humanity (PCCH) include:

- The preparation of a complete and updated register of cases of human rights violations committed during the period of repression;
- Oversee preliminary investigations and the monitoring of developments in each case;
- Institutional coordination to facilitate efficient progress;
- Design strategies to strengthen the investigations in each case, detect weakness and address them;
- Conduct the digitization of all records and case files to ensure efficient and speedy searches and extraction of information;

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<sup>11</sup> International Crimes Database. 2013. Juicio a las Juntas Militares. Available at :

<http://www.internationalcrimesdatabase.org/Case/1118/Juicio-a-las-Juntas-Militares/>

<sup>12</sup> *Ibid.*

<sup>13</sup> Filippini, L. Briefing: Criminal Prosecutions for Human Rights Violations in Argentina. *International Center for Transitional Justice*. 2009, November. <https://www.ictj.org/sites/default/files/ICTJ-Argentina-Prosecutions-Briefing-2009-English.pdf>

<sup>14</sup> Carbó, A. G. 2013. Resolución PGN 1442/13. Deputy Secretary General Resolution 1442/13. 2013, 29<sup>th</sup> July. Buenos Aires. Available: <https://www.mpf.gov.ar/resoluciones/pgn/2013/PGN-1442-2013-001.pdf>

<sup>15</sup> A 2008 Resolution, which followed the Fiscal Unit's publication of its document "Some problems related to the processing of cases for violations of Human Rights Committed During State Terrorism". Once escalated by the Fiscal Unit of Coordination and Follow-up to the Attorney General, this established guidelines for performance objectives, which are specified in the document "Guidelines for the implementation of Resolution PGN 13/08"; Carbó, Resolución PGN 1442/13.

<sup>16</sup> *Ibid.*

- Research and keep up to speed on domestic, foreign and international developments in criminal law and procedure;
- Coordinate tasks and efforts with other prosecutors in order to optimize resources to achieve set objectives;
- Hold consultations with institutional and social actors involved in the pursuit of truth and justice.<sup>17</sup>

The PCCH comprises federal prosecutors and is currently led by María Ángeles Ramos.<sup>18</sup> The PCCH operates at the federal level and intervenes at the local level when it deems necessary.<sup>19</sup>

### Outcomes:

The June 2020 report of the PCCH shows that 3 316 people have been investigated for crimes against humanity, of which 995 were convicted.<sup>20</sup> Two hundred and sixty-three (263) cases are still being investigated, and 67 are awaiting trial.<sup>21</sup> The disaggregated figure consists of 605 individuals prosecuted, 540 accused, 181 cases without merit, 162 acquitted, 91 dismissed, 71 investigated and 26 fugitives. 645 individuals implicated in crimes during the dictatorship died.<sup>22</sup>

Without the ongoing and focussed dedication of the PCCH, it is unlikely that these investigations and prosecutions would have been conducted. The success in Argentina is testament to the collective and political will to serve and deliver justice, notwithstanding the long lapse in time.

## **B. Germany**

### Context:

Following WWII, Nazis crimes were investigated by the Allied authorities and culminated in the famous Nuremberg Trials. The investigative obligation was then transferred to the new German state's police authorities.

In 1958, Germany established the Central Office of the State Judicial Administration for the Investigation of National Socialist Crimes, to prosecute Nazi criminals.<sup>23</sup> German prosecutors were initially hamstrung as the state needed proof that a suspect was directly involved in a

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<sup>17</sup> Report of the Office of the Prosecutor for Crimes against Humanity (PCCH) updated to 24<sup>th</sup> June 2020. Courtesy Translation. Available: <https://www.fiscales.gob.ar/lesa-humanidad/estado-actual-del-proceso-de-juzgamiento-263-causas-estan-en-etapa-de-instruccion-y-67-aguardan-por-el-inicio-del-juicio/>

<sup>18</sup> Report of the Office of the Prosecutor for Crimes against Humanity (PCCH) updated to March 24<sup>th</sup> 2020. Available: <https://www.fiscales.gob.ar/lesa-humanidad/24-de-marzo-la-procuraduria-de-crimes-contrala-humanidad-actualizo-los-datos-sobre-el-proceso-de-juzgamiento/>

<sup>19</sup> Available at: <https://www.mpf.gob.ar/que-es-el-mpf/>

<sup>20</sup> Current Stage of Judgment Process for Crimes Against Humanity. 2020, June 16<sup>th</sup>. Prosecutor Authority for Crimes Against Humanity Argentina.

<sup>21</sup> Report of the Office of the Prosecutor for Crimes against Humanity (PCCH) updated to 24<sup>th</sup> June 2020.

<sup>22</sup> *Ibid.*

<sup>23</sup> Records of the Central Office of the Judicial Authorities of the Federal States for the Investigation of National Socialist Crimes (B 162). Available: <https://portal.ehri-project.eu/institutions/de-006145>

crime.<sup>24</sup> In more recent times criminal liability was imposed on those who aided and abetted the commission of crimes, even if they were directly involved in the actual murders.<sup>25</sup> This significantly expanded the potential universe of suspects. However, because of the long effluxion of time most suspects and witnesses had already died.

