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## **Annual Report 2014/2015**

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NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

IN TERMS OF THE NPA ACT 32 of 1998

# TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b>	<b>2</b>
<b>LIST OF ABBREVIATIONS /ACRONYMS</b>	<b>5</b>
<b>PART A: NATIONAL DIRECTOR’S REPORT</b>	<b>7</b>
<b>PART B: STRATEGIC OVERVIEW</b>	<b>12</b>
Vision	13
Mission	13
Values	13
Organisational structures	13
Strategic objectives	14
Legislative and other mandates	15
Constitutional mandates	15
Legislative mandates	15
Policy mandates	18
Relevant court rulings	20
<b>PART C: OVERVIEW OF NPA INTERVENTIONS</b>	<b>20</b>
<b>BROAD VIEW OF INTERVENTIONS</b>	<b>21</b>
Prosecution policy and policy directives	21
Matters tried in the jurisdiction of another DPP	21
Centralisation authorisations	21
Reports sought and received from DPPs	24
Assistance provided to DNDPPs, DPPs and prosecutors in representing their professional interests	24
Compliance with United Nations (UN) guidelines	25
<b>PART D: OVERVIEW OF THE OPERATIONS OF THE NPA AND PERFORMANCE AGAINST PREDETERMINED OBJECTIVES</b>	<b>26</b>
<b>OVERVIEW OF THE NPA</b>	<b>27</b>
High profile matters – NPA	31
<b>ACTIVITIES OF THE DEPUTY NATIONAL DIRECTORS OF PUBLIC PROSECUTIONS</b>	<b>33</b>
National Prosecutions Service (NPS)	33
<i>High profile cases – NPS</i>	51
<i>Noteworthy matters on appeal - NPS</i>	55
<i>Noteworthy cases</i>	55
National Specialised Prosecutions Services (NSPS)	71
<i>High profile cases – SCCU</i>	83

<i>Noteworthy cases – PCLU</i>	91
<i>Noteworthy cases – MPTT</i>	
<i>Noteworthy cases – SOCA Unit</i>	93
<i>Noteworthy cases – LAD</i>	94
Asset Forfeiture Unit (AFU)	95
<i>Noteworthy cases – AFU</i>	105
Office for Witness Protection (OWP)	111

## **PART E: INFORMATION RELATED TO THE OPERATIONS OF THE NPA 114**

Personnel position of the NPA	115
Information relating to training programmes for prosecutors	121
Improper conduct	122
Amendments to the Code of Conduct for prosecutors	124
Technical Indicators and descriptions	125

## **LIST OF TABLES**

TABLE 1: SUMMARY OF THE NUMBER OF CENTRALISATION AUTHORISATIONS PER DPP OFFICE AND THE SCCU	21
TABLE 2: MATTERS IN WHICH CENTRALISATION WAS AUTHORISED	22
TABLE 3: PENDING CENTRALISATION APPLICATIONS	23
TABLE 4: CENTRALISATION AUTHORISATIONS COUPLED WITH RACKETEERING AUTHORISATIONS	23
TABLE 5: EXPENDITURE REPORT	28
TABLE 6: BUDGET ALLOCATION PER ECONOMIC CLASSIFICATION	29
TABLE 7: PROGRESS ON NPA STRATEGIC OBJECTIVE 1: INCREASED SUCCESSFUL PROSECUTION	35
TABLE 8: ANNUAL COMPARISON OF CASES FINALISED INCLUDING ADRM: 2013/14 - 2014/15	35
TABLE 9: ANNUAL COMPARISON OF NEW CASES ENROLLED: 2013/14 - 2014/15	36
TABLE 10: ANNUAL COMPARISON OF COURT UTILISATION INCLUDING SCCU: 2013/14 - 2014/15	36
TABLE 11: ANALYSIS OF CASES REMOVED FROM THE COURT ROLL: 2013/14 – 2014/15	36
TABLE 12: PROGRESS ON PROGRAMME PERFORMANCE INDICATORS FOR INCREASED SUCCESSFUL PROSECUTION: 2013/14 — 2014/15	37
TABLE 13: ANNUAL COMPARISON OF PROGRESS ON NEW CASES AND CRIMINAL COURT CASES FINALISED WITH VERDICT: 2010/11 – 2014/15	38
TABLE 14: CASES FINALISED THROUGH ADRM	39
TABLE 15: ANNUAL COMPARISON OF ADRM: 2013/14 – 2014/15	40
TABLE 16: COMPARISON OF AGE GROUPS	40
TABLE 17: BREAKDOWN OF THE MANNER IN WHICH CHILDREN IN CONFLICT WITH THE LAW WERE DEALT WITH	41
TABLE 18: ANNUAL TREND ANALYSIS OF CJA DIVERSIONS: 2010/11 – 2014/15	47
TABLE 19: SEXUAL OFFENCES FINALISED	47
TABLE 20: TRIO CRIMES FINALISED	50
TABLE 21: SKILLS DEVELOPMENT OPPORTUNITIES	72
TABLE 22: PROGRESS ON STRATEGIC OBJECTIVE 2: IMPROVED PROSECUTION OF CASES THAT REQUIRE SPECIALISED PROSECUTIONS (NSPS): 2013/14 — 2014/15	73
TABLE 23: PROGRESS ON PROGRAMME PERFORMANCE INDICATORS FOR IMPROVED PROSECUTION OF CASES THAT REQUIRE SPECIALISED PROSECUTION (NSPS)	75

TABLE 24: CYBERCRIME CASES FINALISED	95
TABLE 25: PROGRESS ON NPA STRATEGIC OBJECTIVE 3: ENSURE THAT PROFIT IS REMOVED FROM CRIME	96
TABLE 26: ANNUAL COMPARISON OF PERFORMANCE: 201/11 – 2014/15	97
TABLE 27: ANNUAL COMPARISON OF PERFORMANCE: 201/11 – 2014/15	97
TABLE 28: PROGRESS ON PROGRAMME PERFORMANCE INDICATORS TO ENSURE THAT PROFIT IS REMOVED FROM CRIME	97
TABLE 29: ANNUAL COMPARISON OF NUMBER OF FREEZING ORDERS	99
TABLE 30: ANNUAL COMPARISON OF VALUE OF COMPLETED FORFEITURE CASES	100
TABLE 31: ANNUAL COMPARISON OF VALUE OF FREEZING ORDERS RELATING TO CORRUPTION OR OFFENCES RELATED TO CORRUPTION WHERE THE AMOUNT BENEFITED PER CASE IS MORE THAN R5 MILLION	100
TABLE 32: ANNUAL COMPARISON OF PAYMENTS MADE TO VICTIMS	101
TABLE 33: PROGRESS ON STRATEGIC OBJECTIVE 4: ENSURE THREATENED WITNESSES ARE SUCCESSFULLY PROTECTED	111
TABLE 34: PROGRESS ON PROGRAMME PERFORMANCE INDICATORS TO ENSURE THREATENED WITNESSES ARE SUCCESSFULLY PROTECTED	112
TABLE 35: BREAKDOWN OF PERMANENT PROSECUTORS EMPLOYED IN THE NPA	115
TABLE 36: BREAKDOWN OF PROSECUTORS ON CONTRACT	115
TABLE 37: BREAKDOWN OF HUMAN RESOURCE CAPACITY PER SUB-PROGRAMME	116
TABLE 38: STATUS OF EMPLOYMENT EQUITY AT HEAD OFFICE	116
TABLE 39: STATUS OF EMPLOYMENT EQUITY IN THE KZN	116
TABLE 40: STATUS OF EMPLOYMENT EQUITY IN NORTH GAUTENG	117
TABLE 41: STATUS OF EMPLOYMENT EQUITY IN SOUTH GAUTENG	117
TABLE 42: STATUS OF EMPLOYMENT EQUITY IN NORTH WEST	118
TABLE 43: STATUS OF EMPLOYMENT EQUITY IN FREE STATE	118
TABLE 44: STATUS OF EMPLOYMENT EQUITY IN NORTHERN CAPE	119
TABLE 45: STATUS OF EMPLOYMENT EQUITY IN EASTERN CAPE	119
TABLE 46: STATUS OF EMPLOYMENT EQUITY IN MTHATHA	120
TABLE 47: STATUS OF EMPLOYMENT EQUITY IN WESTERN CAPE	120
TABLE 48: BREAKDOWN OF TRAINING PROVIDED TO PROSECUTORS	121
TABLE 49: ANALYSIS OF LABOUR MATTERS DEALT WITH	123

## TABLE OF FIGURES

FIGURE 1: HIGH LEVEL ORGANISATIONAL STRUCTURE OF THE NPA	13
FIGURE 2: CASE MANAGEMENT BY HIGH COURTS	42
FIGURE 3: OVERVIEW OF THE CASES DEALT WITH BY THE HIGH COURTS	42
FIGURE 4: CASES FINALISED BY REGIONAL COURTS	43
FIGURE 5: CASE MANAGEMENT BY REGIONAL COURTS	43
FIGURE 6: CASES FINALISED BY DISTRICT COURTS	44
FIGURE 7: CASE MANAGEMENT BY DISTRICT COURTS	44
FIGURE 8: ALL COURTS: CONVICTION RATE IN SEXUAL OFFENCES CASES	46
FIGURE 9: ALL COURTS: CONVICTION RATE ON TRIO CRIMES	47

## LIST OF ABBREVIATIONS / ACRONYMS

ACTT	Anti-Corruption Task Team
ADRM	Alternative Dispute Resolution Mechanism
AENE	Adjusted Estimates of National Expenditure
AFU	Asset Forfeiture Unit
ANC	African National Congress
APA	Africa Prosecutors Association
APP	Annual Performance Plan
CARA	Criminal Assets Recovery Account
CEO	Chief Executive Officer
CJA	Child Justice Act
CJS	Criminal Justice System
CPO	Court Preparation Officer
DCS	Department of Correctional Services
DEA	Department of Environmental Affairs
DHA	Department of Home Affairs
DDPP	Deputy Director of Public Prosecutions
DNDPP	Deputy National Director of Public Prosecutions
DoD	Department of Defence
DoH	Department of Health
DoJ&CD	Department of Justice and Constitutional Development
DPCI	Directorate for Priority Crime Investigation
DPP	Director of Public Prosecutions
DPME	Department of Planning, Monitoring and Evaluation
DSD	Department of Social Development
ECMS	Electronic Case Management System
EE	Employment Equity
ENE	Estimates of National Expenditure
Hawks	Directorate for Priority Crime Investigation
IAP	International Association of Prosecutors
ICT	Information Communications Technology
IJS	Integrated Justice System
IPID	Independent Police Investigative Directorate
IT	Information Technology
JCPS	Justice, Crime Prevention and Security
LAD	Legal Affairs Division
LGBTI	Lesbian, Gay, Bisexual, Transsexual and Intersexual
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
MPTT	Missing Persons Task Team
MTEF	Medium Term Expenditure Framework
MTSF	Medium Term Strategic Framework
National Director	National Director of Public Prosecutions
NCA	National Crime Agency

NCPF	National Cyber Security Policy Framework
NDP	National Development Plan
NEEC	National Efficiency Enhancement Committee
NPA	National Prosecuting Authority
NPS	National Prosecutions Service
NSPS	National Specialised Prosecutions Services
OECD	Organisation for Economic Cooperation & Development
OHS	Occupational Health and Safety
OWP	Office for Witness Protection
PCLU	Priority Crimes Litigation Unit
PEEC	Provincial Effectiveness Enhancement Committees
PFMA	Public Finance Management Act
PGI	Prosecutor Guided Investigations
POCA	Prevention of Organised Crime Act
SAPS	South African Police Service
SARS	South African Revenue Service
SCA	Supreme Court of Appeal
SCCU	Specialised Commercial Crimes Unit
SCM	Supply Chain Management
SCOPA	Standing Committee on Public Accounts
SDPP	Special Director of Public Prosecutions
SLA	Service Level Agreement
SMS	Senior Management Services
SOCA	Sexual Offences and Community Affairs
SORMA	Sexual Offences and Related Matters Act
SIU	Special Investigating Unit
SPS	Specialised Prosecutions Services
SS	Support Services
SSA	State Security Agency
TCC	Thuthuzela Care Centre
TIP	Trafficking in Persons
TRC	Truth and Reconciliation Committee
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime
USA	United States of America
VIS	Victim Impact Statement
WPP	Witness Protection Programme

## PART A: NATIONAL DIRECTOR'S REPORT



## PART A: NATIONAL DIRECTOR'S REPORT

I feel privileged to present the National Prosecuting Authority (NPA) Annual Report in terms of Section 35(2) of the NPA Act, 1998 (Act No. 32 of 1998). The NPA is an institution that is strategically placed at the forefront of the war against criminality. As the NPA it is absolutely crucial that we comply with all legislative prescripts applicable to our environment.

When I started my term as the National Director I made a solemn commitment that I will ensure that the NPA acts "without fear, favour or prejudice". I believe that I have been true to my word in that respect. I have chosen to be the friend of the "rule of law" and even though I have been with the NPA for a short time, my observation is that the majority of our staff follow the law.

As an organisation we abide by the legislation that prescribes our dependence on the Department of Justice and Constitutional Development but we will continue to pursue independence, including financial independence. We are firmly of the view that for full prosecutorial independence, financial independence is imperative.

I am elated to be reporting on the NPA activities and programmes undertaken during the past year. I have no doubt that the performance outcomes contained in the relevant sections of the report bear testimony that we have succeeded in remaining loyal to the pursuit of our mandate.

Through instrumentality of the National Prosecutions Service (NPS), we have managed to maintain the high conviction rates in the 1 656 high and lower courts throughout the country with all courts achieving an overall conviction rate of 92.3% in the 319 149 cases finalised with a verdict.

A positive clearance ratio of 3.4% was achieved. There were 908 364 cases enrolled, and, with the outstanding cases on the courts roll at the end of the previous financial year, 938 638 cases were finalised. A total of 30 274 more cases were therefore disposed of than received, in delivering justice to the community.

The NPA continued to achieve favourably in most of its performance indicators. Most notably, the improved conviction rate in organised crime (92.2% against last year's 88.9%) gives us confidence that our coordinated efforts with our partners to break the back of organised crime are yielding results. One of the high profile matters in this category of crime is that of Radovan Krejčíř, and while his trial is yet to be concluded, the fact that he remains in custody is significant.

The conviction rate in the prosecution of sexual offences matters was 69%, which is exceptional when one considers the nature of these crimes and the complexity in achieving a successful prosecution. This is also a 1.9% improvement on the conviction rate achieved in the previous financial year.

The National Specialised Prosecutions Service (NSPS) has successfully improved the prosecution of cases that require specialised prosecution.

An exceptional conviction rate of 94.3% was achieved in the prosecution of complex commercial crime by the Specialised Commercial Crime Unit (SCCU). This should be viewed against the nature and complexity of the crimes prosecuted.



The Priority Crimes Litigation Unit (PCLU) continued to execute its mandate in managing investigations and prosecuting serious national and international crimes. During the reporting period, the unit achieved a conviction rate of 67% (two out of three cases) on crimes referred to the PCLU. The Missing Persons Task Team (MPTT), a separate project of the PCLU, continued with research and investigations into the identification, tracing and exhumations of the mortal remains of persons who disappeared during the apartheid era. The MPTT successfully closed 31 cases.

The NPA hosted and facilitated the 2014 Sexual Offences Indaba during July 2014. The theme for this year was “360 Degrees against Sexual Offences”, with a specific focus on prevention. It was aimed at creating a platform whereby stakeholders can collaboratively support the government in realising its constitutional mandate to effectively respond to the high incidence of sexual violence. It was attended by 170 delegates from all sectors. It was decided to highlight and focus on the following objectives, inter alia:

- Sharing information on best practices, success stories, lessons learned and the replication of successful interventions at new project sites
- Minimising the duplication of programme/project interventions
- Networking with peer organisations and creating new partnerships
- Exploring opportunities for developing new, impactful strategies and programmes/projects

The SOCA Unit’s performance is reflected throughout the report but it is significant that the impact of the training that is provided by the unit is mentioned as a highlight. A comprehensive training programme is provided that delivered 47 sessions on various subject matters to assist prosecutors in delivering a better service to the victims of crime.

The Office for Witness Protection (OWP) is credited with ensuring, for the 13<sup>th</sup> consecutive year, that no witnesses were harmed or threatened while on the programme. Guided by section 41 of the Constitution, the OWP has excellent high level cooperation with its partners and stakeholders. The protection of witnesses resulted in 13 life terms and 238 sentences of direct imprisonment being imposed in cases in which the witnesses in the programme testified.

The Asset Forfeiture Unit (AFU) warrants a special mention with the best ever overall performance recorded, significantly exceeding its previous best performance in 2013/14. Noteworthy are:

- 463 completed forfeiture cases with a value of R1.9 billion
- 342 freezing orders to the value of R2.7 billion
- Freezing orders to the value of R2.2 billion and recoveries of R1.5 million relating to cases where the amount benefitted from corrupt activities was more than R5 million
- R1.6 billion paid to the victims of crime
- R11.1 million recovered in cases where government officials were convicted of corruption and other related offences
- An overall success rate of 95.1%

The Anti-Corruption Task Team (ACTT) is a presidential initiative and therefore enjoys the status of government priority. It works on the multi-agency format. It has been of great assistance to the NPA in the successes recorded in combatting corruption. Almost all the big successes of the AFU in terms of high profile cases have emanated from this unit. 23 persons were convicted of corruption and related offences where the amount benefited was more than R5 million and 130 government officials were successfully prosecuted for corruption and related offences.

The reality of the rationalisation of courts was a welcome development for our constitutional democracy. Most importantly, this development is a victory for the continued efforts by government and the judiciary to ensure access to justice for all. The area of jurisdiction of a division of a high court in a province is now aligned to the provincial boundaries of that province. Local seats are established within a division to bring justice closer to the communities that are further from the main seat in the province. The old jurisdictional divisions were most unfavourable and prejudicial to those with the most limited resources, who often had to travel across provincial borders to seek justice in courts situated far from their places of residence.

The establishment of the new high courts in Limpopo and Mpumalanga which removes a major portion of the work from the previous North Gauteng jurisdiction, has had the greatest impact particularly for prosecutors from this division. The process of re-allocating resources and shifting prosecutors to fit in with the new court locations has been a challenge that must be carefully managed to ensure a balance between what is in the best interests of the organisation and the greater system, and the interests of the prosecutors and their families.

Another positive development in the criminal justice system is the establishment of the Office of the Chief Justice (OCJ), independent of the Department of Justice and Constitutional Development (DoJ&CD). The OCJ is now responsible for reporting on performance of the high courts and this measure will no longer be reflected in the NPA's strategic plans and performance reports.

It is also important to note that government put stringent measures in place to deal decisively with the growing trend of violent protests and criminality that result from industrial action. The President in his State of the Nation Address and in other key platforms has continued to decry this ill which also has a significant economic impact on the country. To this end, the NPA has added conviction rates in this category of crime to its performance indicators, to ensure that the criminal justice system demonstrates the necessary focus to curb this emerging crime. The same focused approach will be taken for all other types of crime that threaten the country's position as one of the leading African states. One such example is the quick collective security cluster response to the violent attacks against foreign nationals in our country recently.

## Acknowledgements

I would like to express my heartfelt gratitude to all my deputies for their dedicated stewardship of their respective areas of responsibility. The cogent advice and the robust discussions we have shared over many hours have stood us in good stead to lead this organisation.

The senior leadership, including myself, have received unwelcome and unsavoury media coverage - this is unfortunately par for the course. Despite these adversarial circumstances I am happy to report that our results are excellent and exceeded the expectations of doomsayers.

I will be remiss if I did not thank the NPA employees for their stellar performance. The DPPs have been wonderful in driving the performance in the regions, where the core work of prosecutions in all the courts across the country happens.

My special gratitude also goes to the Support Services staff. These are the people who are schooling us all in good governance practices. I thank them for a job well done in achieving the feat of a second clean audit in two financial years.

To the Exco which has the unenviable task of being the “board of directors” of the NPA, I salute you for a job well done.

I wish to assure every employee of the NPA and every casual observer of our activities that decisions taken at Exco are taken with a great deal of consideration and reflection. We do not take anyone for granted. We realise that the whole organisation falls or stands by these decisions.

Finally, I would like to thank my wife and family for their unwavering support.

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

**Mxolisi SO Nxasana**  
**National Director**  
**Date: 29 May 2015**

## PART B: STRATEGIC OVERVIEW



## PART B: STRATEGIC OVERVIEW

### Vision

Justice in our society so that people can live in freedom and security

### Mission

Guided by the Constitution, we in the National Prosecuting Authority, ensure justice to the victims of crime by prosecuting without fear, favour or prejudice, and by working with our partners and the public to solve and prevent crime

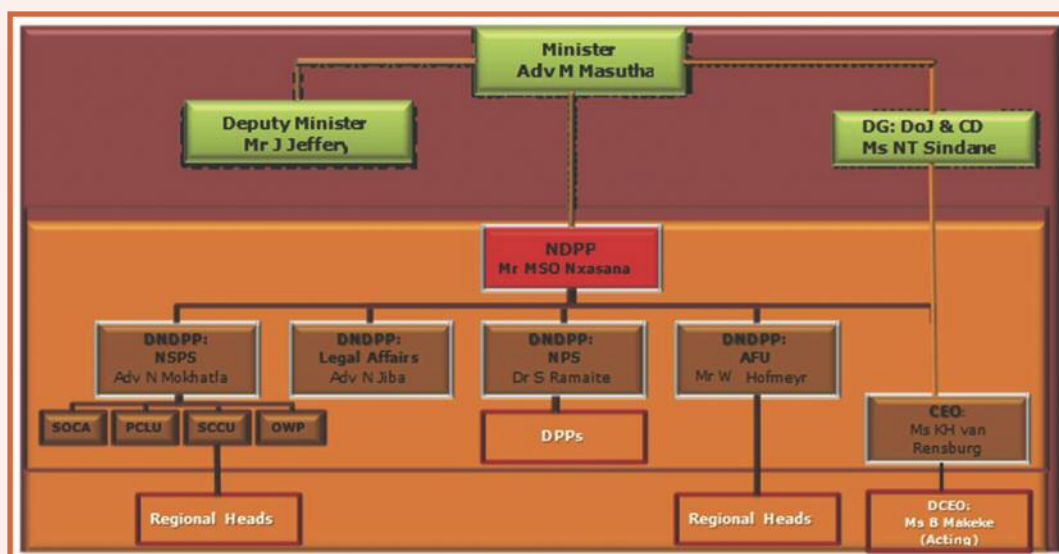
### Values

- Integrity which is displayed through ethical conduct, high moral standards, honesty, moral principles and values, no corruption or fraud – zero tolerance, keeping promises, truthfulness and being beyond reproach
- Accountability which is depicted by being responsible and answerable for our actions
- Service excellence which is found in providing first class customer service and complying with the Batho Pele principles
- Professionalism which can be seen through commitment/dedication, punctuality, competence, and professional conduct in and out of court
- Credibility which is depicted in the following behaviour: consistency and the ability to inspire belief or trust

### Organisational structure

The structure of the NPA is depicted in figure 1 below.

Figure 1: High level organisational structure of the NPA



## Strategic objectives

The NPA has four strategic objectives:

- Increased successful prosecution
- Improved prosecution of cases that require specialised prosecution
- Ensure profit is removed from crime
- Ensure threatened witnesses and related persons are successfully protected

Each objective is specifically linked to a sub-programme as reflected in the Estimates of National Expenditure (ENE) or budget. Both the National Prosecuting Authority (NPA) Strategic Plan 2015-2020 (Strategy) and Annual Performance Plan (APP) 2015/16 were aligned to link the strategic objectives to the budget structure.

Each Deputy National Director of Public Prosecutions (DNDPP) is responsible for a sub-programme for improved accountability, as follows:

- National Prosecutions Service (NPS) - Dr Silas Ramaite SC
- National Specialised Prosecutions Services (NSPS) - Advocate Nomvula Mokhatla
- Asset Forfeiture Unit (AFU) - Mr Willie Hofmeyr
- Office for Witness Protection (OWP) - Advocate Nomvula Mokhatla

Advocate Nomgcobo Jiba is responsible for the Legal Affairs Division (LAD) which provides legal advisory services to the NPA and the National Director of Public Prosecutions (National Director). The unit was established in 2010. It monitors and manages civil litigation matters, processes requests for mutual legal assistance and extraditions, and renders assistance to the National Director and the NPA in general through legal opinions.

The fifth sub-programme is Support Services (SS), for which the Chief Executive Officer (CEO) is responsible with delegated powers from the Director-General of Justice and Constitutional Development (DoJ&CD).

The NPS is responsible for general prosecutions, and appeals that may follow and includes making use of alternative dispute resolution mechanisms (ADRM). It is the biggest unit in the NPA and is responsible for the prosecution in the lower and high courts. The bulk of the prosecutors and the budget is allocated to this component.

The NSPS consists of the following business units:

- Specialised Commercial Crime Unit (SCCU)
- Sexual Offences and Community Affairs Unit (SOCA)
- Priority Crimes Litigation Unit (PCLU)

The SCCU is a small specialist prosecution unit with regional representation in all provinces. Its main objective is the prosecution of complex commercial crime with a focus on corruption and has specialist prosecution skills to deal with cybercrime.

The unit focuses primarily on issues involving the victimisation of women and children. It develops strategies and policy relating to: sexual offences, domestic violence, human trafficking, maintenance matters and young offenders.

The PCLU is a very small specialist prosecuting unit that manages investigations and prosecutes crimes that impact on state security. The unit is a national component in the office of the National Director.

The AFU seizes assets that are the proceeds of crime or have been part of an offence through a criminal or civil process. It is a small unit of lawyers that operates in the civil litigation sphere.

The OWP provides for protection, support and related services to vulnerable and intimidated witnesses and related persons in the judicial proceedings in terms of the Witness Protection Act, 1998 (Act No. 112 of 1998).

The Director-General, as the accounting officer of the NPA, has prepared a full report with the cooperation of the NPA on the performance against pre-determined objectives. This report will therefore not dwell on that aspect.

## Legislative and other mandates

### Constitutional mandates

The NPA derives its mandate from section 179 of the Constitution. Section 179(2) expressly empowers the NPA to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental thereto. Furthermore, section 179(4) requires that the NPA must exercise its functions without fear, favour or prejudice.

The National Director of Public Prosecutions (National Director), as head of the NPA, and Directors of Public Prosecutions (DPPs), as the NPA heads at various seats of the high courts, are responsible for ensuring compliance with its constitutional obligations. In terms of section 179(5) of the Constitution, the National Director must determine prosecution policy and issue policy directives, which must be observed in the prosecution process. The prosecution policy and any amendments thereto must be determined with the concurrence of the Minister responsible for the administration of justice and after consultation with the directors. Furthermore, in terms of section 179(6) of the Constitution, the Minister responsible for the administration of justice exercises final responsibility over the prosecuting authority, and may, in terms of national legislation, request reports from the National Director regarding the functioning of the prosecuting authority.

### Legislative mandates

The NPA, as the sole entity seized with the responsibility of instituting prosecutions on behalf of the state, is legally bound by various pieces of legislation. Below is a short discussion of key legislation.

#### **National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) (NPA Act)**

In terms of section 20(1) of the NPA Act, the power vests in the prosecuting authority to:

- (a) Institute and conduct criminal proceedings on behalf of the state
- (b) Carry out any necessary functions incidental to instituting and conducting such criminal proceedings and
- (c) Discontinue criminal proceedings



In terms of section 11 of the NPA Act, the President may, after consultation with the Minister and National Director, appoint not more than four persons as Deputy National Directors of Public Prosecutions (DNDPPs). A DNDPP has original prosecutorial powers as set out in section 20(1) of the NPA Act. The DNDPPs' powers and functions are exercised subject to the control and direction of the National Director. The National Director may also assign certain specific functions to a DNDPP. The NPA Act also allows for the appointment of Special Directors of Public Prosecutions (Special Directors) to deal with special focus areas.

Under section 13(1) of the NPA Act, the President may, after consultation with the Minister and the National Director, also appoint DPPs at the respective seats of the high courts [section 13(1)(a)] and Special Directors to exercise certain powers, carry out certain duties and perform certain functions conferred or imposed on or assigned to him or her by the President by proclamation in the Gazette [section 13(1)(c)]. A DPP appointed in terms of section 13(1)(a) of the NPA Act has original prosecutorial powers in respect of any offence committed in his or her area of jurisdiction but not in the area of jurisdiction of another DPP. A special director appointed in terms of section 13(1)(c) of the NPA Act also has original prosecutorial powers in respect of those offences identified in his or her Presidential Proclamation in any area of jurisdiction, but subject to the concurrence of the first-mentioned DPP of the area of jurisdiction concerned.

A Deputy Director of Public Prosecutions (DDPP) appointed by the Minister under section 15(1)(b) of the NPA Act to the office of a director also has original prosecutorial powers in respect of the area of jurisdiction concerned. However, such DDPP must exercise such powers subject to the control and directions of the DDP concerned and only in the area of jurisdiction for which he or she has been appointed and only in respect of such offences and in such courts as he or she has been authorised in writing by the National Director or a person designated by the National Director.

Prosecutors are appointed in terms of section 16(1) of the NPA Act. A prosecutor may be appointed to the office of the National Director, the office of a director, or any lower court in the Republic. A prosecutor does not possess original prosecutorial powers contemplated in section 20(1) of the NPA Act. He or she may only exercise and perform such prosecutorial powers and functions if authorised to do so by the National Director or a person designated to do so by the National Director.

Section 28 of the NPA Act should be read with Chapter 6A (sections 17A to 17L) of the South African Police Service Act, 1995 (Act No. 68 of 1995) (SAPS Act). The last-mentioned provisions provide for the establishment of a separate division in the South African Police Service (SAPS), namely, the Directorate for Priority Crime Investigation (DPCI). These provisions, among others, ensure a multi-disciplinary and integrated approach in the prevention, combating and investigation of the priority crimes, including corruption offences. In terms of section 17D(3) of the SAPS Act, the National Head of the DPCI may, if he or she has reason to suspect that a national priority offence has or is being committed, request the National Director to designate a DPP to exercise the powers of section 28 of the NPA Act. In terms of section 17F(4) of the SAPS Act, the National Director must ensure that a dedicated component of prosecutors is available to assist and cooperate with members of the DPCI in conducting its investigations.



**Criminal Procedure Act, 1977 (Act No. 51 of 1977)**

This Act regulates matters relating to criminal proceedings in a court of law and contains various provisions relating to the powers, duties and functions of members of the prosecuting authority. These include provisions relating to the power to withdraw a charge and stop a prosecution, the attendance of witnesses in court, the issuing of summonses, admission of guilt, bail, the release of an accused person, summary trials, the charge, the plea, jurisdiction, preparatory examinations, trial before different courts, conduct of proceedings, witnesses, evidence, competent verdicts, previous convictions, sentence, reviews and appeals, and compensation.

**Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)**

The Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) (POCA) provides measures for law enforcement agencies and the NPA to combat organised crime and money laundering. The primary feature of the POCA is to provide for the recovery of the proceeds of unlawful activity. Chapter 5 provides for the freezing and confiscation of the value of benefit derived from crime in cases where the accused is convicted of an offence. Chapter 6 focuses on property that has been used either to commit an offence or which constitutes proceeds of crime. It provides for freezing and forfeiture of proceeds and instrumentalities of crime through a process that is not dependent on a prosecution. In addition, section 71 of the POCA empowers the National Director to request information from government departments and statutory bodies in respect of investigations relevant to this Act without having to issue subpoenas.

**Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002)**

The Priority Crimes Litigation Unit (PCLU), situated in the office of the National Director, is mandated to manage and direct the investigation and prosecution of the crimes of genocide, crimes against humanity and war crimes as contemplated in the International Criminal Court Act. This Act makes provision for extraterritorial application in its implementation in certain circumstances.

**Witness Protection Act, 1998 (Act No. 112 of 1998)**

The Office for Witness Protection (OWP) is established in terms of this Act and provides a support service for the criminal justice system and judicial proceedings, providing protection, support and related services to vulnerable and intimidated witnesses and related persons enabling such witnesses to testify without intimidation, fear or danger. The OWP is established in the DoJ&CD with the Director-General as the accounting officer, but is administered by the NPA.

**Criminal Law (Sexual Offences and Related Matters) Act, 2007 (Act No. 32 of 2007) (Sexual Offences Act)**

The Act comprehensively and extensively amends all aspects and implementation of the laws relating to sexual offences, and deals with all legal aspects of, or relating to, sexual offences in a single statute. The Act, inter alia, repeals various common law offences and replaces them with

statutory offences that are gender neutral and applicable to all forms of sexual penetration and sexual violation committed without consent. It also creates new offences for certain compelled acts of penetration or violation, and enacts comprehensive provisions for new or amended offences against children and persons who are mentally disabled.

### **Child Justice Act, 2008 (Act No. 75 of 2008)**

The Act establishes a child justice system for children in conflict with the law.<sup>1</sup> This Act seeks to ensure that child justice matters are managed in a rights-based manner and assists children suspected of committing crime to become productive members of society by engaging with them in restorative justice processes, diversions and other alternative sentencing options.

### **Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013)**

The Act gives effect to South Africa's obligations in respect of the trafficking of persons in terms of international agreements. The Act provides for an offence of trafficking in persons, penalties that may be imposed in respect of such offences, measures to protect victims, as well as the prevention and combating of the trafficking in persons within or across the borders of the Republic. The Act was signed off by the President in 2013; however the date for implementation is still to be gazetted.

## **Policy mandates**

### **National Development Plan 2030**

The National Development Plan (NDP) provides the strategic framework for government. The National Planning Commission (NPC) recommended that in order to strengthen the criminal justice system (CJS), departments should implement the recommendations of the Review of the CJS, which culminated into the seven-point plan.<sup>2</sup>

The NPA aligned its strategy with the seven-point plan adopted by Cabinet. Government prepared the MTSF (2014-2019), to incrementally actualise the NDP. The Framework served as a transition mechanism of the government programme of action from the outgoing administration to the incoming one, after the elections of May 2014. The NPA and the larger cluster monitor and regularly report on the implementation of the MTSF to Cabinet through the National Treasury (NT) and the Department of Planning, Monitoring and Evaluation (DPME).

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<sup>1</sup> Refers to children under the age of 18, who are suspected to have committed crime. They will not be dealt with in terms of the normal criminal court procedure which is used for adults, but the child justice process will be followed.

<sup>2</sup> National Planning Commission. (2012). National Development Plan: Vision for 2030. Accessed from: <http://www.npconline.co.za/pebble.asp?reid=25>, dated 7 March 2014.

