
National Prosecuting Authority South Africa

Strategic Planning Conference May 2019 Summary Report







Agenda

NPA Strategic Planning Conference	
Date: 27 – 29 May 2019	
Venue: Kopanong Hotel and Conference Centre	
Day 1: 27 May 2019	
Taking stock and where we want to go (Facilitator: Adv Sibongile Mzinyathi)	
Welcome	Ms Bulelwa Makeke
Review of agenda	Adv Shamila Batohi
Why the NPA matters	Judge Dunstan Mlambo
NDPP's vision	Adv Shamila Batohi
NPA staff survey findings	Dr Martin Schönteich
NPA performance and credibility	Mr Gareth Newham
NPA performance trends	Adv Bradley Smith
Gala dinner - NDPPs in conversation	Adv Shamila Batohi, Adv Vusi Pikoli, Adv Bulelani Ngcuka, with Adv Anton du Plessis
Day 2: 28 May 2019	
The NPA's partners and the external environment (Facilitator: Adv Elaine Zungu)	
Introduction of stakeholders	Adv Elaine Zungu
Role of prosecution services in wider criminal justice reforms. What does success look like for prosecution services?	Mr Christopher Stone
The SAPS (Detective Service)	Lt-Gen Tebello Mosikili
Legal Aid South Africa	Ms Vidhu Vedalankar
Financial Intelligence Centre	Adv Xolisile Khanyile
Directorate for Priority Crime Investigation (the Hawks)	Lt-Gen Godfrey Lebeya
Civil society	Mr Lawson Naidoo
Business Against Crime South Africa	Dr Penuell Maduna
Special Investigating Unit	Adv Andy Mothibi
Day 3: 29 May 2019	
The NPA's partners and the external environment (Facilitator: Adv Anton du Plessis, ISS)	
Emerging organised crime trends and threats in South Africa	Dr Mark Shaw
The Investigating Directorate in the Office of the NDPP	Adv Hermione Cronje
The importance of values for the NPA	Adv Vusi Pikoli
Break-out groups: Impact, Values, Structure	Facilitated by: Adv Wendy da Silva Adv Aaron Raletjana Adv Indhra Goberdan Adv Alnicia Coetzee Adv Adrian Mopp Adv Daphney Rangaka
Break-out groups' feedback to plenary, and discussion	Adv Anton du Plessis
The way forward – conference resolutions and next steps	Adv Shamila Batohi

Introduction

The National Prosecuting Authority's (NPA) senior leadership gathered in Johannesburg from 27 to 29 May 2019 to review the NPA's five-year strategic plan and enable a revitalised organisation to fulfil its constitutional mandate and societal responsibilities.

It follows a troubled decade during which the NPA has had six different National Directors of Public Prosecutions, three of whom were acting in the post.

This discontinuity in leadership, public controversy around some of that leadership, and critical funding and staff shortfalls undermined the NPA's long-term strategic planning amidst widespread corruption in the criminal justice system.

The NPA is now firmly on a path to renewal.

President Cyril Ramaphosa has publicly committed to ensuring the NPA is effective and independent, and the new National Director of Public Prosecutions, Shamila Batohi, was appointed in December 2018 in a process of unprecedented transparency.

The NPA strategic planning conference aimed to motivate and empower senior NPA officials, while identifying how the NPA will respond to its challenges and opportunities.

The event looked at current and anticipated changes in the NPA's operating environment. It was an opportunity to engage with key partners, understand their concerns and their own plans, and seek opportunities for collaboration. This is a report on the conference.

“Independence is the most important issue for the new NDPP and the NPA as a whole. Independence relates to decision making, nothing more... Be transparent, and embrace the importance of accountability. Independence and accountability are two sides of the same coin.”

Adv Bulelani Ngcuka

“Independence is about doing your job, and doing it in the right way with integrity, irrespective of external pressure.”

Adv Vusi Pikoli

“Through its ethical conduct, empathy towards clients and exemplary legal adeptness, we will convey our professionalism. There is a need for the highest possible standards of integrity, and those whose conduct falls short will not be tolerated in the NPA.”

Adv Shamila Batohi



NATIONAL PROSECUTING AUTHORITY
South Africa

“South Africa’s rampant lawlessness and corruption is the reason the NPA matters. The NPA is integral to upholding the rule of law, and the judiciary is ready to cooperate”

Dunstan Mlambo is Judge President of the Gauteng Division of the High Court of South Africa. He was appointed a judge in the Labour Court in 1997, and went on to serve as a Judge in the South Gauteng High Court, and the Supreme Court of Appeal. Before his current appointment he served as Judge President of both the Labour Court and the Labour Appeal Court. Mlambo served as chairperson of Legal Aid SA from 2002 to 2019.



Why the NPA matters

Judge President Dunstan Mlambo gave the conference keynote address on why the NPA matters.

In her introduction, NDPP Shamila Batohi pointed to his seminal judgments enhancing NPA independence. In 2017, Judge Mlambo rejected the argument that the South African President alone could set up a commission of inquiry into state capture, essentially paving the way for the Zondo Commission.

Judge Mlambo has also stated in a separate judgment that the imperative of prosecutorial independence must be consistently adhered to.

The judge said the NPA matters because of rampant lawlessness and corruption in South Africa. The NPA had a mammoth task to debunk the myth that the rule of law has been subverted.

“Our current social context is a breeding ground for the total breakdown of law and order, and this cannot be allowed to happen.” The NPA is integral to upholding the rule of law, Mlambo said, and the judiciary was ready to cooperate. He described a struggling court system, with trials delayed and not run efficiently. Some accused waited more than two years for their trials to start, and numerous cases were struck off the roll. “For the victims and survivors of crime, we have no excuses.”

Outside the courtroom, lawlessness, criminality and corruption had become a normal way of life; and the public felt there were not enough arrests and prosecutions. “Citizens cannot be blamed for their sentiments of hopelessness as they are confronted with daily reports of wrongdoings which consistently go unpunished.”

Vision of the NPA leadership

National Director of Public Prosecutions (NDPP) Shamila Batohi opened the NPA conference with a vision of a just society in which people can live in freedom and security. She described the historic opportunity to restore the NPA's reputation, fulfil its constitutional mandate, and ensure all staff deliver on its values.

The NDPP reaffirmed the NPA's commitment to being lawyers for the people of South Africa, and noted a recent internal survey finding that 91% of NPA staff support firm leadership actions to revitalise the organisation. She acknowledged the turbulent social, political and economic circumstances facing the country, and said the NPA had failed the nation and not delivered adequate results.

"My vision for the NPA is ambitious - to rebuild and lead a trusted and effective prosecution service that ensures justice to all South Africans through independent, professional and victim-centred service delivery," the NDPP said. "This vision is upheld by the pillars of credibility, independence, professionalism and accountability."

The NPA will rebuild its integrity by consistently meeting its internal and external performance targets.

"This can be achieved by an unwavering commitment to ensuring prosecution decisions are taken without fear, favour or prejudice, and by employing high-calibre, professional and independent leaders through transparent appointment processes. The NPA must make an effective contribution to South Africa's socio-economic development, restore the rule of law, and restore public trust in SA institutions," the NDPP said.

NPA head office would empower Directors of Public Prosecutions to make prosecutorial decisions in their own jurisdictions, with a specialised head office capacity to support prosecutors on the ground.

New capacity in the NDPP's office would focus on long-term strategic issues and trends, making it an innovative hub driving creative solutions to operational and institutional challenges.

The NPA's budget needs to increase significantly for it to meet its obligations. The NDPP said she was working to decouple the NPA from the Department of Justice and Constitutional Development, enabling it to have its own accounting officer and negotiate budgets directly with Treasury.

The NPA needed to show it was serious about tackling corruption and would once again become an accountable organisation with regular and transparent reporting to the public, civil society, Parliament and government.