Additional bureaucratic and political issues prevented the Central Office from conducting its work consistently. For instance, much evidence was destroyed, intentionally or through negligence and degradation, before the implicated perpetrators could be held accountable.

### Operations:

The Central Office's main purpose is to conduct preliminary investigations into war crimes that occurred under Nazi rule, between 1933 and 1945. Following preliminary investigations, the Central Office refers processed cases to federal public prosecutor offices. The assigned public prosecutors are obliged to report to the Central Office and to notify it of all steps taken.<sup>26</sup> Generally, more than 30 cases are referred to the public prosecutor from the Central Office per year.<sup>27</sup>

Initially, the Central Office was not immediately effective.<sup>28</sup> At first, it was not able to prosecute criminals itself. Its work was further impeded by the initial lack of special provision for war crimes in contemporary German law, and by a statute of limitations that made some crimes almost impossible to prosecute after 1960.

For the next 40 years, the Central Office faded from public conscience to re-emerge in 2007 with several landmark cases.<sup>29</sup> Thomas Walther, a lawyer working with the Central Office at the time, devised a strategy to challenge the unhelpful precedent set in 1969 in the case against John Demjanjuk, a former guard at the Sobibor Nazi extermination camp located in Poland. Kurt Schrimm, then-head of the Central Office, used the Demjanjuk case to energise the office.

An important function of the Central Office is the collection, examination and preservation of documentation and records of war crimes investigations and prosecutions. This is important in order that future generations may learn from history.

### Outcome:

Since its formation, the Central Office has helped find and prosecute almost 7 000 Nazi criminals.<sup>30</sup>

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<sup>24</sup> Kinstler, L. 2017. The last Nazi hunters. *The Guardian*. 2017, August 17<sup>th</sup>. Available: <https://www.theguardian.com/news/2017/aug/31/the-last-nazi-hunters>

<sup>25</sup> Interview with Jens Rommel, Chief Prosecutor at the Central Office. Available at: <https://www.dw.com/en/nazi-crimes-prosecutor-time-is-running-out/a-46536430>

<sup>26</sup> Records of the Central Office of the Judicial Authorities of the Federal States for the Investigation of National Socialist Crimes (B 162). Available: <https://portal.ehri-project.eu/units/us-005578-irn43608>

<sup>27</sup> Interview with Jens Rommel.

<sup>28</sup> Kinstler, 2017, The last Nazi hunters, *The Guardian*.

<sup>29</sup> *Ibid.*

<sup>30</sup> Records of the Central Office of the Judicial Authorities of the Federal States for the Investigation of National Socialist Crimes (B 162).

An indirect result of the establishment of a specialised approach to Nazi war crimes has been the institutionalisation of the pursuit of justice for human rights violations in Germany. The state's success with Nazi war crime prosecutions contributed to its vigorous approach in the pursuit of perpetrators of grave international crimes today.<sup>31</sup> This led to the creation of a specialized international crimes unit at the federal prosecutor's office in 2010, and the allocation of more resources to the unit, which greatly facilitated Germany's capacity to pursue universal jurisdiction cases.<sup>32</sup>

The innovative device of structural investigations has also enhanced the ability of German prosecutors to pursue serious human rights violations.<sup>33</sup> Structural investigations are not directed against specific persons but rather focus on the structures and context within which the crimes were perpetrated. This has facilitated the ability of prosecutors to identify suspects and facilitate several important prosecutions.<sup>34</sup>

### **C. Bosnia and Herzegovina**

#### Context:

The armed conflict in Bosnia and Herzegovina between 1992 to 1995, was characterized by grave violations of human rights including mass killings, rapes, widespread destruction, and displacement of the population.<sup>35</sup> To ensure criminal accountability for international crimes committed in the Former Yugoslavia, the United Nations Security Council, acting established the International Criminal Tribunal for the former Yugoslavia (ICTY).

The War Crimes Chambers (WCC) in Bosnia and Herzegovina were created in the context of the ICTY's completion strategy.<sup>36</sup> The WCC is a domestic chamber based in Sarajevo WCC and shares concurrent jurisdiction over atrocity crimes with various local courts.<sup>37</sup> It initially had a mixed national-international composition, but as of 2012, the WCC comprises 48 local judges only.

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<sup>31</sup> Varney, H. Ground-breaking International Justice in Germany. *International Center for Transitional Justice*. 2020, May 28<sup>th</sup>. Available: <https://www.ictj.org/news/groundbreaking-international-justice-germany>

<sup>32</sup> Human Rights Watch. 2014. Lessons in specialized war crimes units. Available: <https://www.hrw.org/report/2014/09/16/long-arm-justice/lessons-specialized-war-crimes-units-france-germany-and>

<sup>33</sup> In Germany, a structural investigation (*Strukturermittlungsverfahren*) is opened where there is evidence that a crime has taken place, but potential perpetrators have not yet been definitively identified. The investigation focuses on structures related to the potential crime and groupings of potential perpetrators. Source: <https://www.ecchr.eu/en/glossary/structural-investigation/>

<sup>34</sup> Varney, H. Ground-breaking International Justice in Germany. *International Center for Transitional Justice*. 2020, May 28<sup>th</sup>. Available: <https://www.ictj.org/news/groundbreaking-international-justice-germany>