## National Cyber Security Policy Framework

The fight against cybercrime remains one of the key priorities for the Justice, Crime Prevention and Security (JCPS) cluster in particular and government in general. In its effort to fight cybercrime, the JCPS cluster has developed the National Cyber Security Policy Framework which was approved by Cabinet in March 2012. The framework provides for policy positions intending to:

- Address national security threats in cyberspace
- Combat cyber warfare, cybercrime and other cyber ills
- Develop, review and update existing substantive and procedural laws to ensure alignment, and
- Build confidence and trust in the secure use of information and communication technologies

## Relevant court rulings

### **Democratic Alliance and Others versus Acting National Director of Public Prosecutions and Others 2012 (3) SA 486 (SCA):**

In the case of the Democratic Alliance versus Acting National Director of Public Prosecutions and others [2013] JOL 30843 (GNP), Mathopo J in the North Gauteng High Court ordered the NPA to produce the tape recordings which Advocate Mpshe relied on when he withdrew charges against Mr Jacob Zuma in 2009. Mr Zuma appealed against the judgment of Mathopo J to the Supreme Court of Appeal (SCA) in Bloemfontein on the basis that the recordings obtained by the NPA were confidential and could not be produced. Secondly, that another court could arrive at a different decision. This judgment potentially placed the NPA at risk of having its decisions reviewed by interested parties at any time and the NPA would not be able to claim privilege and confidentiality on its records.

On 28 August 2014, Navsa J of the SCA upheld the judgment of the North Gauteng High Court with a variation that a private arbitrator, Hurt J, be appointed to determine which of the memoranda were confidential and thereby ordering the National Director to produce documents and electronic recordings. On 4 August 2014, the electronic recordings and transcripts were filed with the registrar of the North Gauteng High Court, Pretoria. The internal memoranda were served to Hurt J as per the order of the SCA.

## PART C: OVERVIEW OF NPA INTERVENTIONS



## PART C: OVERVIEW OF NPA INTERVENTIONS

### Broad view of interventions

The following is a broad view of various interventions by the NPA that have strengthened its ability as well as that of its stakeholders to fulfil its mandate

#### Prosecution policy and policy directives

My predecessors and I have come up with a variety of adjustments or amendments to the Prosecution Policy and Guidelines. This is necessary because we must subject our processes to constant review and refinement. Furthermore, various pieces of legislative changes necessitate such amendments. However, as the NPA we have not seen any necessity for a complete overhaul of our policies and guidelines in the past five years. It is easy to see why. These policies and guidelines have stood the test of time and have proved to be fit for the purpose for which they were determined.

I invite you again to read the report and see the minor adjustments and amendments effected during the previous financial year. The surgery has indeed been cosmetic.

#### Matters tried in the jurisdiction of another DPP

No cases were tried outside their jurisdiction except for various centralisation authorisations.

#### Centralisation authorisations

The NPS dealt with 18 applications for centralisation during the reporting period. 17 of these applications emanated from the various DPP Offices, and one from the SCCU. The National Director authorised centralisation in respect of 17 of the 18 applications, and one application was referred back with queries (see tables 1-4).

*Table 1: Summary of the number of centralisation authorisations per DPP Office and the SCCU*

DPP's office	Number of centralisation applications
Western Cape	3
South Gauteng	5
North Gauteng	5
Northern Cape	3
North West	0
KwaZulu-Natal	0
Free State	0
Eastern Cape: Grahamstown	0
Eastern Cape: Mthatha	0
SCCU	1

**Matters in which centralisation was authorised***Table 2: Matters in which centralisation was authorised*

State versus	Area of jurisdiction from which application emanated	Charges	Area of jurisdiction in which charges were committed	Date of authorisation by the National Director
Colin Booysen	Western Cape	Fraud, unlawful possession of a firearm and ammunition furnishing false information for a firearm competency certificate, and failure to lock a firearm inside a prescribed safe	South Gauteng and North Gauteng	22 April 2014
Christo Loannides	North Gauteng	Rape, indecent assault, crimen injuria, and ill-treatment of a child (in contravention of the Child Care Act)	Western Cape	2 June 2014
Mthembeni Mtunzi-Omhle Mthunzi and Another	South Gauteng	Intimidation, kidnapping, assault with intent to do grievous bodily harm, and defeating the ends of justice	North Gauteng	10 July 2014
George Franks	Western Cape	Rape, sexual assault, sexual grooming of a child, possession of child pornography and exposure of a child to pornography	KwaZulu-Natal	10 July 2014
Jimmy Kgomotso Modisenyanane	Northern Cape	Murder, rape, robbery with aggravating circumstances and kidnapping	Free State	25 July 2014
Daniel Daffue	North Gauteng	Rape, sexual assault and indecent assault	KwaZulu-Natal	29 July 2014
Phillip Siniko Langa	North Gauteng	Murder, conspiracy to commit murder, unlawful possession of firearms and ammunition	South Gauteng	28 August 2014
Johannes du Toit and Others	Northern Cape	Murder and conspiracy to commit murder	Western Cape	22 October 2014
Raymond Hodgskin	Western Cape	Reckless or negligent driving, driving under the influence of intoxicating liquor, perjury and attempt to defeat the administration of justice	KwaZulu-Natal	29 October 2014
Albert Mile Tau	North Gauteng	Murder, kidnapping and rape	North West	15 December 2014
Marthinus William de Jager and Another	Northern Cape	Fraud, contravention of the Nature and Environmental Conservation Ordinance 19 of 1974, contravention of the Animal Diseases Act, No. 35 of 1984, subordination of perjury and defeating the ends of justice	North Gauteng (Limpopo)	29 January 2015
Vincent Muso Msibi	South Gauteng	Rape, kidnapping, assault with intent to do grievous bodily harm, pointing of a firearm and failure to lock a firearm inside a prescribed safe	KwaZulu-Natal	24 February 2015

State versus	Area of jurisdiction from which application emanated	Charges	Area of jurisdiction in which charges were committed	Date of authorisation by the National Director
Galada and Others	SCCU	4 counts of fraud 1 count of money laundering (c/s 4 of Act 121 of 1998)	South Gauteng North Gauteng Free State Western Cape Eastern Cape (Centralised in Free State)	21 October 2013

### Pending centralisation applications

Table 3: Pending centralisation applications

State versus	Area of jurisdiction from which application emanated	Charges	Area of jurisdiction in which charges were committed	Outcome
Thabo Java Baloyi	North West	Murder, kidnapping, robbery with aggravating circumstances, unlawful possession of a firearm and ammunition	North Gauteng	Referred back to DPP North West with queries

### Centralisation authorisations coupled with racketeering authorisations

Table 4: Centralisation authorisations coupled with racketeering authorisations

State versus	Area of jurisdiction from which application emanated	Charges	Area of jurisdiction in which charges were committed	Date of authorisation by the National Director
Sikhumbuzo Sibanda and Others	South Gauteng	Robbery with aggravating circumstances, malicious damage to property, unlawful possession of firearms and ammunition	North Gauteng	4 March 2015
Hugo Ras and Others	North Gauteng	Amongst others, theft, money laundering, transport, possession and the selling of rhino horns	Free State, KwaZulu-Natal, North West and South Gauteng	8 September 2014
Mafuthu Chiliza and Others	South Gauteng	Theft of electricity	North Gauteng	During August 2014
Mugnaioni and Others	South Gauteng	Racketeering, theft, illegal trade and possession of precious group metals (platinum) and diamonds	North West, North Gauteng, Gauteng local	20 May 2014



## Reports sought and received from DPPs

As a matter of course, the NDPP requests reports from DPPs in instances where cases handled in the various jurisdictions have considerable impact on the psyche of our society.

Analysis of such cases provides the NPA with a perspective on the successes and challenges experienced in key cases, which may contribute to the amendment of prosecutorial directives and policy guidelines. In other cases, it is simply important to understand what contributed to unsuccessful cases and determine whether the causes are due to a systemic nature or a lack of skills or the inexperience of individual prosecutors. In all cases, appropriate interventions are identified and measures put in place to address problem areas.

In the course of the period under review, a few cases had the spotlight on the prosecutions (especially in the media space). Two earned particular attention, namely the Dewani murder case and the subsequent discharge of the accused, and the Anene Booysen rape and murder case.

The DPP Western Cape, Advocate Rodney de Kock submitted a report in this regard. More comprehensive details regarding the Dewani matter are discussed under noteworthy cases in this report.

An interim report on the matter of **State versus Lamoer** (Western Cape SAPS Provincial Commissioner) was also received from the DPP Western Cape. The matter is still before the courts and has not been finalised.

## Assistance provided to DNDPPs, DPPs and prosecutors in representing their professional interests

In terms of section 22(4)(e), the National Director must, in addition to any other powers, duties and functions conferred or imposed on or assigned to him by section 179 or any other provision of the Constitution, the NPA Act or any other law, assist the Deputy National Directors, DPPs and prosecutors in representing their professional interests.

The NPA has fully implemented the Occupational Dispensation for Legally Qualified personnel with the exception of the LP10s which is in the process of being implemented. The last of the grievances in relation to the implementation of the Occupational Specific Dispensation (OSD) are being finalised. Over the last few years, all senior managers have complied with the requirement to file their financial disclosures and the NPA is also fully compliant in the area of concluding performance agreements. There is a strong focus on ensuring that these are aligned to the performance of the organisation and that rewards are allocated in line with the percentage of targets achieved. The process of implementing annual salary increases has been fully automated and no delays have been experienced in recent years. The organisation ensures that all prosecutors are issued with their own copies of the essential research works.<sup>3</sup> The NPA

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### <sup>3</sup> Books for prosecutors

1. De Villiers, D.S. 2012. Evidence Through Cases. 4<sup>th</sup> ed. Florida Glen: Pergo.
2. Etienne, du Toit, (et...al). 1987. Commentary on the Criminal Procedure Act. Cape Town: Juta.
3. Kruger, A. 2008. Hiemstra's Criminal Procedure. Durban: LexisNexis.
4. Marnewick, C.D. 2012. Litigation Skills for South African Lawyers. 3<sup>rd</sup> ed. Durban: LexisNexis.
5. Snyman, C.R. 2014. Criminal Law. 6<sup>th</sup> ed. Durban: Juta.
6. Van Der Berg, John. 2012. Bail: a Practitioner's Guide. 3<sup>rd</sup> ed. Lansdowne: Juta.
7. Zeffert, D.T, Paizes, A.P. 2009. South African Law of Evidence. 2<sup>nd</sup> ed. Durban: LexisNexis.



is in the process of providing these digitally to prosecutors. Robes and pilot bags are also provided to assist in growing the public perception of professionalism among prosecutors.

The NPA continues to actively participate in the activities of the Africa Prosecutors Association (APA) and the International Association of Prosecutors (IAP). This results in a mutually beneficial sharing of expertise and knowledge which is of great benefit to the NPA's prosecutors. It also provides an opportunity to showcase South Africa's prosecutors on a global platform, which is advantageous to both the NPA and the country as a whole.

### **Africa Prosecutors Association (APA)**

The APA celebrates its 10<sup>th</sup> year of existence. The APA released its first ever handbook and training manual on counter-terrorism which was drafted by a member of the NPA. The first formal training on the manual was provided in Angola to twelve Attorneys-General and prosecutors of Angola's Attorney-General office. The NPA provided the key trainers for the event.

The APA held its annual conference in Kinshasa, Democratic Republic of the Congo (DRC), preceded by training. This training programme brought prosecutors from around the continent together in a bid to increase the capacity of prosecutors in Africa to not only use national and multilateral agreements to combat environmental crime, but also to illustrate best practices across the continent and internationally, through a series of case studies. The NPA played a pivotal role in drafting the content for this training schedule, arranging speakers as well as providing presentations.

### **NPA interaction with the International Association of Prosecutors (IAP)**

The NDPP and CEO attended the IAP annual conference in Dubai in November 2014, together with IAP Exco members and the chairperson of the Society of State Advocates.

The NPA was honoured when the "Boeremag" trial prosecutors received the IAP's Special Achievement Award. A prosecutor in the "Boeremag" trial received the award in Dubai on behalf of the team.

The NPA is considering making a formal bid to host the IAP's Annual Conference in 2018. The Minister has indicated that he is in favour of the bid. A formal presentation is being prepared for Parliamentary approval.

### **Compliance with United Nations (UN) guidelines**

Section 22(4)(f) of the NPA Act requires that the National Director shall bring the United Nations guidelines on the role of prosecutors to the attention of the directors and prosecutors and promote their respect for and compliance with these principles within the framework of national legislation.

The introduction to the prosecution policy states that the UN guidelines should be observed in the prosecutions process. In addition, the code of conduct for members of the NPA took into account the UN guidelines as well as the "Standards of professional responsibility and statement of the essential duties and rights of prosecutors" as developed by the International Association of Prosecutors (IAP) and tabled at the 17<sup>th</sup> session of the UN Commission on Crime and Criminal Justice. Much of what is in the UN guidelines is embodied in the NPA's code of conduct. A copy of this code is required to be handed to all prosecutors at the time of taking their oath or making their affirmation of office (or as soon as possible thereafter).

## PART D: OVERVIEW OF THE OPERATIONS OF THE NPA AND PERFORMANCE AGAINST PREDETERMINED OBJECTIVES



## **PART D: OVERVIEW OF THE OPERATIONS OF THE NPA AND PERFORMANCE AGAINST PREDETERMINED OBJECTIVES**

### **Overview of the NPA**

The NPA is mandated to institute criminal proceedings on behalf of the state and to carry out the necessary functions incidental thereto.

The purpose of the NPA is to provide a coordinated prosecuting service that ensures that justice is delivered to the victims of crime through general and specialised prosecutions, witness protection and to remove the profit from crime.

The Accounting Officer of the NPA is the Director-General of the Department of Justice and Constitutional Development. However the Chief Executive Officer (CEO) has been delegated by the Director-General to perform certain tasks on her behalf.

Notwithstanding the challenges encountered by the NPA during the reporting period, the organisation generally performed well in the achievement of its objectives. A conviction rate of 92.3% was achieved. The NPA's four sub-programmes met most of its targets (11 of the 13) set for the indicators in the 2014 estimates of national expenditure (ENE).

In some performance areas, targets were exceeded. Of particular note is the result of the combined efforts of the criminal justice system (CJS) against corruption. The Specialised Commercial Crime Unit (SCCU) exceeded its target on the number of persons convicted of corruption or offences related to corruption where the amount benefited per case is more than R5 million and met nine of its ten targets. In this regard the Asset Forfeiture Unit (AFU), which is the third sub-programme of the NPA, exceeded targets set in nine out of its ten performance indicators ensuring that the profit is removed from crime.

The National Prosecutions Service (NPS), the largest sub-programme of the NPA with the majority of the prosecutors, met four out of five of its ENE targets. The NPS successfully dealt with a number of high profile cases (mentioned further down in the report), including that of the Oscar Pistorius matter which was televised, a first for the South African courts.

The internationally recognised fourth sub-programme of the NPA, the Office for Witness Protection (OWP), continued its important work of protecting vulnerable witnesses. Over the last thirteen years, no witness has been harmed, threatened or killed whilst on the programme.

Support Services, the fifth sub-programme, provides administrative support to the office of the National Director and the Directors of Public Prosecutions. The main objective is to maintain a clean audit outcome for the NPA through sustaining strict compliance measures and internal control.

The organisation's capacity to deliver depends largely on its ability to develop and retain its talent. While the NPA has various programmes aimed at developing capacity, a flagship programme is the implementation of the leadership and management development programme which commenced in the second quarter of 2014/15 and will be completed in the first quarter of the next financial year. 133 employees will have benefited from the programme at its completion.

Although the overall vacancy rate in the NPA increased to 14.4%, the number of filled posts also increased by 6.2% and the establishment grew by 13.7%. The augmented budget allocation for the coming year led to growth in the establishment, specifically the increase in regional court posts and an increase in the number of court preparation officers. Where the need was identified, additional prosecutors for the dedicated sexual offences courts, and additional posts for the two new high courts that need to be fully operational in the coming year, were allocated.

The Vulindlela and Persal Reports reflect a high number of senior management services (SMS) members, presenting a distorted picture of the management structure of the organisation. The determination is based on salaries of employees. The occupation-specific dispensation (OSD) salaries for higher levels are equivalent to the Public Service Act, 1994 as amended (Act No. 103 of 1994) level 13 and 14 appointees, causing OSD employees to be reported as SMS members, while in reality they are production units.

The moderation process for the implementation of the performance rewards of 2013/14 for salary levels 15 was not completed in 2014/15 but will be carried over and finalised in 2015/16.

## Overview of the financial results

For the third consecutive year, the NPA has spent 100% of its budget allocation during the year under review. This was achieved by closely monitoring expenditure and centralising the budget towards the end of the financial year. The NPA is not a revenue generating department, and does not charge tariffs for services rendered. Neither does the NPA provide free services that would have yielded revenue had a tariff been charged.

The NPA received a clean audit opinion in the 2013/14 financial year. This was achieved by implementing an audit action plan to address the audit findings from the Auditor-General for the 2012/13 financial year as well as to address weaknesses in the controls and systems as identified by the management team of the NPA.

The NPA as a programme in the department budget vote did not prepare a separate annual report and all information relevant to the NPA has been included in this report.

Table 5: Expenditure report

Sub- programme name	2014/15			2013/14		
	Final appropriation	Actual expenditure	(Over)/under expenditure	Final appropriation	Actual expenditure	(Over)/under expenditure
	R'000	R'000	R'000	R'000	R'000	R'000
National Prosecutions Service	2 144 150	2 144 150	0	1 990 747	1 990 747	0
National Specialised Prosecutions Services	269 485	269 485	0	241 352	241 352	0
Asset Forfeiture Unit	133 568	133 568	0	179 789	179 789	0
Office for Witness Protection	160 737	160 737	0	146 471	146 471	0
Support Services	546 183	546 183	0	509 805	509 805	0
<b>Total</b>	<b>3 254 123</b>	<b>3 254 123</b>	<b>0</b>	<b>3 068 164</b>	<b>3 068 164</b>	<b>0</b>

As mentioned, the NPA once again spent 100% of its budget allocation during the year under review. Budget allocation as it relates to the core business of prosecution and related services, divided into four sub-programmes was as follows:

*Table 6: Budget allocation per economic classification*

Sub-Programme	National Prosecutions Service	National Specialised Prosecutions Services	Asset Forfeiture Unit	Office for Witness Protection	Support Services
<b>Compensation of employees</b>	2 061 038	234 495	91 499	76 973	159 059
<b>Goods &amp; services</b>	74 144	33 479	41 002	83 262	320 060
<b>Payment of capital assets</b>	2 367	361	469	237	58 494
<b>Other</b>	6 601	1 150	598	265	8 570
<b>Total</b>	<b>2 144 150</b>	<b>269 485</b>	<b>133 568</b>	<b>160 737</b>	<b>546 183</b>

Expenditure on compensation of employees was at 99.51% (R2.6 billion) which resulted in a underspending of R12.8 million. This underspending was due to non-filling of funded vacancies as well as resignations. This underspending was used to defray goods and services expenditure.

Goods and services was overspent by 7.48% (R38,4 million) as at the end of the financial year due to the payment of AFU curators as well as the procurement of a new telephonic system to the value of R29 million. This transaction impacted on Payment for Capital Assets expenditure which was underspent with 33.52% (R31.2 million) as at the end of the year. The procurement was planned and budgeted for as capital expenditure. However, due to the unit price being below R 5 000 it was classified as current expenditure. The NPA was also not able to perform tenant installations at some of its buildings, given delays with the finalisation of leases.

Departmental Agencies and Accounts was overspent with 183.9% (R5.1 million) due to an increase in the Safety and Security Sector Education and Training Authority (SASSETA) payment. National Treasury approved this virement on 18 March 2015.

## Service delivery environment

In order to fully understand the activities of the NPA, it is important to outline the context and environment in which the organisation operates. For many South Africans, the issue of safety and security is of great concern, and the long-term vision of the JCPS Delivery Agreement for all people in South Africa to be and feel safe, resonates fully with them.

It is in this context that the NPA seeks to deal with criminal cases efficiently and effectively. As the organisation at the end of the criminal justice system value chain, the NPA performs a crucial function through its work of prosecuting cases in order that perpetrators of crime can be appropriately sentenced or dealt with for the crimes they have committed. For this reason any inefficiencies in the processes of departments that supply the NPA with cases, or those responsible for the effective operations of the courts in which it operates, have a negative impact on its ability to succeed. Stakeholder relations remain a key success factor for the NPA and priority is given to this area at all levels. The NPA actively participates in the forums instituted



by the Chief Justice, case flow management forums at all levels as well as other interdepartmental fora.

Ensuring that trial cases proceed when they are set down for trial remains a primary challenge that the CJS has not adequately addressed. The implementation of pre-trial hearings identified by the NPA, Legal Aid South Africa and the Chief Justice as one of the solutions to prevent remands of trial-ready cases has been slow in gaining traction, particularly in the lower courts. This has been compounded by the placing of too few trial cases on the court rolls, resulting in wasted court hours. The implementation of pre-trial hearings across all courts will further receive attention over the strategic period.

The norms and standards issued by the Chief Justice, published in the Government Gazette on 28 February 2014, may lead to increased court hours, which should result in increases in the number of matters finalised through verdicts. An important element of ensuring that productivity increases is the monitoring of the performance of the courts. The NPA supports the office of the Chief Justice and the adoption of the reporting template for the Provincial Efficiency Enhancement Committees (PEEC) where the NPA is represented by the Director of Public Prosecutions (DPP).

Inadequate role planning and case scheduling remain a concern as they impact on the finalisation of cases; however, these are monitored and reported at the PEEC meetings.

The NPA continues to provide its services within the context of the austerity measures imposed on all government departments. The NPA has sought to use available resources more effectively giving meaning to the adage “doing more with less”. In particular, its committed prosecutors have, with great dedication, continued their efforts to successfully prosecute accused, some of whom have deeply wronged society through their actions. Another way in which it has done so is through its Legal Affairs Division (LAD), whose research and legal opinions have, in some cases, revealed incorrect application of the law, thereby saving the NPA unnecessary costs.

The decline in the performance of the high courts was mainly because of the unavailability of key role players and the loss of court days. Fewer court days result in fewer finalised cases. The number of court days decreased by 2.6% from the previous year and resulted in 2.3% fewer cases being finalised, including alternative dispute resolution mechanism (ADRM).

In an environment in which technology has become ever more sophisticated, a particular challenge is to successfully prosecute cybercrime cases in an effort to combat this growing international phenomenon. A special focus on cybercrime cases during the year included the skills development of relevant prosecutors, and the NPA is reaping the rewards of this strategy. The special focus resulted in achieving both a higher conviction rate and added convictions. Increasingly, the international community is calling for an integrated approach to the prosecution of these cases, and the NPA has cooperated with and contributed to international organisations such as the Organisation for Economic Co-operation and Development (OECD), the International Association of Prosecutors (IAP), as well as African organisations such as the Africa Prosecutors Association (APA), and other South African stakeholders (see detail below).

The organisation was constrained in achieving its target for the number of cybercrime cases successfully prosecuted by the lack of new cybercrime cases received from the South African Police Service (SAPS).

In an ongoing effort to improve the perception of the CJS among the South African public, the NPA continues its contribution towards the backlog project by the DoJ&CD which began in 2006. As a result, the number of backlog cases in the lower courts has been significantly reduced. A number of the temporary backlog courts have become permanent courts.

In addition, a number of high profile matters – for example, the arrest of Radovan Krejčíř on charges of dealing in drugs and attempted murder and the conviction and sentencing in the Channelle Henning murder case – have strengthened public confidence in the CJS and, in particular, in the NPA. The televising of the Oscar Pistorius trial has had both a positive and negative impact for the NPA. In general the public has a greater confidence in the system as a whole. However, individuals who may be required to testify in other cases have become more hesitant to participate in the belief that they may face the intensity of cross examination depicted during the Pistorius trial.

The lack of dedicated courts and staff in some of the SCCU regional offices continued to be a challenge, adversely impacting on the number of backlog cases in the unit. Long, drawn-out trials further continued to impact negatively on the number of backlog cases. Changes in magistrates in different regions also contributed to an increase in backlog cases.

### High profile matters – NPA

In ***Freedom Under Law versus National Director of Public Prosecutions and Others*** 2014 (1) SACR 111 (GNP) April 2014), the North Gauteng High Court (per Murphy J) made certain unfavourable credibility findings against three senior members of the NPA, namely, Advocates Nomgcobo Jiba, Sthembiso Lawrence Mrwebi, and Sibongile Mzinyathi. The judgment of Murphy J was confirmed by the Supreme Court of Appeal (SCA) in ***National Director of Public Prosecutions versus Freedom Under Law*** 2014 (4) SA 298 (SCA).

Following the above-mentioned decisions of the High Court and Supreme Court of Appeal, the NPA, via the office of the State Attorney, briefed senior counsel to furnish a legal opinion as to whether, among others, disciplinary steps ought to be taken against the abovementioned senior members of the NPA. The legal opinion was furnished to the State Attorney on 7 July 2014.

In his legal opinion, senior counsel in summary concludes that the findings of Murphy J in the High Court, as confirmed by Brand JA in the Supreme Court of Appeal, constitute compelling justification for disciplinary proceedings against Advocates Jiba, Mrwebi and Mzinyathi. The fact that they misled the Court and were prepared to lie under oath not only indicates a strong *prima facie* case of serious misconduct, but also casts grave doubt on their fitness to hold office. He consequently recommends that the President should, in terms of section 12(6)(a) of the NPA Act, consider provisionally suspending the mentioned senior NPA managers pending an inquiry into their fitness to hold the office of Deputy National Director of Public Prosecutions and Directors of Prosecutions, respectively, to be presided over by a retired judge of the High Court. He further recommends that a criminal investigation for perjury be opened against all three members of the NPA and that the findings against the mentioned NPA members made in the judgments be submitted to the General Council of the Bar as a matter of urgency to consider whether an application should be brought against them in terms of section 7 of the Admission of Advocates Act.

In a memorandum dated 18 July 2014 addressed to the Minister of Justice and Correctional Services, the NPA explained in detail to the Minister the NPA's motivation and arguments pertaining to a request that the President should provisionally suspend Advocates Jiba, Mrwebi and Mzinyathi from their respective offices. The Minister was requested to forward the contents of the memorandum to the President and request the President to provisionally suspend the three senior NPA members from their respective offices pending an enquiry into their fitness to hold such offices and the finalisation of the envisaged criminal investigations and outstanding inquiries and investigations and action of the General Council of the Bar.

In a memorandum dated 31 July 2014, the CEO of the NPA informed the Minister that the NPA had appointed a fact finding committee to investigate allegations that certain employees of the NPA, including senior members, had committed unethical and unprofessional conduct and to advise on appropriate remedies if contraventions had occurred. The Minister was informed that the nature of the allegations and the seniority of the officials allegedly involved necessitated the involvement of an outside committee of suitable credibility. Therefore, the CEO appointed retired Judge Zak Yacoob as the chairperson of the committee. He was assisted by Advocate TK Manyage, a member of the Johannesburg Bar. The committee has finalised its report. The committee, among others, also made certain unfavourable credibility findings against Advocates Nomgcobo Jiba, Sthembiso Lawrence Mrwebi, and Sibongile Mzinyathi. On 27 February 2015 the CEO informed the Minister about the findings and recommendations of the committee.

During the beginning of September 2014, it came to the National Director's attention that the Minister had publicly indicated that he has not yet approached the President regarding the abovementioned recommendations of the National Director. The opinion was held that failure to bring these serious matters to the attention of the President is causing a credibility crisis within the NPA as a whole and that it was appropriate to urgently bring stability within the NPA and it is of utmost importance that the matter should be communicated to the President as a matter of urgency. Therefore, a decision has been taken to approach the President directly so as to bring the matter officially under the President's attention. Accordingly, in a letter dated 12 September 2014, the National Director wrote directly to the President and brought the matter to his personal attention. The National Director personally handed this letter to the President.

Furthermore, in a letter dated 17 September 2014 the National Director responded to certain questions raised by the Minister; he informed the Minister about further instances of misconduct committed by and adverse findings made against Advocates Jiba and Mrwebi; informed the Minister about steps already taken by the NPA and steps to be taken against the three senior members of the NPA concerned; informed the Minister about the NPA's submission made directly to the President; and again requested the Minister to also engage with the President regarding the proposed suspension of the three senior members of the NPA as a matter of urgency. It was also pointed out to the Minister that after the High Court judgment in April 2014, the National Director requested reports from Advocate Jiba regarding the Mdluli corruption matter, which request was ignored. Further, the National Director has repeatedly requested an official handover report on matters being dealt with by Advocate Jiba, without any response. The National Director held the view that such insubordination is intolerable and makes it very difficult to perform his duties.



At the time of finalising this report, the position relating to the conduct of Advocates Jiba, Mrwebi and Mzinyathi was as follows:

- (a) The fact finding committee has finalised its work and submitted a report to the National Director. As indicated above, on 27 February 2015 the CEO informed the Minister about the findings and recommendations of the committee
- (b) The General Council of the Bar has already brought an application in the High Court, Gauteng Division, for an order striking the names of each of the respondents (Advocates Jiba, Mrwebi and Mzinyathi), from the roll of advocates, alternatively, to suspend them from practising as advocates for such period as the court may deem appropriate. Advocates Mrwebi and Mzinyathi have already indicated that they will oppose the application
- (c) Criminal proceedings have been instituted against Advocate Jiba in the Regional Court, Pretoria. The charges are fraud and perjury and the case has been postponed to 10 June 2015
- (d) Perjury charges have been laid against Advocates Jiba, Mrwebi and Mzinyathi. This case is still under investigation by the South African Police Service
- (e) Criminal proceedings are also outstanding against Advocate Mrwebi for contravening section 32(1)(b), read with sections 1, 20, 24, 25, 32(1)(a) and 41(1) of the NPA Act

In spite of the above-mentioned urgent requests directed to the Minister and the President, and the outstanding criminal proceedings against Advocates Jiba, Mrwebi and Mzinyathi, no feedback has been received from the Minister or the President. As emphasised by the High Court, *"the respondents are unbecoming of persons of such high rank in the public service, and especially worrying in the case of the (acting) NDPP, a senior officer of this court with weighty responsibilities in the proper administration of justice. The attitude of the respondents signals a troubling lack of appreciation of the constitutional ethos and principles underpinning the offices they hold."* Therefore, it is important for the Minister and the President to fulfil their constitutional mandate and to act as a matter of urgency.

## Activities of the Deputy National Directors of Public Prosecutions

### National Prosecutions Service (NPS)

#### *Highlights of achievements*

The NPA had set high aims for 2014/15 and through dedication and commitment, we managed to exceed expectations. Although not all annual targets as outlined in the annual performance plan were achieved, concerted efforts were made by all prosecutors to ensure improved performance even in the face of various challenges experienced by the courts during the year under review.

Some of the highlights achieved by the NPA during this year include:

#### **Stakeholder collaboration and integration**

The NPS participated in the National Joint Operational and Intelligence Structure (Natjoints) and relevant priority committees established to deal with priority issues. These include issues that affect stability and respect for law and order, the development and implementation of action plans to ensure safety and security of events, such as the elections and international events, and other practical priorities that relate to security and crime. The Natjoints reports to the JCPS cluster Directors-General (DGs) forum. There are also provincial Joints where the divisions are represented.

The NPS continued to be a major contributor and participant in the National Development Committee (NDC), where major policy proposals are reviewed before submission to the JCPS DGs for consideration. During this year, these included the victim empowerment programme (VEP) intersectoral strategy and model and country reports, such as South Africa's country report to the 13<sup>th</sup> United Nations Congress on Crime Prevention and Criminal Justice.

The NPS is part of the National Efficiency Enhancement Committee (NEEC) established by the Chief Justice, and participates in the National Operations Committee (NOC) and the Provincial Efficiency Enhancement Committees (PEECs). One of the most significant contributions by the NPA to the NOC was a template for the monitoring of performance at PEEC level, prepared by the operational component based on the indicators that the NEEC task team had identified. The effective monitoring of court performance is critical for proper case flow management. This template was subsequently adopted by the NEEC. The NPS also promoted the use of pre-trial hearings, as a tool to better identify the issues in dispute, reduce the duration of trials and ensure that trials have the greatest prospect of proceeding on the trial date.

The CJS review is another important stakeholder forum where initiatives falling within the CJS seven-point plan adopted by Cabinet are dealt with. A variety of protocols were dealt with during the reporting period.

The NPS provided performance information to the Deputy Minister (through the office of the National Director) in preparation for his unannounced visits to various courts.

The NPS contributed actively in the development of the Medium Term Strategic Framework (MTSF) priorities. An update with regard to the NPS performance in respect of the annual development indicators publication was provided to the Presidency.

The National Joins meeting is attended on a monthly basis where unrest related cases are tabled for discussion. Pursuant to the rise of unrest matters, a stability committee was established to deal effectively with the resolution of all unrest matters.

The "Barcode of Wildlife" project aims to develop the first DNA<sup>4</sup> wildlife barcode reference library for endangered and threatened species in South Africa. 200 species have been identified and relate to 5 000 samples that need to be taken in the wild and analysed. In prosecutions, it is very difficult to ascertain and prove the exact species, as required by the legislation. An example of this is where the accused is found in possession of bones or grinded substances. The aim of the project is thus to identify the species through the DNA library and provide evidence for court purposes.

The NPA is represented on the national committee overseeing the project to ensure that appropriate legal standards and procedures are developed for collecting and using DNA evidence in enforcement and prosecution of wildlife crime; and that there is appropriate awareness and capacity development, through training, for using the data generated by the project.

The NPA participated in a trilateral task team to facilitate the transition of enforcement responsibilities from the Department of Environmental Affairs to the Department of Mineral Resources. The NPA provided guidance pertaining to court processes, criminal law, amendments to the legislation, joint inspections and course content requirements for inspectors.

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<sup>4</sup> Deoxyribonucleic acid

## Overview of the performance against predetermined objectives

### NPA Strategic objective 1: Increased successful prosecution

#### Sub-programme 1: National Prosecutions Service

Purpose: The National Prosecutions Service (NPS) is primarily responsible for general prosecutions and the appeals that may follow, which include resolving criminal matters outside the formal trial process through alternative dispute resolution mechanisms (ADRM), settling admissions of guilt for minor offences and considering dockets brought by the police where persons have not been charged.

#### Programme performance indicators for sub-programme 1

Table 7: Progress on NPA strategic objective 1: Increased successful prosecution

Sub-programme 1: National Prosecutions Service					
Performance Against Target					
Performance Indicator	Actual Achievement 2013/14	Planned Target 2014/15	Actual Achievement 2014/15	Deviation from Planned Target to Actual Achievement 2014/15	Comment on Deviations
Number of criminal court cases finalised including ADRM	505 342	473 480	503 463	6.3%	More accused successfully completed diversion programmes and more suitable cases identified for informal mediations

#### Number of criminal court cases finalised including ADRM

All courts excelled by finalising 503 463 cases during the reporting period. The target of 473 480 was exceeded by 6.3% with 29 983 cases more than the target. A breakdown per forum of the cases that were finalised including ADRM by all courts is indicated in the table below and a comparison is drawn with the performance during the previous financial year. Noteworthy is the improvement in finalisation by the district courts, constituting 92.5% of the national total. Both the regional and high courts recorded a reduction.