"Through its ethical conduct, empathy towards clients and exemplary legal adeptness, we will convey our professionalism. There is a need for the highest possible standards of integrity, and those whose conduct falls short will not be tolerated in the NPA," the NDPP said.



Adv Shamila Batohi was appointed National Director of Public Prosecutions (NDPP) by President Cyril Ramaphosa in December 2018 and assumed the position in February 2019. She began her career as a Junior Prosecutor in the Chatsworth Magistrates Court in KwaZulu-Natal (KZN). Batohi was seconded to the Investigation Task Unit established by President Nelson Mandela in 1995 and later served as the first regional head of the Directorate of Special Operations based in KZN. She was Director of Public Prosecutions for KZN from 2000 to 2009, and senior legal advisor to the Prosecutor at the International Criminal Court from 2009 to 2018. The NDPP completed her Bachelor's degree at the University of Durban-Westville and post-graduate studies at the University of Natal.

"My vision for the NPA is to rebuild and lead a trusted and effective prosecution service that ensures justice to all South Africans through independent, professional and victim-centred service delivery"

Findings of the NPA staff survey

Dr Martin Schönreich, a global expert on prosecution services, presented the results of an NPA staff survey conducted by the Institute for Security Studies.

95% of staff surveyed expect the NDPP will take a zero-tolerance approach to corruption



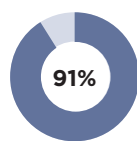
Dr Martin Schönreich directs the criminal justice reform programme of the Open Society Justice Initiative, which promotes rights-based law reform and strengthens legal capacity worldwide through hands-on technical assistance, research, network building and litigation. His focus is on prosecutorial reform, with emphasis on independence, accountability, and effectiveness. Schönreich has worked with prosecution services in various jurisdictions, including Argentina, Georgia, Malawi, Mexico, Nigeria, and Ukraine. He holds a PhD in criminal justice from the City University of New York and an LLB from the University of KwaZulu-Natal.



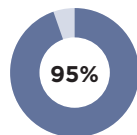
Survey emailed to

4 408
staff members

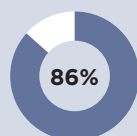
with responses received from about a third



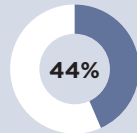
of respondents expect the new NDPP to **act firmly to revitalise the NPA**



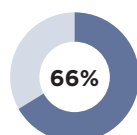
expect she will take a **zero-tolerance approach** to corruption



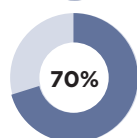
of respondents said working for the NPA **makes a positive difference** in others' lives



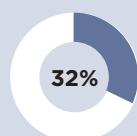
feel valued for the work they do



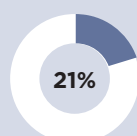
indicated **overall job satisfaction**



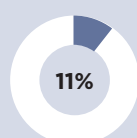
felt their work provides a sense of **personal accomplishment**



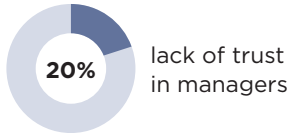
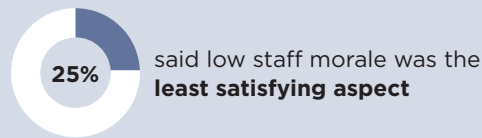
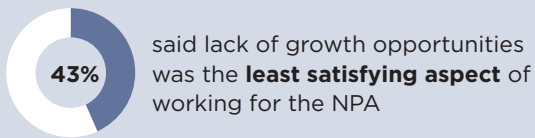
of respondents said they joined the NPA to **serve their country**



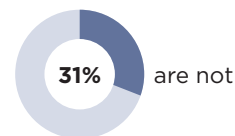
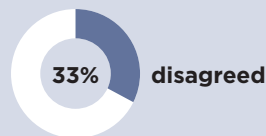
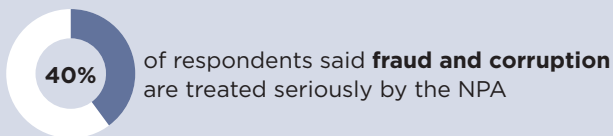
joined to **make a difference**



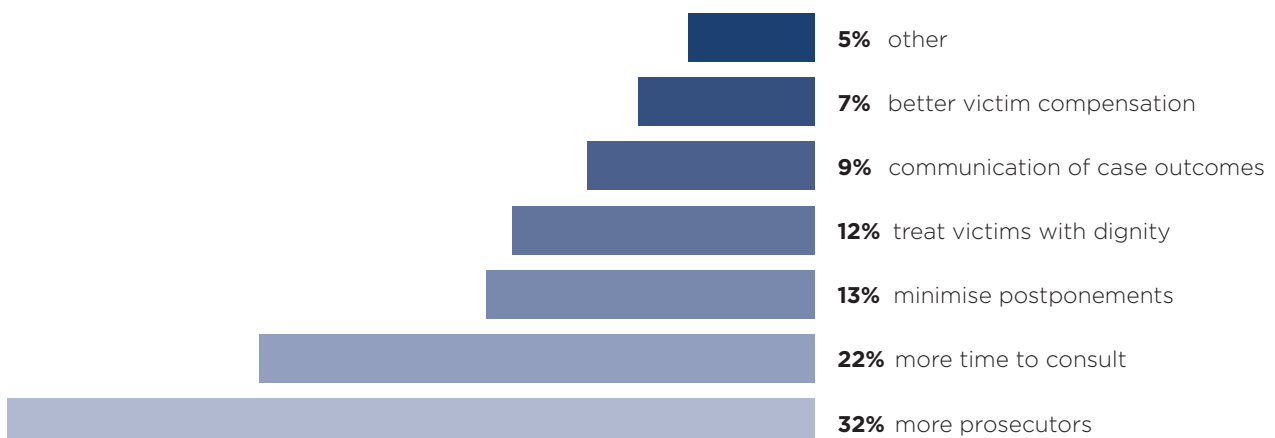
joined due to the **NPA's reputation**



Prosecutors and support staff in the district and regional courts said they felt **less safe, connected and recognised** than their counterparts in the higher courts.



NPA staff suggestions for improving victim services



“Trust in the criminal justice system affects trust in the government, and especially in the rule of law”

Gareth Newham is head of Justice and Violence Prevention at the Institute for Security Studies (ISS), an authoritative and independent research, policy and training organisation working to enhance human security in Africa. He has 20 years’ experience in researching criminal justice systems. Newham holds a Master’s degree in public and development management from the University of the Witwatersrand, a post-graduate diploma in applied social science research methodology from the University of Stellenbosch, an Honours degree in political studies, and a Bachelor’s degree in social sciences, both from the University of Cape Town.



NPA performance and credibility

Building public trust and credibility are vital objectives for the NPA, said Gareth Newham, head of Justice and Violence Prevention at the Institute for Security Studies.

“Trust in the criminal justice system affects trust in the government, and especially in the rule of law,” he said. The NPA could demonstrate its renewed integrity by acknowledging its shortcomings, and should improve its visibility and credibility through effective communication.

Public mistrust in the criminal justice system had led to fewer people reporting crime to the police, with reporting rates for most crimes declining between 2016 and 2018, Newham said. In the period 2018/19, there were just 3 601 murder convictions from 20 336 cases brought to trial.

More than half (53%) of new dockets were declined for prosecution, further eroding public trust in the NPA and the police. “What emerges is a blame game, which is incredibly unconstructive given that the murder rate in SA has increased by 19% over the last six years.”

The criminal justice system was not operating as a coherent system, Newham said. Communication breakdowns and the refusal to take responsibility further undermined public trust.

He said that the recommendations of the National Development Plan should provide guidance for criminal justice reform, and the system should adopt key indicators to increase trust and credibility.

“This requires all officials within the system to engage with members of the public with fairness, and always in a manner that upholds each person’s dignity.”