<sup>35</sup> Witte, H. and Duffy, C. "Annex 4: Mechanisms in Europe". In *Options for Justice*, 2018, September 18<sup>th</sup>. 485-625. Available: <https://www.justiceinitiative.org/uploads/68077a78-c712-40d9-9b8d-b1512efb7e50/options-for-justice-annex-4-europe-20180918.pdf>

<sup>36</sup> Singh, P-P. Looking for justice: the war crimes chamber in Bosnia and Herzegovina. *International Justice Program of Human Rights Watch*. 2006, February 7<sup>th</sup>. Available: [https://www.hrw.org/report/2006/02/07/looking-justice/war-crimes-chamber-bosnia-and-herzegovina#\\_ftn1](https://www.hrw.org/report/2006/02/07/looking-justice/war-crimes-chamber-bosnia-and-herzegovina#_ftn1)

<sup>37</sup> Witte, H. and Duffy, C. "Annex 4: Mechanisms in Europe". In *Options for Justice*, 2018, September 18<sup>th</sup>.

Adjunct to the WCC the Special Division for War Crime (SDWC) was formed in 2004 in the Prosecutor's Office. Initially, the SDWC was composed of both international and national prosecutors. However, the international prosecutors were phased out in 2012.<sup>38</sup>

#### Operations:

The SDWC within the Prosecutor's Office of Bosnia and Herzegovina is working on cases transferred by the ICTY to the WCC, as well as cases initiated in the Prosecutor's Office.<sup>39</sup>

According to the official website, the SDWC currently has 36 prosecutors working specifically on cases related to the past conflict.<sup>40</sup>

Prosecutors of the SDWC initially sent "highly sensitive" cases to the WCC and "sensitive" cases to local courts. Since the adoption of the National War Crimes Strategy in 2008, cases have been sorted based on "complexity criteria," considering "the gravity of the criminal offence, the capacity and role of the perpetrator, and other considerations."

#### Outcome:

Between 2004 and 2017, some 473 war crime proceedings had been initiated by the SDWC.<sup>41</sup> By November 2017, 66 cases had been adjudicated, resulting in the conviction of 83 individuals, the acquittal of 49 suspects, and the suspension of eight cases. A further 13 cases involving 43 accused were at the trial stage and six cases remained before the Appellate Court.<sup>42</sup> In 2018 a further 17 accused were convicted.<sup>43</sup>

### **D. Uganda**

#### Context:

Following the ascendancy to power by President Yoweri Museveni in 1986, Uganda faced several counterinsurgencies, most notably from the Lord's Resistance Army (LRA). The conflict saw severe human rights violations, including killings, sexual violence, widespread kidnapping and a pervasive use of child soldiers. An estimated 75 000 children were abducted and forced to serve as combatants, porters, and sex slaves from 1979 to 2005.<sup>44</sup>

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<sup>38</sup> *Ibid.*

<sup>39</sup> The Prosecutor's Office of Bosnia and Herzegovina. Department I (Special Department for War Crimes). Available: <http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=2&id=4&jezik=e>

<sup>40</sup> *Ibid.*

<sup>41</sup> Observations on the National War Crimes Processing Strategy and its 2018 Draft Revisions, including its relation to the Rules of the Road 'Category A' cases. 2018, September. Available: <https://www.osce.org/files/f/documents/d/b/397541.pdf>

<sup>42</sup> Witte, H. and Duffy, C. "Annex 4: Mechanisms in Europe". In *Options for Justice*, 2018, September 18<sup>th</sup>.

<sup>43</sup> Observations on the National War Crimes Processing Strategy, 2018.

<sup>44</sup> *International Center for Transitional Justice*, Uganda, 2020. Available: <https://www.ictj.org/our-work/regions-and-countries/uganda>

### Mechanisms established:

The International Crimes Division (ICD) of Uganda's High Court was formally established in 2011 to deal with cases involving international and transnational crimes.<sup>45</sup> The ICD is currently tasked with investigating war crimes, crimes against humanity, genocide, terrorism, human trafficking, piracy and other international crimes.<sup>46</sup>

The ICD is headquartered in Kampala and comprises five judges, a registrar, and a prosecutions and investigations unit. *"The ICD's prosecution function is entrusted to a unit of Uganda's Directorate of Public Prosecutions (DPP). The Criminal Investigations Department of the Ugandan Police Force is responsible for investigating crimes that may be tried before the ICD under the lead of the prosecutors, who guide investigations to ensure the effective collection of required evidence. Prosecutors and investigators assigned to the ICD are public officials appointed through the regular procedure set out in the Public Service Act and the Police Act and have undergone specialized training in the investigation and prosecution of serious crimes."*<sup>47</sup>

### Outcome:

The ICD has prosecuted about 50 people, mostly in relation to human trafficking and terrorism related crimes. One case involving international crimes has reached the trial stage and another is at the pre-trial stage, while a third is at the investigative stage. The ICD has been held back by a lack of funding and human resources and a dire lack of political support.<sup>48</sup>

## **2. Where Special Offices of Prosecution were *not* established**

Peru and the United Kingdom (in relation to the Northern Ireland) have not established special offices of prosecution, which has contributed to overburdening existing institutions. This has impacted negatively on victims and survivors seeking justice. This means that funding, bureaucracy and lack of capacity are constant challenges which tends to delay the delivery of justice.