Table 8: Annual comparison of cases finalised including ADRM: 2013/14 - 2014/15

Forum	2013/14	% of National	2014/15	% of National	Progress
High courts	1 026	0.2%	978	0.2%	-4.7%
Regional courts	39 283	7.8%	36 651	7.3%	-6.7%
District courts	465 033	92%	465 834	92.5%	0.2%
<b>All</b>	<b>505 342</b>	<b>100%</b>	<b>503 463</b>	<b>100%</b>	<b>-0.4%</b>

The number of cases finalised is dependent on the inflow of new cases enrolled coupled with efficient court utilisation. A reduced inflow of cases was recorded in all courts as indicated in the table below with the highest variance in the regional courts.

Table 9: Annual comparison of new cases enrolled: 2013/14 - 2014/15

Forum	2013/14	% of National	2014/15	% of National	Progress
High courts	878	0.1%	874	0.1%	-0.5%
Regional courts	67 557	7.3%	61 540	6.8%	-8.9%
District courts	863 364	92.8%	845 950	93.1%	-2.0%
<b>All</b>	<b>931 799</b>	<b>100%</b>	<b>908 364</b>	<b>100%</b>	<b>-2.5%</b>

The average court day utilisation decreased by 2.6% as fewer court days were utilised coupled with a marginal reduction of 0.5% in the average court hours utilised per day. Noteworthy is the fact that the courts are on average only achieving 78.1% (3 hours 31 minutes) of the expected 4 hours 30 minutes as stated in the Chief Justice Norms and Standards.

Table 10: Annual comparison of court utilisation including SCCU: 2013/14 - 2014/15

Forum	Court Days	Ave Hours	Court Days	Ave Hours	Progress	Progress
	2013/14	2013/14	2014/15	2014/15	Court Days	Ave Hours
High courts	8 790	03:04	8 379	03:04	-4.7%	0.0%
Regional courts	72 807	03:34	71 706	03:38	-1.5%	1.6%
District courts	174 011	03:29	168 948	03:29	-2.9%	0.2%
<b>All</b>	<b>255 608</b>	<b>03:29</b>	<b>249 033</b>	<b>03:31</b>	<b>-2.6%</b>	<b>0.6%</b>

### Analysis of cases removed from the court roll

The NPA excelled by reducing the number of cases withdrawn from the court roll – 11 993 (8.4%) fewer cases were withdrawn compared to the previous year. A reduction is also noted in the number of warrants issued for non-appearance by the accused. More cases (277) were, however, removed due to mental referrals. A matter of concern is the 5.3%(5 934) increase in the number of cases struck from the court roll. The increased notion of the judiciary to strike cases from the roll justifies further exploration as there is no legal provision for this.

Table 11: Analysis of cases removed from the court roll: 2013/14 – 2014/15

Indicator	2013/14	% of Total Removed	2014/15	% of Total Removed	Progress
Withdrawals	142 540	31.2%	130 547	30.0%	-8.4%
Warrants	156 477	34.2%	139 599	32.1%	-10.8%
Transfers	45 102	9.9%	45 647	10.5%	1.2%
Mental referrals	1 441	0.3%	1 718	0.4%	19.2%
Struck off roll	111 730	24.4%	117 664	27.0%	5.3%
<b>Total removed</b>	<b>457 290</b>	<b>100.0%</b>	<b>435 175</b>	<b>100.0%</b>	<b>-4.8%</b>

## Progress on programme performance indicators for increased successful prosecution

Table 12: Progress on programme performance indicators for increased successful prosecution: 2013/14 — 2014/15

Sub-programme 1: National Prosecutions Service					
	Performance Against Target				
Performance Indicator	Actual Achievement 2013/14	Planned Target 2014/15	Actual achievement 2014/15	Deviation from planned Target to actual achievement 2014/15	Comment on deviations
Number of criminal court cases finalised with verdict	329 153	324 276	319 149	-1.6%	Reduction in court utilisation impacted negatively on the finalisation of trial cases
Number of criminal court cases finalised through ADRM	176 189	149 204	184 314	23.5%	More accused successfully completed diversion programmes and more cases identified for informal mediations
Conviction rate in high courts	88.8% (911)	87% (979)	91% (890)	4%	Conviction rate fluctuates from year to year and the performance is in line with the performance of previous years
Conviction rate in regional courts	76% (27 246)	74% (27 372)	76.6% (25 591)	2.6%	
Conviction rate in district courts	93.6% (273 641)	87% (266 849)	94.2% (268 127)	7.2%	
Conviction rate in organised crime	88.9% (394)	90% (420)	92.2% (474)	2.2%	
Conviction rate in Sexual Offences	67.1% (5 484)	67% (4 763)	69% (5 084)	2%	
Conviction rate in trio crimes	84.1% (1 597)	85% (1 563)	82% (1 453)	-3%	
Conviction rate in violent protests and industrial actions prosecuted	n/a	Baseline	72.7% (8)	n/a	Baseline data

## Number of criminal court cases finalised with verdict

The courts finalised 319 149 verdict cases with a conviction rate of 92.3% (294 608 convictions). Compared to the previous year, 10 004 (3%) fewer cases were finalised with a verdict. The progress per forum is indicated in the table below. Analysis of this trend shows a gradual decline of 3.6% from the 2010/11 financial year. The decline correlates to a similar decline of 2.5% in the number of new cases enrolled.

*Table 13: Annual comparison of progress on new cases and criminal court cases finalised with verdict: 2010/11 – 2014/15*

Indicator	2010/11	2011/12	2012/13	2013/14	2014/15	Change over prev yr	Change over period 10/11-14/15
New cases	962 317	897 842	916 917	931 799	908 364	-2.5%	-5.6%
District courts	877 623	820 688	845 391	863 364	845 950	-2.0%	-3.6%
Regional courts	83 619	76 210	70 457	67 557	61 540	-8.9%	-26.4%
High courts	1 075	944	1 069	878	874	-0.5%	-18.7%
Cases finalised Verdict	331 045	316 098	323 390	329 153	319 149	-3.0%	-3.6%
District courts	292 648	276 360	284 633	292 279	284 741	-2.6%	-2.7%
Regional courts	37 310	38 600	37 563	35 848	33 430	-6.7%	-10.4%
High courts	1 087	1 138	1 194	1 026	978	-4.7%	-10.0%

Enhanced screening processes ensure quality prosecutions. The number of withdrawals is also measured to ensure quality prosecutions and a just outcome in all cases. Analysis of the trend indicates a very positive and inspiring decline of 42.1% over a five year period in the number of cases withdrawn.

The effective performance of the NPS is directly linked to the effective performance of the other role players within the CJS. Ensuring that trial cases proceed when they are set down for trial remains a primary challenge that the CJS has not adequately addressed. The implementation of pre-trial hearings identified by the NPA, Legal Aid South Africa and the Chief Justice as one of the solutions to prevent remands of trial-ready cases has been slow in gaining traction, particularly in the lower courts. This has been compounded by the placing of too few trial cases on the court rolls, resulting in wasted court hours as demonstrated in the analysis of average court utilisation. The implementation of the norms and standards issued by the Chief Justice have not led to increased court utilisation.

The need to assist the SAPS in ensuring a conviction by guiding investigations adds to the burden of prosecutors. There has been a focus on the review and screening of cases by experienced prosecutors. Case review teams have been established at some centres and more focus will be placed on the establishment of such teams in all offices during the next year. Maintaining the required prosecutorial experience is ensured by various training sessions and one-on-one mentoring.

The Department of Correctional Services (DCS) is also under pressure to accommodate remand detainees and sentenced offenders. The allocation of dedicated remand detention centres has resulted in offenders being transported over long distances between courts and places of detention. This impacts on court productivity as remand detainees often arrive late and this places further pressure on courts to finalise cases earlier in the day to facilitate their return to the correctional facility before the changing of shifts. A protocol between DCS and Legal Aid SA has been proposed to ensure improved access to remand detainees for consultation, reducing time lost when consultations take place at courts.

### Plea and sentence agreements

A total of 1 760 plea and sentence agreements in terms of section 105A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) was concluded. This is a 33% increase compared to 1 323 of the previous financial year. Most of the agreements involved longer and more serious cases. The 1 760 agreements involved a total of 23 789 counts, representing an average of 13.5 counts per case. Valuable court time was saved in the process since lengthy trials were avoided while convictions and suitable sentences were still handed down.

### Number of criminal court cases finalised through ADRM

184 314 cases were finalised by means of ADRM of which 3 221 (1.7% of national total) were finalised by the regional courts and 181 093 cases (98.3% of national total) in the district courts. The courts excelled by finalising 35 110 (23.5%) more cases than the target of 149 204.

Compared to the previous year, the regional courts finalised 214 (6.2%) fewer cases whilst the district courts finalised 8 339 (4.8%) more cases. Overall the courts managed to finalise 8 125 (4.6%) more cases compared to the previous year.

Table 14: Cases finalised through ADRM

Forum	2013/14	% of National	2014/15	% of National	Progress
Regional courts	3 435	1.9%	3 221	1.7%	-6.2%
District courts	172 754	98.1%	181 093	98.3%	4.8%
<b>All</b>	<b>176 189</b>	<b>100%</b>	<b>184 314</b>	<b>100%</b>	<b>4.6%</b>

ADRM encompasses diversion and informal mediation as methods of resolution of disputes between parties. A total of 41 126 cases were diverted after enrolment, 5 882 cases were diverted before enrolment in terms of the Child Justice Act (CJA) and 137 306 cases were successfully mediated on an informal basis. A focused approach on alternative measures to reduce trial cases resulted in a 4.6% improvement in the number of cases finalised through ADRM methods compared to 176 189 cases in the previous financial year.

Table 15: Annual comparison of ADRM: 2013/14 – 2014/15

Indicator	2013/14	% of Total ADRM	2014/15	% of Total ADRM	Progress
Diversions	40 620	23.1%	41 126	22.3%	1.2%
Diversions ito CJA	6 352	3.6%	5 882	3.2%	-7.4%
Informal meditation	129 217	73.3%	137 306	74.5%	6.3%
<b>Total ADRM</b>	<b>176 189</b>	<b>100%</b>	<b>184 314</b>	<b>100%</b>	<b>4.6%</b>



**Diversions in terms of the Child Justice Act, 2008 (Act No. 75 of 2008) (CJA)**

The CJA came into operation in April 2010 and created a new procedural framework for dealing with children who are in conflict with the law. This Act seeks to ensure children's accountability and respect for the fundamental freedoms of others, and to prevent crime and promote public safety through the use of diversions, alternative sentencing and restorative justice.

13 969 children were dealt with of which 602 children (4.3%) were between the ages of 10 and 13 years of age and 13 367 children (95.7%) were between the ages of 14 and 17 years of age. Fewer children were dealt with during 2014/15 compared to the previous year. A comparison with the previous year is set out in table below:

*Table 16: Comparison of age groups*

Age group	2013/14	% of total	2014/15	% of total	Progress
10 – 13 years	668	4.4%	602	4.3%	-9.9%
14 – 17 years	14 363	95.6%	13 367	95.7%	-6.9%
<b>Total children</b>	<b>15 031</b>	<b>100%</b>	<b>13 969</b>	<b>100%</b>	<b>-7.1%</b>

The manner in which the children were dealt with compared to the previous year is indicated in the table below. In line with the reduced number of diversions, the number of Section 9 referrals was reduced by 15%, Section 41 diversions by 14.4% and preliminary inquiry diversions by 4.6%. Noteworthy is the increase of 30.3% Schedule 3 offences that were diverted in terms of Section 52(3) of the CJA where the relevant DPP indicated the existence of exceptional circumstances.

*Table 17: Breakdown of the manner in which children in conflict with the law were dealt with*

Diversion	FY	TOTAL
<b>Sec.9 referrals</b>	2013/14	<b>394</b>
	2014/15	<b>335</b>
	<b>Progress</b>	<b>-15%</b>
<b>Sec 41 diversion</b>	2013/14	<b>1 798</b>
	2014/15	<b>1 539</b>
	<b>Progress</b>	<b>-14.4%</b>
<b>Preliminary inquiry diversion</b>	2013/14	<b>4 051</b>
	2014/15	<b>3 866</b>
	<b>Progress</b>	<b>-4.6%</b>
<b>Schedule 3: Diversion</b>	2013/14	<b>109</b>
	2014/15	<b>142</b>
	<b>Progress</b>	<b>30.3%</b>



419 children were convicted with a conviction rate of 76% after the case was referred for trial, whilst 492 children were diverted during the trial stage.

During 2014/15, 7.4% fewer children were diverted in terms of the CJA compared to the 6 352 diverted during 2013/14. A trend analysis indicates a steady decline in the overall number of children diverted before enrolment with a 25.3% reduction compared to 2010/11 when the CJA came into operation.

*Table 18: Annual trend analysis of CJA diversions: 2010/11 – 2014/15*

Indicator	2010/11	2011/12	2012/13	2013/14	2014/15	Change over prev yr	Change over period 10/11-14/15
Diversions of children into CJA (before enrolment)	7 869	6 422	6 605	6 352	5 882	-7.4%	-25.3%

This decline is not necessarily positive as an increase in the number of diversions was an important step in achieving one of the goals of the Act. The decline does not necessarily suggest that there are fewer number of children in conflict with the law. However, different factors as received from our nodal points can be drawn from the decline:

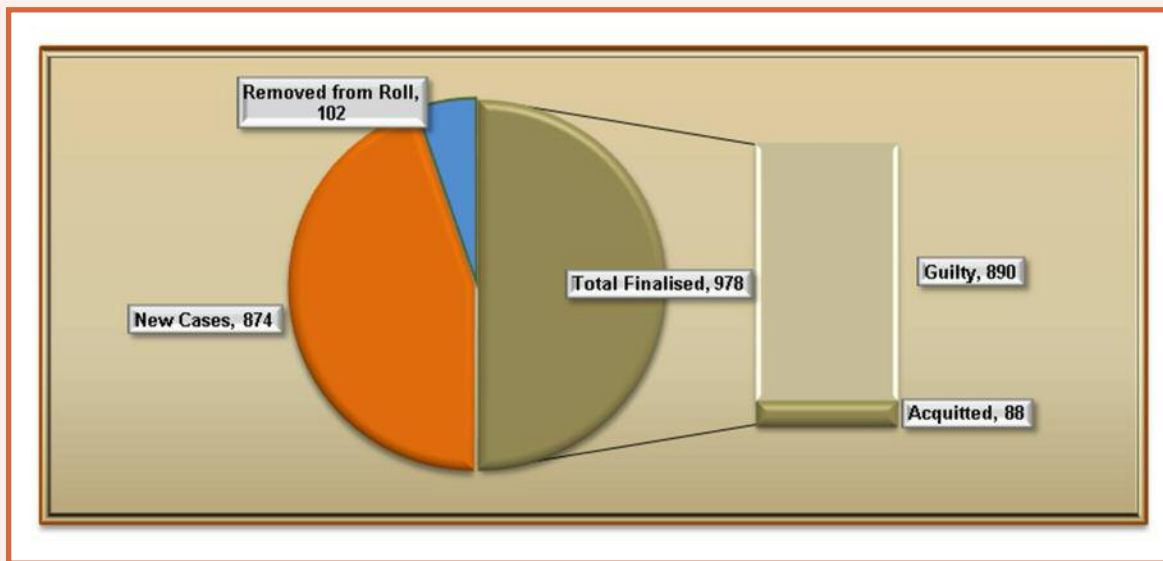
- That some of the children do not qualify for the requirements of diversions as provided for in section 52 of the CJA e.g. they do not acknowledge responsibility etc.
- That some commit serious offences where there are no exceptional circumstances to allow the DPP to authorise diversion
- There is generally a slight decrease in matters diverted due to the limited number of accredited diversion programmes and the decrease of service providers - this on its own will have a negative impact on the number of children being diverted
- During this financial year we have also noted that children do not comply with diversion orders and if the non-compliance certificate has been submitted to the clerk of the court the child may be referred to the child justice court for prosecution. One of the reasons of non-compliance is that some children do not have good support systems at home to sustain them during the diversion programmes.

### **Conviction rate and progress of high courts**

The high courts enrolled 874 new cases and finalised 978 cases. The number of cases finalised with a verdict decreased by 4.7% from the previous year. The percentage of backlog cases decreased from 34% to 26.4%. The high courts also managed to achieve a high conviction rate of 91%.

The following graph indicates the case management in the high courts:

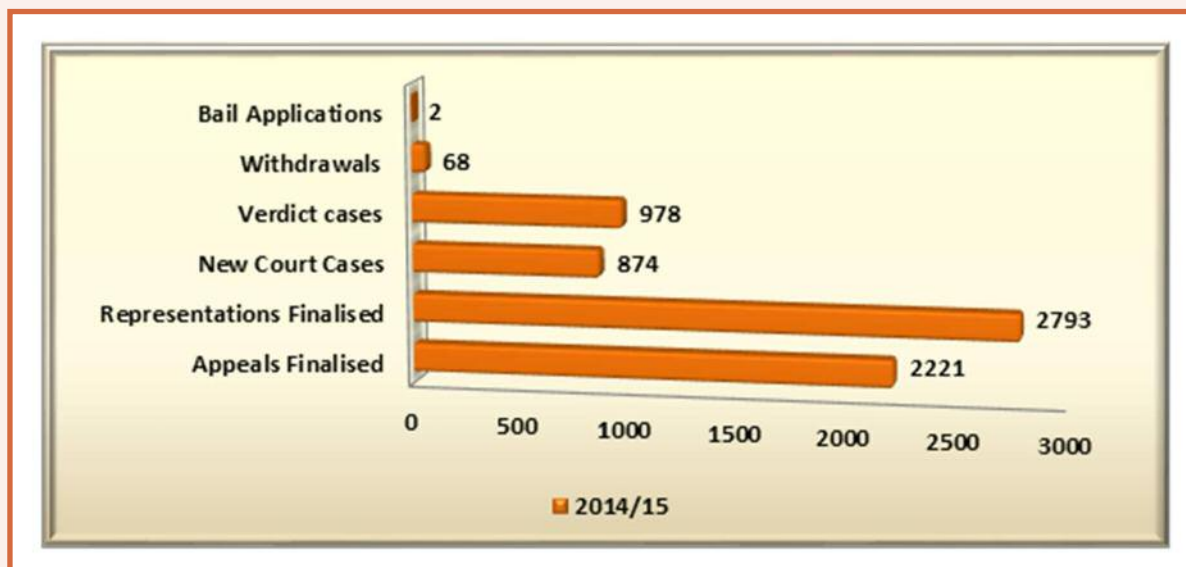
Figure 2: Case management by high courts



The number of formal bail applications in the high courts as well as the number of withdrawals showed a marked decrease. Although the number of convictions increased, there was a slight decrease in the number of verdict cases finalised.

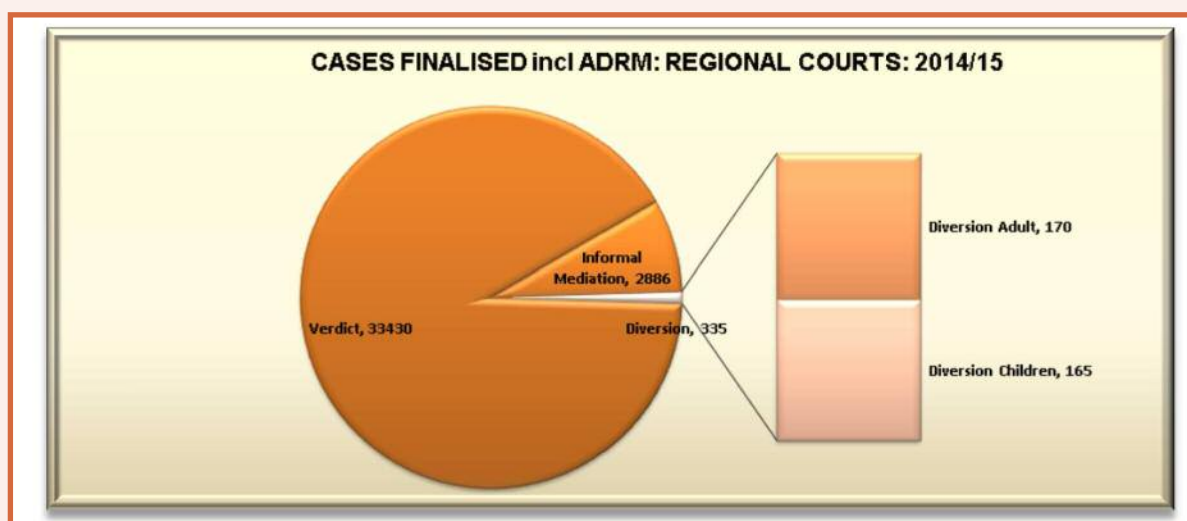
Fewer representations were received and finalised by the high courts. The number of finalised appeals decreased by 2.1% from 2 269 to 2 221.

Figure 3: Overview of the cases dealt with by the high courts



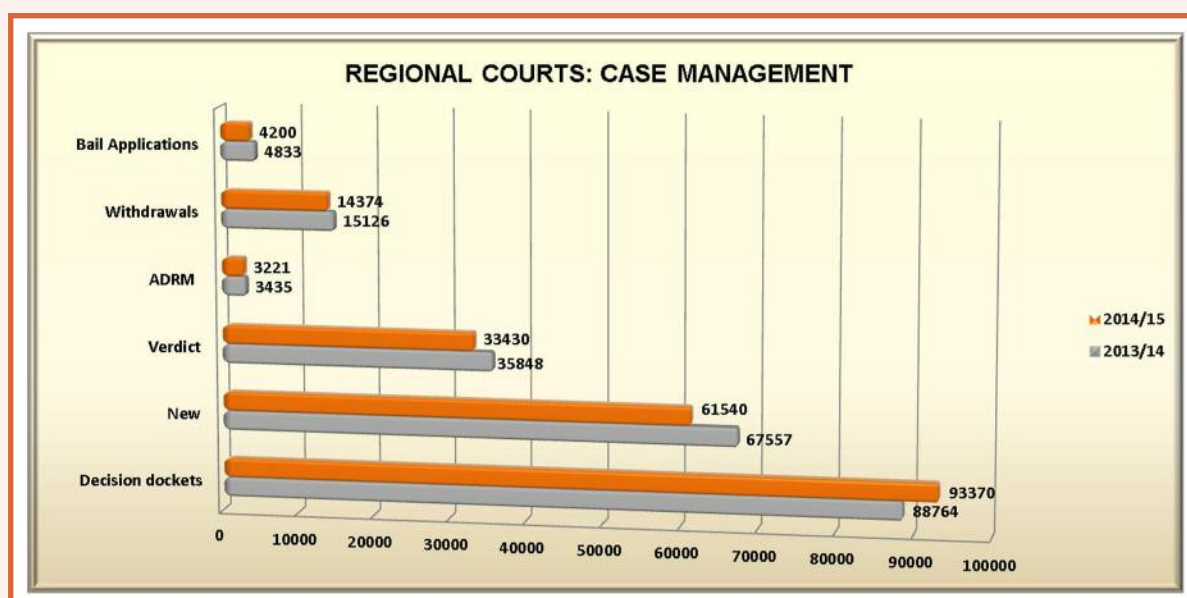
## Conviction rate and progress of regional courts

Figure 4: Cases finalised by regional courts



The regional courts enrolled 61 540 cases which is 6 017 (8.9%) less than the 67 557 new cases enrolled during the previous year. The courts finalised 36 651 cases comprising 33 430 verdict cases (91.2% of the total finalised cases) with a conviction rate of 76.6% and 3 221 ADRM cases (8.8% of the total finalised cases). This represents a finalisation rate of 0.5 cases per court per day. The reduced inflow of cases coupled with a reduction in court utilisation resulted in reducing the cases finalised – 6.7% (2 632) fewer cases finalised.

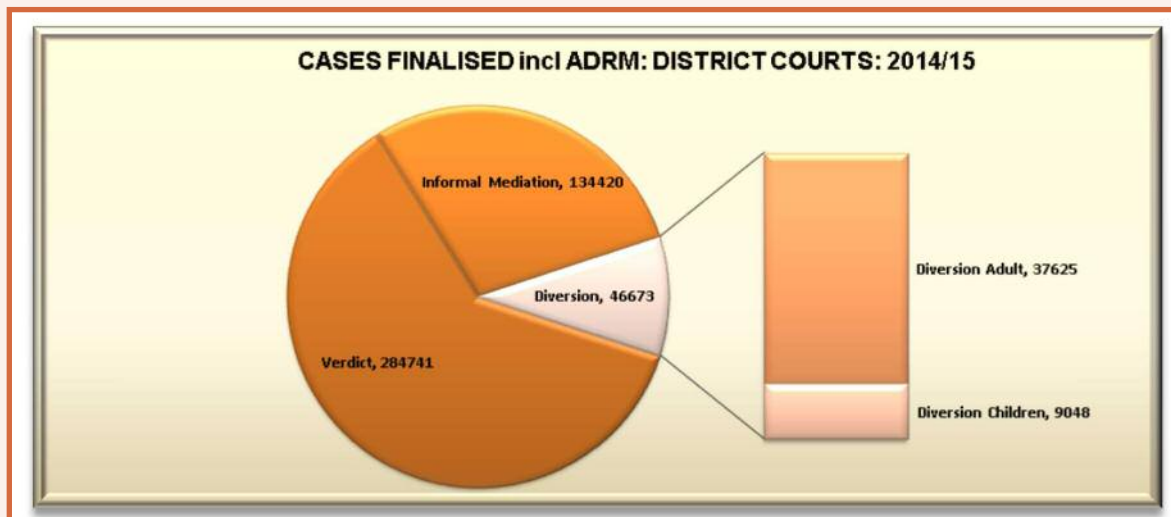
Figure 5: Case management by regional courts



In addition to the finalisation of cases, 4 200 formal bail applications and 93 370 decision dockets were also dealt with. Enhanced screening processes implemented throughout the regions yielded positive results as 6.6%, (1 004) fewer cases were withdrawn by the regional courts. A total of 247 compensation orders were granted to victims of crime to the value of R54.6m.

### Conviction rate and progress of district courts

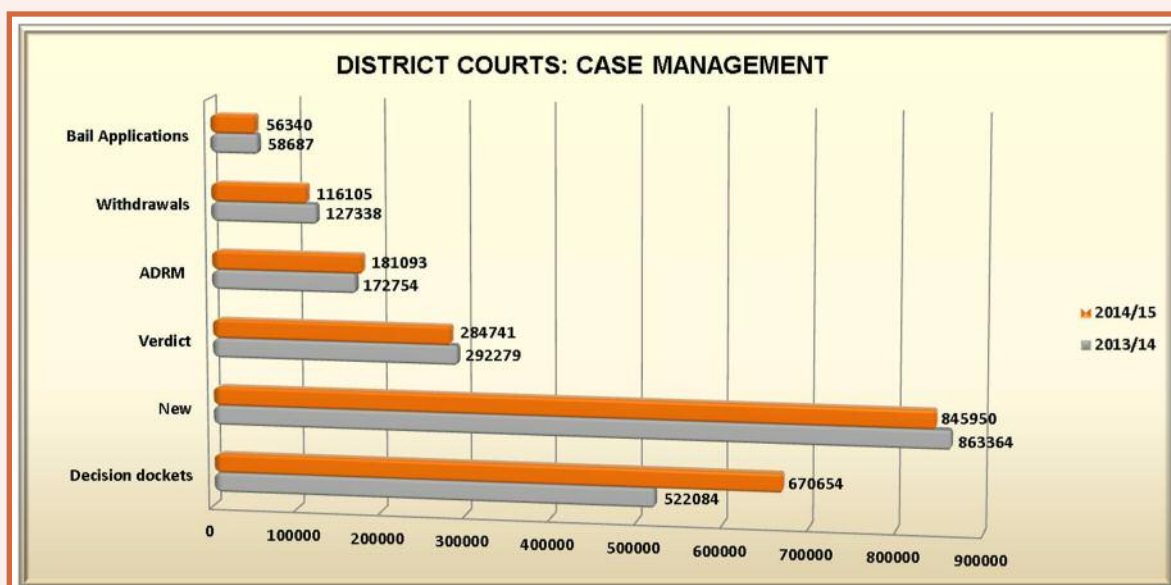
Figure 6: Cases finalised by district courts



The district courts enrolled 845 950 new cases which is 17 414 (2%) fewer than the 863 364 the previous year. The courts finalised 465 834 cases comprising 284 741 verdict cases (61.1% of the total finalised cases) and 181 093 ADRM cases (38.9% of the total finalised cases). This represents a finalisation rate of 2.8 cases per court per day.

High conviction rates were maintained during this reporting period and a conviction rate of 94.2% was achieved. The number of finalised cases, including ADRM, was 465 834 compared to 465 033 finalised during 2013/14, representing a 0.2% increase (801 cases).

Figure 7: Case management by district courts



In addition to this, 56 340 formal bail applications and 670 654 decision dockets were also dealt with. Increased focus on ADRM resulted in 8 339 (4.8%) more cases finalised through use of ADRM compared to 172 754 finalised during 2013/14. Enhanced screening processes implemented throughout the regions have again yielded positive results as 8.8% (11 233) fewer cases were withdrawn by the district courts. A total of 650 compensation orders were granted to victims of crime to the value of R4.6m.

### **Conviction rate in organised crime**

The NPA's focus on organised crime achieved an outstanding conviction rate of 92.2% which is 2.2% above the target and an increase of 3.5% compared to the previous year. The prosecutors seized with the prosecution of organised crime achieved 474 convictions which is an increase of 20.3% on the number of cases finalised during the previous financial year.

- Eleven cases involving racketeering and/or money laundering charges were finalised with verdicts (eight of these cases were finalised with guilty verdicts, and the remaining three were acquittals)
- Five cases involving money laundering were finalised with verdicts (they were all finalised with guilty verdicts)
- Three cases involving gang-related activities charges were finalised with verdicts (two of these cases with guilty verdicts, and the remaining one was an acquittal)

### **Environmental crimes**

The number of environmental crimes finalised with a verdict increased from the previous year by 60.6% - from 165 to 265 cases. The conviction rate also increased from 86% to 94.7%. Specific attention on the illegal hunting, dealing and possession of rhino and rhino horns, ivory, abalone, cycads, waste and pollution cases are amongst the prioritised focus areas that impact on the environment.

The NPA participated in various initiatives and projects to address environmental crime.

### ***Barcode of Wildlife Project – SA***

The project aims to develop the first DNA<sup>5</sup> wildlife barcode reference library for endangered and threatened species in South Africa. 200 species have been identified and relate to 5 000 samples that need to be taken in the wild and analysed. In prosecutions, it is very difficult to ascertain and prove the exact species, as required by the legislation. An example of this is where the accused is found in possession of bones or grinded substances. The aim of the project is thus to identify the species through the DNA library and provide evidence for court purposes.

The NPA is represented on the national committee overseeing the project to ensure that appropriate legal standards and procedures are developed for collecting and using DNA evidence in enforcement and prosecution in wildlife crime; and that there is appropriate awareness and capacity development, through training, for using the data generated through the project.

The NPA has been involved in the training of laboratory staff and scientists in the taking of samples to ensure that they correctly follow the principles of chains of evidence.

Features of each identified species - DNA profile, photos, taxonomy etc. - will be loaded onto a database. If the police or Environmental Management Inspector (EMI, the so called green scorpions) find for example powder/bones and a specific species has to be identified, then the DNA will be extracted from the evidence and then compared with the DNA profiles in the database to identify the species. In respect of plants the main focus is on cycads as their features are similar and due to leaves and roots being cut off during the poaching process, it is difficult to identify the exact species. In South Africa, the onus to prove and correctly identify the species, lies with the prosecution. This database will greatly assist in doing so correctly.

### ***Department of Mineral Resources enforcement trilateral task team***

The task team was established at the request of the Department of Mineral Resources, due to legislative changes to the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002). The task team was convened to facilitate the transition of enforcement responsibilities from the Department of Environmental Affairs to the Department of Mineral Resources. The NPA participated in this task team; providing guidance pertaining to court processes, criminal law, amendments to the legislation, joint inspections and course content requirements for inspectors.

### **Conviction rate in sexual offences**

In accordance with the Presidential Directives to enhance the focus on sexual offences matters through the establishment of dedicated courts, the NPA has shown its commitment by finalising 7 372 sexual offences verdict cases with an improved conviction rate of 69%. Not only was the conviction rate target of 67% exceeded by 2% but an overall improvement was maintained throughout the year.

A multi-disciplinary approach followed by provincial structures established with stakeholders from the DoJ&CD, Legal Aid South Africa, SAPS, Department of Health (DoH) and NPA have contributed to the achievement in finalising and improving the conviction rate in sexual offence cases.

A comparison with the previous year indicates the improved conviction rates and a decline in the number of cases finalised.

*Figure 8: All courts: Conviction rate in sexual offences cases*

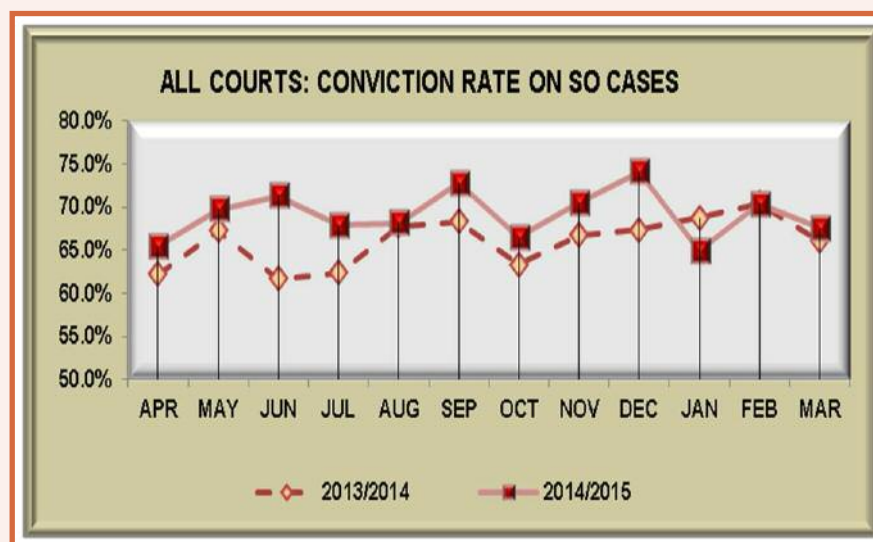




Table 19: Sexual offences finalised

Financial year	Convictions	Acquittals	Total finalised	Conviction rate
2013/14	5 484	2 690	8 174	67.1%
2014/15	5 084	2 288	7 372	69.0%
<b>Progress</b>	<b>-7.3%</b>	<b>-14.9%</b>	<b>-9.8%</b>	<b>1.9%</b>

### Conviction rate in trio crimes

Pursuant to the reduction in the levels of trio crimes, one of the MTSF priorities for 2014/15, the NPA has contributed by focusing mainly on the prosecution of these matters. A total of 1 772 cases comprising 4 729 trio counts were finalised with a conviction rate of 82%. The NPA has therefore not achieved the set target of 85%. Improvement is noted at the end of the financial year, showing that the integrated approach between all role players is bearing some fruit. This should be built on in the new financial year.