Adv Bradley Smith is a Deputy Director of Public Prosecutions in the National Prosecutions Service division of the NPA. He began his career as a clerk in the Germiston Magistrates Court. Smith was part of the team behind the formation of the NPA in 1998, and worked on its Serurubele transformation programme in 2003. He was admitted as an advocate in 1994 and appointed a DDPP in 2003.

KEY SUCCESSES



Conviction rates in district, regional and high courts have **increased**



From 2014/15 to 2018/19 there was a **13.7% increase** in matters reported at 55 Thuthuzela Care Centres



Only 87 courts offer court preparation services for witnesses, but there was a **marked increase** from **65 213** witnesses assisted in 2009/10 to **110 181** in 2018/19.

NPA performance trends

Deputy Director of Public Prosecutions, Adv Bradley Smith, presented a trend analysis for improvements aligned with NPA goals.

Key successes

Conviction rates in district, regional and high courts have increased.

From 2014/15 to 2018/19 there was a 13.7% increase in matters reported at 55 Thuthuzela Care Centres (TCC), which offer an integrated approach to rape care, prioritise the dignity of sexual violence victims, and help to build strong prosecution cases. The TCC programme is led by the NPA's Sexual Offences and Community Affairs Unit.

TCCs show an increasing number of matters reported through the centres, compared to those reported directly to the SA Police Service (SAPS), Smith said. The current conviction rate is 73.5% with an average 57% of reported cases relating to child victims.

Only 87 courts offer court preparation services for witnesses, but there was a marked increase from 65 213 witnesses assisted in 2009/10 to 110 181 in 2018/19.

The NPA has seen a steady increase in convictions for cybercrime, Smith said. New legislation will change the definition of cybercrime, so new targets are required. There has been an increase in the number of decision dockets received and finalised.

The number of witnesses and related persons on the witness protection programme has increased. NPA witness protection is regarded as a best practice model in Africa, and is highly respected by the international community.

In 2018, the NPA took over responsibility for civil litigation from the Department of Justice and

Constitutional Development. In 2018/19, the NPA was successful in 75.4% of all finalised civil litigation actions.

Performance concerns

Conviction rate targets for trio crimes and violent protest and industrial actions have not been achieved for five years. Targets have also not been achieved in corruption cases involving more than R5m.

There has been a decline in finalised cases, and the backlog of serious cases is growing in the regional and high courts. The number of cases finalised is declining in district courts, regional courts, and high courts.

The SAPS reported an 11.8% decline in community-reported serious crimes over a ten-year period. There has been a positive and steady decline in the number of cases withdrawn since 2002/03, although there has been a disconcerting 9.1% spike in withdrawals during the past year. This is possibly due to resource constraints, incomplete investigations and a lack of oversight.

Challenges and constraints

There are currently 1 141 vacancies at the NPA, and in May 2019 there were fewer prosecutors employed than at any time since 2007, with a 20.7% decrease in posts since the height of NPA capacity in 2011/12.

Budget cuts and shortfalls impact on NPA operations, resulting in inadequate preparation, lack of adequate witness consultation, and delays in finalisation of investigations and cases. Resource constraints also impact on oversight and screening of dockets, skills and knowledge gaps, and increased workload for staff.



NDPPs in conversation

Two former NDPPs, Adv Bulelani Ngcuka and Adv Vusi Pikoli, joined current NDPP Shamila Batohi for a gala dinner discussion with Institute for Security Studies Executive Director Anton du Plessis

Bulelani: The best days of my life were with the NPA. Prosecutors have the constitutional mandate and duty to turn this country around.

Anton: How did you turn around the morale of the NPA when you started?

Bulelani: Budget and remuneration were the complaints from everybody. We established a diverse committee of prosecutors to tell us what they needed. I approached the relevant ministers, and asked them to come to the party to ensure we had proper funding for the prosecutors' salaries. After we approached Treasury, we were able to secure a 50% increase for our prosecutors. They felt valued, listened to, and inspired. We introduced the 'lawyers for the people' slogan, and it became a symbol of pride and commitment across the NPA.

Anton: Vusi, can we get your perspective on funding?

Vusi: NPA funding cannot be discussed without talking about financial independence. In order to execute your strategies, you must have the purse in your hands. It can be very frustrating not being in charge of your budget. I am encouraged to see that these discussions are continuing in the NPA. Progress on financial independence is crucial to the NPA's future.

Shamila: We will be fighting for the NPA's financial independence, and welcome the assistance of previous NDPPs to make compelling cases to new ministers.

Anton: Shamila, what did you learn from working with Bulelani and Vusi?

Shamila: Bulelani is the most inspirational leader I have worked with, and prosecutors felt the same after what he accomplished during a very difficult period of transition.

On the day Vusi was suspended, some of the DPPs gathered at the offices of the Scorpions. We wondered

whether this was really happening to a man who did the right thing and stood his ground. To ensure that the rule of law is upheld, we must stick to our guns at all times. We must fight the good fight. In this regard, these gentlemen are both hugely inspirational as I lead the NPA into the next phase of SA's prosperity.

Bulelani: Shamila should pursue the NPA's independence from the Department of Justice and Constitutional Development, and the NPA should have its own budget. This should be a priority for the NPA.

Anton: Can there be a truly independent NPA in the prevailing political environment?

Bulelani: Absolutely. This is the most important issue for the new NDPP and the NPA as a whole. Independence relates to decision making, nothing more. Be clear, the ultimate decision is yours and no one else's, right or wrong. Apply your mind carefully and independently, take the decision, and own it. If you're wrong, the courts will be there to tell you so. Be transparent, and embrace the importance of accountability. Independence and accountability are two sides of the same coin.

Vusi: Independence is about doing your job, and doing it in the right way with integrity, irrespective of external pressure. Have no fear, a good decision will defend itself. You will sleep at night with a clear conscience, and know you can justify your decision. That is basically what's required of us.

You will need to insulate yourselves not only from the executive, but from business people and friends too, because many people will want to influence your decisions.

Question from NPA colleague: Any regrets about not completing your tenure as NDPP?

Bulelani: It was a difficult decision. I wanted to leave after five years as we had set up all the units of the NPA, and we had good leadership. The president refused to release me when I first asked to leave, and my colleagues told me it wasn't the right time. When I decided to stay another year, the spying allegations began. My family took that heat, and that's when it was difficult. I also had to balance that with the interests of the organisation, which were of course a key consideration in my final decision.

Vusi: I left because I had to, not because I wanted to. For the sake of our prosecutors, when I was asked to resign, I refused and requested due process to establish what I had done to warrant it. That is respecting the rule of law. I told the president I refused to resign and he asked me to reconsider or be suspended. I said no, and was suspended.

I regret not pursuing the matter further when I was fired. I wish I had tried a bit harder, but the emotional toll was big.

Shamila: I'm thinking, what if that happens to me? I know I will be attacked, because that is what happens when the NPA does its job. I am here for the long haul - I didn't come back from the Netherlands for the NPA to fail. Since Bulelani and Vusi left, we have had Constitutional Court decisions which empowered and strengthened us to protect our independence.

When I get attacked, I hope civil society and all defenders of the Constitution will fight to protect the NPA. I am ready to fight that fight with all of you.

Adv Bulelani Ngcuka was the first NDPP following the establishment of the NPA in 1998. He resigned in 2004 following allegations he was an apartheid-era spy, accusations found by the Hefer Commission of Inquiry to have no basis. In 2006 Ngcuka founded Vuwa Investments, a firm committed to broadening the social transformation movement and the creation of sustainable wealth. He previously served as chair of the United Democratic Front in the Western Cape, and in 1991 formed part of the ANC's delegation to CODESA, the convention negotiating SA's post-apartheid framework.