### **A. Peru**

#### Context:

Between 1980 and 2000, Peru had an internal armed conflict which resulted in large numbers of human rights violations and some 70 000 fatalities in atrocities committed by the Shining Path and other insurgent groups as well state security forces. The Truth and Reconciliation

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<sup>45</sup> Kihika, K. S. and Regué, M. Briefing: Pursuing Accountability for Serious Crimes in Uganda's Courts Reflections on the Thomas Kwoyelo Case. *International Center for Transitional Justice*. 2015, January. <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Uganda-Kwoyelo-2015.pdf>

<sup>46</sup> The Judiciary of the Republic of Uganda. 2020. International Crimes Division. Available: <http://www.judiciary.go.ug/data/smnu/18/International%20Crimes%20Division.html>

<sup>47</sup> Kihika and Regué. 2015. Pursuing Accountability for Serious Crimes. *ICTJ*.

<sup>48</sup> Matsiko, G. 12 years on, Uganda's international crimes division has little to show. *Fondation Hirondelle*. 2020, March 9th. Available: <https://www.justiceinfo.net/en/tribunals/national-tribunals/43986-12-years-on-uganda-international-crimes-division-has-little-to-show.html>

Commission (*Comisión de la Verdad y la Reconciliación* (CVR)) documented testimonies of gross human rights violations.

The CVR recommended prosecutions in key cases.<sup>49</sup> The CVR stressed strong political will and commitment by state authorities was needed in order to achieve justice.<sup>50</sup> In 2004, the CVR recommended the establishment of a special office of prosecution to investigate and prosecute past human rights abuses, but this recommendation was not implemented.<sup>51</sup>

#### Follow up to the truth commission:

When the CVR concluded its work in 2001, it delivered evidence uncovered in 47 cases to the Public Prosecutor's Office. This evidence was used by the Public Prosecutor's Office to initiate investigations on these cases.<sup>52</sup>

However, progress was limited. By 2008, the majority (57,7%) of the 194 total cases (47 of which were presented by the CVR, 12 investigated by the Ombudsman's Office itself, and 159 by the Inter-American Commission on Human Rights), were still in the preliminary investigation stage, despite the majority of them being initiated between 2001 and 2004.<sup>53</sup> One of the reasons for the slow progress was that the Office of the Prosecutor had not created a specialized unit to ensure that cases were diligently pursued.<sup>54</sup>

A decade after the conflict ended, 3 prosecutors were appointed to act at the national level (*Fiscalía Penal Nacional*); and six prosecutors have been assigned regional jurisdictions (*Fiscalías penales supraprovinciales*), three in Lima, two in Ayacucho, and one in Huancavelica.<sup>55</sup> However cases were not being investigated effectively prompting the Prosecutor's Office to assign 15 additional prosecutors to carry out human rights investigations.<sup>56</sup>

However, in addition to these responsibilities these prosecutors were also tasked with the investigation and prosecution of crimes involving taxes, customs and intellectual property.<sup>57</sup> This overburdened the prosecutors and severely hampered the progress of the crimes from the past. The *Defensoría del Pueblo* (Office of the Ombudsman) concluded in 2008 that the absence of an exclusive dedication to human rights cases and an elevated caseload resulted in few cases being pursued.<sup>58</sup>

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<sup>49</sup> CRV. Informe Final, Tome IX, Recommendations of the TRC towards reconciliation, Lima, 2003, as cited by Acevedo, J. P. P. L. 2010. Reparations and Prosecutions after Serious Human Rights Violations: Two Pending Issues in Peru's Transitional Justice Agenda. *Oxford Transitional Justice Working Papers Series*. Oxford: Faculty of Law. Available: <https://www.law.ox.ac.uk/sites/files/oxlaw/acevedo1.pdf>

<sup>50</sup> CRV. Informe Final, Tome IX, Recommendations of the TRC towards reconciliation, Lima, 2003,

<sup>51</sup> Acevedo, J. 2009. Two Pending Issues in Peru's Transitional Justice Agenda.

<sup>52</sup> Arce, G. 2010. Armed Forces, Truth Commission and Transitional Justice in Peru. SUR 13. Available: <https://sur.conectas.org/en/armed-forces-truth-commission-transitional-justice-peru/>

<sup>53</sup> *Ibid.*

<sup>54</sup> Hurtado, M. R. 2008. Informative note on the situation of human rights criminal cases in Peru. *International Center for Transitional Justice* (in a possession of the author).