It should be noted that trio crimes are prosecuted mainly in the regional courts where the average conviction rate for the year was 76.6%. Viewed against this the conviction rate of 82% for trio crimes is quite remarkable.

A breakdown of the categories compared to the previous year indicates an increase in the prosecution of vehicle robbery cases as opposed to the decline in the other two trio crime categories. Fewer counts were also dealt with in all three categories.

Figure 9: All courts: Conviction rate on trio crimes

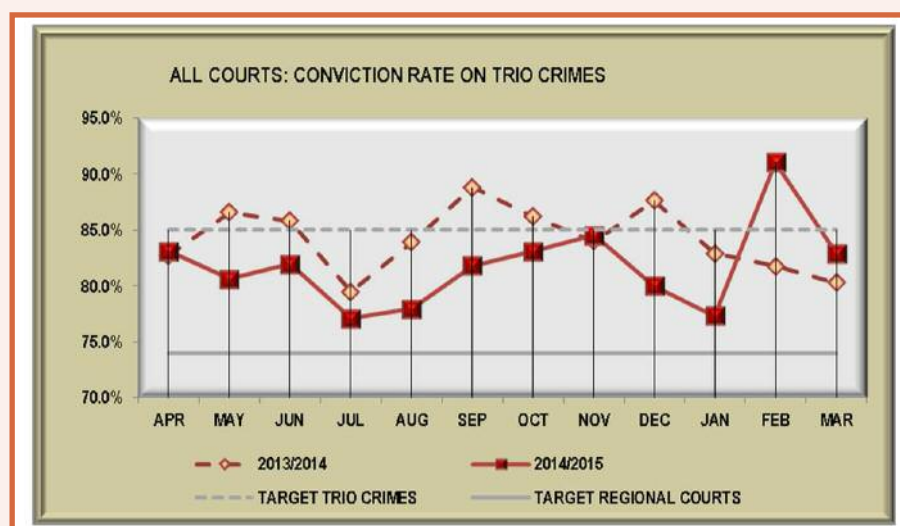


Table 20: Trio crimes finalised

Trio crime category	2013/14		2014/15		PROGRESS	
	Cases	Counts	Cases	Counts	Cases	Counts
House robberies	1 077	1 338	999	1 279	-7.2%	-4.4%
Business robberies	524	748	456	615	-13%	-17.8%
Vehicle robberies/hi-jacking	298	386	317	363	6.4%	-6%
<b>Total</b>	<b>1 899</b>	<b>2 472</b>	<b>1 772</b>	<b>2 257</b>	<b>-6.7%</b>	<b>-8.7%</b>



## **Violent protests and industrial actions**

Political and/or domestic instability is a serious challenge that, if left unabated, will undermine our democracy, rule of law and development trajectory. Issues that contribute to this instability are violent industrial and service delivery-related protest actions, as well as disrespect for authority and for one another. It is therefore imperative to prevent and combat the violent crime that accompany what is otherwise legitimate industrial and protest action.

The NPA measured the violence in protest actions as from September 2014. Only eight cases were finalised with convictions during the period September 2014 to March 2015 with a conviction rate of 72.7%. Specific problems experienced in these cases include the identification of accused persons.

## **Court preparation programme**

The purpose of the ***Ke Bona Lesedi*** court preparation division is to prepare witnesses for court, empowering them to testify, and thus enhancing prosecution and customer satisfaction.

The number of witnesses assisted by court preparation officers (CPO) for 2014/15 was 104 847 compared to 94 975 for 2013/14, a steady increase of 10.6% in performance. The average achievement of the court preparation target for this financial year was 75.4% per CPO, which is an improvement of 6.3% compared to the 69.1% reported on last year. In 2014/15, 22 276 children under the age of 18 years received court preparation services, compared to 23 171 in 2013/14. The completion and utilisation of victim impact statements (VIS) also increased. The CPOs prepared 6 159 VIS in 2014/15, compared to 2 952 VIS in 2013/14. Intensive training for both prosecutors and CPOs was a priority during this reporting period and this impacted positively on the performance. The VIS has proved most valuable for the prosecution and contributed to good results. During 2014/15, 1 566 VIS were utilised by the prosecution, compared to the 735 utilised last year. Overall CPOs are being optimally utilised and exceeded their targets.

The court preparation component recognises the importance of educating the community, especially the previously disadvantaged, in light of the high levels of crime which are perpetrated against women and children. During 2014/15, 777 education programmes were provided nationally.

## **Initiatives**

The NPS drives its strategic objectives through active involvement and collaboration of its senior management team. Bi-monthly meetings of the national operations management team (NOMM) comprising of all DPPs are held to empower NPS management and to ensure constant feedback and persistent collaboration of all efforts to the effective implementation of strategic initiatives and objectives.

The effective performance of the NPS is directly linked to the performance of the other role players within the CJS. Ensuring that trial cases proceed when they are set down for trial remains a primary challenge that the CJS has not adequately addressed. The implementation of pre-trial hearings, identified by the NPS, Legal Aid South Africa and the Chief Justice as one of the solutions to prevent remands of trial-ready cases, has been slow in gaining traction, particularly in the lower courts. This has been compounded by the placing of too few trial cases on the court rolls, resulting in wasted court hours as demonstrated in the analysis of average court utilisation.

The need to assist the SAPS in ensuring a conviction by guiding investigations adds to the burden of prosecutors. There has been a focus on the review and screening of cases by experienced prosecutors. Case review teams have been established at some centres and more focus will be placed on the establishment of such teams in all offices during the next year.

The Department of Correctional Services (DCS) is also under pressure to accommodate remand detainees. Chapter 12 of the National Development Plan (page 405, the National Planning Commission) indicated: "The population of awaiting trial prisoners must be reduced drastically. Increased use of technology is important to monitor awaiting trial prisoners to ensure attendance in court and to prevent at-risk suspects from committing crimes or endangering community safety. The use of tagging and tracking of awaiting trial prisoners should be explored as an alternative to incarceration". A protocol between DCS and NPS has been proposed to ensure a decrease in the number of remand detainees eligible for, but who cannot afford bail.

## **Representations**

The component at the NPS national office responsible for representations comprises of four prosecutors and an administrative assistant. The majority of the representations received during the performance year were requests to reconsider decisions in criminal matters. The policy directives require that the remedy of recourse to the relevant DPP be exhausted before the National Director will review the decision of the director. The review process to be followed by the National Director is prescribed in Section 22(2)(c) of the NPA Act and is adhered to.

Representations at the national office are received either directly from representors or via the offices of the National Director, Communications or Support Services. The NPS component has, with the assistance of the South African State Information Technology Agency (SITA), implemented an electronic system to ensure that accurate statistics are kept and that information can quickly be accessed.

A total of 491 files pertaining to representations were received. 461 files were finalised reflecting a clearance ratio of 84.7%. 97 of the finalised files were matters placed before the National Director as review decisions. Four matters pertained to either petitions in terms of Section 327 of the Criminal Procedure Act or requests for pardons in terms of Section 84(2)(j) of the Criminal Procedure Act.

The major challenge during the last year was the postal strike which resulted in delayed receipt of some representations sent via post. The NPA also provides for representations to be submitted via email to [communication@npa.gov.za](mailto:communication@npa.gov.za). A significant percentage of representations were received through this channel in the year under review.

## **Skills development**

The skills development section aims to ensure quality prosecutions in all cases. It does so through intensive and extensive skills development and training programmes. Continuous changes and legal developments necessitate that prosecutors keep abreast of recent judgments and legislative changes. In this regard, the team distributed 3 860 copies of the updated version of the "Handy hints" manual to all prosecutors.

Skills development requires focused planning and effort to pinpoint opportunities in minimum time.

Against this background the following skills development opportunities were addressed:

*Table 21: Skills development opportunities*

Training	Outcome	Number of courses	Number and rank of attendees
Legal writing, indictments/charge sheets and related topics.	Address the basic skills framework for lower and high courts as well as the skills development implementation plan for prosecution	6	123 senior state advocates, state advocates, senior prosecutors, control prosecutors regional court prosecutors and prosecutors
Advanced trial advocacy	Address the basic skills framework for lower and high courts as well as the skills development implementation plan for prosecution	3	53 senior state advocates, state advocates, senior prosecutors, control prosecutors regional court prosecutors and prosecutors
Prosecution of trio crimes, cybercrime, corruption and fraud	Improve prosecution of cases that require specialised prosecution	Trio crimes: 6 Cybercrimes: 5 Corruption & fraud 7	493 Deputy Directors, senior state advocates, state advocates, senior prosecutors, control prosecutors regional court prosecutors and prosecutors
Prosecution of SCCU cases	Improve prosecution of SCCU cases.	2	28 Deputy Directors, senior state advocates, state advocates, senior prosecutors, control prosecutors regional court prosecutors and prosecutors
Indictments/charge sheets and related topics.	Address the basic skills framework for tutors and aspirant prosecutors	13	201 aspirant prosecutors 7 tutors
<b>Total number of courses and attendees:</b>		<b>43 courses</b>	<b>908 attendees</b>

Together with members of the NPS, the Justice College continued to offer technical training to 1 389 prosecutors countrywide on the following topics:

- Trial advocacy for district court prosecutors
- Advanced trial advocacy for advanced prosecutors
- Road traffic offences
- Admissibility of evidence
- Corruption and fraud
- Trio and other related crimes
- Stock theft and related offences
- Mediation and alternative dispute resolution mechanisms
- Prosecutions of environmental crimes
- Criminal liability
- Psychiatry/psychology and the law
- Cybercrime
- Organised crime (basic course)
- Forensic experts

The aspirant prosecutor programme aims to ensure that quality training is offered to improve employee performance, career development and organisational growth. During May 2014, 145 aspirant prosecutors were recruited of whom 140 were appointed as prosecutors. The February 2015 intake comprised 203 aspirant prosecutors. Final assessments will only be conducted during January 2016.

## Organised crime

The NPS's focus on organised crime achieved an outstanding conviction rate of 92.2% which is 2.2% above the target and an increase of 3.3% compared to the previous year. The prosecutors tasked with the prosecution of organised crime achieved 474 convictions which is an increase of 20.3% on the number of cases finalised during the previous financial year.

Eleven cases involving racketeering and/or money laundering charges were finalised with verdicts (eight of these cases were finalised with guilty verdicts, and the remaining three were acquittals). Five cases involving money laundering were finalised with verdicts (they were all finalised with guilty verdicts), while three cases involving gang-related activities charges were finalised with verdicts (two of these cases with guilty verdicts, and the remaining one was an acquittal).

The number of environmental crimes finalised with a verdict increased from the previous year by 60.6% - from 165 to 265 cases. The conviction rate also increased from 86% to 94.7%. Specific attention on the illegal hunting, dealing and possession of rhino and rhino horns, ivory, abalone, cycads, waste and pollution cases are amongst the prioritised focus areas that impact on the environment.

## High profile cases – NPS

### Extradition of Shrien Dewani

In April 2014 British national, Shrien Dewani, was extradited to South Africa from the United Kingdom (UK) following a protracted legal battle.

The DPP acting on behalf of the Republic of South Africa (RSA) applied for Dewani's extradition from the UK in December 2010 after the SAPS obtained evidence under oath implicating him in the murder of his wife, Anni Hindocha.

Dewani opposed the RSA's application citing amongst others that:

- He would not receive a fair trial in South Africa
- The manner in which the investigation and prosecution was conducted was an abuse of process
- His physical and mental condition was such that it would be unjust and oppressive to extradite him, and
- Prison conditions in the Republic of South Africa (RSA) were such that it would infringe his rights if he were to be extradited to South Africa

The DPP mounted a defence and provided the UK authorities with various assurances.

In March 2012, after protracted court hearings the high court dismissed Dewani's objections in respect of his fair trial rights, the conduct of the investigation and prosecution and prison conditions. The UK High Court held, however, that Dewani's mental condition was such that, at that stage, it would violate his rights under the European Convention to extradite him. The matter was referred back to the district court to hear further evidence on Dewani's mental condition and the adequacy of facilities at Valkenberg Hospital to treat him.

The high court eventually ruled in March 2014 that Dewani be extradited to the RSA. Dewani arrived in South Africa on 8 April 2014 and appeared in court on that same day.

He was found fit to stand trial in August 2014 and his trial commenced in the Western Cape High Court in October 2014. He was detained at Valkenberg Hospital for the duration of his stay in South Africa, in compliance with the undertakings provided to the UK authorities. Similarly the necessary steps were put in place at the high court to ensure that the environmental conditions did not lead to a relapse in his condition.

The successful conclusion of this matter recognised South Africa's commitment and ability to comply with international obligations, and was an endorsement of South Africa's standing in the international community

### ***The State versus Shrien Dewani***

Shrien Dewani was arraigned in the Western Cape High Court on charges of contravening Section 18(2)(A) of the Riotous Assembly Act, No. 17 of 1956 The charges were conspiracy to commit kidnapping, robbery with aggravating circumstances and murder; kidnapping; robbery with aggravating circumstances; murder; and obstructing the administration of justice.

The trial commenced in October 2014 and state presented the evidence of sixteen witnesses and closed its case.

Three of the sixteen witnesses were accomplice witnesses. Only one accomplice had direct contact with the accused, Shrien Dewani. The only direct evidence against the accused therefore was the evidence of the accomplice. The state also presented circumstantial evidence which supported the evidence of the accomplice. The court did not deem the credibility of the witness sufficient for it to accept his evidence.

The defence applied for the accused's discharge on all counts and the court granted the application and acquitted the accused on 8 December 2014.

The trial demonstrated how the rights of an accused person are given effect to and that our courts endorse the RSA's compliance with international obligations.

### ***State versus J Arthur Brown***

On 12 February 2015, a full bench of the Constitutional Court (CC) dismissed convicted accused J Arthur Brown's application for leave to appeal against his concurrent double prison sentences of 15 years for fraud because it bore no prospects of success. The CC order brought to a final and satisfactory close a protracted investigation and prosecution process, fraught with obstacles, of some eight years.

In 2006, the Financial Services Board (FSB) discovered serious irregularities relating to the Cape Town-based Fidentia group of companies. It was placed under curatorship in 2007. A Scorpions/Hawks investigation resulted in the prosecution of various accused for offences committed in relation to Fidentia's business. Accountant Maddock and businessman Goodwin concluded plea agreements with the state at an early stage in the investigation and received hefty prison sentences. The related partially-heard prosecution against Bothma in the Johannesburg SCCU still continues.

Fidentia controlling director, J Arthur Brown involved the prosecution, police and the FSB in protracted litigation of various sorts over years. His trial on fraud, corruption and related offences eventually commenced in 2012 in the Western Cape High Court.

Brown initially pleaded not guilty. After months of trial and after evidence was led, he changed his plea in 2013, and was convicted on two counts of fraud, each involving tens, if not hundreds of millions of rands of investor trust funds.

The trial court sentenced him to pay fines. The DPP considered that the sentences were shockingly lenient and that each of the two offences should have attracted the minimum sentence of 15 years for the fraud involving more than R500 000. The State consequently applied to the trial court for leave to appeal against sentence. The trial court dismissed the application.

The state petitioned the Supreme Court of Appeal (SCA), which granted leave to appeal in July 2013.

### **The SCA judgment**

The SCA handed down judgment on 1 December 2014.<sup>6</sup> The SCA allowed the state's appeal and ordered that two concurrent sentences of 15 years imprisonment should replace the trial court's non-custodial sentences of fines.

As the CC has dismissed the application for leave to appeal, the SCA judgment remains authoritative on the various and important issues that were decided.

In an unusual step, the SCA decided that the trial judge's performance during the trial merited judicial sanction. He had repeatedly and improperly intervened during the trial in favour of Brown.

The NPA was at the receiving end of severe criticism after the non-custodial sentences were handed down by the trial court. The SCA judgment has gone a long way to redressing the mostly unfair criticism and recognising the NPA's pursuit of appropriately severe sentences in serious white-collar crime.

### ***State versus OLC Pistorius***

Oscar Leonard Carl Pistorius, the world renowned Paralympian athlete and celebrity shot and killed his girlfriend, celebrity, Reeva Steenkamp on 14 February 2013. On 3 March 2014, the trial commenced in the North Gauteng High Court.

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<sup>6</sup> S v Brown (681/2013) [2014] ZASCA 217 (1 December 2014)



The investigation and subsequent prosecution of Mr Pistorius had become a matter of national and international interest not only for prosecutors but the international law enforcement fraternity as a whole. In February 2014, a first in our criminal law history, the media brought a successful application to broadcast the trial on live television. The trial was voted the 2014 newsmaker of the year and Judge Moseneke was quoted as saying *"I remain deeply proud of the manner in which all of those who were part of this trial allowed our nation and the world into our courts and into how we dispense justice"*.

The media application for the first time in the history of South African law not only brought the trial into the sitting rooms of citizens of the world but also placed immense focus on the role, functions and mechanics of the justice system, more so, on the role of the prosecutor in presenting the state's case.

The prosecution of Mr Pistorius and the stance to ensure prosecutorial independence and integrity left the NPA with many difficult prosecutorial challenges. The NPA was faced with presenting circumstantial evidence for which almost every aspect was challenged at length by a string of defence expert witnesses.

On 21 October 2014, a five year sentence was handed down by the high court judge Masipa, bringing a 49-day trial to an end. The NPA has successfully applied for and was granted leave to appeal certain questions of law at the Supreme Court of Appeal.

### ***State versus TS Maqubela***

The deceased in this matter, Patrick Maqubela, was an acting judge of the Western Cape High Court at the time of his death, when he was married to the accused. On 5 June 2009, the deceased failed to report to duty. His decomposing body was found in his flat on 7 June 2009.

Initially police believed the death of the deceased to be natural and as a result opened an inquest docket. Several factors caused them to change the charge to murder despite the fact that the pathologist could not determine the cause of death. The state meticulously built up a circumstantial case against the accused by using cellular phone detailed billing, cellular phone mapping, cellular phone XRY downloads, the movements of the deceased, the volatile relationship between the deceased and the accused, monetary incentives in the form of a life policy of R20 million, medical evidence and the witness statement taken from the accused which ultimately proved that after the deceased died, the accused accelerated the decomposition of his body and remained with his corpse for hours thus negating the possibility that the deceased died of natural causes.

The accused was convicted of murder without the state proving the actual cause of death. In addition the accused was convicted of forgery and fraud involving R4 million which related to the purported Will of the deceased. The court specifically held that the state needs only to prove potential loss. The accused was sentenced on 31 March 2015 to an effective 18 years direct imprisonment.



## Noteworthy matters on appeal - NPS

### *Jezile versus The State*

This was the most notable trafficking in persons matter finalised by the full bench of appeal. The appellant was the first person in the Western Cape convicted of trafficking in the form of ukuthwala or forced marriage.

The accused and the family of the complainant kidnapped the fourteen year-old minor girl as she was preparing for school. She was then taken to the home of the accused where he paid lobola to her family and she was forced to wear the traditional clothes of a makoti. This occurred in the Eastern Cape. Later she was transported to the Western Cape where she was kept locked up at the home of the accused who raped her repeatedly.

The accused was convicted, inter alia, of contravening section 71(1) of Act 32 of 2007- trafficking in persons for sexual purposes, multiple charges of contravention of section 3 of Act 32 of 2007 - rape.

On appeal the appellant alleged, inter alia, that he was practicing his cultural beliefs and did not know that ukuthwala was a criminal offence. He argued that the aberrant form of ukuthwala, does not require consent. The state argued that any traditional practice must be constitutionally compliant and not criminally offensive.

The matter was heard before a full bench and members of civil society were invited to join as amicus curiae. Seven amicus curiae also argued.

The court confirmed the conviction for trafficking in persons. The court found that ukuthwala, which is constitutionally compliant, requires consent. As this was absent, the appellant's reliance on an aberrant form of ukuthwala which did not require consent, could not be supported.

## Noteworthy cases

### **Violent crimes**

#### *State versus Albert Justice Morake*

The Palm Ridge Court delivered one of the heaviest sentences in the history of the criminal justice system when the accused was sentenced to 1 535 years imprisonment for 144 counts ranging from attempted murder, rape, kidnapping, theft, armed robbery and possession of firearm. The accused raped 29 women and kidnapped and robbed 25 men.

The accused, who sometimes acted in concert with an accomplice, targeted couples walking in the street or sitting in their vehicles in the streets during the night. He would point a firearm at them and demand that the man climb into the back of the car where he would tie his hands and feet. The complainants were either forced to walk into a nearby veld or the accused would drive their vehicle to a veld. There, they would be robbed of cash, jewellery, cell phones and any other valuables. The women would then be taken to a different spot not far from where their partners were captives and be raped.

***State versus Sakhile Maxwell Sphephelo Khoza***

The accused was sentenced to life imprisonment and an additional 16 years in the Pietermaritzburg High Court on charges relating to two counts of murders and one of attempted murder.

The accused lived with his mother and girlfriend, Vamisile Ngidi. He argued with his mother and girlfriend over a sum of money that he was supposed to have given to a neighbour. The accused then left the house but returned shortly thereafter, when he called his girlfriend to his room and tried to strangle her. His mother intervened and both women managed to escape from him. The accused chased the women with a bush knife, striking them both. While his mother escaped with injuries Vamisile suffered severe head wounds and died on the scene.

When neighbouring family members, including the accused's grandmother, heard the commotion, they rushed to assist. On seeing his grandmother, the accused struck her several times with the bush knife fatally injuring her.

Although the accused raised the defence of temporary non-pathological criminal incapacity, a panel of three psychiatrists testified that he was in a sound state of mind when he committed the offences.

***State versus Edwin Sipho Mzimba***

The accused was handed two life sentences plus sixty years imprisonment for robberies committed between November 2013 and January 2014.

The accused was charged with two counts of murder, attempted murder, robbery with aggravating circumstances, unlawful possession of firearm and ammunition.

The accused terrorised businesses in the area of Ivory Park. In one incident the accused attacked the complainants (mother and son) and the deceased who were in the motor vehicle on their way to their respective homes after closing their bakery business. He wielded a firearm and smashed the driver's window, and shot the deceased who was seated at the back of the motor vehicle.

***State versus Rudolf Marthinus Struwig***

Rudolf Marthinus Struwig was sentenced to two life terms of imprisonment in the Pietermaritzburg High Court for his role in the murders of Simphiwe Trevor Ndlovu and Mandla Petros Masango.

Struwig owned a security company which was based in Ladysmith and provided security guards to surrounding farms and businesses. It appears he extended his services to contract killings.

The accused approached his employee, Lucky Themba Mlangeni, and offered him R5000 to kill Ndlovu. He also provided him with firearms. Mlangeni with two other assailants killed the deceased using the firearms provided.

Later the accused again procured the services of Mlangeni; this time to kill Masango for R5 000 which he did.

***State versus David Mpho Nkosi and Another***

The Palm Ridge High Court sentenced the accused to life imprisonment for the murder of Lawrence Moepi.

Moepi was employed at Sizwe Ntsaluba Goboda in Houghton as a forensic auditor. He succumbed to gun wounds to the head, chest and abdomen after being shot by Nkosi. The deceased was followed into the parking area of his work place by the two accused. Nkosi approached the deceased, fired several shots and returned to the vehicle driven by Sephoru.

***State versus Ntokozo Goodman Zulu and Another***

The accused were sentenced to 58 years each in the Durban High Court for the robberies they committed in 2008 and 2009.

On 30 December 2008, the men assaulted and robbed two cash-in-transit security guards at the Shell garage in Kloof. This kind of robbery is referred to by the South African Banking Risk Information Centre (SABRIC) as a “cross pavement robbery.” This refers to an attack on a security guard carrying the cash box whilst crossing the pavement or in the parking area. The accused fled the scene.

In January 2009, the men attacked and robbed two more cash-in-transit security guards at a fast food outlet in Tongaat. Whilst the men fled the scene they were arrested later that year due to information the police received through informants.

For the period of 2006 to June 2014, KwaZulu-Natal experienced 279 cross pavement robberies. This resulted in a cash loss of R35 million.

The men were sentenced to 18 years for robbery with aggravating circumstances, 15 years for attempted murder and 25 years for robbery with aggravating circumstances, pertaining to the robbery in Tongaat.

***State versus Mpho Mkhumbeni and Others***

Judge Jake Moloi of the Free State High Court sentenced the five accused to life imprisonment for the murder of Tshediso Nylimane in Virginia.

The accused are members of “Makaota gang” and the deceased belonged to the “Portuguese gang”. On the day of the incident, about fifty members of Makaota gang saw the deceased and four other members of the Portuguese gang walking in the street of Meloding and chased after them. They caught up with the deceased and assaulted him with pangas, knives and other sharp objects. The deceased was stabbed 36 times and died on the scene.

The accused’s application for leave to appeal both conviction and sentence was dismissed.

***State versus Sagren Malayan***

The Durban Regional Court sentenced an ex-policeman, Sagren Malayan, to 15 years imprisonment and declared him unfit to possess a firearm. In July this year, Malayan was convicted of murdering Dean Romano Govender (20) in October 2012.

On 20 October 2012, Malayan (who was off duty on the day) attended a relative's birthday party at Hillgrove Secondary School in the Newlands West area. Govender was also at that party. When he and his friends got into an argument with another group of males, Malayan stepped in to resolve the situation. He asked the group, including the deceased, to leave the party.

According to witnesses who testified in court, the group was leaving the party when they saw the accused walking towards them. He fired two gunshots and after a third shot was fired, the deceased fell to the ground. Post mortem results revealed that the bullet struck Govender in his right arm, penetrating his chest. This caused internal injuries including damage to both his lungs.

The defence raised an argument that Malayan acted in self-defence as the deceased had threatened him with a knife. However the knife was never found on the crime scene, nor was it presented in court.

### ***State versus Nkosinathi Emmanuel Mngadi and Another***

The accused were sentenced to life plus 23 years imprisonment in the Pietermaritzburg High Court. The pair was convicted of murder, robbery with aggravating circumstances and assault.

This relates to the incident that took place on 7 May 2013 in which an Ixopo farmer, Peter Hackland (61) was robbed and murdered, and his daughter and associate assaulted.

The accused went to the farm on the pretence that they were seeking employment. They then demanded money and used firearms to threaten the deceased. When he told them that there was no money on the farm they shot him, stealing his cell phone and money. They took his daughter, Louise Hartwig and his co-worker Fennell to the pantry where they repeatedly demanded money, assaulted them and sprayed pepper spray into their eyes.

The accused's application for leave to appeal their conviction and sentence was refused by the court.

### ***State versus Samuel Ndlovu***

The North West High Court sentenced Samuel Ndlovu to two life terms of imprisonment on two murder charges. On 12 January 2014, the accused was seen packing his bag and locking the door to the shack he was renting. One of the neighbours was suspicious after she had heard the accused's girlfriend shouting that the accused was strangling the child and alerted the landlord.

The landlord investigated and saw a child lying on the bed. He found the accused and brought him back to his shack where the accused stated that he had killed his girlfriend and the child. The accused's girlfriend and her one year-old daughter were discovered in the shack both having been stabbed. The girlfriend had been stabbed 17 times. She was seven months pregnant and one of 17 stabs penetrated the womb and stabbed the foetus. After being told that the child was not his, he first subjected her to the gruesome and traumatic experience of witnessing the killing of her child before killing her as well.

### ***State versus Siyabulela Phupha***

The accused, a prisoner serving time at St Albans prison, was sentenced to an effective nine years imprisonment for attempted murder and possession of a dangerous weapon. The accused admitted to smuggling in an okapi knife into the prison and stabbing a prison warden, Hugo Mulder, seven times.

The motive for the attack emanates from the allegations that the St Albans Prison authorities wanted to transfer the accused to Kirkwood prison and he was frustrated about this development at the time.

### ***State versus Ntokozo Skhumbuzo Mthimkhulu***

Ntokozo Skhumbuzo Mthimkhulu was given five life sentences plus 45 years in the Mtunzini High Court after having been found guilty of five counts of murder, three counts of rape and five counts of robbery with aggravating circumstances.

During the period of May to August 2010, he would target women either entering or leaving the Empangeni bus and taxi rank and lure them into nearby bushes or sugar cane plantations where he robbed, raped and killed them. In luring them he would promise them airtime or transportation to their onward destination.

### ***State versus Samkelo Mvubu***

Samkelo Mvubu appeared at the Libode Magistrates Court where he was charged with two counts of murder as a result of circumcising two initiates at an illegal circumcision school. The murder cases emanate from the discovery of the two dead bodies by the police in an illegal circumcision school. In addition to the two counts of murder Mvubu is also facing two counts of contravening the Health Standards Traditional Circumcision Act, 2001 (Act No. 6 of 2001).

In the same court, on 3 July 2014, three male teenagers aged between 16 and 17 appeared on charges of unlawful circumcision for circumcising another 16-year-old boy. The young initiate was rescued by the police. The three teenagers were not released to their parents but referred to Bosasa Place of Safety in Mthatha until their next court appearance on 10 July 2014.

### ***State versus Enrico Jacobs***

On the afternoon of 30 March 2013 at the corner of Nyasa and Tana Roads, Retreat, Cape Town, the accused approached Marko Muller, Moeieba Cornelius and Lindsay Thomas Gora who were in front of a cafe. The accused, in the company of Damien Jacobs, were armed with firearms and planned on shooting any members of the Mongrels gang that they encountered.

The accused identified the persons at the corner as members of the Mongrels. They proceeded to shoot them and thereafter fled the scene. Cornelius and Gora, died later in hospital as a result of the gunshot wounds inflicted during the shooting. Muller survived the attack. The two accused are members of the Luciano Boys gang which had combined with the Corner Boys gang in their gang war against the Mongrels gang.

The accused was found guilty on charges of murder, attempted murder and was sentenced to two life imprisonment sentences, and sentences of 15, 10 and six years respectively.

The court ordered the sentences to run concurrently with sentence imposed in count three (life imprisonment).

### ***State versus Willemse and Another***

The two accused were found guilty on charges of the murder of a farmer on a remote farm near Philipstown in the Karoo, attempted murder of the farmer's wife and robbery with aggravating circumstances. The accused brutally attacked and robbed the elderly farmer and his wife. Both accused were sentenced to life imprisonment in the Northern Cape High Court - Kimberley in January 2015.

### ***State versus April and Another***

One of the accused were found guilty during February 2015 in the Circuit Court in Upington on charges of murder and child abuse. He was sentenced to 15 years imprisonment on the murder charge and five years imprisonment for the child abuse. The accused assaulted a 4 year-old girl over a period of time. The deceased sustained numerous wounds, 24 of which were head wounds.

### ***State versus Alfred Zwane and Two Others***

The agony of nine families who were victims of three assailants in the Muldersdrift area was finally put to an end at the Palmridge High Court by Judge Mavundla who sentenced Alfred Zwane (27), Samson Mandlezi (23) and Maweni Ubisse (27) to two life terms and 148 years imprisonment. They were convicted on 18 counts ranging from murder, robbery with aggravating circumstances, housebreaking with intent to rob and attempted murder.

The trio from Diepsloot were arrested for a series of crimes in Muldersdrift after residents reported a spate of attacks by armed men from the period of 6 July 2012 to the day of their arrest on 14 September 2012. Their crimes left two families shattered after losing their loved ones who were brutally shot in full view of the other surviving family members.

Allysa Botha was 13 years-old at the time of her death. Andre Arnold Jordaan also succumbed to gunshot wounds when his home was ransacked by the accused later the same month.

### ***State versus Khakhu***

The accused was charged with the murder of young Luke Tibbets who was shot whilst sitting on his mother's lap in a vehicle. He was convicted on charges of murder, attempted murder, and malicious damage to property as well as possession of unlicensed firearms and ammunition. He was sentenced to two terms of life imprisonment as well as a further 42 years imprisonment.

## **Sexual Offences**

### ***State versus Falakhe Khumalo***

The accused (18) was sentenced by the Durban Regional Court to life imprisonment for the beheading of a woman, Desiree Murugan, in Chatsworth.

The body of Murugan, a sex worker, was found at the Shallcross Sports stadium in Chatsworth while her head was discovered a week later in Infume, on the Durban South Coast.



Khumalo is the last accused of the six people who were arrested for this murder. In his plea, Khumalo mentioned that he had gone to a sangoma (accused four) to get medicine for a sexually transmitted infection that he had contracted. The sangoma requested the head of an Indian, Coloured or White female as payment and that he would pay R2 million for the head. The accused then enlisted the assistance of his co-accused. They identified the deceased as a potential victim and killed her while she was having sexual intercourse with the accused. He told the court the deceased was decapitated and her body dumped while her head was taken to the sangoma.

### ***State versus Johannes De Jager***

Johannes De Jager was sentenced to four life terms, six years and three months imprisonments that are to run concurrently by the Western Cape High Court after being convicted on seven counts including the rapes and murders of Hiltina Alexander and Chairmaine Mare, theft of a cellular phone of the deceased and two charges of dismembering a body.

### ***State versus Zamuxolo Njemla***

The Sexual Offences Court in Mthatha sentenced Zamuxolo Njemla to an effective 25 years imprisonment for repeatedly raping his cousin's 6 year-old daughter.

After frequently visiting the home of his victim, he preyed on the young girl when she was playing in a deserted chicken run. Njemla, who worked as a petrol attendant at a local filling station, first raped the girl when she returned from school while her mother was at work and threatened to kill her if she told anyone. He again raped the young girl in the same chicken run while her mother was sleeping.

### ***State versus Remminton Zamokhle Ngema***

Remmington Zamokuhle Ngema, a prosecutor at the Newcastle Magistrates Court was sentenced to life imprisonment for the rape of a 13 year-old girl in October 2011. The girl is known to Ngema and the offence took place while she was under his supervision.