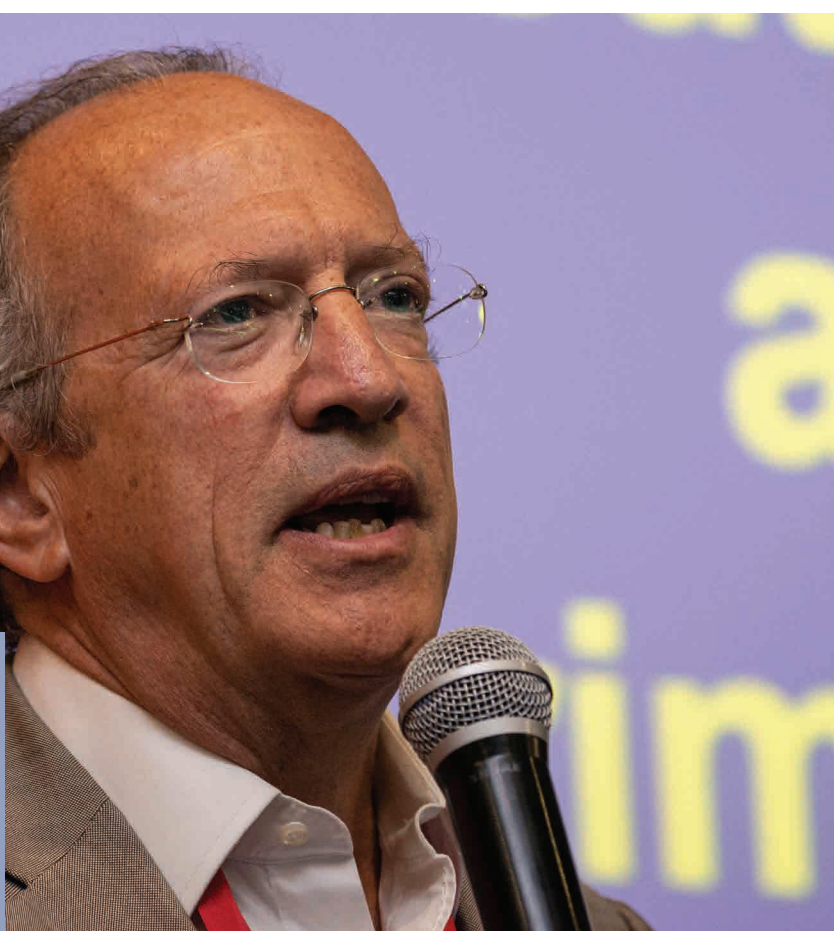
Adv Anton du Plessis is the Executive Director of the Institute for Security Studies (ISS). He has worked on human security, international criminal justice and rule of law issues in more than 20 African countries, with a focus on delivering training and technical assistance to senior law enforcement and criminal justice officials. Du Plessis has three law degrees and is an admitted advocate of the High Court of South Africa with more than 20 years of legal and management experience. Anton is a World Economic Forum Young Global Leader (2014-2020) and vice-chair of the forum's Global Agenda Council on Terrorism. He is a former Prosecutor and Senior State Advocate at the NPA.

Adv Shamila Batohi was appointed NDPP by President Cyril Ramaphosa in December 2018 and assumed the position in February 2019. She began her career as a Junior Prosecutor in the Chatsworth Magistrates Court in KwaZulu-Natal (KZN). Batohi was seconded to the Investigation Task Unit established by President Nelson Mandela in 1995 and later served as the first regional head of the Directorate of Special Operations based in KZN. She was Director of Public Prosecutions for KZN from 2000 to 2009, and senior legal advisor to the Prosecutor at the International Criminal Court from 2009 to 2018. Batohi completed her Bachelor's degree at the University of Durban-Westville and post-graduate studies at the University of Natal.

Adv Vusi Pikoli served as NDPP from 2005 until his suspension in 2007 for refusing to allow interference in the NPA's independence. In 2008 he received a Special Achievement Award from the International Association of Prosecutors for his stance on prosecutorial independence. Pikoli has been Western Cape Police Ombudsman and advised the Minister of State Security until his 2019 appointment as Chief Risk and Compliance Officer for South African Airways.

“At the centre of any functioning constitutional democracy is a well-functioning criminal justice system”

Christopher Stone is an independent advisor on justice reform, organisational strategy, and institutional innovation. He co-directs the Executive Public Leaders Programme at Oxford's Blavatnik School of Government, and is an affiliate of Red Lion Chambers in the UK and Columbia University's School of International and Public Affairs. Stone is a graduate of Harvard College, the Institute of Criminology at Cambridge University, and the Yale Law School.



Role of prosecution services worldwide in criminal justice reform

The problem is not crime but the gap between people's aspirations for safety and justice and their repeated experiences of fear and injustice, Christopher Stone said.

He spoke at the conference to help expand the ambition of the NPA's leadership and encourage a sense of the larger significance of the transformation of the NPA. Stone explored the role that prosecution services can play in wider processes of criminal justice reform, drawing on examples from several countries.

Meeting targets did not necessarily mean that South African prosecutors felt they were performing well and effecting justice. Instead, concepts like professionalism, an ethical code of conduct, public responsibility, responsiveness and legal liability were more influential in shaping prosecutors' work and the way they justified their decisions. Most prosecutors did not perceive that performance targets diminished their professional discretion or the rule of law. They did not feel they were pressured to make decisions which were more pertinent to statistics than justice.

In 2000, the South African Law Commission suggested the effectiveness of the criminal justice system must be measured as a whole, rather than by isolating its constituent elements.

This recognises that the criminal justice system is an integrated one, holding the SA Police Service and the NPA jointly responsible for ensuring criminals are held accountable. Conviction rates alone cannot and should not be used to measure the ultimate outcome of the prosecution.

The cases which ought to be measured against the conviction rate should only be those where the prosecutor has decided there is sufficient evidence to prosecute. There must always be room for acquittals, as the NPA is not solely in the business of securing convictions. The conviction rate is suggestive, but not conclusive.

What success for the NPA looks like

At the centre of any functioning constitutional democracy is a well-functioning criminal justice system, and the office of the NDPP is at the core of delivering criminal justice. Turning the tide against crime cannot be achieved overnight, but we must acknowledge that citizens' impatience and dissatisfaction is justified.

Success for the NPA includes a well-functioning criminal justice system, the feeling of security for each citizen and their community, the end of violence, especially gender-based violence, and safety for informal businesses.



Lt-Gen Tebello Mosikili is Divisional Commissioner of the SAPS Detective Service. She is a former national head of the SAPS Family Violence, Child Protection and Sexual Offences Unit. Mosikili is an investigative expert with nearly 30 years' policing experience.

The SAPS Detective Service

The SA Police Service (SAPS) will develop and publish a strategic plan for 2020 to 2025, said Lt-Gen Tebello Mosikili, Divisional Commissioner of the SAPS Detective Service. Internal priorities include enhancing police safety, the cascading of resources to local level, and implementing recommendations by the Marikana Commission of Inquiry, which investigated the 2012 police shooting of miners at Marikana platinum mine.

External priorities include the unification of policing agencies into a single service, combating crimes against women and children, organised crime, and crimes in the banking industry.

The SAPS' strategic goals have five operational dimensions:

- Establishing the authority of the state
- Thorough and responsive investigation of every crime
- Effective utilisation of resources in the investigation of crime

- Crime intelligence in support of policing
- A collaborative and consultative approach to policing

Priorities for the detective services include:

- The establishment of specialised investigation units for gangs, taxi violence, murder and robbery
- Prioritisation of crimes against women and children

Issues of concern within the justice, crime prevention and security cluster

- Cases struck off the roll due to the lack of foreign interpreters
- Exclusion of the investigating officer during bail hearings
- Inadequate number of court officials
- Withdrawal of domestic violence-related cases
- Inadequate number of dedicated prosecutors for specialised crimes

“The NPA and Legal Aid SA can work together to improve efficiencies in the court system”

Vidhu Vedalankar has been Chief Executive of Legal Aid SA since 2002. She has served as Director of Housing for the Durban Metro Council and spent two years working for the eThekweni (formerly Durban) Municipality on various local councils, serving as CEO in 1999.