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

## Outcome:

Despite many recommendations by the truth commission for prosecution, only a modest number of cases have proceeded, largely due to a lack of political will.<sup>59</sup> As of September 2019, the courts had issued rulings in only 86 cases concerning crimes committed during the conflict period, securing 44 convictions.<sup>60</sup> This has severely undermined the transitional justice project, as most perpetrators have not been held to account and continue their lives with almost complete impunity.<sup>61</sup>

Moreover, the state has gone out of its way to promote impunity with the courts occasionally intervening to enforce accountability. For instance, in December 2017, the-President granted former President Fujimori a ‘humanitarian pardon’ based on claims of illness, but one year later the Supreme Court overturned this pardon, and Fujimori returned to prison.<sup>62</sup>

In 2008, the Office of the Ombudsman highlighted several key issues that obstructed the progress of the cases.<sup>63</sup> These were:

1. Lack of a specialised prosecutor’s office;
2. Delays and lack of consistent investigations;
3. Lack of a strategy to investigate prosecution for human rights abuses;
4. A reduction in prosecutorial initiative from the state;
5. Poor execution of arrest warrants;
6. Prosecutorial decisions which contradicted the human rights agenda;
7. Inadequate representation of victims of human rights violations.
8. Excessive workload of investigators and prosecutors who were overburdened with other cases that were deemed to be more important;
9. Lack of cooperation from the security forces.<sup>64</sup>

## **B. United Kingdom**

### Context:

Northern Ireland endured significant human rights violations during what is known as ‘the Troubles’, which began in 1968 and ended in 1998 with the Good Friday Agreement. While the Troubles predominantly occurred in Northern Ireland, at times this ethno-nationalist conflict spilled over into England. More than 3 500 people were killed in the conflict, of whom

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<sup>59</sup> Correa, C. Reparations in Peru from recommendations to implementation. *International Center for Transitional Justice*. 2013, June. Available: <http://corteidh.or.cr/tablas/r30998.pdf>

<sup>60</sup> Human Rights Watch. 2020. Peru. Available: <https://www.hrw.org/world-report/2020/country-chapters/peru>

<sup>61</sup> Sandoval, C., 2008. The Challenge of Impunity in Peru: The Significance of the Inter-American Court of Human Rights. *Essex Human Rights Review*, 5(1), pp.1-20.

<sup>62</sup> Human Rights Watch. 2020. Peru. Available: <https://www.hrw.org/world-report/2020/country-chapters/peru>

<sup>63</sup> Hurtado. 2008. Informative note on the situation of human rights criminal cases in Peru. *ICTJ*.

<sup>64</sup> *Ibid.*

52% were civilians, 32% were members of the British security forces and 16% were members of paramilitary groups.<sup>65</sup>

### Mechanisms:

Efforts to address justice have been predominantly ad hoc and disjointed.<sup>66</sup> This indicates the absence of an overall strategy to redress the wounds of the past.

In 2005, the Historical Enquiries Team (HET) was established to investigate the 3 269 unsolved murders committed during the Troubles between 1968 and 1998. It was a special unit of the Police Service of Northern Ireland. It was closed in 2014 due to budgetary constraints.<sup>67</sup> The HET's responsibilities were meant to be taken over by the new Historical Investigation Unit in 2016.<sup>68</sup> However, it appears that this unit has yet to be established.<sup>69</sup>

Prosecutions have not been prioritised in Northern Ireland.<sup>70</sup> Rather, the state has focused on symbolic and truth-telling initiatives as well as some inquiries into the abuses. However, families have persistently pushed for prosecutions.<sup>71</sup>

The 1998 Bloody Sunday Inquiry commissioned by then-Prime Minister Tony Blair and the 2010 publication of the Saville Report resulted in Prime Minister David Cameron's public apology. In 2012, the Police Service of Northern Ireland (PSNI) announced that it would launch a murder investigation into the Bloody Sunday deaths, relying on a team of 30 detectives.<sup>72</sup> However, the PSNI did not begin investigations complaining that it lacked the necessary resources and expertise to undertake the investigation<sup>73</sup>

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<sup>65</sup> As compiled by Malcolm Sutton. See:

[https://www.wesleyjohnston.com/users/ireland/past/troubles/troubles\\_stats.html](https://www.wesleyjohnston.com/users/ireland/past/troubles/troubles_stats.html). For more information on Sutton: <https://www.theguardian.com/uk-news/2020/jul/19/malcolm-sutton-solo-effort-document-every-death-in-the-troubles>

<sup>66</sup> Northern Ireland Human Rights Commission. 2013. Dealing with Northern Ireland's Past: Towards a Transitional Justice Approach. Available:

[https://www.nihrc.org/uploads/publications/NIHRC\\_Transitional\\_Justice\\_Report.pdf](https://www.nihrc.org/uploads/publications/NIHRC_Transitional_Justice_Report.pdf)

<sup>67</sup> "Historical Enquiries Team". 2008. House of Commons Hansard. Available:

<https://web.archive.org/web/20110605022849/http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmhansrd/cm080225/text/80225w0004.htm>

<sup>68</sup> "Investigations into fatalities in Northern Ireland involving British military personnel". House of Commons, United Kingdom Parliament. 2017, April 25<sup>th</sup>. Available:

<https://publications.parliament.uk/pa/cm201617/cmselect/cmdfence/1064/106404.htm>

<sup>69</sup> O'Keeffe, C. Council of Europe has 'serious concerns' over Historical Investigations Unit delays. *Irish Examiner*. 2019, March 14<sup>th</sup>. Available: <https://www.irishexaminer.com/news/arid-30911020.html> ; Burke, C. Foster urges new Northern Ireland secretary to 'revisit' scope of historical investigations unit. *The Journal*. 2020, February 14<sup>th</sup>. Available: <https://www.thejournal.ie/foster-historical-investigations-unit-lewis-5007271-Feb2020/>

<sup>70</sup> Lundy, P. 2010. Commissioning the Past in Northern Ireland. *Review of International Affairs*, vol. LX, no. 1138-1, pp. 101-133.