### ***State versus Musawenkosi Mthethwa***

Musawenkosi Mthethwa was sentenced in the Richards Bay Regional court for the rape of a 13 year-old boy. The complainant was walking from Brackenham to Nseleni when he met the accused who asked him if he had seen his cattle. After a brief conversation, he convinced the boy to accompany him to look for cattle. When they were in the forest Mthethwa raped the boy and threatened him not to tell anyone. Mthethwa pleaded guilty to the charges and was sentenced to life imprisonment.

### ***State versus Madoda Allam***

A 68 year direct imprisonment sentence was handed down to the accused at the circuit court sitting in Worcester. Judge President John Hlophe convicted the accused on ten counts including three counts of rape, sexual assault, two counts of robbery with aggravating circumstances, and two counts of pointing a firearm and theft.



The accused's modus operandi in committing these crimes showed that they were calculated. He offered lifts to the women who were hitchhiking around the Worcester area. He would then drive to secluded areas where he would rape and rob his victims. He assaulted some of his victims and left them in unfamiliar areas in the dark, thereby exposing them to further danger. His crime spree was spread over three years from 2011 to 2013. His victims are still so traumatised that they were too afraid to speak to the investigating officer. One of them was a grade 12 learner who struggled to write her exams.

***State versus Thanduxolo Maphela and Another***

Thanduxolo Maphela, a former dance teacher, was sentenced by the High Court sitting in Palm Ridge to four life terms plus 32 years for eight counts of rape of minors aged 11 to 13 years.

In one occasion in the Roodepoort area, he asked the complainants to accompany him in order to fetch traditional instruments, sticks, documents etc. which were to be used in their traditional dancing practice and competitions. While walking through a veld or near bushes the accused called the complainants separately into the bushes and raped them.

***State versus Qunisela Gumede***

Qunisela Gumede was sentenced to two life terms of imprisonment in the Scottburgh Regional Court after pleading guilty to two counts of rape. He was known to the complainants who were aged seven and nine years-old at the time.

The incident occurred in 2012 when the accused called one of the girls into his rondavel to dish up food for him. He raped her and then gave her money to buy sweets. Her sister (the second complainant) was standing in the doorway and witnessed what had happened. She was raped by the accused on another occasion. This complainant told her teacher what had happened and the police were alerted.

***State versus M***

A Hammarsdale man was sentenced to life imprisonment in the Pietermaritzburg Regional Court for the rape of his daughter.

The girl who was six years-old when the rapes began, had been living with her mother and went to live with her father when her mother took ill. She lived with him and his family for four years and on a visit to her mother in 2012, she refused to go back.

A teacher at the school saw that she was not coping and called in her mother and a social worker. At this point the child told them that her father had sexually abused her on several occasions over the past few years.

***State versus Patrick Sekgoro and Another***

Patrick Sekgoro (28) and Elvin Alton Barends (24) appeared before Judge Bulelwa Pakati in the Northern Cape High Court and were found guilty of rape and murder and were sentenced to life imprisonment on each count. The sentences will run concurrently.

Both accused met the deceased Agnes Kedimetse Phoku (53) on the street at Galeshewe. They beat and dragged her to the nearest field where she was raped. She was found the following day with injuries to her head. She was taken to Kimberley hospital to be treated but died eight days later.

### ***State versus O***

The Taung Regional Court sentenced the accused to life imprisonment for two counts of rape. The victims, 8 and 11 years-old respectively, were raped between September and November 2010 at Magogong Village.

The mother of the victims who is related to the accused went to Johannesburg for work, leaving the two victims under his care. In the evenings, he would watch television at a neighbour's house and, on his return would then have sexual intercourse with both victims. The incident happened over a period of two months on different occasions. The victims sustained serious injuries.

The accused threatened to kill them should they report the incident. They only reported the ordeal to their mother when she returned in December 2010.

### ***State versus Mhlonishwa Ellias Mathebula***

Mhlonishwa Ellias Mathebula (33) was given nine life sentences and 90 years after he pleaded guilty to 18 counts of rape in the Scottburgh Regional Court.

From the period of 2008 to 2013, Mathebula accosted females in the south coast area, mainly Umzinto, Hibberdene, Dududu and Msinsini. He targeted women in the early morning as they made their way to school or work and would drag them into the nearby sugarcane fields to rape and assault them. He sometimes acted alone and on occasion with an accomplice whom he did not identify. The complainants were aged between 14 and 40 years and in one instance he raped both a mother and daughter.

### ***State versus Qetelo Andile Pata***

37 year-old Qetelo Andile Pata pleaded guilty in the Pietermaritzburg Regional Court on 31 October 2014 for the sexual assault of one girl and the rape of another. He was sentenced to one life term and 15 years imprisonment.

On that day, the accused, who was known to both girls, sexually assaulted the 13 year-old complainant at his home. He was disturbed by the coughing of a passer-by and this allowed the girl to escape.

Three hours later he visited the second complainant, a 15 year-old girl at her house and told her that he needed to talk to her. They walked back to the house where he raped her. As she was unable to run away from him, he raped her more than once. In his plea, the accused told the court that he felt tempted to commit these acts when he saw the girls.

Although the defence argued in the accused's mitigation on the grounds that he had shown remorse, the prosecutor said the fact that he had previously served a sentence for rape indicated that he had a disregard for the law and the rights of others.

***State versus Mildred Thandi Mndawe***

The accused, Mildred Thandi Mndawe faced charges of fraud, alternatively theft and money laundering, and was convicted of money laundering. The accused was sentenced to pay a fine of R30 000 or four years imprisonment conditionally suspended for five years. The accused was ordered to compensate the complainants, to the amount of R10 000.

The complainants had successfully lodged a claim for land restitution at the Department of Rural Development and Land Reform (DRDLR) Mpumalanga for the Hermansburg farm, under the name Endlovini Community Property Project, in Mbombela, comprising 29 households and having a formally constituted committee. The farm was used for crop farming which the community could not sustain due to financial difficulties. However, they opted to continue with the previous agricultural farming and eco-tourism economic activities.

The accused was a sole member of a close corporation, Sadia Trading cc and also owns a hair salon. She was approached by a syndicate operating within the DRDLR to submit a fraudulent quotation for work purportedly done on the farm. She submitted a quote for an amount of R2.9 million to the officials in the DRDLR who informed her that the amount of money would be paid into her bank account.

After a few days an amount of R2.9 million was electronically transferred into her account. She was instructed to transfer various amounts to the other syndicate members as their share and was given R250 000 as her share. She used a portion of her share to buy a motor vehicle and settled some debts.

***State versus Moses Motlatsi Mpeli***

The Free State High Court sentenced a 25 year-old accused from Dewetsdorp to life imprisonment after he pleaded guilty to rape of his 6 year-old neighbour on 3 December 2013.

The accused sent a girl to the shop. He ordered her to come into the house when she returned but she refused. He then viciously raped her. He threatened to kill her if she ever said a word to anyone about the rape.

The mother of the victim interrogated her until she informed her of what happened. The police searched the house of the accused and found a blood-stained t-shirt and blanket.

***State versus Ashraf Athens Dyers***

Ashraf Athens Dyers from Blydeville near Lichtenburg was sentenced in the North West High Court to three life sentences, 15 and 10 years for rape charges and five years for kidnap after he was found guilty of raping six victims between 2009 and 2013.

The accused raped a 13 year-old girl, two 15 year-olds, a 16 year-old and two adult females. The last victim was forced to accompany him to his residence to rape her overnight.

***State versus Potso Lecheko***

The accused was sentenced by the Protea Magistrate's Court to an effective 20 year jail term for an act of felatio forcefully performed on him, which is categorised as rape under the Sexual Offences Act of 2007.

The accused was charged with three counts (one of housebreaking and two rapes) and sentenced to 15 years for each count. Ten years of count three and two were ordered to run concurrently with the sentence in count one.

During the trial, two women testified how Lecheko broke into their homes in the early morning and assaulted them. He then took them to a spaza shop adjacent to their room where he took off his pants, threatened the complainants with a knife, whilst continuing with the assault and ordered both women to perform an act of felatio. He later locked them inside a wardrobe and fled with goods to the value of R18 000.

***State versus Vuyisile Stofile***

Serial rapist-robber Vuyisile Stofile was given a life sentence and 44 years direct imprisonment after he was convicted on four counts of rape and six counts of robbery with aggravating circumstances. The sentences will not run concurrently.

Stofile's raping spree spanned a period of a few months between 2012 and 2013. In most incidents, his modus operandi was to board public transport from Khayelitsha to Nyanga in the mornings where he got a lift to work. Before going to his spot where his lift to work picked him up, he would wait for potential victims next to a field behind GF Jooste Hospital. He would tell his victims that it was dangerous to walk on the road from Nyanga Junction to the main entrance of the hospital and convinced them of a short and safer route.

He would lure them to a bushy area behind the hospital alongside the railway line in Mannenberg. When they got to the bushy area, he would take out a knife or a gun and threaten to stab or shoot them, demand their cellular phones and money, force them to undress, kneel down and rape them. He would remove the SIM card from their cellular phones. He was linked to the crimes by forensic evidence, cellular phone records and identification parades.

***State versus Andrea Stephanie Bredenhann***

The Rustenburg Regional Court sentenced Andrea Stephanie Bredenhann to six life sentences for contravening the provision of Section 3 of Act 32/2007 (rape), six life sentences for contravening the provision of Section 4 of Act 32/2007 (compelled rape) and 20 years imprisonment for other sexual assault and other charges.

The case of Evert Phillipus Bredenhann, who was originally charged with Bredenhann was postponed to arrange for him to undergo a 30-day observation period in a psychiatric facility. This was after he alleged that he was unable to follow the proceedings due to mental illness.

### ***State versus B***

A 57 year-old man from Boshoff in the Free State was sentenced to three life sentences by the Free State High Court after he was found guilty of raping his two daughters aged 27 and 23 over many years.

Judge F Jordaan sentenced the man to life imprisonment for each count of rape and two years for assault with intent to cause grievous bodily harm. The court heard that the father started raping his 27 year-old daughter in 2002 and the other one from 2007. The rapes continued until he was arrested in April 2013. The elder daughter has two children as a result of the rapes.

### ***State versus Four Minors***

The Bloemfontein Magistrates Court sentenced four boys to 10 years imprisonment each wholly suspended for five years after they were found guilty of raping another boy. Magistrate Jan Greyvenstein sentenced the boys, aged between 13 and 15 years for raping a 10 year-old boy in November 2011.

The court heard that on the day of the incident, all the boys walked together to the soccer ground for practice. When they were done with their soccer practice the four accused pulled the victim, who was the youngest, to a secluded place and raped him.

The four boys said in court that they were playing a 'game' with the victim and in this game they had to penetrate him. They thought that the victim was giving them consent because he was taking part in the game.

### ***State versus S***

The criminal case commonly known as "Griquatown triple murder" against the accused, whose name is withheld because he is a minor, appeared before Judge President Frans Kgomo of the Northern Cape High Court in Kimberley.

The 18 year-old boy was found guilty of murdering the Steenkamp family members and rape of their daughter. The offences were committed on the Steenkamp family farm in Griquatown. The accused was 15 years-old when he committed the offences.

The court sentenced him to an effective 20 years imprisonment. It has to be respected that the accused still has the right to appeal the convictions and the sentences.

### ***State versus Darrel Woest***

Darrel Woest (32) was convicted of nine counts of sexual offences; rape, possession of 351 child porn videos and pictures causing a child to witness a sexual offence.

Mr Darrel Woest was a well-known person to the two minor complainants as he used to give them food. The boys, 11 years-old and 15 years-old respectively, visited him to get food as usual. He raped both victims and later also assaulted them.

The investigation team found a device owned by him which stored a pornographic video of a 3 year-old child wearing a disposable nappy being raped. He was in a possession of 351 pornographic materials in which children were featured.

He was sentenced to an effective prison term of 20 years.

***State versus Thulebona Cyprian Khumalo***

Thulebona Cyprian Khumalo pleaded guilty to rape and robbery with aggravating circumstances in the Stanger Regional Court. The complainant, a 19 year old student at the University of KwaZulu Natal (UKZN) had returned from university and was waiting in the Thembeni area for her family members to take her home, when the accused confronted her.

He attacked her with a bush knife, robbed her of her cell phone and then raped her. When he had fled the scene, the complainant reported the incident to the police. The police traced the stolen cell phone and the accused was arrested. Further evidence was in the form of a positive DNA test.

The accused was sentenced to 10 years for rape and 15 years for robbery with aggravating circumstances, resulting in an effective 25 year term of imprisonment.

***State versus N***

The Mthatha High Court sentenced a 55 year-old man to two life sentences for raping his two daughters over a period of time. The rapist, who cannot be named to protect the identity of his victims, was convicted of raping his biological children during the period between 2009 and 2011 at their Ncambedlana Farms home. When the rapes started, one of the girls was only two years-old and the other six years-old.

During the trial, it emerged that the father was a feared person in their community and used to rule his household with an iron fist, threatening anyone interfering with his family with his licenced firearm. His wife, who married him when she was 19 years-old, and is 25 years his junior, was solely dependent on him.

***State versus Sizwe Thando Dlaminni***

The Scottburgh Regional Court sentenced 22 year-old Sizwe Thando Dlamini to life plus 25 years imprisonment for the kidnapping, rape and murder of a seven year-old girl last year.

The accused broke into the home of an elderly Amandawe resident and kidnapped her grandchild. The child was taken to a river where Dlamini raped and strangled her before throwing her body into the river. Her body was found a few days later.

Dlamini was sentenced to 10 years imprisonment for kidnapping, life imprisonment for rape and 15 years imprisonment for murder. The presiding officer ordered that the sentences for murder and kidnapping run concurrently with that of life.

**Environmental crimes*****State versus Jinhai Xu and Two Others***

Three Chinese nationals were convicted and sentenced in the Vosloorus Regional Court for possession of abalone with an estimated value of R2.1 million and for operating a fish processing plant without permit.



The crime was exposed by neighbours who complained to the Community Policing Forum (CPF) of Vandyk Park about a chemical smell from the accused's premises. This complaint was investigated by the CPF and, on confirmation of wrong-doing; the organised crime unit was contacted. They found the three accused – the dried and frozen abalone was confiscated and the accused arrested.

### ***State versus Mandla Chauke***

The Nelspruit Magistrates court sentenced Mr Mandla Chauke to 77 years imprisonment. Chauke and two others entered the Kruger National Park through the Stolsnek area. The rangers who were doing the anti-poaching patrols in the area heard the gunshots and went to investigate. They discovered that Chauke and his two accomplices had shot three rhinos of which one, an adult bull, was fatally wounded. The cow and the calf were badly wounded but still alive, and lying on the ground suffocating in a pool of their own blood.

They further noticed Chauke with his two accomplices searching in the grass. It later transpired that they were searching for ammunition. Chauke and his accomplice were arguing about not having brought enough ammunition. The rangers instructed Chauke and his two accomplices to stop. A shootout ensued, during which Chauke and one accomplice were wounded. The accomplice later died in hospital while the other managed to escape and ran away. He is still at large. The horns of the bull were recovered from the accused.

He was convicted of murder of the deceased accomplice; illegal hunting of the three rhinos; theft of horns; possession of firearm; possession of ammunition and trespassing. He was sentenced to 15 years for murder, 8 years for theft of horns, 15 years for possession of firearms, 7 years for possession of ammunition, and 2 years for trespassing. The sentence on theft will run concurrently with that of illegal hunting whilst the sentence of possession of a firearm and possession of ammunition will run concurrently with the sentence of murder.

Each of the accused was sentenced to R800 000 or two years imprisonment. A total fine of R2.4 million rand was imposed. The three accused pleaded guilty and the state led evidence in aggravation of sentence through a witness from marine and coastal management branch.

### ***State versus Hugo Ras and Nine Others***

A ruthless rhino killing syndicate of ten members was arrested on 19 September 2014 in various parts of the country. The arrest followed a year-long prosecutorial guided investigation led by the Hawks, resulting in the arrest of the notorious suspects. The state alleges that the syndicate is responsible for the brutal slaughtering and mutilation of rhinos from June 2008 to June 2012. These killings, which include a pregnant rhino cow and a small calf, took place in state and privately owned reserves. The main aim of the syndicate was to obtain as many rhino horns as possible in order to sell them for financial gain. The syndicate sold the rhino horns to the Eastern market eg Vietnamese market. The syndicate operated in Limpopo, Mpumalanga, North West, Gauteng and KwaZulu-Natal.

The ten that appeared in the Hatfield Magistrate Court in Pretoria were Hugo Ras, manager of the syndicate; Trudie Ras; Anton Ras; Arno Smit; Bonnie Steyn, a pilot from Ficksburg; Willie Oosthuizen, a warrant officer from the Organised Crime Unit in Pretoria; Joseph Wilkinson, an attorney from Pretoria, MC Scheepers; Mandla Magagula and Willem van Jaarsveld.



The syndicate illegally obtained 84 rhino horns in a number of ways. 24 rhinos were killed and dehorned of 40 horns. The majority of these rhinos were darted and killed with M99 rifles or other firearms. Only two of them survived the brutal attacks. 14 rhino horns were stolen whereas 29 were obtained by other means. A conservative estimate of the value of 84 horns is R22 million and the value of the 22 rhinos which were killed is R5.5 million.

The ten accused were charged with various common law offences including theft, fraud, malicious injury to property, attempting to defeat the ends of justice as well as statutory offences including racketeering, money laundering, conspiracy, incitement to commit a crime, intimidation, killing and dehorning of rhino as well as illegal possession, transporting and selling of rhino horns and illegal possession of firearms and possession of scheduled substances.

The case was postponed for seven days to 29 September 2014 in the same court in order for the police investigators to verify information obtained during the arrest. All accused will remain in custody. NPA will oppose the bail application by the accused.

## Serious traffic offences

### *State versus Phelelani James Mchunu*

On 23 September 2014, 25 year-old Phelelani James Mchunu was sentenced by the Greytown Regional Court to five years direct imprisonment on five counts of culpable homicide. This relates to an incident that occurred when the bakkie in which he was transporting school children veered into a sludge dam, killing five children.

In his plea, Mchunu admitted that he was negligent for not properly checking the vehicle and ensuring that the brakes were in good working order. Further, he acknowledged that his actions were unlawful and that his negligence led directly to the death of the five children.

## Unlawful possession of firearms

### *State versus Andre Visagie*

Andre Visagie, a 49 year old man and the leader of the Geloftevolk Republikeine, a right-wing organisation that strives for the independence of the Boer nation, was convicted in November 2013 in the Kimberley Regional Court on charges of unlawfully possessing six home-made shotguns, a 9mm semi-automatic pistol, a large quantity of ammunition and parts of a firearm, in contravention of the Firearms Control Act, 2000 (Act No. 60 of 2000).

He was sentenced to an effective five years imprisonment. He applied for leave to appeal on both conviction and sentence. The appeal was granted on conviction but dismissed on sentence.

## Organised crime

### *State versus Martins and Four Others*

Accused one to five were associated and as such constituted an "enterprise" within the meaning of Section 1(1) of the Prevention of Organised Crime Act 121 of 1998. The enterprise engaged in the illegal possession, transportation, storage and sale of abalone and drug dealing in exchange for abalone.

Accused one was not convicted on any of the charges as he was assassinated before judgment was given. Accused four, the wife of accused one, was acquitted on all the charges. Accused two, three and five were convicted on several charges, including conducting an enterprise through a pattern of racketeering, dealing in drugs, and possession of abalone.

Accused two, three and five were each sentenced to 15 years imprisonment for racketeering, while accused two and three were each sentenced to five years imprisonment on each count. Accused two, three and five were each sentenced to two years imprisonment on the abalone charges.

Some of the sentences will run concurrently but an effective sentence of 20 years for accused two and three and 17 years for accused five were imposed.

### ***State versus Chungije Liang***

In this environmental crime matter a significant conviction and sentence, which also received much media attention, was obtained by the DPP Organised Crime Unit. The accused, a Chinese national, was found guilty and sentenced to 10 years imprisonment of which 3 years were suspended on condition that the accused pay a fine in the amount of R5 million in equal portions to CARA and to Cape Nature for possession of ivory – a sentence which will certainly have a significant deterrent effect in respect of prospective offenders of similar offences.

## **Drug trafficking**

### ***State versus James Zuma***

The police were profiling passengers arriving from international destinations at Cape Town International Airport when they noticed the accused appearing very nervous when completing customer documents.

During the interview with the suspect he became very uncomfortable and he said he needed to use the toilet. He subsequently admitted swallowing drugs at Sao Paulo apparently with the view of bringing them in to the country. The accused was arrested and taken to hospital where he discharged 99 units of cocaine valued at R1.1 million.

The accused was found guilty and sentenced to 18 years imprisonment for dealing in drugs.

### ***State versus Riedewaan Abrahams***

On 16 December 2012, the SAPS conducted a S252A operation. The agent was tasked to buy methamphetamine (known as “tik”) worth R50 from a known drug house. The police returned to the house after the agent handed over the drugs. The accused was pointed out by the agent and when police searched his pockets they found the marked money on the accused. During the search of the premises, the police also found 26 heroin “straws” and 26 “tik straws” in the garage.

The accused was found guilty as charged and sentenced to nine years direct imprisonment for dealing in drugs.

## National Specialised Prosecutions Services (NSPS)

### Highlights of achievements

#### **NPA Strategic Objective 2: Improved prosecution of cases that require specialised prosecution**

##### ***Sub-programme 2: National Specialised Prosecutions Services***

**Purpose:** The National Specialised Prosecutions Services deals with priority crimes, litigation, sexual offences and community affairs, and specialised commercial crime.

This sub-programme consists of the following business units which will be discussed below:

- Specialised Commercial Crimes Unit (SCCU)
- Priority Crimes Litigation Unit (PCLU)
- Sexual Offences and Community Affairs (SOCA) Unit

#### **Specialised Commercial Crimes Unit (SCCU)**

The SCCU deals with complex commercial crimes and has offices in all nine provinces.

The most challenging aspect of Outcome 3 of the MTSF is sub-outcome 7 which requires an improvement in trust and willingness to invest in South Africa by investors. A target was set to convict at least 20 people of corruption where the amount benefitted is more than R5 million by 31 March 2015. The NPA exceeded the target in obtaining convictions of 23 accused. The NPA participates in the Anti-Corruption Task Team (ACTT) which was set up to focus on this target.

Notwithstanding the constraints experienced by the SCCU, the unit provided a sterling service to customers by maintaining a high conviction rate of 94.3% against a target of 93% and reaching nine out of its ten performance targets.

The SCCU achieved 1 069 convictions against a target of 988.

The SCCU performed exceptionally well in the area of cybercrime and maintained a high conviction rate of 95.1% against a target of 74%. The NPA further obtained 232 cybercrime convictions.

A special focus of government is corruption. At the end of February 2015; the SCCU had achieved its annual target of 20 accused where the amount benefitted is more than R5m being convicted of corruption.<sup>7</sup> By the end of March 2015, 23 accused where the amount benefitted is more than R5m were convicted of corruption.

Compensation orders for victims of R 51.3m, against the annual target of R30.9m, were obtained.

In line with the priority focus of government on dealing with corrupt government officials, the NPA increased the number of convictions of government officials on corruption charges to 130 compared to 73 during the previous year.<sup>8</sup> This is an increase of 78.1%.

<sup>7</sup> Please note the definition changed in the new MTSF document from 2014/15

<sup>8</sup> There was a change in the MTSF definition and focus is now on all government officials as opposed to just JCPS officials - figures were adapted accordingly

In some of the SCCU regions that have only one dedicated court, limited availability on the court roll contributes to lengthier remands. In the short-term, the SCCU will attempt to alleviate the problem by prosecuting cases in the high court. The SCCU aims to influence the process of establishing more dedicated commercial crime courts.

A joint strategy session with the SAPS was held in May 2014 and a joint strategy to deal with the investigation and prosecution of complex commercial crimes was signed.

The SCCU hosted a successful anti-corruption workshop from 10-12 March 2015, attended by relevant stakeholders both from the public and private sector. A practical action plan to increase anti-corruption efforts emanated from the conference and will be monitored by a coordinating committee.

### Performance of the NSPD against the predetermined objectives

Table 22: Progress on strategic objective 2: Improved prosecution of cases that require specialised prosecutions (NSPS): 2013/14 — 2014/15

Sub-programme 2: National Specialised Prosecution Service (NSPS)					
Performance Against Target					
Performance Indicators	Actual Achievement 2013/14	Planned Target 2014/15	Actual Achievement 2014/15	Deviation from planned Target to actual achievement 2014/15	Comment on deviations
Conviction rate in complex commercial crime	93.9% (1099)	93% (919)	94.3% (1 069)	1.3%	Conviction rates fluctuate from year to year and the performance is in line with the performance of previous years
Number of operational TCCs	38	50	44	-12%	Delays in finalising the recruitment process

### Conviction rate in complex commercial crime

The SCCU maintained a high conviction rate of 94.3% against a target of 93% in all courts. The SCCU's methodology of prosecutor guided investigation greatly contributes to the high conviction rate, in that the SAPS and the prosecution work as a team to ensure the effective and efficient investigation and prosecution of cases. The thorough screening of cases prevents 'deadwood' cases that have no reasonable prospect of success from being placed on the court rolls. SCCU prosecutors are in general experienced and highly skilled in the area of commercial crime due to the principle of dedication to commercial crime. A vigorous training programme is followed at all the SCCU offices. Joint training of the SAPS and the SCCU contribute to notable levels of expertise in dealing with complex commercial crime. The system of co-location with the police and courts also plays an important role in the expeditious finalisation of cases.

## Number of Thuthuzela Care Centres (TCCs)

The number of operational sites providing services in line with verification criteria increased from 38 to 44. The number of matters reported at TCCs decreased slightly by 304 (1%), from 30 706 to 30 402 in comparison to the previous financial year.

*Table 23: Progress on programme performance indicators for improved prosecution of cases that require specialised prosecution (NSPS)*

Sub-programme 2: National Specialised Prosecution Service (NSPS)					
Performance Against Target					
Performance Indicators	Actual Achievement 2013/14	Planned Target 2014/15	Actual Achievement 2014/15	Deviation from planned Target to actual achievement 2014/15	Comment on deviations
Number of persons convicted of corruption or offences related to corruption where the benefit per case is more than R5m	21 (63)	20 (20)	23 (23)	15%	Focus on serious corruption - more cases received from SAPS and NPS which resulted in more persons convicted than benefited
Number of government officials convicted of corruption or offences related to corruption <sup>9</sup>	73	180 (712)	130 <sup>10</sup>	-27.8%	Time to finalise cases is long
Conviction rate in cybercrime prosecution	94.8% (211)	74% (189)	95.1% (232)	21.1%	Conviction rate fluctuates from year to year and the performance is in line with the performance of previous years
% of cases reported at a TCC that is referred to court for prosecution	n/a	51% (7 863)	47.3% (6 845)	-3.7%	Substantial increase in non-arrest dockets
Conviction rate in PCLU	n/a	80% (4/5)	67% (2/3)	-13%	Conviction rate fluctuates from year to year and the performance is in line with the performance of previous years
Percentage of legal opinions provided to the NDPP within 20 days	n/a	100%	100%	0%	Target met

<sup>9</sup> The indicator changed from JCPS officials to government officials

<sup>10</sup> 47 by SCCU and 83 convictions of government officials by NPS equals 130

### **Number of persons convicted of corruption or offences related to corruption where the amount benefited per case is more than R5m**

In partnership with the Anti-Corruption Task Team (ACTT), the SCCU has achieved the target and convicted more accused than planned. Various measures during the year assisted including:

- A workshop between the NPA and ACTT during November 2014. The purpose of this workshop was to reflect on the method of addressing corruption. An assessment was done on what has been done to date, how it was done and whether it was successful. Challenges were also identified and addressed
- A joint strategy between the SCCU and SAPS was signed off and implemented in July. In terms of this strategy, output 7 of the MTSF matters are placed on a priority list and jointly managed by the SCCU and SAPS
- The monitoring and management of these cases is a standing item on the agenda of the six annual SCCU management meetings
- The regional heads of the SCCU monitor and manage these cases and all prosecutors are aware that these matters must be prioritised. They also continuously engage with the judiciary regarding the case flow management of these cases
- Two Deputy Directors of Public Prosecution at SCCU head office have been allocated to oversee the cases in the SCCU regions and the regional heads report monthly to them on these cases and provide a certificate to the effect that they have overseen the case plans of each case. These two deputies engage on a continuous basis with other stakeholders within the ACTT to ensure that investigations are fast-tracked and obstacles are removed. Reports dealing with cases that have been “red-flagged” by the ACTT are always presented at meetings. They also ensure that issues raised at the operational meetings of the ACTT are followed up and the ACTT is provided with feedback on the issues
- Assistance by the NPS, where there are insufficient SCCU resources, was requested and had a positive impact

### **Number of government officials convicted of corruption or offences related to corruption**

The MTSF target for 2014/15 was very high and was reduced from 180 to 72 in the 2015/16 period. The NPS contributed 83 convictions of government officials with various projects implemented with stakeholders in order to curb the corruption that is rife in government departments. Three accused employed by the NPA were convicted in the year. SCCU had an increase of 147.4% (47 officials convicted) from the 19 officials convicted in the previous year whilst the NPS had an increase of 53.7% from the 54 officials convicted the previous year.

### **Conviction rate in cybercrime prosecutions**

In line with the MTSF, a special focus was placed on the prosecution of cybercrime cases in order to curb this growing international phenomenon. Although new technologies create new criminal opportunities rather than new crime types, cybercrime is an extension of an ordinary crime committed within cyber space where information and communication technologies are used as an instrumentality, targets or as a means of perpetuating further crimes.

During 2014/15, the NPA improved the prosecution of cybercrime cases by finalising 16% (32) more cases than in the previous year. A total of 244 cybercrime cases were finalised with a conviction rate of 95.1%. The NPA is reaping results from the special focus placed on the skills development of prosecutors.



Table 24: Cybercrime cases finalised

Financial year	Convictions	Acquittals	Total finalised	Conviction rate
2013/14	200	11	211	94.8%
2014/15	232	12	244	95.1%
<b>Progress</b>	<b>16%</b>	<b>9.1%</b>	<b>15.6%</b>	<b>0.3%</b>

### Conviction rates in the prosecution of sexual offences reported at TCCs

Matters reported at Thuthuzela Care Centres (TCCs), as a result of which police dockets were opened, are submitted to TCC case managers for prosecutor guided investigations. Once these cases are trial- and court-ready they are referred for prosecution. A total of 6 845 cases reported at TCCs were referred to court for prosecution. The percentage of cases reported at TCCs where case managers are appointed that were referred to court for prosecution decreased during 2014/15 to 47.3% from 49.2% in 2013/14. This is due to a considerable increase in the number of non-arrest dockets and “stranger rapes<sup>11</sup>” reported at a number of sites. Therefore the aforementioned will have a negative impact on the number of cases that are trial- and court-ready, resulting in fewer cases being referred to court for prosecution. It will also negatively impact on the actual number of cases being finalised in court in comparison to the previous financial year.

Together with stakeholder colleagues, SOCA embarked on a focused intervention regarding sexual offenses reported at TCCs, to ensure the improvement in the prosecution of these cases with the cooperation of relevant stakeholders. Hence the conviction rate in the prosecution of sexual offences reported at TCCs in 2014/15 was 68.4%, significantly higher than the target of 65% (3.4%). It is also an improvement on the conviction rate of 2.5% against the conviction rate of 2013/14 (65.9%).

For TCC reported cases, victims receive support services by victim assistance officers at the sites whilst case managers are responsible for prosecutor guided investigations. These case managers are legally qualified experts in sexual offences and are also responsible for the prosecution in a number of TCC matters that go to court. The remaining TCC cases are dealt with by NPS prosecutors specialised in sexual offences prosecutions.

The performance of the TCCs is closely monitored and discussed at the provincial oversight committee meetings. The meetings aim to address concerns and challenges in respect of those sites that are not achieving the targets with relevant stakeholders.

### Priority Crimes Litigation Unit (PCLU)

The PCLU is a specialist prosecuting unit in the Office of the National Director, with specific expertise in the prosecution of complex litigation falling within its mandate, as per a proclamation issued by the President, and coordinates the prosecution of matters within its mandate in consultation with the relevant DPP.

The PCLU continued to execute its mandate in managing investigations and prosecuting serious national and international crimes, along with functions assigned to it by the National Director.

<sup>11</sup> Sexual offences committed by unidentified alleged offenders

The unit achieved a conviction rate of 67% (two out of three) on cases prosecuted by the PCLU.

The unit finalised 15 decisions in respect of matters falling within its mandate.

All requests for legal opinions were finalised within 14 days of receiving the request. This is in line with the performance of the previous financial year.

The unit fully complied with the NPA's responsibility for reporting to international bodies.

### **Missing Persons Task Team (MPTT)**

The MPTT, a separate project of the PCLU, is mandated to identify and trace the remains of persons who disappeared during the period covered by the Truth and Reconciliation Commission (TRC). The MPTT continued with research and investigations into the identification, tracing and exhumations of the mortal remains of persons who disappeared during the aforementioned period of conflict.

The MPTT successfully closed 31 cases against the target of 30 (+3%).

## **NOTEWORTHY CASES**

### ***Japie Maponya***

The MPTT conducted extensive investigations in the Piet Retief area and Swaziland in the search for the remains of Japie Maponya, abducted and killed by Vlakplaas operatives in September 1985. The matter was handled through Interpol structures in South Africa and the Royal Swazi Police. Former Vlakplaas commander Eugene de Kock, serving a life sentence for the murder, was taken to the South African border area in partnership with the Department of Correctional Services (DCS) to provide site identification and assist with enquiries related to other parties. The matter is ongoing.

### **1970s detainees**

The MPTT identified a number of individuals detained under Section 6 of the Terrorism Act in the late 1970s who were officially released from detention but never seen again. This pattern of disappearances was not previously noted by the TRC. Co-ordinated investigations are underway into these cases that, *inter alia*, include Elias Shivuri (February 1978), Accadius Busani Ngubo (February 1978), Joel Paile (February 1978), Thembinkosi Sindiswa Mnyazana (April 1978), Thabo Stanley Pule (May 1978), and Gwaza Twalo (May 1980). Others who disappeared in custody at this time include Jobe Ngwenya (1977), Thomas Mmaledimo (1978) and Brian Nomgqokwana (August 1978). The case of Thomas Mmaledimo, last seen in custody in Nebo police station, received particular attention.

Nkosinathi Sydney Mavuka (MK Colbert) disappeared in similar circumstances in the early 1980s and progress was made in tracing witnesses in this regard.

## **Consultations with former security police personnel**

The MPTT held extensive consultations with former Vlakplaas commander Eugene de Kock regarding cases of missing persons. His assistance resulted in the recovery of the remains of Phemelo Ntehelang, described below. Mr de Kock also facilitated MPTT access to certain former security police members. He further made contact and met with several former colleagues in Gauteng, Mpumalanga and North West Provinces in order to obtain information that may lead to the resolution of key cases. This was facilitated by the MPTT in partnership with the DCS.