Legal Aid SA

Legal Aid SA is an independent statutory body. It provides legal aid, or makes legal aid available, to indigent persons, and provides legal representation at state expense. It also provides education and information concerning citizens' legal rights and obligations.

The performance of Legal Aid SA has been excellent in the past 18 years, said Chief Executive Vidhu Vedalankar. Funds have been used prudently to operate a national footprint of offices with effective infrastructure, systems and processes that enable the efficient delivery of services to clients.

Legal Aid SA has had 17 unqualified audit reports since 2002/3. Universum has accredited Legal Aid SA as a top employer for the past 10 years. The main challenge is budget cuts. There has been a R164m (8.8%) reduction to the Treasury grant, which was partially offset by the Department of Justice and Constitutional Development's allocation of a further R30m. The budget shortfall is now R134m.

To manage these cuts, Legal Aid SA has had to reduce salaries and its operating and capital budgets. The outcomes include cuts to staff posts and delivery targets. After representations to Treasury, budget cuts were reversed to the baseline for 2019/20. Following a review of the salary budget, 111 posts were removed. Reduction of staff members and benefits has lowered motivation and morale.

Court coverage has dropped by 3% over the last two financial years for district and regional courts.

Other legal service delivery challenges include court productivity and backlog, and low case finalisations. Legal Aid SA is faced with a large number of clients who cannot afford bail.

Strategic risks

Strategic risks impacting on performance include challenges to the rule of law, lack of capacity to deliver against demand for legal services, and poor services provided by justice centres and judiciary practitioners. There is a lack of confidence in the criminal justice system due to ineffective and inefficient processes, and a perception that it is unable to resolve cases timeously, fairly and efficiently.

Relationship between the NPA and Legal Aid SA

Though work done at court level is adversarial, the NPA and Legal Aid SA can work together to improve efficiencies in the court system. Enhanced cooperation must focus on early identification and removal of matters that should not be on the roll, and alternatives to bail to ensure attendance at court.

There should be a reduction in matters postponed for further investigation, and joint planning between Legal Aid SA and the NPA in high court matters.



Adv Xolisile Khanyile was appointed Director of the Financial Intelligence Centre in 2018. She has held various positions in the NPA, including Director of Public Prosecutions in the Free State, acting Director of Public Prosecutions in Gauteng, and Senior Deputy Director of Prosecutions. Khanyile has also served as Deputy Director of Public Prosecutions in the NPA's Asset Forfeiture Unit.

Financial Intelligence Centre

The Financial Intelligence Centre (FIC) is SA's national centre for the receipt of financial data, and analysis and dissemination of financial intelligence to authorities including the NPA. Its mandate includes identifying the proceeds of crime, and combating money laundering and terror financing.

The FIC can provide the NPA with proactive and reactive financial intelligence reports, including information gathered by foreign financial intelligence units, said FIC Director Adv Xolisile Khanyile.

It can assist the NPA's Asset Forfeiture Unit with the freezing of accounts, obtaining a warrant for financial records, and supporting affidavits relating to applications under the Prevention of Organised Crime Act.

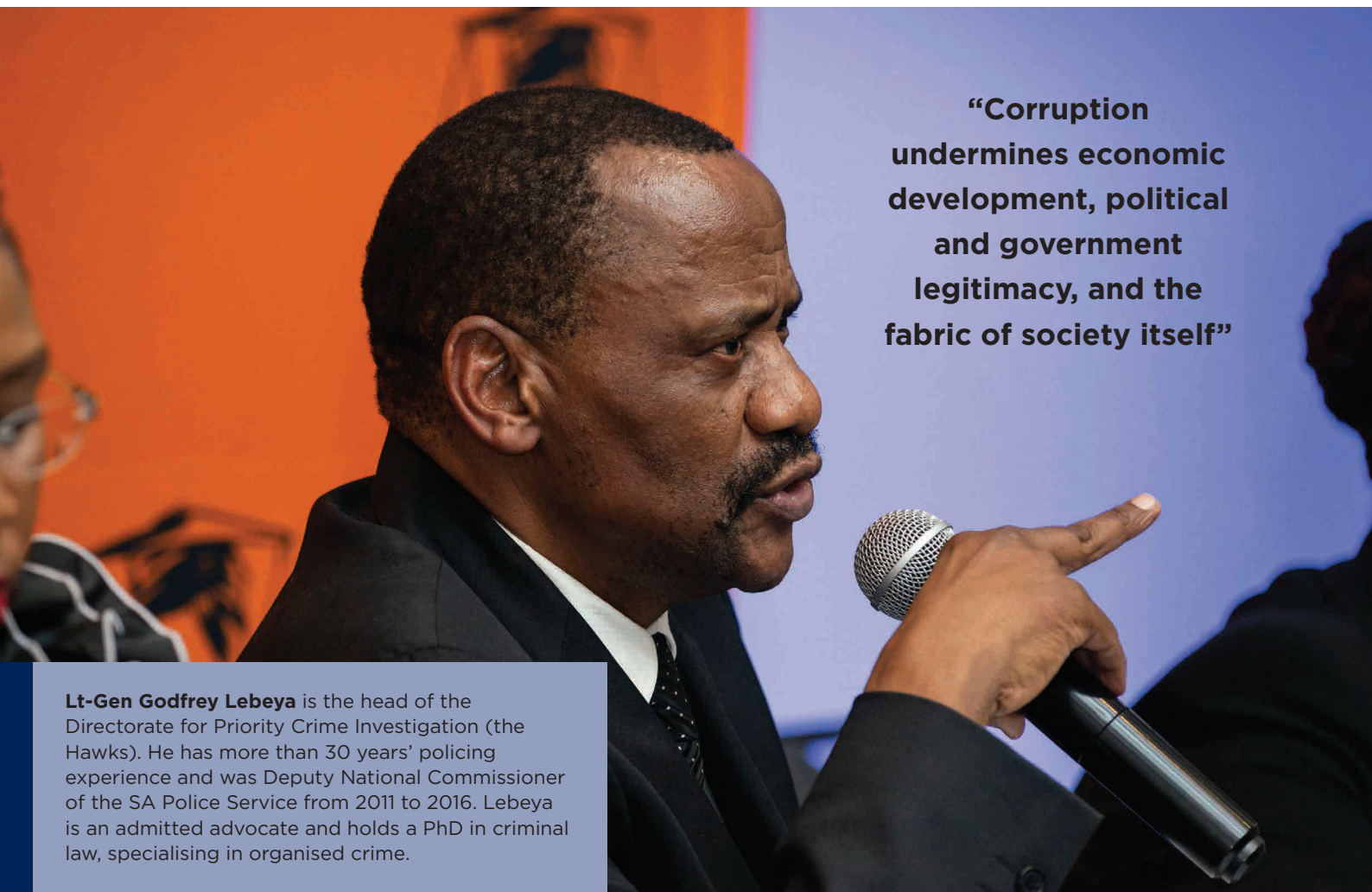
It can also help the NPA's Priority Crimes Litigation Unit with monitoring of bank accounts.

The FIC can provide affidavits on cash flow relating to money laundering and terror financing. Khanyile said it was the NPA's responsibility to ensure money laundering and terror financing risks are understood, and actions against these threats are coordinated.

The NPA needs to cooperate and coordinate with the FIC, the Hawks, SA Reserve Bank and SA Revenue Service.

It should ensure that terrorist financing offences are investigated and prosecuted and subject to effective, proportionate and dissuasive sanctions.