<sup>71</sup> *Ibid*, 13.

<sup>72</sup> Northern Ireland Human Rights Commission. 2013. Dealing with Northern Ireland's Past: Towards a Transitional Justice Approach. Available:

[https://www.nihrc.org/uploads/publications/NIHRC\\_Transitional\\_Justice\\_Report.pdf](https://www.nihrc.org/uploads/publications/NIHRC_Transitional_Justice_Report.pdf)

<sup>73</sup> *Ibid*.

The Northern Ireland Human Rights Commission acknowledged that inquests play a significant role in establishing accountability, by identifying perpetrators responsible for violations of human rights. However, the Commission noted that, given the long delays in investigating cases, inquests on their own are not adequate in the context of the scale of the conflict in Northern Ireland.<sup>74</sup>

The issue of criminal accountability for gross human rights violations and crimes committed during the Troubles is still hotly contested in the UK. In its latest attempt to suppress the investigations into these incidents, the British government has announced a plan to close nearly 2 000 open investigations into killings during the Troubles.<sup>75</sup> The proposed legislation envisages a legal bar on any future investigations that have been classified as “closed” by an independent body to be established. The initiative has been met with much criticism.<sup>76</sup> In particular, the Northern Ireland’s human rights commissioner and others lobbying for justice have noted that this proposed amnesty legislation violates human rights and Article 2 (right to life) of the ECHR.<sup>77</sup>

### Outcome:

Justice has not been served for the vast majority of victims of the Troubles in Northern Ireland, with only 12 serious cases involving army personnel making it to court.<sup>78</sup> In April 2019, the Public Prosecution Service (PPS) reported that prosecutorial decisions had been made in 26 cases made in the past decade.<sup>79</sup> Only 12 of these cases resulted in prosecutions and murder convictions were secured in only 4 of these cases, while 3 cases are still active. Two of the cases were discontinued and one accused was acquitted.<sup>80</sup>

There has been no coordinated or coherent approach to prosecutions. No dedicated unit of prosecutors was ever established to focus on these cases, which may explain the lack of concerted action in most of the over 2 000 unsolved cases.<sup>81</sup>

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<sup>74</sup> In the case of *McCaughey and others v the United Kingdom*, the European Court of Human Rights said: “The Court considers that the carrying out of investigations, including holding inquests, into killings by the security forces in Northern Ireland has been marked by major delays. It further considers that such delays remain a serious and extensive problem in Northern Ireland. See: <https://ohrh.law.ox.ac.uk/mccaughey-and-others-v-uk-the-requirement-of-prompt-investigation-into-state-killings/>

<sup>75</sup> Carroll, R. Dismay over UK plan to close unsolved Troubles cases. *The Guardian*, 2020, March 18<sup>th</sup>. Available: <https://www.theguardian.com/uk-news/2020/mar/18/dismay-over-uk-plan-to-close-unsolved-troubles-cases>

<sup>76</sup> Ibid.

<sup>77</sup> Sabbagh, D. Troubles troops amnesty could break law, said Northern Irish watchdog. *The Guardian*, 2020, May 13<sup>th</sup>. Available: <https://www.theguardian.com/uk-news/2020/may/13/troubles-troops-amnesty-could-break-law-said-northern-irish-watchdog>

<sup>78</sup> British Army. 2006. An Analysis of Military Operations in Northern Ireland. 46, para 431. Available: [http://www.vilaweb.cat/media/attach/vwedts/docs/op\\_banner\\_analysis\\_released.pdf](http://www.vilaweb.cat/media/attach/vwedts/docs/op_banner_analysis_released.pdf)

<sup>79</sup> Dempsey, N. and Fairbairn, C. BRIEFING PAPER CBP 8352: Investigation of former armed forces personnel who served in Northern Ireland. Commons Library Briefing, 1 April 2020. Available: <https://commonslibrary.parliament.uk/research-briefings/cbp-8352/>

<sup>80</sup> *R v Thain* (1984) *R v Clegg* (1993) (acquitted on retrial in 1999) and *R v Fisher and Wright* (1995). These figures do not appear to include members of the Ulster Defence Regiment. Methuen writes that 18 UDR soldiers were convicted of murder and 11 of manslaughter during the Troubles. Ryder, C. 1991. *The Ulster defence regiment: an instrument of peace?* 150.

<sup>81</sup> Carroll, R. Dismay over UK plan to close unsolved Troubles cases. *The Guardian*, 2020, March 18<sup>th</sup>.

#### IV. Prosecution-led Investigations

There is a worldwide trend of closer cooperation between investigators and prosecutors, particularly in relation to complex criminal cases that require concentrated efforts and multidisciplinary expertise.<sup>82</sup> Complex criminal cases include organised crime, corruption or serious international crimes, where the perpetrators are powerful or politically well-connected.