The MPTT continued to approach other former members of the security forces including former ASKARIS for assistance in establishing the fate of certain missing people.

The MPTT also provided assistance in respect of the Victim-Offender Dialogues (VOD) hosted by the DCS with Mr de Kock in respect of the March 1992 Nelspruit incident which included a missing person, Mr Tiisetso Leballo. Four families were taken to meet Mr de Kock. The MPTT assisted the DCS in carrying out a cleansing ceremony in Nelspruit in January 2015 with families of those killed. The MPTT specifically conducted the site investigation in Nelspruit and obtained documentation for the family in this regard.

## **Exhumations conducted**

The remains of four individuals were exhumed in this period.

Former Vlakplaas commander Eugene de Kock, with another former security policeman, provided assistance in tracing the remains of former Umkhonto weSizwe (MK) member Phemelo Moses Ntehelang, killed at Vlakplaas in July 1989. They were able to identify a large area beside a river on a private farm near Zeerust where they had buried Ntehelang's body twenty six years earlier. The MPTT conducted excavations over a period of five days and ultimately located the remains of Mr Ntehelang wrapped in a blanket with heavy stones on top. Signs of attempts to burn the body were also evident. A public exhumation of his remains was held on 17 December 2014 in the presence of the Ntehelang family, the Deputy Minister of Justice and Correctional Services, and government officials from North West Province. His remains will be handed to his family in the new financial year.

The MPTT also conducted extensive excavations at Mbaleni cemetery in Thohoyandou in search of the remains of missing MK member Carlton Nengudza, believed to have been shot dead in April 1987. The remains of an adult male were located in a pauper's grave and exhumed. Forensic examination is underway and DNA tests will be conducted to establish the identity of the body.

On 13 March 2015 the MPTT conducted the public exhumation of two missing MK members, namely Charles Sandile Ngqobe (MK Timmy Bhengu) and Leon Tebogo Tume (MK Norman Nkosi). Earlier MPTT investigations had established that Mr Bhengu was shot dead in Soweto on 7 January 1986 and had been buried in an unmarked pauper's grave in Dobsonville cemetery. DNA tests on samples from remains in pauper's graves had established his identity. Similarly, previous MPTT investigations had identified, through DNA tests of remains in pauper's graves in Avalon cemetery in Soweto, the remains of Mr Tume, shot dead in Soweto on 13 June 1980. The exhumations were conducted in the presence of the Ngqobe and Tume families, members of the Gauteng Provincial Legislature, and members of MK MVA. The MPTT is currently conducting forensic examination of the two exhumed remains which will be handed to their families in the new year.

## **Excavations conducted**

The MPTT also conducted excavations in several locations that have not yet yielded positive results.

Extensive excavations at sites at Mamelodi cemetery in search of the remains of MK members Odirile “Mainstay” Maponya (killed in 1988) and Samuel Pitsi (1987) were conducted. Over sixty skeletonised remains have been examined at the site but no viable matches have yet been found.

Excavations were also conducted at Bizana in the Eastern Cape in search of the remains of missing MK member Fundisile Ndamase. No viable remains were found.

## **DNA identifications**

Positive DNA matches were obtained in seven cases from remains previously exhumed by the MPTT. These include Richard Lentsela, Mojau Teme, Japie Jacob Phadi, Mzwakhe Phato, Tamsanqa Poto, Archie Lethoko and Leon Tume.

## **Closing of cases**

The MPTT conducted an end-of year progress review of cases and closed 31 cases for the year 2014/15.

## **Handover of remains**

The MPTT participated in three handover ceremonies in the year under review in which the remains of seven individuals were handed over. Five individuals were handed over in East London, one in the Free State (Theunissen) and one in North West Province (Schweizer-Reneke). The MPTT transported and arranged the remains in coffins for these handovers. The MPTT also arranged viewing of the remains for the families and provided an overview of the injuries sustained that led to the deaths as well as DNA reports where required.

## **Legal Affairs Division (LAD)**

2014/15 marks four years since the Legal Affairs Division (LAD) was established in 2010, some years after the establishment of the NPA. As required in its mandate, the LAD continues to provide legal advice, monitor and manage civil litigation matters, process requests for mutual legal assistance and extraditions, and render assistance to the National Director and the NPA in general through legal opinions on case law and high profile cases. It also conducts vetting of contracts entered into between the NPA and various external parties. Over and above monitoring civil matters, the LAD aims to conduct, to a limited extent, some civil matters on its own.

As a relatively new division and with an understanding of the manner in which civil matters are dealt with by the NPA, the LAD will continue to engage with its stakeholders and colleagues from other business units in order to ensure that they understand the LAD’s mandate.

## Civil litigation performance overview for 2014/15

During the year, the LAD received 772 civil actions compared to the 669 civil actions that were received in 2013/14. This is an increase of 15.4%. LAD also received and dealt with 141 applications compared to 42 received in the previous financial year. While this is not a large comparative increase it is important to note that LAD operated with few advocates as a number had resigned for various reasons, putting strain on remaining advocates. Despite these challenges, LAD finalised 23 civil actions and 20 civil applications where the NPA was cited. During this period LAD also drafted and settled 57 discovery affidavits. Numerous consultations were attended with counsel, state attorney and prosecutors involved in the cases. The importance of the role played by LAD during these consultations is crucial as it helps counsel to understand the decisions made by our prosecutors as well as our policies.

During the year, LAD also provided legal advice and comment on legislation and proposed legislation, including the following:

- The Legal Practice Act, 2014 (Act No. 28 of 2014), in particular its impact on the NPA
- The Superior Courts Act, 2013 (Act No. 10 of 2013), and its impact on the NPA
- A proposal by the South African Police Service to amend Schedules 1 and 2 to the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), by including certain substances in the schedules
- The Legal Aid Bill, which was scrutinised and found that it did not affect the NPA. The Portfolio Committee on Justice was notified accordingly.
- The Cybercrime Bill, which was submitted by LAD to the SCCU for comment. The progress of the Criminal Procedure Amendment Bill
- The progress of the Extradition and International Cooperation in Criminal Matters Amendment Bill with the DoJ&CD. These Bills relate to certain recommendations of the Organisation for Economic Cooperation and Development (OECD) Working Group on Bribery
- A proposed amendment of the NPA's Prosecution Policy to give effect to the recommendations of the OECD Working Group on Bribery

Legal opinions and assistance were provided on the following matters:

- The powers, duties and functions of financial investigators and analysts in the AFU
- The application of salary increases for Deputy Directors of Public Prosecutions
- The prescription of traffic fines
- Various draft policies and terms of reference prepared by the Office of the CEO
- Inputs to Support Services relating to the NPA's final Strategic Plan
- The taking of the oath in terms of section 32(2)(a) of the NPA Act
- Assisted in the drafting of a centralisation request
- Drafting of a Ministerial Memorandum and letter for the Minister's signature for the acting appointment of a Deputy Director of Public Prosecutions at the seat of the High Court in Bisho, Eastern Cape
- Legal advice to the NPS regarding the disclosure of information in possession of the NPA
- Legal advice relating to the process to be followed in terms of section 24(3) of the NPA Act when a Special Director wishes to prosecute an accused person in the area of jurisdiction of a DPP at the seat of a high court
- Legal opinion as to whether it is necessary for a prosecutor to take the oath again when promoted

- Legal opinion regarding the interpretation of the expression “settlement allowance”
- Legal opinion regarding the acting appointment of a director in the Office of Witness Protection

The NPA deals with the incoming formal requests for Mutual Legal Assistance (MLA) wherein the Minister has issued a notification in terms of section 7(1) of the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996). These matters are coordinated in the office of the NDPP and the necessary assistance in the execution of the request is rendered in conjunction with the offices of the Directors of Public Prosecutions.

In the case of the incoming requests for extradition the NPA is requested to render the necessary assistance once the Minister has issued a notification in terms of section 5(1) of the Extradition Act, 1962 (Act No. 67 of 1962).

The outgoing requests in both instances are initiated by the DPP in conjunction with SAPS and the LAD has to ensure compliance with relevant international instruments and applicable domestic legislation and advises the NDPP accordingly as his approval for transmission to foreign states is required.

Two representatives of the LAD were appointed to the task team on Trafficking in Persons (TiP). As members of the team, they contributed to the development of the training manual for prosecutors. The LAD representatives were mainly responsible for the development of the chapter on international cooperation as well as PowerPoint presentations as training aids on the subject. The LAD representative responsible for international cooperation, was also responsible, in conjunction with other members of the team, for conducting training nationally. The LAD is also accountable for all work relating to international instruments. These include the OECD Convention on Foreign Bribery, the United National Convention against Corruption, the BRICS agreements, and the G20 Anti-Corruption Working Group.

A member of the LAD has been a permanent member of the OECD Working Group on Bribery since June 2007 and also represents the NPA on the G20 Anti-Corruption Working Group and the BRICS Anti-Corruption sub-committee.

During the year the LAD members attended four international meetings of the OECD Working Group on Bribery in Paris, France and three international meetings of the G20 Anti-Corruption Working Group in June 2014 (Rome), October 2014 (Paris) and March 2015 in Istanbul (Turkey) respectively.

South Africa is one of the lead examining counties to perform the evaluation of Liberia. Two members of the LAD performed this work in Vienna, Austria.

### **Sexual Offences and Community Affairs (SOCA) Unit**

The SOCA unit focuses primarily on issues involving the victimisation of women and children. The SOCA develops strategy and policy relating to sexual offences, domestic violence, human trafficking, maintenance matters and young offenders. The broad outcomes that SOCA seeks to achieve are to:

- Improve the conviction rate in gender-based crimes and crimes against children
- Actively protect vulnerable groups from abuse and violence
- Ensure access to maintenance support
- Systematically reduce secondary victimisation



## Sexual offences

A detailed integrated training programme and manual was developed, including topics on, *inter alia*, the social context, child witnesses, mind maps of the Sexual Offences and Related Matters Act, 2007 (Act No. 32 of 2007), medical examinations, investigations, etc. The content was compiled by a group of experts from the SOCA unit, the SAPS, the Department of Health (DoH) and the Department of Social Development (DSD), under the leadership of the SOCA unit. The content was finalised with additional inputs and sections focussing on stakeholder responsibilities at the TCCs. A training schedule was also developed. The training sessions were facilitated by the SOCA provincial managers with relevant stakeholders as trainers. The content of this material was also reviewed prior to commencement of the programme, and the unit delivered 23 integrated training sessions attended by 563 delegates.

The sexual offences training manual for prosecutors was reviewed during the period and updated with the latest case law and related legislative developments. Training commenced and the unit delivered six training sessions attended by 100 prosecutors.

The SOCA unit provided submissions towards the drafting of the Judicial Matters Second Amendment Act, 2013 (Act No. 43 of 2013). The unit also compiled and submitted comprehensive inputs for the amendment to sections 15 and 16 of this Act. Amendments to the National Register for Sex Offenders, established in terms of the Sexual Offences and Related Matters Amendment Act, 2007 (Act No. 32 of 2007) were also suggested.

The SOCA played a critical role in ensuring the success of the 9<sup>th</sup> APA prosecutorial conference hosted by the DRC in Kinshasa. The conference was preceded by a training session on gender-based violence and environmental crimes. SOCA compiled and developed a comprehensive training programme for sexual gender-based violence, focusing on the following topics:

- Social context related matters in the prosecutorial environment
- International and African policies, proclamations, declarations, etc. dealing with our commitment to curbing and addressing the management of gender-based violence on the continent
- Legislation in South Africa, with emphasis on sexual offences and domestic violence and also sentencing for these offences

Discussions of relevant case law applicable to relevant legislation information session on harmful traditional practices in Africa was also included, and SOCA delivered the three-day training session that was attended by various prosecutors from ten different countries in Africa

The SOCA unit hosted and facilitated the 2014 Africa Sexual and Gender Based Violence Summit during December 2014 in Cape Town attended by approximately 100 delegates, including prosecutors from other African countries. The theme for this year was “Ending Sexual and Gender Based Violence in Africa”.

## Maintenance matters

A total of 222 888 formal and informal maintenance enquiries were processed of which 144 134 (64.7%) were finalised. In comparison to the previous financial year this is an increase of 28 280 matters dealt with. The number of matters finalised increased by 15 724 from 128 410 in the prior financial year to 144 134. This finalisation rate equals 64.7% which is slightly below the target of 65%.

The number of civil attachments [section 26 of the Maintenance Act, 1998 (Act No. 99 of 1998)] finalised and facilitated, was 22 523, which is slightly less (308) than 22 831 in the previous year.

The number of reciprocal maintenance orders decreased with 257 orders obtained compared to 275 last year based on the actual number received and dealt with by senior maintenance prosecutors.

Five maintenance training sessions were conducted during the year, attended by 163 prosecutors.

### **Child justice**

The SOCA coordinated the review process of the child justice training manual and related directives, in line with the latest developments in law focusing on the CJA. Four child justice training sessions were conducted, attended by 84 prosecutors.

Comprehensive inputs were provided to the Department as part of the inter-sectoral child justice committee meetings to be incorporated into the annual Parliamentary report by the Department on diversions, court preparations, training delivered and other related aspects of the CJA.

Detailed diversion analysis reports were completed quarterly, including a comparative analysis of the two previous financial years. Possible reasons for deviations in the provinces were also determined to identify challenges and to ensure that corrective actions are in place.

The SOCA unit participated in the departmental committee to critically analyse the current age of criminal capacity (10 years, section 7 of the CJA). The purpose of this is to enable the committee to provide a comprehensive report to Parliament (in line with section 96(4) of the CJA) based on the review of the current minimum age of criminal capacity.

The SOCA unit also provided feedback on international research conducted internally dealing with the age of criminal capacity in various countries. The SOCA unit gave a presentation on the international trends of criminal capacity and the possible consequences of increasing the age of criminal capacity to a workshop facilitated by the Department. It was resolved that the age of criminal capacity should be increased to 12 years with the provision reviewed in the next five years.

The SOCA unit visited two One-Stop Child Justice Centres. The focus of these visits was to ensure that the CJA is properly interpreted and implemented accordingly.

### **Domestic violence**

The SOCA unit reviewed the domestic violence training manual and updated it with the latest case law and legal developments. Three training sessions, attended by 40 prosecutors, were conducted on the integrated domestic violence manual.

The unit participated in a panel discussion on the role of religious leaders in dealing with the scourge of domestic violence and presented on the domestic violence law, court processes including the legislative protection mechanisms and the post trauma suffered by victims.

The SOCA participated at the national implementation strategy development process which was facilitated by the Department. A national template was developed to reflect all lesbian, gay, bisexual, transsexual and intersexual cases reported and progress with these cases. A separate template was created to incorporate all the withdrawn and undetected cases in order for SAPS to recall these cases. A special team comprising the SAPS, NPA and the Department will analyse all the recalled (withdrawn and undetected) cases to ascertain reasons for withdrawal and if all the necessary steps were taken to ensure investigation of undetected cases and subsequent prosecution if applicable.

Seven *Ndabezitha Izimbizos*, attended by 1 883 community members, were conducted and facilitated by the domestic violence section in SOCA. The main focus of these izimbizos is public awareness/education on sexual and other forms of gender-based violence matters for the communities, in conjunction with the relevant traditional leaders. Included on the programme is an introduction of the SOCA mandate, the TCC-model and the position of law relating to sexual offences, domestic violence, child justice, maintenance and trafficking.

### **Trafficking in persons (TIP)**

Six training sessions on trafficking in persons, attended by 104 prosecutors, were conducted.

The SOCA unit participated in the roundtable discussion on trafficking in persons in Pretoria, where several relevant stakeholders, including SOCA, presented on the legislation, training, and the international perspective on TIP. Most departments reported on their readiness to implement the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013). Victims of trafficking also shared their experiences and how recruiters prey on potential victims' weaknesses, substance abuse and poverty. Based on the training delivered by the NPA (SOCA and NPS) and directives developed, the NPA is ready to implement the above-mentioned Act once it comes into operation.

Together with the International Office for Migration, the SOCA unit developed and presented a training programme for prosecutors from Africa on TIP, in Addis Ababa, Ethiopia. It was attended by 18 delegates from various countries in Africa. The curriculum focused on the South African legal perspective, current legislation, case law, possible challenges, international perspective on trafficking, etc. This training initiative was delivered at the request of APA.

### **High profile cases – SCCU**

Conviction rate in complex commercial crime

#### ***State versus Sifiso Dennis Mlangeni***

The accused was employed in a senior managerial position by Standard Bank Corporate Investment. The duties of the accused included amongst other things, the management of the banking account of the Courier and Freight group (Ltd) which is wholly owned by the South African Postal Office. The accused fabricated/falsified transaction requests and signatures thereto as if same emanated from these entities. The accused opened an Athens Bank Account in the name of Mr Mboneni Nkosi and amounts totalling R1.3 million were transferred thereto. An amount of R4.4 million was transferred to an account belonging to Van Der Venter Mojapelo Attorneys Incorporated. The total amount involved in the 19 counts of fraud was R5.7million. The accused pleaded guilty to 19 counts of fraud and was sentenced to 20 years imprisonment.

***State versus Victor Kwenda and Another***

Accused 1 was employed by MERSETA, a SETA established by the Minister of Higher Education. He was employed as a grants and levies administrator. Accused 1 and 2 were business associates and held co-directorship in a company. Accused two is also a sole member of a closed corporation and occasionally paid grants to qualifying employers who were registered for skills development. Accused 1 acting in concert with accused 2 changed the banking details of qualifying employers and substituted them with those of BIU Trading, the cc of accused 2 with the result that those grant payments were unlawfully paid into the account of BIU and/or Accused 2. The total amounts so transferred was R4.8 million. The two accused were charged with 26 counts of fraud to the tune of R4.8 million. Both accused pleaded guilty to the charges. The accused were both sentenced to 20 years imprisonment.

***State versus Jose Maria Seri***

The accused had knowledge of various taxpayers that were to receive income tax and vat refunds. The bank details of these taxpayers were then changed and refunds in 13 different amounts totalling R19 million were paid to the accused. The accused was charged with one count of money laundering and 13 counts of fraud. Accused pleaded guilty to the charges and was sentenced as follows: count 1: 5 yrs. imprisonment, counts 3 – 13: 15 yrs. imprisonment on each count. The sentences on counts 3 to 13 are to run concurrently. Effective sentence is 20 years imprisonment.

***State versus Lucille Borill***

The accused was a partner in a firm of chartered accountants. The firm was mandated to perform various accounting services for a diamond broker. The broker provided the accused with access to his internet banking service. He also provided her with several blank cheques in order for her to perform the aforementioned services. During 2011 the accused transferred two amounts from the broker's account to personal accounts controlled by her. She also used two of the blank cheques to settle personal debts incurred by her. The total actual loss amounted to R2.7 million. After a trial she was convicted on 4 counts of fraud. Counts 1, 2 and 3 were taken together for purposes of sentence and the accused was sentenced to 15 years imprisonment. On count 4 the court found that there were no substantial and compelling circumstances and the accused was sentenced to 15 years imprisonment. The two sentences were ordered to run concurrently.

***State versus Porsha Moore***

The accused was employed as a creditors' clerk and bookkeeper by Rhymco (Pty) Ltd which produces and markets yeast, dough raising and fermentation technology. The accused had access to the banking accounts of the company and her duties were to receive cash from the company's debtors and to make payments to its creditors. The accused defrauded her employer by performing 85 electronic payments from the company's bank accounts into her personal bank accounts to the tune of R9.2 million over a period of three years. The funds were transferred to her bank account under the pretext that they were payable to the company's creditors and this was done by falsifying the company's accounting records. Accused was convicted of 85 counts of fraud. Evidence of a gambling addiction was led in mitigation of sentence. The accused was sentenced to 15 years imprisonment.

***State versus Riette van der Merwe:***

The accused was employed at Groundwork Consulting (Pty) Ltd as a senior bookkeeper. She made use of her internet access to the complainant's business bank accounts to make unauthorised payments from the complainant's account in the amount of R5.6 million to her personal account. She was charged with 190 counts of theft, pleaded guilty thereto and was sentenced to 15 years imprisonment.

***State versus Govender***

Tharmaville Govender is accused two in this case. She was employed by a company called Thyssen Krupp SA (Pty) Ltd and at the time of her arrest she held the position of a bookkeeper. Her duties included but were not limited to making or causing payments to be made to creditors of the company, preparing the payroll for salaries and wages and other general accounting duties. Together with Neelambal Moodley (who is accused one in a pending matter) and Stuart Duncan Klorke who is accused two in another court; she acted with common intent and in furtherance of common purpose transferred or caused the transfer of an amount of R8.4 million into their respective accounts. The accused were not creditors of the company. They created fictitious creditors and thereby causing money to be paid into their account. Accused two received a total amount of R4 million.

The accused was convicted and sentenced to 15 years imprisonment.

***State versus Sanna***

The accused was employed at Mercguard Insurance Brokers (Pty) Ltd as a group accountant and/or financial manager from 1998 until December 2004. His duties included, inter alia, the financial management of all subsidiaries of Mercguard, in particular the Admin Place (Pty) Ltd. The accused was subsequently appointed to the position of internal auditor and/or administrative clerk and carried the same responsibilities at First Link until July 2005. The accused had internet access to all bank accounts held by Mercguard and/or First Link. Various electronic transfers were made from the dormant (Matrix) account held by Mercguard at Mercantile Bank to various accounts, including the accused's personal accounts, Sanna Industrial Holdings (Pty) Ltd account and the accused's creditors. The accused was the sole director of Sanna Holdings. The state alleged that the accused conducted various electronic transfers on 743 times amounting to R9.8 million to these accounts under the pretext that they were business related and/or such payments were made on behalf of the employer for the benefit of its creditors. The accused was found guilty on all 743 counts of fraud and was sentenced to 15 years direct imprisonment.

**Government officials convicted of corruption*****State versus Cornelius Cameron Wessels***

The accused, a Cape Town sergeant, was sentenced to eight years direct imprisonment after he was convicted of corruption at the Bellville Specialised Commercial Crimes Court.

Police officers working at the Cape Town Police Station were involved in drug dealing. An undercover operation was set up to trap and arrest those involved. Five police officers formed part of the undercover operation.

A police agent involved in the undercover operation was “arrested” for possession of dagga. He was detained at the Cape Town Police Station.

Another undercover police officer was handed a R100 note with a serial number known to the police and a white container containing food and four sealed bags of dagga concealed underneath the food. He was told to go to the Cape Town Police Station and request the accused to hand over the container to the “inmate” and pay the accused with the marked R100.

When the undercover police officer arrived at the police station, the accused told him to come back later as his supervisor was still at the office. After the supervisor had left, the undercover police officer handed him the container and later paid him the R100.

The accused delivered the container with the food to the arrested undercover agent (inmate) who opened the container and exposed the four sealed dagga bags. Although he saw the dagga bags, the accused did not seize them instead he advised him to flush the papers in the toilet.

The accused was arrested and the R100 note was found in his pants.

### ***State versus Sanele Witness Zungu***

Sanele Witness Zungu, (27) was sentenced to six years direct imprisonment for fraud at the Melmoth Regional Court. Ms Zungu, a Department of Home Affairs (DoH) employee, was convicted for fraudulently issuing birth certificates and identity documents (ID).

In 2010, the complainant was at Melmoth hospital when the doctor asked her to produce her ID to facilitate an application for disability grant. A cleaner at the hospital overheard her telling the doctor that she did not have an ID. The cleaner then approached the complainant and told her about the accused who can arrange the documentation.

The complainant visited the DoH and met with the accused. Ms Zungu advised the complainant that she would have to pay R1 200 and she would be issued with a birth certificate followed by an ID. The complainant paid the accused this sum of money over a period of time, however, when she received the birth certificate it contained an incorrect date of birth. The accused then agreed to rectify the problem and asked the complainant to come back after some time.

Ms Zungu was off sick on the day that the complainant went back to the DoH and she was assisted by another employee. Once this employee realised that something was wrong, he questioned the complainant and raised the alarm. The police were contacted and a trap was set. The complainant was given trap (marked) money to pay Ms Zungu who was subsequently arrested.

### ***State versus Ricardo Abrahams***

The accused, a member of SAPS, was convicted and sentenced on a charge of corruption to eight years imprisonment. He accepted a bribe of R700 to convey drugs to prisoners in a section 252A trap.



***State versus Francke***

Similar to the Wessels matter (supra), the accused, a SAPS cell guard, accepted a bribe of R500 in a section 252A trap to convey a parcel to a prisoner in the cells. The magistrate handed down a substantial sentence of 8 years imprisonment.

***State versus Thobile Gqola***

Former City of Cape Town Councillor, Thobile Gqola, was sentenced to six years direct imprisonment in the Bellville Special Commercial Crimes Court after he was convicted on three counts of fraud and six counts of corruption. He faced five counts of fraud and seven counts of corruption but was acquitted on other counts after witnesses could not be traced.

The accused, who was a ward councillor and a public figure at the time of his crimes, promised unsuspecting and desperate residents that they would receive government flats and houses if they paid him R7 000, provided him with copies of their identity documents and, in some instances, with the birth certificates of their children. He would ask for a deposit of R3 000 and then collect the remaining R4 000 later. He took the money from five people - all residents of Lower Crossroads, but never delivered on the promised properties.

***State versus Modiba and Another***

The accused are former DoJ&CD officials convicted of racketeering and fraud charges. It was found that, over an extended period of time, both accused had defrauded the employer by processing fraudulent payments to service providers to the value of R3.4 million. Accused one was sentenced to an effective term of 10 years imprisonment. A confiscation order to the value of R750 000 was secured against his pension. Accused two was sentenced to an effective term of five years imprisonment.

***State versus Phuthu Tshivhanganyi***

The Alexandra Regional Court convicted and sentenced a former acting court manager in the DoJ&CD for two counts of fraud and one count of theft to the total of R60 000.

The accused was sentenced to five years imprisonment in terms of Section 276(1)(i) of Act 51 of 1977 and another five years for count 2 and 3 which is wholly suspended for five years on condition that she is not found guilty of a similar offence during the period of suspension.

The accused held a rank of a senior administration officer at Protea Magistrates Court and was later appointed as acting court manager. It was during this period that these crimes were committed. The accused instructed her subordinates to deposit money due to the DoJ&CD into her personal account stating that her supervisor had directed that the money be given to her.

Further amounts were also taken from the cash hall by the accused from her juniors under the pretext that the money will be given to the supervisor. The investigations revealed that there was no instruction from the supervisor; instead, the accused pocketed the money. She was subsequently charged criminally and departmentally, proceedings that led to her dismissal and guilty verdict in the criminal court.

This is one of the cases emanating from an investigation and prosecutorial task team, mandated to recover about R30 million lost in cash halls in the DoJ&CD's jurisdiction of Gauteng Regional Office, with Protea Magistrates Court amongst the offices under investigation.

### **Corrupt activities relating to foreign public officials**

#### ***State versus Nkaya***

In this matter, the accused offered a bribe of R1 000 to a member of the American consulate in Cape Town to obtain a visa. The accused was sentenced in terms of a plea agreement to a R20 000 fine, half of which was suspended. As far as can be established, this is the first conviction in South Africa for corrupt activities relating to foreign public officials in terms of section 5 of the Prevention and Combating of Corrupt Activities, 2004 (Act No. 12 of 2004) (PRECCA).

Conviction rate in cybercrime prosecutions

#### ***State versus Steward Taylor***

The accused presented a cloned/duplicated card on four occasions during a two-day period. He was found in possession of this cloned card on his arrest. Also in his possession was an identity document of another person with the accused's photo inserted. This identity document was used to open a store account (identity theft). The store was targeted with two of the purchases. The total amount involved was approximately R26 000. It was clear that a syndicate was involved because the particulars of the same card were also used by another runner. The accused was sentenced to five years imprisonment.

#### ***State versus M Kwenda***

The 27 year accused was sentenced to an effective period of two years imprisonment for offences related to fraud and the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) (ECT Act) violations involving an amount of R32 349. The accused was a first offender.

#### ***State versus Siyamyanda Patshwa***

The accused was convicted of one count of conspiracy to commit fraud and 49 counts of contraventions of Section 86(4) of the ECT Act. The accused was found in possession of a skimming device and cloned cards. He was sentenced to an effective period of 6 years imprisonment.

### **Corruption relating to match fixing in sport**

#### ***State versus Malgas***

This matter developed out of the earlier Setshedi soccer referee corruption trial and conviction for match-fixing. The accused was convicted on both counts ie being an accomplice to match-fixing and perjury. He was sentenced to two years imprisonment on the corruption count and two years imprisonment on the perjury count, not to run concurrently. The accused subsequently applied for leave to appeal the conviction and sentence but this has been denied. The defence indicated that they will petition the high court.

## **Corruption where the amount benefited is more than R5 million**

### ***State versus Webb's Arms and Ammunition cc and Two Others***

Accused three is the sole member of both accused one and accused two. Accused one traded as a general arms and ammunition dealer in Port Elizabeth. Accused three was the owner of a house, situated in an affluent area in Port Elizabeth. Accused three indicated to SARS that he operated a guest house in the name of Arthur's Guest House from the aforesaid address.

Accused two purportedly did research and development and more specifically designed an aerial arms platform system. Accused four, in his private capacity, performed administrative and bookkeeping functions, as a servant or agent of accused one and/or accused two and/or accused three and/or Arthur's Guest House and/or other businesses which were owned by accused three.

Accused four was employed at SARS as a client analyst for a period of 12 years, conducting the role of a refund risk screener. Prior to being a client analyst, he was a Value Added Tax (VAT) audit team leader for seven years.

Accused four assisted accused three in the calculation of the figures of the said VAT 201 forms for accused one, accused two, accused three and the other aforesaid entities for presentation to SARS.

As an employee of SARS, accused four made entries on a so-called scratchpad function on the vendor's electronic file in cases where no risk or low-risk were identified. Accused four made various fraudulent scratchpad entries in an endeavour to convince SARS to pay VAT refunds to accused one, accused two and accused three.

A VAT audit relating to the February 2011 VAT period of accused one was carried out by the VAT audit section of SARS.

Accused three in the execution of a common purpose with accused four submitted false documents, in order to substantiate the aforesaid VAT claim of accused one, for the said period to SARS.

The accused were sentenced as follows:

Accused one and accused two were sentenced to a fine of R100 000 which was suspended for a period of five years. Accused three was sentenced to 15 years imprisonment of each of the four counts. It was ordered that the sentences run concurrently.

### ***State versus Eben Kotze***

This complicated and involved commercial matter was prosecuted in the high court before Coetzee, J. The accused was arraigned on 19 charges of fraud, 16 charges of corruption, one charge of theft, 13 charges of money laundering and one charge of perjury.

In essence, the accused, who was the Head: Property Finance Division of Imperial Bank Ltd (IBL) at the time, and also an Executive Director for a period, received illegal profits (by interposing legal entities in which he had an interest between the original seller of immovable properties and the eventual buyer thereof and then increasing the price of the properties to the eventual buyer, where-after the property developments were then financed by IBL at the higher price, thereby realising illegal profits) and corrupt payments from property developers in exchange for various actions on his part, eg irregularly approving progress payment claims made by them.

These illegal profits and corrupt payments were in some cases laundered through the trust accounts of attorneys who were involved in the registration of such properties and the applicable mortgage bonds in favour of IBL. The amount involved in the case is approximately R240 million, and it was alleged that the accused received corrupt payments to the value of nearly R7.9 million and illegal profits to the value of approximately R1.5 million.

The accused was convicted on all 50 counts and sentenced to 19 years imprisonment.

### ***State versus Clive Thulani Nxele***

A former employee of Mott MacDonald South Africa (Pty) Ltd, Clive Thulani Nxele was sentenced to an effective 20 years in prison by the Johannesburg Commercial Crimes Court. On 83 occasions, the accused transferred a total of R8.9 million from the account/s of his employer to his own bank accounts whilst employed as an accountant at Mott MacDonald. Nxele pleaded guilty to all 83 counts of theft committed between April 2008 and January 2013.

### ***State versus Gary Patrick Porritt***

This matter has a long and protracted history, and it was the fourth time that the case or aspects relevant thereto came before the Supreme Court of Appeal in Bloemfontein. The latest appeal arose from an order given by the South Gauteng High Court in Johannesburg, per Mailula J, in terms on which the two prosecutors assigned to the case, were removed from the matter.

Pursuant to the reported decision of ***Bonugli and Another versus Deputy National Director of Public Prosecutions and Others***, the issue relating to the recusal or removal of prosecutors caused various problems in a number of high profile cases, particularly in relation to outsourced counsel appointed in terms of Section 38 of the National Prosecuting Authority Act. The same test was applied for the removal or disqualification of prosecutors as that applicable to the recusal of judicial officers. In many instances this was simply a tactical ploy by accused persons to have experienced prosecutors (sometimes advocates in private practice holding SC status) removed from their cases, in the hope that they would stand a better chance of escaping conviction. However, the Supreme Court of Appeal (SCA) in a landmark judgment has now brought clarity to this issue and has also set aside the judgment by Mailula J to remove the two prosecutors from the case.

Essentially, the SCA ruled that the test for the recusal of a prosecutor is different to that of a judicial officer by reason thereof that their respective roles in an adversarial system cannot be equated. It has been affirmed by the court, and is now settled law, that a prosecutor can only be removed from a case if he or she misconducts him or herself or acts in an improper manner to the extent of occasioning substantive trial unfairness.

***State versus Warren Lubke***

The accused was employed by Pick n Pay Retailers Limited (PnP) in the capacity of a General Manager Fresh Produce. His responsibilities *inter alia* included overseeing the marketing of fresh produce between PnP and its suppliers. Through his work relationship with the supplier (Up to Date Sales known as UTD), he established a rebate account into which a percentage of all PnP invoicing would be allocated. PnP promotions were then funded from this account which ensured that UTD suffered no financial impact as a result of promotions. PnP had no control over or access to the rebate account albeit trite that it had a substantial interest in it. Syner-G marketing and Events was at all relevant times a company involved with coordinating events for and on behalf of PnP including promotions, sport and etc., and the accused knew of Syner-G bank account albeit had no access or rights to the account. The accused was at all relevant times a member of Close Prop 12 cc and a sole signatory on the bank account. Whilst the rebate account had been in place, the accused utilized Syner-G invoicing letterheads, and issued fictitious invoices by replacing the SynerG banking details with the Close Prop 12 cc banking details. The said invoices were issued to UTD and paid by them from the rebate account to the total amount of R4, 3 million. It is noteworthy to indicate that the accused had prior to court appearance sold his assets and repaid PnP an amount of R850 000 held in attorneys trust. During evidence on sentence, it transpired that he held shares in PnP in the amount of R580 000, Pension Benefits in approximate amount of R1 million and leave pays in the amount of R43437. The accused made an offer that was accepted by PnP to forfeit all these benefits to recoup the loss suffered. The accused was sentenced to 12 years imprisonment.