“The NPA should ensure that terrorist financing offences are investigated and prosecuted and subject to effective, proportionate and dissuasive sanctions”



“Corruption undermines economic development, political and government legitimacy, and the fabric of society itself”

Lt-Gen Godfrey Lebeya is the head of the Directorate for Priority Crime Investigation (the Hawks). He has more than 30 years’ policing experience and was Deputy National Commissioner of the SA Police Service from 2011 to 2016. Lebeya is an admitted advocate and holds a PhD in criminal law, specialising in organised crime.

Directorate for Priority Crime Investigation

The Directorate for Priority Crime Investigation, also known as the Hawks, is a specialised unit operating as an independent directorate within the SA Police Service (SAPS). It is responsible for the combating, investigation and prevention of national priority crimes, such as serious organised crime, commercial crime and corruption.

Corruption undermines economic development, political and government legitimacy, and the fabric of society itself, Hawks head Lt-Gen Godfrey Lebeya told the conference.

It jeopardises the allocation of resources to sectors crucial for development, and encourages and perpetuates other illegal activities.

As of 31 March 2019, the Hawks are involved in 16 746 cases and 2 830 inquiries. Lebeya said re-engineering of the Hawks includes the setting of a clear strategy, designing a responsive structure, securing suitable accommodation, enhancing skills levels and retaining personnel which are beyond reproach.

The current operational mandate of the Hawks sets a demarcation threshold that is too low.

This must be changed to distinguish that which satisfies the element of seriousness in organised crime, corruption and commercial crime. The current inadequacies in the investigation of serious priority crimes will be addressed.

The Independent Police Investigative Directorate has noted that criminals have adopted the “mob operational” method of perpetrating their criminal business, which renders the conventional approach of “one-member-one-docket” ineffective. The working methodology must therefore be inclined to multi-disciplinary team work, as opposed to an individual approach.

The lack of earmarked resources for the Hawks has resulted in it being totally dependent on the SAPS, without the ability to influence prioritisation of resources. The Hawks shall continue processes to secure the necessary tools of trade, including engagements with role players that deal with the Criminal Assets Recovery Account funding, Rapid Development Programmes, the Preferential Procurement Policy system of acquisition, as well as the modernisation of information technology.

Civil society recommendations

Inclusion of civil society organisations in the NPA strategic planning conference was a welcome change from the often adversarial relationship of the past, said Lawson Naidoo, Executive Secretary of the Council for the Advancement of the South African Constitution (CASAC). He spoke at the NPA conference as a representative of organisations including CASAC, the Dullah Omar Institute, Freedom Under Law, the Helen Suzman Foundation, the Institute for Security Studies, and the Public Affairs Research Institute.

There is no existing forum for interaction between the NPA and civil society, but this must be created so the NPA can communicate with the public directly, and hear from the victims of crime and others impacted by the prosecutorial system. Without gaining the public's trust, citizens will be less inclined to supply the NPA with evidence, or be willing to act as witnesses, Naidoo said.

The NPA needs to develop a way of engaging with victims of crime, especially where a decision is taken not to prosecute. It is essential that the NPA is held accountable not just to the executive but to the public that it serves. An independent complaints procedure is a necessary adjunct to building public confidence.

Because of actual and perceived political interference in its decisions and senior appointments, the NPA's credibility is at unacceptably low levels. This perception is a disservice to those within the NPA who continued to ensure justice was delivered. Civil society salutes those who sought to discharge their constitutional mandate in the face of egregious leadership.

One of the NPA's priorities must be addressing the trust deficit and public hunger for action. "The prosecution of high-profile cases will prove that the new era goes beyond the rhetoric. People want to see action against those implicated in corruption and state capture," Naidoo said. "This will assure them that the culture of impunity has ended."

This should be done as soon as possible, particularly where the evidence is not only sufficient, but where trials will be relatively quick and uncomplicated. The NPA must also act in the interests of victims of state-orchestrated violence, and hold police officers accountable.

Naidoo said civil society understands some of the difficulties faced by prosecutors at court level, including working conditions, workload, lack of training and resources, and vacancies. "We cannot focus solely on personnel changes at the higher levels of the NPA - key structural and organisational issues must be addressed. Failing this, the corrupt will be removed, and the demotivated will be left behind."

"The prosecution of high-profile cases will prove that the new era goes beyond the rhetoric. People want to see action against those implicated in corruption and state capture."



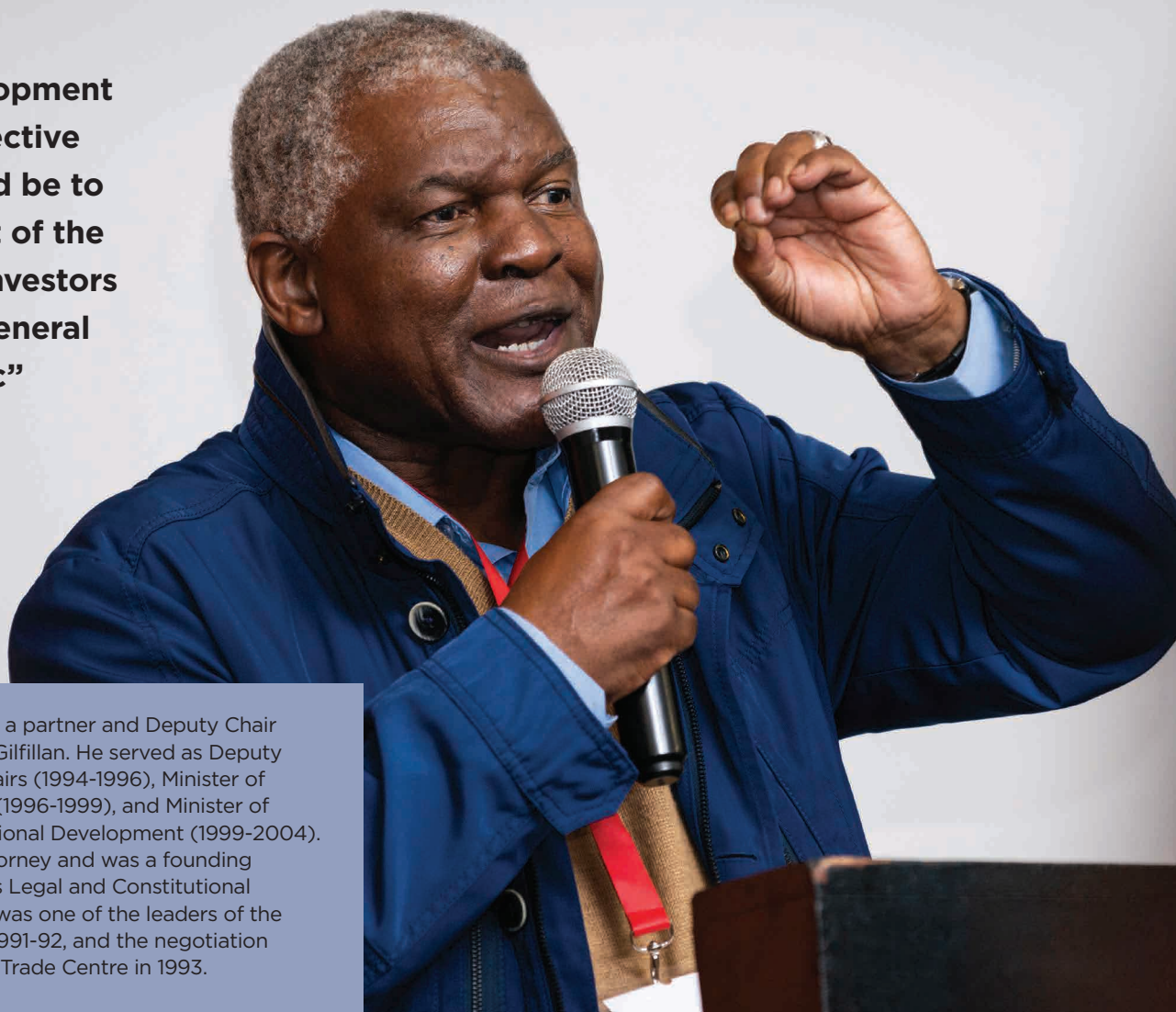
Lawson Naidoo is Executive Secretary of the Council for the Advancement of the South African Constitution (CASAC), an organisation committed to the principles of progressive constitutionalism, democracy and the rule of law. He holds an LLB from the University of Southampton and an LLM from the University of Cambridge, and was admitted as a barrister in England and Wales.