Comparative analysis on prosecutorial systems reveals that both adversarial and inquisitorial systems have moved away from traditional models of a total separation between the investigative and prosecutive functions.<sup>83</sup> Similarly, recommendations made by the Council of Europe note that in *“States where the police is independent of the public prosecution should take effective measures to guarantee that there is appropriate and functional co-operation between the Public Prosecution and the police.”*<sup>84</sup>

##### 1. England and Wales

In common law countries investigators and prosecutors typically operate apart from each other. However, in the 1990s, experts and researchers observed several nascent challenges related to the failure of prosecutors to direct investigations.<sup>85</sup> Police were growing increasingly dependent on prosecutors for legal advice because of the development of new types of crime (such as organized crime, particularly money laundering and drug-trafficking and crimes under international humanitarian law) and the mounting complexities of substantive and procedural law.<sup>86</sup>

Moreover, the strict separation of investigative and prosecutorial functions leads to problems in coordination. Prosecutors typically only get involved in a case once police investigations are advanced enough to indicate that a prosecution is most likely. This practice has the potential to undermine the case. This is because *“[i]n deciding whether to involve the prosecutor before a charge is made or in deciding what and how much information the prosecutor should be given, the police will be guided by their law enforcement concerns which are not necessarily the same as those of the prosecutor.”*<sup>87</sup>

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<sup>82</sup> Office of the United Nations High Commissioner for Human Rights. 2006. Rule-of-law tools for post-conflict states: Prosecution initiatives. HR/PUB/06/4. Available:

<https://www.ohchr.org/Documents/Publications/RuleoflawProsecutionsen.pdf>

<sup>83</sup> Kyprianou, D. 2008. Comparative Analysis of Prosecution Systems (Part II): The Role of Prosecution Services in Investigation and Prosecution Principles and Policies, 7, *Cyprus and European Law Review*.

<sup>84</sup> Recommendation Rec(2000)19 Adopted by the Committee of Ministers of the Council of Europe on 6 October 2000 and Explanatory Memorandum. The role of public prosecution in the criminal justice system. Available:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804be55a>

<sup>85</sup> Kyprianou (Part II).

<sup>86</sup> *Ibid.*

<sup>87</sup> Lidstone, K. 1987. The reformed prosecution process in England: a radical reform? *Criminal Law Journal*, 296.

Under the Criminal Justice Act (2003) once it is apparent that a criminal charge may be preferred, a prosecutor can require the police to investigate further before agreeing to the commencement of criminal proceedings.<sup>88</sup> The Crown Prosecution Service “*determines the appropriate charges in more serious or complex cases, and advises the police during the early stages of investigations....*”<sup>89</sup>

## 2. The Netherlands

In the Netherlands, there are separate units within its police, prosecution, and immigration services dedicated to pursuing serious international crimes cases. In addition, a special department within the Ministry of Justice supports the work of these units.<sup>90</sup> The National Office (Landelijk Parket) of the Dutch Public Prosecution Service (DPPS National Office), based in Rotterdam, is responsible for prosecuting serious international crime prosecutions.<sup>91</sup>

Investigations are conducted by the Dutch International Crime Unit (Team Internationale Misdrijven) within the National Crime Squad of the police.<sup>92</sup> An investigative judge plays an important role oversees the investigations. Cooperation between war crime units, and in particular between police and prosecutors, is a critical factor in the success of these prosecutions. Human Rights Watch notes, “*The Netherlands is a useful model for other countries in this regard. Police investigators and prosecutors in the Dutch war crimes units work together very closely, with prosecutors closely monitoring and supervising investigations.*”<sup>93</sup>

## 3. South Africa

Even though prosecution-led investigations are standard practice in inquisitorial legal systems (such as Germany, France or the Netherlands), the prosecution-led investigations introduced in South Africa in the 1990s were considered ground-breaking for a common law jurisdiction.<sup>94</sup>

Prosecution led investigations were initially introduced to tackle the prevalence of car hijacking in Johannesburg in 1999. This innovation envisaged that all serious car-hijacking cases in Johannesburg were channelled to the Task Force, composed of three prosecutors and an administrative assistant, and was based on the close cooperation between prosecutors and investigators. Within 18 months, the Task Team increased the conviction rate from 10%

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<sup>88</sup> Kyprianou, D. 2008. Comparative Analysis of Prosecution Systems (Part I): Origins, Constitutional position and Organization of Prosecution Services. *Cyprus and European Law Review*.

<sup>89</sup> The Crown Prosecution Service. 2017. About CPS: The Crown Prosecution Service. Available: <https://www.cps.gov.uk/about-cps>

<sup>90</sup> Human Rights Watch. The Long Arm of Justice: Lessons from Specialized War Crimes Units in France, Germany, and the Netherlands. 2014, September 16<sup>th</sup>. Available: <https://www.hrw.org/report/2014/09/16/long-arm-justice/lessons-specialized-war-crimes-units-france-germany-and>

<sup>91</sup> Open Society Justice Initiative. Briefing Paper: Universal Jurisdiction Law and Practice in the Netherlands, 2019 April.

<sup>92</sup> *Ibid.*

<sup>93</sup> Human Rights Watch. The Long Arm of Justice, 2014.