***State versus Da Fonseca and Another***

The accused, who had both been employed in senior positions at BHP Billiton in Richards Bay, committed 106 offences of corruption over a period of six years between April 2007 and 5 June 2013. The crimes were executed by the accused agreeing with sub-contractors to inflate quotations and invoices that were submitted by their employer to customers for payment. Once the inflated price was paid by the customer, unbeknown to the accused's employer, the inflated amounts were secretly shared between the accused and the sub-contractors.

The accused, both first offenders who had refunded the entire amount of R5.5 million to the complainant prior to their sentence, were sentenced to a fine of R100 000 or three years imprisonment, plus five years imprisonment wholly suspended for five years in addition to three years correctional supervision.

***State versus Madimetja Harry Maja***

The joint co-operation between the Department of Trade and Industry's (DTI) Companies and Intellectual Property Commission (CIPC), the Hawks, SARS, and the SCCU resulted in the conviction of a syndicate that operated within DTI and SARS to fraudulently hijack the identities of big corporations.

This is the first conviction for company hijacking under the new Companies Act, 2008 (Act No. 71 of 2008) (Companies Act, 2008) which established the Companies and Intellectual Property Commission (CIPC) as a juristic person to function as an organ of state within the public administration, but as an institution outside the public service.

The accused was a member of a syndicate that fraudulently submitted CM29 forms to the CIPC together with minutes and resolutions for the amendment of directorships of Coca Cola Africa (Pty) Ltd, Remag (Pty) Ltd, NtiroTechnolgies (Pty) Ltd and MJS Trading (Pty) Ltd. He was found guilty of fraud. His role as a member of the public in the syndicate was to assist members of public to register companies and submit documents to an employee at CIPC. They gave out and pretended that they were authorised to submit the CM29 documents for the appointment of directors of Coca Cola Africa, Remag, Ntiro Technolgies and MJS Trading. They pretended that the CM29 documents presented were legitimate and official, and that, in terms of the minutes and resolutions, the six directors of Coca Cola (Pty) Ltd, Remag (Pty) Ltd, NtiroTechnolgies and MJS Trading had resigned and or removed. They fraudulently presented copies of the identity documents for the new directors with the names, reason for resignation and dates.

They induced the CIPC and its officials to accept and believe that the information was true and correct in the amount of R7.5 million for rebate from SARS.

### ***State versus Antony Ian Marais***

A 39 year-old chartered accountant, Antony Ian Marais, was sentenced to five years direct imprisonment for fraud in the Durban Specialised Commercial Crimes Court.

Mr Marais ran an accounting practice in La Lucia, Durban North, where he received money from clients that was to be either invested or kept in a trust. He used these funds for his personal gain under the pretence that the money would be secure. To date, no money has been returned to the complainants.

One complainant, an 85 year-old man, had handed over his life savings to the accused as he was told by the accused that the money would be invested.

The complainant could not testify in court and the state successfully applied to hand in his affidavit in terms of Section 3(c) of the Law of Evidence Amendment Act 45 of 1988.

The defence made an application for leave to appeal the accused's conviction, however this was denied.

## **Noteworthy cases – PCLU**

### ***State versus Johan Prinsloo***

The accused, a right-wing extremist, was convicted in the Bloemfontein High Court on a charge of high treason, alternative conspiracy to engage in terrorist activities for his role in the thwarted attack on the President of the RSA and senior Cabinet ministers of the government of the Republic at the African National Congress' (ANC's) elective conference in Mangaung during December 2012. The accused was found guilty on the main charge, high treason, and was sentenced to 15 years imprisonment of which five years were suspended.

A further six years imprisonment for possession of ammunition, of which three years would run concurrently with the main charge, was handed down. Therefore an effective sentence of 13 years imprisonment was achieved in this case.



***State v Henry Okah***

During the previous reporting period, the accused, a Nigerian national, was convicted on 13 terror-related charges in contravention of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004) in the South Gauteng High Court. The charges primarily related to acts of terrorism committed in Nigeria, flowing from the accused's leadership of a Nigerian political movement (MEND). Further charges related to threats directed at South Africa's business interests in Nigeria. The accused was sentenced to serve an effective 24 years imprisonment.

***State versus Uriwani and Five Others***

The six accused are foreign nationals from, inter alia, Rwanda, Uganda and Tanzania, who were arraigned in the Johannesburg Regional Court on charges of attempted murder, unlawful possession of a firearm and ammunition for a failed assassination attempt on former Rwandan General, Kayumba Nyamwasa, who had been given asylum in South Africa. Four of the six accused were found guilty. The court found that there was a political motive. The accused were sentenced to eight years imprisonment on the attempted murder charge, five years on the possession of unlicensed firearms charge and two years on the possession of unlawful ammunition.

**Noteworthy cases – SOCA Unit*****State versus A Gangathela***

In a case heard in the Mthatha, Eastern Cape, Thuthuzela Care Centre, the accused was charged with four counts of rape of the victim, who was 12 years-old at the time. The accused is an uncle to the victim and the incidents occurred more than once at their common home. The case manager took over the case and proceeded with the prosecution. The accused was convicted and sentenced to imprisonment of 30 years. In a second case (also prosecuted by the same case manager) involving the accused with the same victim, the accused was also convicted and sentenced to a further 30 years imprisonment.

***State versus Mahola and Two Others***

Two of the accused gang raped the victim and were charged with rape and robbery. Accused one is still at large. After separation of the trials, accused two was convicted of robbery and sentenced to ten years imprisonment, while accused three was convicted of rape and sentenced to life imprisonment.

***State versus Mabuza***

In this case in Mpumalanga, the accused was charged with section 71 of the Sexual Offences and Related Matters Amendment Act, 2007 (Act No. 32 of 2007) (trafficking for sexual exploitation), convicted and sentenced to eight life imprisonments.

### ***State versus B***

The accused in this North West case was charged with 41 counts of contravening provisions in the Sexual Offences and Related Matters Amendment Act, 2007 (Act No. 32 of 2007) and the Children's Act, 2005 (Act No 38 of 2005) After separation of trials, accused two was convicted on 35 counts. Three biological children were abused and forced to have sexual intercourse for a number of years by the parents. Accused were sentenced to, inter alia, 12 life imprisonment sentences on six charges of rape and six charges of compelled rape. The case manager for the Klerksdorp TCC prosecuted the matter.

### ***State versus Jezile***

The accused was charged with section 71 of Sexual Offences and Related Matters Amendment Act, 2007 (Act No. 32 of 2007) and rape, convicted and sentenced to 22 years imprisonment. The Case manager of Manenberg Western Cape assisted with the prosecution. The full bench of the Western Cape High Court confirmed the conviction and sentence on appeal.

## **Noteworthy cases – LAD**

### **Constitutional challenge by Kunjana against the Minister of Justice and Others**

Kunjana challenged the constitutionality of section 11 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992) (Drugs Act) as well as the constitutionality and lawfulness of the conduct of the searches at her premises.

Section 11 authorises a police official to conduct warrantless search and seizure if he or she has reasonable grounds to suspect that an offence under the Drugs Act has been or is about to be committed.

In this matter, the police conducted warrantless search and seizure in terms of section 11 at the premises of Kunjana and seized bags of drugs. The criminal case against Kunjana is on hold pending the finalisation of this application.

The LAD agreed with the views of counsel that the applicant is correct that section 11(1)(a) and (g) of the Drugs Act infringes the right to privacy in terms of section 14 of the Constitution and the infringement is not justifiable in terms of section 36 of the Constitution.

The LAD agreed with the views of counsel that the state should concede that the infringement is not justifiable in terms of section 36 of the Constitution and the relevant subsections are unconstitutional.

Furthermore, the state should ask the court to make a declaration of invalidity which is prospective and not in any way retrospective.

### **Dagga matters**

The LAD is handling 17 applications and six action proceedings in which the applicants have brought several identical proceedings in various provinces to challenge section 4(b) of the Drugs Act and section 22A(10) of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965) (Medicines Act).

The applicants are members of the Dagga Party and they include Mr Gareth Prince who previously initiated similar proceedings in the High Court of South Africa, which was subsequently sent to the Supreme Court of Appeal (SCA) and ultimately the Constitutional Court.

In both the SCA and the Constitutional Court (***Prince versus President Law Society of the Cape of Good Hope and Others 2002 (CC)***), the applicant brought a more refined constitutional challenge to the impugned provisions.

The applicant challenged that the impugned provisions were overbroad only in so far as they relate to the use or possession of cannabis as part of religious ritual. He did not dispute that the prohibition served a legitimate government purpose, but claimed that the ban is based on prejudice and bigotry.

The applicants broadened the challenge further to include a total legitimisation of cannabis. The reasons the applicants advance in support of their claim of unconstitutionality were, however, reminiscent of issues resolved in the earlier proceedings.

The applicants also resorted to bringing a stay of prosecution of current criminal cases against them pending the constitutional challenge applications and action proceedings.

The LAD has now received one judgment in which the applicants asked the court to grant a blanket stay of all pending dagga criminal cases in the country. The LAD attended the consultation in this matter with counsel and made inputs to the answering affidavit.

## Asset Forfeiture Unit (AFU)

### NPA strategic objective 3: Ensure that profit is removed from crime

**Purpose:** The Asset Forfeiture Unit (AFU) seizes assets that are the proceeds of crime or have been part of an offence through a criminal or civil process.

### Programme Performance indicators for sub-programme 3

Table 25: Progress on NPA strategic objective 3: Ensure that profit is removed from crime

Sub-programme 3: Asset Forfeiture Unit					
Performance Against Target					
Strategic Objectives	Actual Achievement 2013/14	Planned Target 2014/15	Actual Achievement 2014/15	Deviation from planned Target to actual achievement 2014/15	Comment on deviations
Number of completed forfeiture cases	390	324	463	42.9%	Increased productivity and increase in smaller orders from good collaboration with WCP DPP
Value of freezing orders (Rm)	R701.5m	R755m	R2 756m	265%	1 case of R1.486 b and 3 of over R100m done. Focus on high value cases, improved investigation of such cases by DPCI and SIU at ACTT, increased use of non-conviction based forfeiture to speed up cases

## Number of completed forfeiture cases

The AFU did exceptionally well due to increased productivity and its continued success with the strategy with the Western Cape's prosecution service. This has increased the number of confiscation orders in relatively small cases by about 90 cases per year over the last four years.

This assisted the unit to achieve its best ever performance, obtaining 463 forfeiture and confiscation orders – an exceptional 18.7% improvement on its previous best performance of 390 in 2013/14. This performance exceeded the annual target of 324 by 42.9%. The performance within this indicator improved immensely by 53.3% over the last two years.

## Analysis of performance trends

Performance had improved up to 2010/11 to a peak of 320. However, performance decreased in the two years after that due to capacity constraints. This was mitigated to some extent by the increasing number of smaller orders in the Western Cape.

As can be seen in the table below, performance has improved dramatically by 53.3% over the last two years.

In addition to the initiative with the prosecution service in the Western Cape, the strategy of doing more cases through chapter 6 of POCA, which does not require a conviction, has enabled the AFU to finalise matters faster as it does not have to wait for the finalisation of the criminal case.

After the excellent performance in the past two years, the AFU increased its target for 2015/16 by 30% to 420 orders, with an increase of 2.3% per annum thereafter. In view of the continued excellent performance, targets for future years may need to be increased even further.

Table 26: Annual comparison of performance: 2010/11 – 2014/15

Indicator	2010/11	2011/12	2012/13	2013/14	2014/15	Change over prev yr	Change over period
Number of completed forfeiture cases	320	300	302	390	463	18.7%	44.7%
Target	300	306	312	318	324	1.9%	8%

## Value of freezing orders

The AFU achieved its best ever performance, obtaining freezing orders to the value of R2.8 billion, significantly exceeding the annual target of R755 million by 265% and last year's performance by 293%. The unit also exceeded its previous best ever annual performance in 2006/07 by 108%.

This outstanding performance is the result of the strategy of focusing on high value cases, and working more closely with the DPCI, SIU and ACTT which assisted in finalising investigations in big cases more speedily and effectively.

Overall, 81% of the total value of freezing orders came from ACTT cases. As discussed below, this is large increase from 64% in the previous year.

## Analysis of performance trends

As can be seen below, performance stabilised and declined slightly in the two years after 2010/11, but has increased significantly over the past two years due to the factors discussed above. The AFU has increased its targets for future years to accommodate this increase. It proposes a very high increase of 58.9% over the next three years or 16.7% pa. However, the huge increase in performance in 2014/15 is not likely to be sustained as it is mainly due to one very big matter of R1.8 billion consisting of two orders.

The strategy of doing as many cases as possible through the non-conviction based process in Chapter 6 also played an important role as cases can be prepared for court more quickly as the process is not dependent on the finalisation of the criminal trial. The impact of this strategy is clearly reflected in the increase proportion of assets frozen through Chapter 6, i.e. 17% in the ten years up to 2009, 26% in the next four years, 66% in 2013/14 and over 85% in 2014/15. Thus the AFU has increased its target by 59% to R1.2 billion over the next three years of 15.7% per annum.

Table 27: Annual comparison of performance: 201/11 – 2014/15

Indicator	2010/11	2011/12	2012/13	2013/14	2014/15	Change over prev yr	Change over period
Value of freezing orders	R549m	R553m	R518m	R701m	R2 756m	293%	402%
Target	R500m	R550m	R600m	R710m	R755m	6.3%	51%

Table 28: Progress on programme performance indicators to ensure that profit is removed from crime

Sub-programme 3: Asset Forfeiture Unit					
Performance Against Target					
Performance Indicators	Actual Achievement 2013/14	Planned Target 2014/15	Actual Achievement 2014/15	Deviation from planned Target to actual achievement 2014/15	Comment on deviations
Number of freezing orders	363	281	342	21.7%	Focus on resolving inhibiting factors with partners
Value of completed forfeiture cases	R296.4m	R180m	R1 939m	977%	1 case of R1.486b and 4 cases of over R55m done. Focus on high value cases, improved investigation of such cases by DPCI and SIU at ACTT, increased use of non-conviction based forfeiture to speed up cases
Number of completed forfeiture cases re-JCPS prosecutions for corrupt activities	5	12	11	-8.3%	Insufficient cases with significant benefit referred

Table 28: Progress on programme performance indicators to ensure that profit is removed from crime

Sub-programme 3: Asset Forfeiture Unit					
Performance Against Target					
Performance Indicators	Actual Achievement 2013/14	Planned Target 2014/15	Actual Achievement 2014/15	Deviation from planned Target to actual achievement 2014/15	Comment on deviations
Value of freezing orders relating to corruption or offences related to corruption where the amount benefited per case is more than R5 million	R451.6m (R1.466bn)	R700m (R2.166bn)	R2 235m (R3.701bn)	219%	1 case of R1 486m and 2 cases of over R55m done. Focus on high value cases, improved investigation of such cases by DPCI and SIU at ACTT, increased use of non-conviction based forfeiture to speed up cases
Value of payments to victims of crime in terms of court orders obtained in terms of POCA	R84.36m	R65m	R1 658m	2 451%	1 case of R1.486b and 2 cases of over R60m done. Focus on high value cases, improved investigation of such cases by DPCI and SIU at ACTT, increased use of non-conviction based forfeiture to speed up cases
Success rate	94.2% (423/449)	93% (301)	95.1% (442/465)	2.1%	Focus on quality assurance and more use of non-conviction based forfeiture to reduce risk in big cases
Value of recoveries relation to corruption where the amount benefited is more than R5 million (proceeds of crime and government losses)	n/a <sup>12</sup>	R30m (R30m)	R1 553m	5 078%	Cases of R1.486b and R63m done. Increased focus on high value cases, improved investigation of such cases by DPCI and SIU at ACTT and increased use of non-conviction based forfeiture to speed up cases
Value of recoveries for government officials convicted of corruption and other related offences (proceeds of crime and government)	n/a <sup>13</sup>	R100 000 (R100 000)	R11.1m	10 964%	Several recoveries of more than R1m due to increased focus on high value cases, improved investigation of such cases by DPCI and SIU at ACTT and increased use of non-conviction based forfeiture to speed up cases

<sup>12</sup> A new indicator in the MTSF 2014-2019 – no historical data available<sup>13</sup> A new indicator in the MTSF 2014-2019 – no historical data available



## Number of freezing orders

The AFU continued to implement its corrective measures to increase productivity and resolve inhibiting factors with its partners and achieved its second best performance obtaining 342 orders, 5.8% lower than its previous best performance of 363 in 2013/14 which was due to some exceptional factors. This performance exceeded the annual target of 281 by 21.7%.

## Analysis of performance trends

As can be seen from the table below, there was a significant decrease in performance after 2010/11 as a result of reduced capacity. This resulted in a downward revision of its targets.

However, the unit has managed to increase its performance over the past two years due to better cooperation with its partners and the strategy of doing more cases through the non-conviction based forfeiture where cases can be taken to court even if the criminal case is not ready for court.

Thus the AFU has increased its targets by 16.4% over the next 3 years or 5.2% pa. This is roughly the same level and growth rate that it experienced prior to the reduction in its capacity.

Table 29: Annual comparison of number of freezing orders

Indicator	2010/11	2011/12	2012/13	2013/14	2014/15	Change over prev yr	Change over period
Number of Freezing Orders	333	318	276	363	342	-5.8%	2.7%
Target	310	318	324	281	281	0%	-9.4%

## Value of completed forfeiture cases

The AFU achieved its best ever performance, obtaining forfeiture and confiscation orders to the value of R1.94 billion – an exceptional 554% higher than the previous best performance in 2013/14. This performance exceeded the annual target of R180 million by 977%.

This outstanding performance was mainly due to one very high value order of R1.49 billion, but, even without this order, the performance would still have exceeded its previous best performance and have been 50% above target.

The improved performance is as a result of good cooperation with the Hawks, SIU at the ACTT, as well as the strategy of focussing on high value cases and doing more cases through non-conviction based forfeiture.

## Analysis of performance trends

As can be seen from the table below, there was a significant decrease in performance after 2010/11 as a result of reduced capacity. This resulted in a downward revision of the target.

However, performance has increased dramatically over the past two years due to the strategies of focusing on high value cases, working closely with the ACTT and doing more cases through non-conviction based forfeiture.

The impact of this shift is reflected in the proportion of assets forfeited through Chapter 6 which was 34% in the ten years up to 2009, and increased to 61% in the next five years. In 2014/15 it was about 98%.

Thus the AFU has increased its targets significantly by 44% over the next 3 years, or 13% pa.

Table 30: Annual comparison of value of completed forfeiture cases

Indicator	2010/11	2011/12	2012/13	2013/14	2014/15	Change over prev yr	Change over period
Value of completed forfeiture cases	R212m	R164m	R119m	R296.4m	R1 939m	554.2%	816%
Target	R175m	R224m	R167m	R170m	R180m	2.8%	2.9%

### Number of completed forfeiture cases re JCPS prosecutions for corrupt activities

The AFU obtained 11 completed forfeiture cases re JCPS prosecutions for corrupt activities, 8.3% below the annual target of 12. Despite not achieving the annual target, this was still the best ever performance and exceeded the performance of 5 in 2013/14 by 120%. Factors that negatively impact on performance was that only a few cases with significant benefits are referred to the AFU or money are recovered by through the use of other ways.

Value of freezing orders relating to corruption or offences related to corruption where the amount benefited per case is more than R5m.

The AFU achieved its best ever performance obtaining freezing orders to the value of R2 235 million, exceeding the previous best performance of R451.6 million in 2013/14 by 395%. Performance was also exceptional, exceeding the annual target of R700 million by 219%.

### Analysis of performance trends

The increased performance in these cases is reflected in the table below. The reasons for the increase is as discussed for the value of freezing orders. Thus the AFU has increased its targets significantly by 43% over the next three years, or 13% per annum.

The AFU has increased its targets significantly by 43% over the next three years, or 13% per annum.

Table 31: Annual comparison of value of freezing orders relating to corruption or offences related to corruption where the amount benefited per case is more than R5 million

Indicator	2010/11	2011/12	2012/13	2013/14	2014/15	Change over prev yr	Change over period
Value of freezing orders relating to corruption or offences related to corruption where the amount benefited per case is more than R5 million	R291m	R144m	R346m	R451.6m	R2 235m	+395%	+219%

## Value of payments to victims of crime in terms of court orders obtained in terms of POCA

The AFU obtained its best ever performance, making payments to victims to the value of R1.658 billion, exceeding its previous best performance of R93.9m in 2011/123 by 1 666%. This performance also significantly exceeded the annual target of R65 million by 2 451% and was 1 866% above the performance in 2013/14. Although this exceptional performance was largely due to one very big order of R1.486 billion, the unit achieved nearly double its previous best performance without taking that order into account.

The strategies of focusing on high value cases, better investigation of high value cases at the ACTT and increased use of non-conviction based forfeiture to speed up cases contributed to this success.

It is important to consider the total payments to victims and the payments to the Criminal Assets Recovery Account (CARA) as it represents the total amount recovered by the AFU. The AFU deposited R58.2 million into CARA, 10.4% below its internal target. The total of payments to CARA and victims was an exceptional R1.717 billion, a substantial 839% above its previous best amount of R182.8 million.

Over the six years to 2012/13, the AFU paid an average of about R90 million per year to CARA or to victims; while its average expenditure was R95 million per year over the period.

In the past two years it paid an average of about R950 million per year to CARA or to victims, while its average expenditure was R157 million per year over the period.

*Table 32: Annual comparison of payments made to victims*

Indicator	2010/11	2011/12	2012/13	2013/14	2014/15	Change over prev yr	Change over period
Value of payments to victims of crime in terms of court orders obtained in terms of POCA	R18m	R94m	R29m	R84.4m	R1 658m	+1 865.9%	+9 068%

## Success rate

A success rate of 95.1% was achieved, exceeding the target of 93%. This performance also exceeded the performance of last year with an improvement of 0.9%.

The target was achieved by an increased internal focus on quality assurance, and more use of non-conviction based forfeiture to reduce the risk of losing, especially in big cases. This assisted the AFU to reduce the number of cases lost for factors beyond the control of the unit.

The higher risk in conviction-based cases is shown by a significant increase in cases where the prosecution is withdrawn or lost to an average of 13 a year in the last two years compared to an average of about five a year. The proportion of such losses has increased to 55% of all losses (26 of 47), compared to 24% previously.

Value of recoveries in relation to corruption where the amount benefited is more than R5 million (proceeds of crime and government losses).

This is a new indicator, set for the ACTT on the basis of its previous recoveries. Only half the target was allocated to the AFU with the expectation that other partners would contribute the balance. Informally, however, the AFU was expected to take responsibility for the full target as it became clear that other partners were not able to report on this indicator.

The AFU achieved an excellent performance, making payments to victims or CARA of R1.553 million, exceeding the target by 5 078%. The performance was largely due to one very big order of R1.486 million, but even without that order, the performance was well above target.

This excellent performance is mainly the result of strategies to focus on high value cases, improved investigation of big cases at the ACTT, and increased use of non-conviction based forfeiture to speed up cases.

### **Value of recoveries from government officials convicted of corruption and other related offences (proceeds of crime and government)**

Recoveries relating to government officials convicted of corruption and related offences, to the value of R11 064 million were made, significantly exceeding the annual target of R100 000 by 10 964%. This excellent performance was due to several big recoveries of more than R1 million in cases being finalised and is the largest recovery ever by the AFU.

This is a new indicator, and it became clear that the target had been set too low. This is because there was limited historical data available to set a realistic target for the ACTT when this was done some time ago in the government's Medium Term Strategic Framework.

The focus on high value cases, improved investigation of big cases at the ACTT, and an increased use due to non-conviction based forfeiture to speed up cases, contributed to this excellent performance.

### **Strategies to improve performance**

The exceptional performance of the AFU during the 2014/15 financial year is due to various strategies implemented:

The first strategic initiative was to focus its limited resources on high value and complex cases that make a greater impact, especially those being done by the ACTT. Part of the motivation was to ensure that its value targets are met in view of its reduced capacity.

The second strategy was to focus much of its resources on working more closely with the DPCI, the Special Investigating Unit (SIU) and National Treasury at the ACTT. This has assisted with finalising investigations and court preparation in big cases more speedily and effectively, and in turn has ensured that such cases are ready more speedily for the AFU to take action. Despite some challenges, the institutionalised cooperation at the ACTT has made a major impact on the number of high value cases ready to take to court.

A third strategy was to do as many cases as possible through the civil forfeiture (or non-conviction based) process in terms of Chapter 6 of POCA. These cases can be prepared for court and finalised more speedily since the process is not dependent on the finalisation of criminal trials.

This strategy has also assisted the AFU to reach its success rate target as it reduces the risk of losing more cases. High value cases are heavily litigated and there is a significant risk that the prosecution may not succeed.

### **Working closely with the DPPs to broaden the use of forfeiture**

A particular focus area for the AFU has been a joint initiative with the DPP in the Western Cape to increase the number of confiscation orders granted after conviction in terms of section 18 of the POCA. Great progress has been achieved with better coordination and by training prosecutors, and it is planned to use this as a model for implementation in other provinces.

### **Training**

In addition to contributing to the achievement of the MTSF outcomes, the AFU will continue to focus on training efforts to increase the skill levels of its staff, including improving its management capacity to develop and coach better, and to manage the performance of its staff members effectively.

### **Improving relationships with key stakeholders**

#### ***Consolidating relationship with the Hawks***

In relation to organised crime, serious economic crime and serious corruption, the AFU has been under more pressure than ever before to make an increased contribution to a multi-agency approach to combating these crimes.

The establishment of the Hawks in 2009 created the opportunity for the AFU, as part of the NPA, to develop the partner relations necessary to increase the use of asset forfeiture significantly, especially in the fight against serious and organised crime. The efforts devoted to building an effective partnership with the Hawks has already begun to show results, especially in the area of combatting corruption and, to some extent, organised crime.

#### ***Consolidating relationship with the Financial and Asset Forfeiture Investigations section (FAFI) in the Hawks***

The establishment of FAFI as a specialist financial investigations capacity in the Hawks is an opportunity for the AFU to extend its work with the Hawks. It has spent much effort in establishing a good relationship with FAFI, and in dealing with the initial problems that arose.

The AFU is in the process of updating its previous memorandum of understanding with the police services (SAPS) to reflect the new structures and to enhance cooperation.

#### ***Improving collaboration with key partners and emerging crimes***

As the Hawks multi-agency model is implemented and consolidated, there is the opportunity for the AFU, as part of the NPA, to engage with it and its CJS partners in similar fashion as in the ACTT, and to achieve the same impact.

This may include setting joint targets, aligning strategies, and focusing on other areas of crime that can benefit from multi-agency collaboration.

It is also important that the AFU and law enforcement deal more effectively with the increased involvement of organised crime in so-called emerging crimes. These offences are characterised by the fact that large profits can be made at little risk because they are often not regarded as very serious by the CJS.

Examples are theft of copper cable and electricity, the cloning of credit cards, various forms of cybercrime, copyright theft, grey goods smuggling, and various forms of environmental crimes such as illegal mining, abalone poaching, rhino poaching, etc.

Several of these crimes are on the priority crime list of the Hawks, namely, narcotics, illicit mining, non-ferrous metals (especially copper theft), environmental crime (rhino poaching), vehicles, specific violent crime (ATM attacks, bank robberies), human trafficking / smuggling, cyber-crime (eg. credit card skimming) and illicit tobacco.

The AFU is currently improving its performance reporting system to enable it to track its actions in this area with a view to introducing a formal performance indicator in future.

### **Special Investigating Unit (SIU)**

The SIU operates under the Special Investigating Units and Special Tribunals Act, 1996 (Act No 74 of 1996). Its mandate is to act on behalf of government through a proclamation signed by the President. Civil litigation and forensic investigation into public money, and/or public assets are used for the recovery of lost assets.

The relationship between the SIU and the AFU has been strengthened to increase the number of referrals to the AFU, but there is room for even better collaboration.

### **Challenges**

#### ***AFU capacity and impact***

Although the AFU has managed to increase its performance significantly over the past two years, there is significant room to expand the use of asset forfeiture due to the improving relationship with key stakeholders.

In addition, it is clear that it is still only making a relatively small impact on the criminal Gross Domestic Product (GDP) which is estimated to be over R100 billion and there is significant room for expanding the use of asset forfeiture further.

#### **Capacity challenges relating to financial investigators**

A further challenge faced by the AFU has been the lack of sufficient skilled financial investigators to do the financial analysis and asset tracing work that is a vital factor for it to make a bigger impact, both in the cases it is doing at present, but also to do the work that is required to develop further cases.

The dispensation governing the appointment of its financial investigators was abolished by oversight during the relocation of the Directorate of Special Operations (DSO) to the SAPS. This had the effect that the AFU was unable to recruit any new staff or promote its existing staff. Thus it had lost a number of its best investigators over the past 6 years and was not able to replace them.



The Judicial Matters Amendment Act, 2012 which came into effect on 2 October 2012 corrected this oversight, but since then NPA's financial constraints prevented the issue from being addressed.

This has a significant impact as cases cannot be taken to court unless a proper financial profile and asset tracing has been done. At present, in some offices, lawyers now have to perform this function although they are ill-equipped to do so, and it does not make sense to use very expensive legal resources to do so.

More recently, the AFU was granted permission to fill its investigator vacancies, but on condition that only entry level posts are filled. The NPA has embarked on a work study for the entire organisation and AFU has been prioritised after the rationalisation process is complete. It is not clear at this point when the outcome of the work study will be available but until then, the AFU will be unable to fill critical senior investigator positions.

This continues to have a significant impact on its ability to meet the increased need for its services and to improve performance further.

## **Noteworthy cases – AFU**

### **Corruption-related cases**

In the past year, the AFU was especially successful in corruption related cases and obtained freezing orders to the value of R2.24 billion. This almost as much as the total amount it has frozen in the previous four years.

This was especially due to excellent work of the Anti-corruption Task Team (ACTT) which was set up by Cabinet in July 2010. Working together with the Hawks, the Special Investigating Unit (SIU), National Treasury, the Financial Intelligence Centre (FIC) has resulted in investigations being completed significantly faster, thus enabling the AFU to take cases to court more speedily.

### ***NDPP versus Gauteng Health (corrupt contracts involving R1.8 billion)***

This is the largest and most complex case done by the AFU and involved several years of preparation. An alleged corrupt relationship between the Member of the Executive Committee (MEC) for Health in Gauteng, Brian Hlongwa, and a businessman Richard Payne, led to the Gauteng Department of Health granting a tender to 3P Consulting (Pty) Ltd to establish a Project Management Unit.

The bid was fraudulently rigged by officials to favour 3P. One of the functions of the Unit was to procure for the Department free from the constraints of the Public Finance Management Act (PFMA). 3P thus entered into contracts with service providers to the value of approximately R300 million for the Department without compliance with the principles for public procurement in the PFMA.

During the course of the contract, Payne paid the deposit of R1.6 million on a new house for Hlongwa at Eccleston Crescent, Bryanston, owned through one of Hlongwa's companies, Golden Pond 363 (Pty) Ltd. Payne also facilitated a payment of a further R1 million from Niven Pillay, the CEO of Regiments Capital (Pty) Ltd and Regiments Health Care (Pty) Ltd, the latter having obtained a contract through 3P to render services to the Department.

The balance of the purchase price for the Eccleston Crescent house was provided through the sale of another property owned by Golden Pond in College Drive, Bryanston. The property was bought by a company under the control of Heinz Smidek, the chief executive officer of AME International GmbH and a director of AME Africa Healthcare (Pty) Ltd. AME Africa Healthcare formed part of the Baoki Consortium, which had fraudulently won a tender to provide a health information system to the Department to the value of R1.1 billion.

Following the elections in April 2009, Hlongwa was not re-appointed as MEC for Health. The new MEC terminated the 3P and Baoki contracts, and they sued the Department.

The AFU brought three sets of interrelated proceedings under chapter 6 of the POCA in July 2014, relying on bid rigging, fraud and corruption:

- The Eccleston house was frozen. Hlongwa is opposing a final forfeiture order, claiming that the payments he received from Payne and Pillay were lawful.
- 3P's contractual rights were frozen. 3P (now in liquidation) and PriceWaterhouseCoopers (PWC) are opposing the matter. PWC claims it was an innocent service provider that believed that 3P could contract as it did for the Department.
- Baoki admitted that Smidek had bought Hlongwa's house, and did not oppose the forfeiture of its rights under its contract with the state. This terminated its litigation against the Department to the value of approximately R 1.4 billion.

### ***NDPP versus Mde (land reform)***

The SIU had investigated this land redistribution matter at the request of the Minister of Rural Development, and found that Mde had a dairy farm transferred into his own private company with the assistance of a Land Affairs official.

The farm was intended for a community trust to empower a number of previously disadvantaged persons. The AFU froze and forfeited the farm worth about R8 million.

### ***Jacobs Trust farm (land reform)***

The AFU forfeited a farm worth R1.5 million in the Free State that had been corruptly obtained by a SAPS detective.

### ***Other land reform cases***

The AFU has been working closely with the SIU and the Hawks at the ACTT, and the Department of Land Reform for some years to recover farms that have been lost through corruption. In 2014/15 it finalised proceedings and forfeited farms worth a total of R52 million:

- Boschhoek farm worth about R19.5 million
- Greenlands farm worth about R14.9 million
- Elizabeth farm worth about R7 million
- Guelderland farm worth about R6 million
- Mbulwane land trust worth about R5 million

***NDPP versus Social Housing Regulatory Authority (SHRA)***

In cooperation with the Financial Intelligence Centre (FIC) and ABSA bank, the AFU assisted National Treasury to recover over R61 million unlawfully moved from the SHRA. It was meant for a social housing development in East London.

The AFU froze and forfeited R59 million in various personal bank accounts. It also managed to recover some of the R4.8 million that had already been dissipated for personal purposes. The funds were forfeited and were returned to National Treasury.

***NDPP versus Victory Ticket and Buffalo City officials***

The AFU obtained freezing and forfeiture orders for about R4.2 million against the company Victory Ticket and certain Buffalo City officials. The order stems from charges of fraud, theft and the unlawful payment on 12 December 2013 of R5.9 million by the City into the account of Victory Ticket cc which is run by Richard Mzwandile, Sokwali-Ntozini and his wife Busisiwe Boti. Victory Ticket had been awarded a rigged tender to transport mourners to Nelson Mandela commemoration events.