Civil society organisations welcome the establishment of the Investigating Directorate in the Office of NDPP, and are ready to assist with skilled investigators, legal practitioners and forensic expertise.

"As the new NPA reasserts its authority and exercises its prosecutorial functions there will be a fight back from those implicated in state capture and corruption and their cronies," Naidoo said. "The NPA will be thrown into the midst of factional political battles once again. You will come under attack - it is likely to be vicious and personal. We want to be ready to defend the NPA when this arises - not to stand behind you, but alongside you, to protect your institutional integrity so that you can indeed prosecute without fear, favour or prejudice."

“The development of an effective NPA should be to the benefit of the economy, investors and the general public”

Dr Penuell Maduna is a partner and Deputy Chair at law firm Bowman Gilfillan. He served as Deputy Minister of Home Affairs (1994-1996), Minister of Minerals and Energy (1996-1999), and Minister of Justice and Constitutional Development (1999-2004). He is an admitted attorney and was a founding member of the ANC's Legal and Constitutional Committee. Maduna was one of the leaders of the CODESA process in 1991-92, and the negotiation process at the World Trade Centre in 1993.



Business Against Crime SA

Business Against Crime SA (BACSA) is a special purpose vehicle with the mandate to engage with and support government on crime and related matters. It was formed in 1996 following President Nelson Mandela's invitation to business to join the government in combating crime. BACSA's roles include the elimination of crime-enabling processes within businesses, and partnering with government to share expertise, information, processes and technologies.

BACSA is currently integrating with Business Leadership SA, said former Justice Minister and BACSA Director Dr Penuell Maduna. BACSA has managed the Commercial Crime Initiative and a project in the NPA Asset Forfeiture Unit (AFU).

The Commercial Crime Initiative focused on financial and economic crimes, including fraud and corruption, money laundering, violations of the Companies Act, and corporate theft. Deliverables focused on prevention, which relies on ethical leadership, and effective prosecution of offenders.

The main stakeholders in this initiative were the NPA, the SA Police Service, correctional services, the judiciary, trade and industry, and the Deputy Minister of Justice and Constitutional Development.

The initiative's main outcome was the formation of the Specialised Commercial Court Centres in SA. The success of this initiative includes a 1 900% increase in cases completed, a 35% reduction in case time and an increase in conviction rates to 95%.

BACSA aided the AFU, where the private sector facilitated capacity building for investigating teams, including lifestyle audits and interpretation of bank and credit cards.

BACSA is in contact with private sector consultancies who are capable and eager to help convert the NPA into an effective and high-performance unit. The development of an effective NPA should be to the benefit of the economy, investors and the general public, Maduna said.

Special Investigating Unit

The Special Investigating Unit (SIU) was established in 1996 under the Special Investigating Units and Special Tribunals Act, and operates as an independent structure in the criminal justice system. Its mandate is to investigate serious malpractices relating to the administration of state institutions, state assets and public money.

The SIU is improving its operational environment and establishing a culture of good governance and accountability, said unit head Adv Andy Mothibi.

It has adopted the Siyakha Strategic Change Framework, ensuring the SIU stays relevant within a changing environment. Coupled with this is the development of effective communication between top management and employees.

Mothibi identified a number of strategic interventions necessary for the SIU to achieve its goals, including the conversion of allegations into proclamations by the president, and establishing capacity for fraud and corruption prevention through public education.

The SIU should standardise the way its objectives are evaluated, and improve the quality and turnaround time of investigations. Engagement with Treasury should ensure the SIU's long-term financial stability.

The SIU has identified multiple sectors as vulnerable to fraud and corruption, including state-owned entities, health, construction, energy, mining, water, education, defence, local government, transport, finance and border management.

Assessments on the health and construction sectors have been completed and corruption vulnerability indices compiled. Assessments are underway on state-owned entities' vulnerability to corruption.

Proactive interventions

The SIU will proactively combat corruption by identifying vulnerable industry sectors and developing corruption prevention programmes. This will be done in partnership with national and provincial government, with private sector participation.

The SIU will be implementing a Corruption Vulnerability Index to expose the root causes of corruption in each industry sector and at all levels of government.



Adv Andy Mothibi is head of the Special Investigating Unit (SIU). He started his career as public prosecutor in magistrates and regional courts. Mothibi has worked for the Department of Finance, South African Airways, Nedbank and Standard Bank, where he was head of operational risk, a role which included combating fraud and money laundering. While at the AfroCentric Investment Corporation he improved its forensic investigations capability.

“The SIU has identified multiple sectors as vulnerable to fraud and corruption, including state-owned entities, health, construction, energy, mining, water, education, defence, local government, transport, finance and border management”

“The NPA could be at the centre of innovations in data collection for the fight against organised crime”

Dr Mark Shaw is Director of the Global Initiative Against Transnational Organised Crime in Geneva. He is a Senior Associate of the London School of Economics’ International Drug Policy Unit, and an Adjunct Professor in the criminology department at the University of Cape Town, where he previously held the National Research Foundation chair of Justice and Security. Shaw has a PhD from the University of the Witwatersrand and has published widely on organised crime, security and justice reform issues, with a strong focus on Africa.



Organised crime trends and threats

South Africa has very diverse criminal markets, said Dr Mark Shaw from the Global Initiative Against Transnational Organised Crime. Organised crime was fragmented, but there is evidence of consolidation. High levels of violence in criminal markets was reflected in SA’s murder rate, and there is a lot of opportunity for participation for foreign criminal actors and networks. There is a very high level of corruption within the state security apparatus, and SA is rated as equivalent to Albania, Colombia, Mexico and Nigeria on the global organised crime scale.

The NPA could be at the centre of innovations in data collection for the fight against organised crime, Shaw said. It must build capacity to understand trends in order to direct its prosecutorial strategy against the threat. SA needs a long-term multiple-stakeholder strategy to address organised crime. The key role of the NPA is only a part of an overarching response.

SA faces five major emerging organised crime trends

- Supply-driven markets are powerful drivers of organised crime, including the drugs trade. Growth in drugs impacts the NPA in a number of ways. The courts are blocked by low-level offenders, but there are very few investigations or prosecutions of high-level drug traffickers. Addiction drives petty crime, and the cash-based drugs trade stimulates corruption in the criminal justice system.

- SA is very vulnerable to criminal markets driven by scarcity, with organised networks swapping from one commodity to another. Rhino horn and gold were examples of high-value SA resources exploited by criminal networks, Shaw said. Law enforcement targets low-level offenders, with very little action against crime bosses.
- Violence is driven by mafia-style criminal gang formations, so identification and targeting of violence entrepreneurs is of great importance to the NPA. As many as 100 gangs have been mapped in the Cape Town area.
- Technology change will affect a large group of people in the long term. By 2024 there will be more internet users in Africa than in the EU, and encryption on ubiquitous handheld devices makes law enforcement harder. The internet is used as a marketplace, to target fraud victims, and to store value in crypto-currencies. It is crucial to develop skills to deal with this threat, and to tackle it with international partners.
- SA needs to build institutions capable of responding to new patterns of finance and trade. The use of shell companies and tax havens will become more prevalent. The growth in illicit trafficking has coincided with a 235% increase in container trade in the last 15 years. China’s Belt and Road Initiative will result in more infrastructure and a broader range of vulnerabilities.