<sup>94</sup> Schönteich, M. 2005. ‘Prosecution-Led Investigation: An Innovative Approach from South Africa’ presentation for the Open Society Justice Initiative conference in Mar del Plata, Argentina, December 5-6.

to 42%. No case dockets were lost or sold, and an effective pool of experienced specialised prosecutors and magistrates was established.<sup>95</sup>

Another example of prosecution led-investigations was the establishment of the Directorate of Special Operations ('the Scorpions'), based on the troika principle which integrates analysis/intelligence, investigation and prosecution.<sup>96</sup> Martin Schönteich lists several advantages to the close cooperation between the investigators and prosecutors:<sup>97</sup>

- Prosecutors guide the strategy and tactics of police investigators – focusing on the collection of admissible evidence and ensuring investigations are court directed;
- Prosecutors meet face-to-face with investigators from the beginning of the case;
- Prosecutors are responsible for good cooperation of witnesses;
- Prosecutors become leaders of multi-agency solutions to crime problems.

In 2019, the Pretoria based Institute for Security Studies organised a seminar on the need for prosecution-led investigations to tackle corruption effectively. Adv. Willie Hofmeyr, then-Deputy NDPP and representative of the Department of the Priority Crime Investigations (DPCI) participated in the event. It was agreed that prosecution-led investigations have proved to be effective and that it was a model that should be adopted.<sup>98</sup>

## V. Conclusions

The case studies highlighted in this memorandum demonstrate that the key ingredients to the success for criminal accountability for past gross human rights violations is:

- a dedicated and specialised investigative and prosecutorial capacity, together with
- prosecution-led investigations, on the back of
- a carefully planned investigative and prosecutorial strategy, with
- strong political support and endorsement for justice in these cases.

Without a dedicated approach with a specific mission to fulfil South Africa's historic pledge to apartheid-era victims it is more than likely that these cases will be neglected in favour of more "contemporary" issues. This has been the trend over the last 18 months.

Establishing a dedicated capacity will signal South Africa's determination to seriously redress the injustices of the past. Argentina is a good example of country that has signalled such commitment. Germany's dedicated efforts through its specialised Central Office, albeit belatedly from 2011, built a public perception of commitment to human rights and accountability. Similarly, in Bosnia and Herzegovina, the specialised office of the prosecution

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<sup>95</sup> Schönteich, 2005, presentation for the Open Society Justice Initiative.

<sup>96</sup> Montesh, M. 2007. A critical analysis of crime investigative system within the South African criminal justice system: a comparative study. University of South Africa. Available: <http://uir.unisa.ac.za/bitstream/handle/10500/1272/?sequence=1>

<sup>97</sup> Schönteich, Prosecution-Led Investigation (2005).

<sup>98</sup> Institute of Security Studies. Why South Africa needs prosecutor-led investigations [seminar]. 2019. Available: <https://issafrica.org/amp/events/why-south-africa-needs-prosecutor-led-investigations>

has succeeded in pursuing a significant number of cases. In all these countries prosecutors and investigators received both political endorsement and material support for their work.

Given the time which has lapsed since the end of apartheid and the winding up of the TRC, it is imperative that South Africa heeds the call to address past crimes before it is too late. This can only be done through making a break from the past and the taking of expeditious steps.

## VI. Recommendations

We accordingly make the following recommendations:

1. In consultation with relevant stakeholders, the NDPP should **establish a Specialised Prosecution Unit exclusively devoted to the investigation and prosecution of crimes committed during apartheid**. Further proposals in relation to the unit include:
  - a. The Specialised Prosecution Unit should comprise of a small number of prosecutors untainted by involvement in the past political suppression of cases.
  - b. While it is currently not possible for police detectives to be located in such a unit, the DPCI should nonetheless assign a small number of investigators to work exclusively on these cases; and to do so in close cooperation with the prosecutors in the unit. The assigned investigators should not have any questionable links to apartheid-era security forces.
  - c. Experts in international criminal law as well those specialised in the preparation of cases involving serious international crimes could be seconded to the unit.
  - d. Facilitate investigations and the building of viable cases through:
    - i. the use of criminal analysis and case management software, that will assist in making connections and the compiling of leads and evidence.
    - ii. the creation of a small analytic section comprising an expert in case management and running an information management system, and a researcher or two to make sense of the vast information, make the necessary connections, assist with structural investigations and generate profiles, chronologies and contextual reports.
  - e. Provide capacity building and training by global experts for investigators and prosecutors, particularly in building of cases involving gross human rights violations under customary international law.
2. The NPA and DPCI, with the support of the Foundation for Human Rights (FHR), should **consider conducting a survey of the prosecutors and investigators who work in the Priority Crimes Litigation Unit (PCLU)**. This survey should include questions about the

number of cases prosecutors and investigators have been assigned; how much time they spend on these cases; and how they prioritize cases. Such a survey will point to challenges faced by the current teams and help to inform possible solutions.

3. The Specialised Prosecution Unit's should include a special channel for **communication with victims' groups and civil society organisations.**
4. **Political leaders should publicly commit to criminal accountability in the TRC cases,** express regret for past neglect and lend the necessary support to the agencies charged with pursuing justice.