National Treasury had issued an instruction that municipalities may fund only transportation and venue costs for these events. However, the Eastern Cape Provincial Government had made arrangements for all the events in the Eastern Cape to be funded through the Eastern Cape Development Corporation. Despite these arrangements, the Executive Mayor of BCMM, Ms Ncitha misrepresented to the Council that the Provincial Government had agreed that the City may use R10 million of its funds for commemoration events. On 11 December the council authorised it and the next day the Municipal Manager approved a deviation on condition.

There were numerous irregularities in the process. The quotations were addressed to a political party, the ANC, and were dated before the Council approval. An official stated that on 11 December, the ANC Regional Secretary went to the City to request that Victory Ticket be registered on its database. The invoice from Victory Ticket to Buffalo City was for the work allegedly performed prior to the Council resolution and the deviation approval. No requisition was received, and no order was generated. The procurement took place contrary to the approved deviation and Victory Ticket was not on Buffalo City's data base of service providers. Thus payment was unlawful and flouted supply chain procedures.

Part of the R5.9 million BCMM unlawfully paid to Victory Ticket was distributed by Ntozini to persons who did not render any service. Victory Ticket paid R350 000 to Lily Rose Trust, whose trustee is allegedly a girlfriend of Phumlani Mkolo, an ANC Regional Secretary. The Trust has not repaid. Zicina received R241 000, Mpidos Emergency R50 000 and Baccallum R22 331 which are still outstanding. An amount of R1.3 million was paid to Mantella Trading CC, run by Dean William Fanoe, which allegedly produced ANC t-shirts. Fanoe repaid the full amount. A sum of R899 000 was paid to Forty Wing Lodge CC run by Viwe Vazi, which allegedly provided catering.

National Treasury had made it clear that catering and other activities were excluded. Vazi has also repaid the full amount. Ntozini and Boti repaid R1.9 million distributed to Sizisa Ukhanyo and to Victory Ticket. R4.2 million was forfeited and the balance is being recouped using restraint and prosecution processes.

***NDPP versus Nyameka and Thumeka Qongqo (OR Tambo District Municipality)***

The AFU obtained a freezing and forfeiture order for R1.2 million in cash from Nyameka Qongqo to the OR Tambo Municipality. In addition, Thumeka Qongqo's lounge and bedroom suites worth R79 000 were sold and the money was returned to the Municipality.

The swift action was made possible by the excellent cooperation of the Municipal Manager who had complained to the Hawks after noticing a fictitious payment of R2.5 million transferred in April 2014 to Thumeka's bank account. Thumeka's sister, Nyameka, at the time the Municipal Assistant Project Accountant, had requested authorisation of the fictitious payment pretending that it was for an approved service provider. Thumeka had never been employed by the municipality nor was she a service provider. Nyameka was suspended.

Thumeka transferred more than R1.5 million to Nyameka which the AFU managed to freeze and forfeit. The AFU obtained a forfeiture order over the property held by the sisters: from Thumeka a house worth about R1.9 million, and from Nyameka R240 000.

**Economic crime**

***Tannenbaum (investment scam)***

The AFU forfeited a further R6.9 million in this massive Ponzi scheme, after a recovery of more than R50 million in the previous year. The money was recovered from the daughter of Daryl Leigh, one of the main figures in the scheme, who had brought her a house in Camps Bay. R5.8 million was deposited in the CARA account.

***Surapure Drinks (Pty) Ltd (investment scam)***

The AFU, working with the SA Reserve Bank, obtained a large freezing order of over R60 million against a businessman who were allegedly running an elaborate pyramid scheme. The money has since been forfeited.

The AFU submitted comprehensive evidence that Cornelius van der Merwe, the sole director of Surapure, in cooperation with the other account holders and individuals, conducted an illegal business operation similar to an unlawful Ponzi scheme – a fraudulent investment scam promising high rates of return with little risk to investors. The evidence showed that Van der Merwe illegally siphoned substantial amounts of the investors' money from Surapure's business bank account to his personal bank accounts and the personal bank accounts of other individuals who operated the unlawful scheme.

***NDPP versus Shu Wei Lu (BEE fraud)***

The AFU froze assets of Ms Shu Wei Lu and five family members estimated to be worth R31.8 million, as well as certain of her entities. She is a former Taiwanese national who is now a South African citizen.

The matter involves three tender contracts to the value of about R67.8 million that she procured from the City of Cape Town with her business entity. She allegedly defrauded the municipality by not disclosing that her partner in the company that was awarded the tenders was an employee of the Department of Social Development. The tenders precluded applications in which state employees were involved. A whistle blower had alerted the city about the fraud.

An investigations by the city that the defendant lied in her application, when it was clear that business entities with state officials as members were precluded from tendering for the contracts. The state official involved was a female employed by the Department of Social Development.

The assets restrained involve about 14 immovable properties, four motor vehicles and monies in 16 bank accounts of the defendant and her relatives who also benefited from the tenders.

### ***Mulaudzi (investor fraud)***

The AFU obtained a large freezing order of R48 million against businessman, Matthews Tuwani Mulaudzi, for defrauding Old Mutual of this amount. Assets worth about R27 million were traced and frozen. The order was subsequently set aside but the AFU has obtained leave to appeal the decision.

The Hawks investigated the complex fraudulent scheme. Mulaudzi is accused of misleading Fairbairn Capital, an investment entity underwritten by Old Mutual, by falsely claiming the R48 million investment for his own benefit, although he was aware that he had already ceded the proceeds to Nedbank. Old Mutual was later alerted by Nedbank about the cession. Investigations discovered that apart from receiving the R48 million, Mr Mulaudzi had also obtained credit of R37 million from Nedbank by ceding the Old Mutual investment as security. Financial investigations by AFU and the Hawks revealed that Mr Mulaudzi utilised part of the proceeds, and tried to hide them by transferring funds between about 10 bank accounts at various banks.

### ***NDPP versus Sibongile Mayana***

The AFU froze and forfeited a Mitsubishi Kombi from Sibongile Mayana, principal of the Khanyisa School for the Blind in Kwa-Magxaki in Port Elizabeth, and ordered that it be registered in the name of the school.

The Municipality had donated R100 000 to buy a minibus for transportation of the pupils. The Kombi was on sale for R79 950, but Mayana colluded with the dealer to increase the price and shared the additional R9 000 with the driver. The Kombi was also registered in her name instead of that of the school.

### ***NDPP versus Kalmar***

The AFU froze a purpose-built prototype lifting crane worth about R2.5 million plus other equipment belonging to a sub-contractor of the multi-national company, Q6, and others. A theft charge had been laid with the SAPS.

### ***Arms control violations***

The AFU obtained two large freezing orders of R64 million and R103 million in relation to money brought into the country irregularly to purchase arms by third parties. In the first matter, the R64 million was forfeited and returned to the relevant government as an innocent party. The second matter is still in the process of litigation.

## Organised crime

### ***NDPP versus diamond smuggling syndicate***

In August 2014, the Kimberley High Court granted the AFU 10 freezing orders to the value of about R50 million against a major diamond smuggling syndicate. R43 million in cash was frozen as proceeds from criminal activity, as well as five fixed properties and four vehicles used to commit illegal transactions. The scale of the operation is clear from the enormous amount of cash seized.

A number of senior businessmen were arrested on charges of contravening the Diamonds Act by illegal diamond dealing, possession and sale of unpolished diamonds, and money laundering.

The project team was led by a senior officer of the Hawks Organised Crime Unit, Upington and included the SAPS, NPA and FIC. It used undercover agents to buy illegal diamonds in numerous unlawful transactions. The operation was one of the biggest organised crime operations in South Africa, and showed that it is possible to fight highly sophisticated organised crime successfully.

### ***NDPP versus Msimango (illegal diamond dealing)***

In October 2014, the Free State High Court granted the AFU a confiscation order to the value of about R6 million in a major Hawks organised crime project when Msimango and others were convicted for illegal dealing in gold.

### ***NDPP versus Mugnaioni (illegal diamond and platinum dealing)***

In February 2015, the Johannesburg High Court granted the AFU a freezing order to the value of about R10 million in a major SAPS organised crime project involving the Mugnaioni family who have allegedly been involved in illegal dealing in diamonds and platinum group metals for many years.

### ***NDPP versus Spies***

Spies is a South African residing in Zimbabwe where he owns a scrap yard and works as a mechanic. He and his wife entered the country with six bricks of unwrought gold which they failed to declare. It was discovered by SARS officials during routine searches. The AFU froze and forfeited the gold valued at R4.3 million on the basis that it constituted an instrumentality of an offence.

## Violent crime

### ***NDPP versus Maqubela***

The AFU worked closely with the prosecutors from the DPP to obtain a freezing order in the murder case of Mrs Tandi Maqubela, the widow of the late acting Judge Ntobeko Maqubela. The AFU relied on evidence that Mrs Maqubela had forged a will in which she attempted to inherit to the exclusion of some of the children.



This order was the first of its kind, and prevents her from inheriting from the estate of her deceased husband on the basis of her conviction for his murder. The value of the inheritance of Mrs Maqubela was estimated at R7.2 million. The executor of the estate and the Master of the High Court in Johannesburg are currently in the process of winding up the estate, and have been ordered not to pay out the inheritance until the finalisation of the forfeiture case.

The AFU has applied for a confiscation order of her inheritance, and will request the court to order that her share be divided amongst the 5 children who are the other heirs.

## Office for Witness Protection (OWP)

### NPA Strategic objective 4: Ensure threatened witnesses are successfully protected

#### Sub-programme 4: Office for Witness Protection

**Purpose:** The Office for Witness Protection (OWP) provides protection, support and related services to vulnerable and intimidated witnesses and related persons in judicial proceedings in terms of the Witness Protection Act (1998).

#### Programme Performance indicators for sub-programme 4

Table 33: Progress on strategic objective 4: Ensure threatened witnesses are successfully protected

Sub-programme 4: Office for Witness Protection					
Performance Against Target					
Performance Indicators	Actual Achievement 2013/14	Planned Target 2014/15	Actual Achievement 2014/15	Deviation from planned Target to actual achievement 2014/15	Comment on deviations
Number of witnesses harmed, threatened or killed whilst on the witness protection programme	0	0	0	100%	Effective Ops Model and Ops Planning

## Number of witnesses harmed, threatened or killed while on the witness protection programme (WPP)

During 2014/15 the OWP maintained its performance record for the last 13 years in ensuring that no witnesses were threatened or killed while on the witnesses protection programme.

*Table 34: Progress on programme performance indicators to ensure threatened witnesses are successfully protected*

Sub-programme 4: Office for Witness Protection					
Performance Against Target					
Performance Indicator	Actual Achievement 2013/14	Planned Target 2014/15	Actual Achievement 2014/15	Deviation from planned Target to actual achievement 2014/15	Comment on deviations
% of witnesses that walked off the witness protection programme	3.7% (12)	1.5%	1.2% (4)	-0.3%	Witness management through induction processes and continued interaction with the witnesses and their related persons

### Percentage of witnesses that walked off the WPP

Four witnesses, who no longer wanted to be on the programme, left the programme voluntarily, and without notice. This is 1.2% of the total number of witnesses on the programme, against a target of 1.5%. In terms of the Witness Protection Act, witnesses and related persons must voluntarily agree to be admitted into the WPP and sign a protection agreement.

### Achievements

The OWP, guided by section 41 of the Constitution, has very high levels of cooperation with its partners and stakeholders. The outcome of this high level cooperation is that 13 life terms and 238 sentences of direct imprisonment were imposed in cases in which witnesses on the WPP have testified.

178 witnesses and 156 related persons joined the programme during 2014/15. The total number of witnesses and related persons managed during the period in witness protection, including the 146 witnesses and 159 related persons carried over from 2013/14, was 639.

Guided by the intention of the Witness Protection Act, and the values and ethos of the Constitution, 149 witnesses and related persons (67 witnesses and 82 related persons) were successfully discharged and resettled. 77 witnesses signed off the witness protection programme and their reasons for signing off the programme were captured. No formal grievances were laid.

The OWP continued to make a crucial contribution to the successful investigation and prosecution of very serious criminal cases and other judicial proceedings. In 2014/15 219 (67.6%) witnesses attended judicial proceedings. The average period that witnesses stayed on the WPP remained 15 months (compared to last year) against a target of 18 months, through improved cooperation with NPA and judicial proceedings officials.

The OWP remained aligned to government's vision of ensuring the appointment of women from diverse cultural backgrounds in leadership positions and to ensure capacity building. Of the nine regional heads, five are women and 45.06% of the OWP staff are women. Following a request from Europol<sup>14</sup>, the WP head of experts presented a paper on the role of women in OWP.

The OWP received a request from the International Criminal Court for SA to play a leading role in the WP Seminar in Ghana during July 2014.

The OWP Director presented a paper on witness protection at the 25<sup>th</sup> anniversary of the Attorney General's Office in September 2014, following an invitation from the office of the Attorney-General in Mozambique. He also presented a paper on witness protection at a training workshop of East African judges and magistrates in Zanzibar in September 2014. The training was aimed at sensitising chief justices, judges and magistrates on matters related to witness protection and sharing RSA expertise and strategy. Another paper was presented on the role of the witness protection at the International Africa Sexual and Gender-Based Violence Summit in December 2014.

The OWP received an invitation from Israel in September 2014 to attend a special training of OWP officials on psycho-social issues from 28-30 October 2014. The OWP nominated two social workers to attend; due, however, to the conflict in Gaza, Department of International Relations and Corporation (DIRCO) deemed it unsafe for the officials to attend.

The OWP also received an invitation to attend the International WP Conference in Turkey, hosted by the Turkish WP and EUROPOL<sup>14</sup>, which enhanced international relations and networking in the field of witness protection.

A request was received from Namibia to provide high level insight and share the South African OWP good practices with a delegation from this country, similar to that provided to Kenya. The OWP provided high level expert guidance to Namibia on the intended development of the OWP Law.

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<sup>14</sup> European Union's (EU) law enforcement agency whose main goal is to help achieve a safer Europe for the benefit of all EU citizens

## PART E: INFORMATION RELATED TO THE OPERATIONS OF THE NPA



## PART E: INFORMATION RELATED TO THE OPERATIONS OF THE NPA

### Personnel position of the NPA

The NPA employed 3 134 prosecutors in permanent positions as at 31 March 2015.

Table 35: Breakdown of permanent prosecutors employed in the NPA

Provinces	African	White	Indian	Coloured	Total
EC	281	93	7	44	425
FS	128	82	3	8	221
GP	582	270	48	30	930
KZN	330	60	108	13	511
LP	182	15	0	3	200
MP	118	4	3	40	165
NC	70	23	1	14	108
NW	117	18	0	3	138
WC	106	120	25	185	436
<b>Total</b>	<b>1914</b>	<b>685</b>	<b>195</b>	<b>340</b>	<b>3 134</b>

### Number of prosecutors on contract: 381

Table 36: Breakdown of prosecutors on contract

Provinces	African	White	Indian	Coloured	Totals
EC	16	2	0	6	24
FS	1	0	0	0	1
GP	244	39	16	44	343
KZN	2	1	2	0	5
LP	3	0	0	0	3
MP	1	0	0	0	1
NC	0	0	0	1	1
NW	0	0	0	0	0
WC	2	0	0	1	3
<b>Total</b>	<b>269</b>	<b>42</b>	<b>18</b>	<b>52</b>	<b>381</b>

The following table reflects the human resource capacity in each of the key sub-programmes:

Table 37: Breakdown of human resource capacity per sub-programme

	National Prosecutions Service	National Specialised Prosecution Services	Asset Forfeiture Unit	Office for Witness Protection
Legal Personnel	3 418	238	106	101 (Protectors)
Admin Personnel	658	84	13	59

## Employment equity profile for prosecutors

### Head office

Table 38: Status of employment equity at head office

	Male					Female					Total
Occupational Levels	A	C	I	W	SUB	A	C	I	W	SUB	
Top Management	2	0	0	1	3	2	0	0	0	2	5
Senior Management	3	1	0	7	11	4	0	1	4	9	20
Professionally Qualified	33	4	1	9	47	17	3	3	28	51	98
Skilled Technical	0	0	0	0	0	0	0	0	0	0	0
Semi-skilled	0	0	0	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0	0	0	0
Total Permanent	38	5	1	17	61	23	3	4	32	62	123
Temporary Employees	0	0	0	0	0	0	0	0	0	0	0
<b>Grand Total</b>	<b>38</b>	<b>5</b>	<b>1</b>	<b>17</b>	<b>61</b>	<b>23</b>	<b>3</b>	<b>4</b>	<b>32</b>	<b>62</b>	<b>123</b>

### KwaZulu-Natal

Table 39: Status of employment equity in the KZN

	Male					Female					Total
Occupational Levels	A	C	I	W	SUB	A	C	I	W	SUB	
Top Management	0	0	0	0	0	1	0	0	0	1	1
Senior Management	3	0	4	2	9	3	0	2	3	8	17
Professionally Qualified	102	6	29	25	162	64	2	52	25	143	305
Skilled Technical	81	0	8	4	93	83	5	19	6	113	206
Semi-skilled	0	0	0	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0	0	0	0
Total Permanent	186	6	41	31	264	151	7	74	33	265	529
Temporary Employees	0	0	0	0	0	0	0	0	0	0	0
<b>Grand Total</b>	<b>186</b>	<b>6</b>	<b>41</b>	<b>31</b>	<b>264</b>	<b>151</b>	<b>7</b>	<b>74</b>	<b>33</b>	<b>265</b>	<b>529</b>



## North Gauteng

Table 40: Status of employment equity in North Gauteng

	Male					Female					Total
Occupational Levels	A	C	I	W	SUB	A	C	I	W	SUB	
Top Management	1	0	0	0	1	0	0	0	0	0	1
Senior Management	9	1	0	10	20	2	0	2	7	11	31
Professionally Qualified	195	3	4	67	269	94	5	7	90	196	465
Skilled Technical	141	1	1	10	153	116	4	1	18	139	292
Semi-skilled	0	0	0	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0	0	0	0
Total Permanent	346	5	5	87	443	212	9	10	115	346	789
Temporary Employees	0	0	0	0	0	0	0	0	0	0	0
<b>Grand Total</b>	<b>346</b>	<b>5</b>	<b>5</b>	<b>87</b>	<b>443</b>	<b>212</b>	<b>9</b>	<b>10</b>	<b>115</b>	<b>346</b>	<b>789</b>

## South Gauteng

Table 41: Status of employment equity in South Gauteng

	Male					Female					Total
Occupational Levels	A	C	I	W	SUB	A	C	I	W	SUB	
Top Management	1	0	0	0	1	0	0	0	0	0	1
Senior Management	5	0	1	8	14	4	0	2	3	9	23
Professionally Qualified	116	5	5	33	159	53	6	21	60	140	299
Skilled Technical	83	1	2	3	89	34	4	6	8	52	141
Semi-skilled	0	0	0	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0	0	0	0
Total Permanent	205	6	8	44	263	91	10	29	71	201	464
Temporary Employees	0	0	0	0	0	0	0	0	0	0	0
<b>Grand Total</b>	<b>205</b>	<b>6</b>	<b>8</b>	<b>44</b>	<b>263</b>	<b>91</b>	<b>10</b>	<b>29</b>	<b>71</b>	<b>201</b>	<b>464</b>

**North West***Table 42: Status of employment equity in North West*

	Male					Female					Total
	A	C	I	W	SUB	A	C	I	W	SUB	
Occupational Levels											
Top Management	0	0	0	0	0	0	0	0	1	1	1
Senior Management	2	0	0	1	3	2	0	0	1	3	6
Professionally Qualified	41	1	0	12	54	21	1	0	5	27	81
Skilled Technical	28	1	0	1	30	27	0	0	0	27	57
Semi-skilled	0	0	0	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0	0	0	0
Total Permanent	71	2	0	14	87	50	1	0	7	58	145
Temporary Employees	0	0	0	0	0	0	0	0	0	0	0
<b>Grand Total</b>	<b>71</b>	<b>2</b>	<b>0</b>	<b>14</b>	<b>87</b>	<b>50</b>	<b>1</b>	<b>0</b>	<b>7</b>	<b>58</b>	<b>145</b>

**Free State***Table 43: Status of employment equity in Free State*

	Male					Female					Total
	A	C	I	W	SUB	A	C	I	W	SUB	
Occupational Levels											
Top Management	0	0	0	0	0	1	0	0	0	1	1
Senior Management	3	0	0	3	6	0	0	1	1	2	8
Professionally Qualified	41	3	1	29	74	22	3	1	39	65	139
Skilled Technical	41	1	1	2	45	24	1	0	12	37	82
Semi-skilled	0	0	0	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0	0	0	0
Total Permanent	85	4	2	34	125	47	4	2	52	105	230
Temporary Employees	0	0	0	0	0	0	0	0	0	0	0
<b>GRAND TOTAL</b>	<b>85</b>	<b>4</b>	<b>2</b>	<b>34</b>	<b>125</b>	<b>47</b>	<b>4</b>	<b>2</b>	<b>52</b>	<b>105</b>	<b>230</b>

## Northern Cape

Table 44: Status of employment equity in Northern Cape

	Male					Female					Total
Occupational Levels	A	C	I	W	SUB	A	C	I	W	SUB	
Top Management	0	0	0	0	0	1	0	0	0	1	1
Senior Management	1	1	0	2	4	0	1	0	0	1	5
Professionally Qualified	22	7	0	8	37	9	3	1	10	23	60
Skilled Technical	27	2	0	2	31	12	2	0	3	17	48
Semi-skilled	0	0	0	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0	0	0	0
Total Permanent	50	10	0	12	72	22	6	1	13	42	114
Temporary Employees	0	0	0	0	0	0	0	0	0	0	0
<b>Grand Total</b>	<b>50</b>	<b>10</b>	<b>0</b>	<b>12</b>	<b>72</b>	<b>22</b>	<b>6</b>	<b>1</b>	<b>13</b>	<b>42</b>	<b>114</b>

## Eastern Cape

Table 45: Status of employment equity in Eastern Cape

	Male					Female					Total
Occupational Levels	A	C	I	W	SUB	A	C	I	W	SUB	
Top Management	1	0	0	0	1	0	0	0	0	0	1
Senior Management	2	0	1	8	11	0	0	3	1	4	15
Professionally Qualified	53	10	3	38	104	26	13	3	33	75	179
Skilled Technical	43	7	1	6	57	32	10	0	11	53	100
Semi-skilled	0	0	0	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0	0	0	0
Total Permanent	99	17	5	52	173	58	23	6	45	132	305
Temporary Employees	0	0	0	0	0	0	0	0	0	0	0
<b>Grand Total</b>	<b>99</b>	<b>17</b>	<b>5</b>	<b>52</b>	<b>173</b>	<b>58</b>	<b>23</b>	<b>6</b>	<b>45</b>	<b>132</b>	<b>305</b>

**Mthatha***Table 46: Status of employment equity in Mthatha*

	Male					Female					Total
	A	C	I	W	SUB	A	C	I	W	SUB	
Occupational Levels											
Top Management	1	0	0	0	1	0	0	0	0	0	1
Senior Management	4	0	0	0	4	1	0	0	0	1	5
Professionally Qualified	48	2	0	1	51	26	2	0	4	32	83
Skilled Technical	34	0	0	0	34	19	0	0	0	19	53
Semi-skilled	0	0	0	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0	0	0	0
Total Permanent	87	2	0	1	90	46	2	0	4	52	142
Temporary Employees	0	0	0	0	0	0	0	0	0	0	0
<b>Grand Total</b>	<b>87</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>90</b>	<b>46</b>	<b>2</b>	<b>0</b>	<b>4</b>	<b>52</b>	<b>142</b>

**Western Cape***Table 47: Status of employment equity in Western Cape*

	Male					Female					Total
	A	C	I	W	SUB	A	C	I	W	SUB	
Occupational Levels											
Top Management	0	1	0	0	1	0	0	0	0	0	1
Senior Management	3	5	1	5	14	0	2	1	3	6	20
Professionally Qualified	45	50	6	46	147	19	57	8	59	143	290
Skilled Technical	27	31	1	7	66	15	47	10	8	80	146
Semi-skilled	0	0	0	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0	0	0	0
Total Permanent	75	87	8	58	228	34	106	19	70	229	457
Temporary Employees	0	0	0	0	0	0	0	0	0	0	0
<b>Grand Total</b>	<b>75</b>	<b>87</b>	<b>8</b>	<b>58</b>	<b>228</b>	<b>34</b>	<b>106</b>	<b>19</b>	<b>70</b>	<b>229</b>	<b>457</b>

## Information relating to training programmes for prosecutors

Table 48: Breakdown of training provided to prosecutors

Name of the Courses	2014/15
	No
Admissibility of evidence : statements (JC)	186
Advanced court preparation : Expert Witness	57
Advanced trial advocacy (JC)	76
Advocacy and ethics awareness	320
AFU policy workshop and specific matters	13
AFU week	7
Anti-corruption and fraud awareness training programme (IMU)	37
Asset forfeiture awareness	1
Asset forfeiture course	4
Certified fraud examination (session 1)	8
Child justice & child justice (SOCA)	32
Civil applications	64
Code of conduct for prosecutors	19
Compilation of daily stats: Witbank magistrate court	7
Conflict and diversity management	15
Corruption and fraud	121
Criminal liability (JC)	38
Customs and exercise act 91 Of 1964	11
Domestic violence (SOCA)	18
Effective business and report writing	22
Emotional intelligence	18
Enforcement training	7
Environmental crimes	7
EQ insights managers coaching	1
EQ: insights journey	4
Ethics and integrity & integrity @ work	64
Forensic awareness campaign (Kimberley)	9
Forensic experts workshop	169
Forensic master class (SCCU)	5
Fraud and corruption (JC)	28
Government budgeting (including SGOA)	7
Human trafficking workshop (SOCA)	43
Insurance fraud	36
Integrated sexual offences	1
Investigation and management of cyber and electronic crimes	25
Justice college - professional ethics seminar	25
Justice college integrity management workshop	1
Legal drafting, compiling of charge sheets and indictments	129
Life coach: Evander Magistrate Court	15
Maintenance training	8
Maintenance training programme (in-house)	5

Name of the Courses	2014/15
	No
Management & leadership for SMS	75
Mediation and alternative dispute resolution mechanisms	84
Microsoft training (overall)	96
Motions	5
Multi - disciplinary training for TCCs	4
Mutual legal assistance and extraditions	14
Organised crime, basic (JC)	50
Professional ethics seminar	22
Protection of personal information act	20
Psychiatry/ psychology and law	35
Psychology and the law (JC)	60
Road traffic offences (JC)	37
Second hand goods	4
Section 18	41
Sexual offences workshop (JC)	57
Stock theft and related offences	28
Theft of trust fund seminar	1
Training workshop on counter terrorism, international criminal & responding to translation threats	12
Trial advocacy (in-house)	14
Trio and other serious crimes (JC)	133
Victim impact statement	36
Video conference session	20



## Improper conduct

### Report on complaints or any alleged improper conduct or any conduct which has resulted in any impropriety or prejudice on the part of a member of the NPA

Table 49: Analysis of labour matters dealt with

Types of misconduct	Number of Prosecutors	Outcome
Gross dishonesty	3	1 X 3 months suspension and final written warning 1X Dismissal 1 X Not guilty
Bringing the name of the organisation into disrepute	2	1 X One month suspension and written warning 1 X Dismissal
Improper conduct	2	1X 1 month suspension and Written warning 1 X Final written warning
Racism	1	1 x Suspension for three months
Assault	1	1 x Not guilty
Insubordination	1	1 X Written warning
Dereliction of duty/poor performance	4	1 X Dismissal 1 X One month suspension and demotion 1X One month suspension 1X Final written warning
Irregular expenditure	1	1 X Withdrawn
Abuse of state property and insolent behaviour	1	1 X Final written warning
Improper conduct	1	1 X Not guilty
Unprofessional conduct	2	2 X Verbal warning
Failure to obey a lawful instruction	1	Written warning
Misuse of state vehicle	1	Final written warning
Negligence	4	2 X Corrective Counselling 1 X Written warning 1 X Final written warning
Absenteeism	3	1 X One month suspension and Final written warning 1X Final written warning 1 X Written warning
Abuse of power	1	Matter dismissed due to timeframe
Settlement of a claim without a mandate	1	1 X Corrective Counselling.
<b>Total</b>	<b>30</b>	

The Integrity Management Unit of the NPA is responsible for the investigation of cases of possible integrity breaches by NPA staff. During the year they received 61 cases in total, 40 cases reported to them directly and 21 cases reported via a hotline established to protect the identify of whistle blowers.

The types of misconduct dealt with in the investigations were:

- Unethical conduct/misconduct 23
- Corruption 25
- Conflict of interest 5
- Prosecutorial discretion 4
- Defeating the ends of justice 3
- Irregular appointment 1

### **Status of cases**

The status of cases:

Cases finalised	32
Case unsubstantiated	5
Cases referred	15
Pending	9

### **Amendments to the Code of Conduct for prosecutors**

There were no amendments to the Code of Conduct.

## Technical Indicators and descriptions

Indicator Title	Number of criminal court cases finalised including ADRM
Method of calculation	The criminal court case is measured as finalised on the date on which the verdict of not guilty given [including stopping of prosecution in terms of section 6(b) of the Criminal Procedure Act 1977, Act No 51 of 1977 (CPA)] is given or sentence is imposed in the case of a guilty verdict and includes cases dealt with in terms of section 57A of the CPA. Should there be multiple accused, the case is only counted upon conclusion of the case against all accused
Indicator Title	Conviction rate
Method of calculation	The percentage of cases finalised with a guilty verdict (including Sec 57A) divided by the number of cases finalised with a verdict. Conviction rate is measured at the date of sentencing or verdict of not-guilty irrespective of the date when the plea was entered
Indicator Title	Number of operational TCCs
Method of calculation	The total number of TCCs which meet the requirements of an operational TCC on the last date of the reporting period
Indicator Title	Number of completed forfeiture cases
Method of calculation	The total number of cases in which a forfeiture or confiscation order was obtained in the reporting period.
Indicator Title	Value of freezing orders
Method of calculation	The total estimated net market value of assets frozen by orders obtained in the reporting period. The value is estimated and counted at the time when the initial order is obtained.
Indicator Title	Number of witnesses harmed, threatened or killed while on the witness protection programme
Method of calculation	The total number of witnesses that were harmed, threatened or killed during the reporting period by a person or persons from whom they were protected either directly or through an agent, while on the NPA witness protection programme.
Indicator Title	Criminal court cases finalised with verdict
Method of calculation	Criminal court cases finalised with a verdict are measured on the date that the verdict of not guilty is given or sentence is imposed in the case of a guilty verdict, and includes cases dealt with in terms of section 57A of the Criminal Procedure Act 1977, Act No. 51 of 1977. Should there be multiple accused, the case is only counted upon conclusion of the case of the case against all accused.
Indicator Title	Number of criminal court cases finalised through ADRM
Method of calculation	The case is measured as finalised on the date on which the case is withdrawn from the criminal court roll or the matter is removed from child justice court roll (whichever applicable). In the case of a diversion this is done after the certificate for the successful completion of the diversion programme is received and in the case of an informal mediation after the case was successfully mediated
Indicator Title	Number of persons convicted for corruption or offences related to corruption where the amount benefited per case is more than R5 million
Method of calculation	Number of persons convicted for corruption in the reporting period, where the amount benefited exceeds R5 million per case.

<b>Indicator Title</b>	<b>Number of government officials convicted for corruption or offences related to corruption</b>
Method of calculation	The total number of government officials (or former officials) convicted of corruption in the reporting period
<b>Indicator Title</b>	<b>% of cases reported at TCC that is referred to court for prosecution</b>
Method of calculation	The number of sexual offences TCC case dockets referred to court by the case management for prosecution divided by the total number of matters reported at the TCCs (which resulted in a police docket).
<b>Indicator Title</b>	<b>Number of freezing orders</b>
Method of calculation	The total number of cases in which freezing orders were obtained in the reporting period. An order is counted only once for each case, at the time when the initial order was obtained. In complex cases with several legs the head of the AFU may approve in writing that the separate legs be counted separately. Any other orders are not counted (they are counted as other orders). When an obtained order is reversed on the return date or on appeal, this is not counted as a negative order but will be reflected in the AFU success rate. If an order is refused after litigation, it is counted as finally lost. If it is redone, the new order granted will be counted (see also definition of success rate).
<b>Indicator Title</b>	<b>Value of completed forfeiture cases (Rm)</b>
Method of calculation	The total estimated net market value of all property of which persons are to be deprived as a result of confiscation or forfeiture orders obtained in the reporting period. The value is estimated and counted on the date when the order is obtained. It includes the value of property recovered from the person by an agreement reached as a result of the litigation in terms of POCA.
<b>Indicator Title</b>	<b>Number of completed forfeiture cases re JCPS prosecutions for corrupt activities</b>
Method of calculation	The total number of JCPS officials involved in corrupt activities against whom or whose property forfeiture or confiscation orders were obtained in the reporting period.
<b>Indicator Title</b>	<b>Value of freezing orders relating to corruption where the amount benefited per case is more than R5m</b>
Method of calculation	The total estimated net market value of assets frozen in the reporting period, relating to cases involving the offence of corruption and/or offences relating to corruption where the amount benefited exceeds R5 million. The value is estimated and counted at the time when the initial order is obtained
<b>Indicator Title</b>	<b>Value of payments to victims of crime in terms of court orders obtained in terms of POCA</b>
Method of calculation	The total amount paid or the net market value of property transferred to the victims of crime during the reporting period resulting from orders or agreements obtained. This refers to orders obtained as a result of litigation in terms of POCA. It is measured only when the proof of payment is received.
<b>Indicator Title</b>	<b>Success rate</b>
Method of calculation	The total number of cases finally won divided by all cases which were finally won or lost. Cases are finally won or lost when a final order is obtained in favour of or against the NPA, i.e. after all appeal or other legal processes have been finalised. It is counted at the date when the case became finally won or lost. Cases finally lost include all cases abandoned after an order was obtained. If a lost case is redone it is not finally lost and the new order will not be counted again.

<b>Indicator Title</b>	<b>Value of recoveries relating to corruption where the amount benefited per is more than R5 million (proceeds of crime and government losses)</b>
Method of calculation	The total amount actually recovered in the reporting period, relating to cases involving the offence of corruption and/or offences relating to corruption where the amount involved exceeds R5 million, All persons involved must have jointly received more than R5m and more than R5 m must be recoverable. The value is determined upon the successful recovery thereof
<b>Indicator Title</b>	<b>Value of recoveries for government officials convicted of corruption and other related offences (proceeds of crime and government losses)</b>
Method of calculation	The total amount actually recovered in the reporting period, relating to cases involving the offence of corruption and/or offences relating to corruption from government officials, The value is determined upon the successful recovery thereof
<b>Indicator Title</b>	<b>% of witnesses that walked off the witness protection programme</b>
Method of calculation	Measured on the number of witnesses that walked off the programme divided by the number of witnesses on the programme