“Case selection criteria will ensure we address those who planned, orchestrated or instigated the corruption of the system and those who ultimately derived the benefit of the looting of state coffers, not only the foot soldiers”

Adv Hermione Cronje was appointed head of the NPA Investigating Directorate by President Ramaphosa in May 2019. She joined the NPA in 1998, and was a founding member of the Asset Forfeiture Unit in 1999, serving as its Western Cape regional head for ten years. In 2012 Cronje helped establish the NPA's Anti-Corruption Task Team. She has acted as a consultant for the Stolen Assets Recovery Initiative, and has assisted anti-corruption units in Africa and abroad. Cronje has a Master's degree in public administration from Harvard University.

The Investigating Directorate

In May 2019 President Cyril Ramaphosa issued a proclamation in terms of the NPA Act to establish a new Investigating Directorate in the Office of the NDPP. The directorate will focus on serious, high-profile or complex corruption cases emerging from Commissions of Inquiry led by Judge Zondo (state capture), Judge Mpati (PIC) and Judge Nugent (SARS).

Adv Hermione Cronje was appointed in May 2019 to head the new directorate. She said its initial operations would focus on corruption in the security and criminal justice sectors. “It is important we get our own house in order and build confidence in the system,” she said.

The directorate will also focus on corruption in state-owned enterprises, and high-level public and private sector corruption. This will include those who have systematically and actively sought to corrupt government procurement systems and processes for private gain, or private sector corruption that undermines the security of the country or impacts disproportionately on the lives of ordinary people.

The directorate will take on a limited number of cases that will have a very high impact.

“Case selection criteria will ensure we address those who planned, orchestrated or instigated the corruption of the system and those who ultimately derived the benefit of the looting of state coffers, not only the foot soldiers,” Cronje said.

She said the directorate was not a replacement for existing structures or mandates, but will ensure the criminal justice system is resolving high-level corruption. It will adopt an integrated and coordinated approach, and will avoid duplication. “There is no need for competition, there is unfortunately more than enough work for all of us.”

The directorate is working closely with the SA Police Service and the Directorate for Priority Crime Investigation (the Hawks), who have already dedicated senior staff to support its establishment. Colleagues in the Financial Intelligence Centre, the Special Investigating Unit, the SA Revenue Services and the State Security Agency have all pledged their support.

Anybody recruited or assigned to work in the directorate will be subjected to security vetting and integrity testing.



Adv Vusi Pikoli served as NDPP from 2005 until his suspension in 2007 for refusing to allow interference in the NPA's independence. In 2008 he received a Special Achievement Award from the International Association of Prosecutors for his stance on prosecutorial independence. Pikoli has been Western Cape Police Ombudsman and advised the Minister of State Security until his 2019 appointment as Chief Risk and Compliance Officer for South African Airways.

The importance of values

Adv Vusi Pikoli spoke at the conference as a former NDPP. He praised the resilience of the NPA and the commitment of many of its staff to the organisation's values.

"There has been instability at the top, but it did not weaken your resolve or commitment to serving the people of South Africa," he said. "Prosecutions have continued to take place because of ordinary prosecutors, despite some leaders sacrificing their independence."

NPA values of accountability, credibility, professionalism and independence were guided by the Constitution, which all NPA staff were obliged to uphold.

"Our oath is about loyalty to the people of South Africa. Our obligation is to ensure we promote applied values, and we must integrate them into our daily work. The NPA is accountable to Parliament, and we are accountable to the people."

Pikoli said NPA values were a threat to criminals, but these criminals nevertheless deserved fair treatment. "We cannot create a culture of promoting human rights in the absence of fairness and accountability. We must be firm but fair, and this necessitates empathy."

Commitment, dedication, passion, fairness and empathy were the essence of servant leadership, he said. "That is our primary goal as we execute our mandate."

"We cannot create a culture of promoting human rights in the absence of fairness and accountability. Commitment, dedication, passion, fairness and empathy are the essence of servant leadership."



The views of NPA staff

Senior NPA staff were active participants in the strategic planning conference. The following is a summary of views expressed during break-out groups.

Values

- The NPA's values of integrity, accountability, credibility and professionalism should be lived values.
- Values drive the behaviour of employees and are important to meeting NPA objectives.
- Reliable prosecutors, acting ethically and with integrity, will take sound, legal and uninfluenced decisions.
- Delegates proposed a number of additional values for the NPA, including transparency, consistency, loyalty, service excellence and dignity.

Performance

- The NPA must refocus on organised crime, corruption, sexual offences, murder and trio crimes, and removing the profits of crime.
- Managers must lead by example and focus their staff on the values of the NPA, rather than chasing statistical targets.
- There must be in-house training for skills transfer, as well as team building exercises.
- Regular integrity workshops must be reintroduced to discuss values and the consequences to those who do not adhere to them.
- The NPA must consider the appointment of integrity ambassadors at all levels of the organisation.
- A complaints, compliments and suggestions mechanism must be established at each NPA office. Positive actions should be recognised and rewarded.
- Vacancy advertisements should make specific reference to NPA values, and applicants should be screened accordingly.

Morale

- Incentives for employees must be reviewed to remove the risk of corruption.
- Colleagues must inspire one another through daily behaviour, and engage stakeholders and civil society on sharing best practices.
- Staff are positive about new NPA leadership, but there is a desire to see the office of the NDPP prove itself. Much focus has been placed on the NDPP, and this must now shift to the organisation as a whole.
- Staff wish to see senior leadership held accountable for decisions. Suggestions were made that the NPA requires a restructuring, to place more emphasis on prosecutors carrying out the organisation's mandate.
- Questions to head office often go unanswered, and the same is true within each NPA office. Internal communications must be realigned with the Batho Pele principles. Not every NPA employee has access to internal communications, and this must be addressed.
- Mutual respect is lacking in the organisation. This is linked to communication, as some staff feel ignored when they do not receive requested feedback. A recent circular indicated payment would be awarded to the lowest earners within the organisation first, and would continue upwards, but head office staff were paid first and this led to a feeling of a lack of respect.
- The introduction of the *NDPP Brief* is positive.
- Managers must address the prevailing sense of fear.
- Managers should take the initiative to give their staff time off as an incentive and to boost morale.
- Diversity training must be undertaken. Female staff feel they are treated differently.
- The NPA must implement a Victim Impact Survey to assist in defining outcomes the NPA wants to measure.

The way forward – conference resolutions and next steps

NDPP Shamila Batohi closed the conference by acknowledging low staff morale and public confidence, but noted the hunger for the NPA to reform and succeed in its mandate. She thanked colleagues for their honest, constructive and strategic inputs. Delegates were asked to share conference ideas with colleagues and to seek their inputs.

“Your feedback, collegiality and critical reflections have left me inspired, invigorated and more committed than ever to the NPA’s revitalisation. We are facing difficult challenges, but I have your back, and I know I can in turn rely on your support. We are on an exciting journey – the task of saving South Africa together.”

Managers and senior NPA leaders needed to engage with their operational, managerial and institutional failings. “This will not be immediate, and some interventions require funds we don’t yet have. However, there are many interventions within our control which do not require large sums of money.”

Innovation is key, she said, and innovation teams would be established in each division to test, document and develop practical and workable improvements to NPA operations.

“We will start small to demonstrate that success is possible, and then build on that success.”

Consultations on NPA strategy, planning and future direction are being held from July to November 2019 in NPA regional offices. The aim is to engage a broad spectrum of staff, motivate employees about a new NPA era, build a culture around NPA values, encourage innovative thinking and share good practice. Staff will be updated on new initiatives and given the opportunity to discuss and express their concerns.

Acknowledgements

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- Conference donors - United States Agency for International Development (USAID), Business Leadership South Africa and the Government of Ireland.
- All delegates for taking three days from their busy schedules to participate and engage as a team.
- All pictures by Brett Eloff, except Dr Mark Shaw (p. 20) by Jacqueline Cochrane.



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