

# ANNUAL 2018/19

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS IN TERMS OF THE NPA ACT 32 OF 1998



A N N I V E R S A R Y



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ANNUAL REPORT SUPPLEMENT



## LIST OF ABBREVIATIONS/ ACRONYMS

ACTT	Anti-Corruption Task Team
ADRM	Alternate Dispute Resolution Mechanism
AENE	Adjusted Estimates of National Expenditure
AFU	Asset Forfeiture Unit
АРА	Africa Prosecutors Association
APP	Annual Performance Plan
CARA	Criminal Assets Recovery Account
CJA	Child Justice Act
CJS	Criminal Justice System
СРО	Court Preparation Officer
DDPP	Deputy Director of Public Prosecutions
DNDPP	Deputy National Director of Public Prosecutions
DoJ&CD	Department of Justice and Constitutional Development
DPCI	Directorate for Priority Crime Investigation
DPP	Director of Public Prosecutions
DSD	Department of Social Development
ECTA	Electronic Communications and Transactions Act
ECD	Eastern Cape Division
EE	Employment Equity
ENE	Estimates of National Expenditure
FATF	Financial Action Task Force
FSD	Free State Division
GDP	Gauteng Division Pretoria
GLD	Gauteng Local Division
IAP	International Association of Prosecutors
IJS	Integrated Justice System
IPID	Independent Police Investigative Directorate
JCPS	Justice, Crime Prevention and Security
KZND	KZN Division
LAD	Legal Affairs Division
LD	Limpopo Division

LGBTI	Lesbian, Gay, Bisexual, Transsexual and Intersexual
MD	Mpumalanga Division
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
MPTT	Missing Persons Task Team
MTEF	Medium Term Expenditure Framework
MTSF	Medium Term Strategic Framework
NCA	National Crime Agency
NCD	Northern Cape Dvision
NCPF	National Cyber Security Policy Framework
NDP	National Development Plan
NDPP	National Director of Public Prosecutions
NHTL	National House of Traditional Leaders
NEEC	National Efficiency Enhancement Committee
NPA	National Prosecuting Authority
NPS	National Prosecutions Service
NWD	North West Division
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
SDPP	Special Director of Public Prosecutions
SMS	Security Management Services
SOCA	Sexual Offences and Community Affairs
SS	Support Services
SSA	State Security Agency
TCC	Thuthuzela Care Centre
TIP	Trafficking in Persons
TRC	Truth and Reconciliation Committee
UNODC	United Nations Office on Drugs and Crime
VIS	Victim Impact Statement
WCD	Western Cape Division

## FOREWORD BY THE NATIONAL DIRECTOR



#### ADV. SHAMILA BATOHI National Director of Public Prosecutions

This report is prepared in terms of Sections 22 (4)(g) and 35 of the National Prosecuting Authority Act, which require that the NDPP prepares a comprehensive report on the operations of the report of the National Prosecuting Authority (NPA) and to submit it to the Minister of Justice and Correctional Services, as the Executing Authority, and thereby to Parliament.

This report covers a period prior to my taking office as the NDPP, marked by allegations of improper conduct by members of the leadership, and possible complicity in state capture, which have emerged in the various Commissions of Enquiry, in particular the State Capture Commission led by Deputy Chief Justice Raymond Zondo. This has resulted in serious damage to the NPA's reputation and credibility.

The organisation has been in a state of crisis due to additional pressures, including financial constraints that led to a fiscalinduced recruitment freeze for more than three years. The Aspirant Prosecutor Programme, the lifeblood supply of fresh talent from universities into the entry levels of the organisation, has not had an intake since 2016.

Notwithstanding, NPA staff have worked, and continue to do so, under challenging circumstances, with limited resources and scant opportunity for training and development.

The courts however continue to function and dedicated staff ensure justice for many victims of crime. High courts achieved an 89.9% rate and the regional courts a rate of 81.7%, which represents the highest rate in the past 5 years. The district courts achieved a conviction rate of 95.7% and exceeded the target by 2%. However, the question remains: does the criminal justice system, really deliver justice to society, and impact positively on crime levels in the country? All victims of crime deserve justice and the attention of a wellfunctioning and effective criminal justice system. However endemic corruption, which has gone unchecked for years, has left the economy of country on the brink of collapse, has seriously affected service delivery and development, and has affected the quality of life of ordinary South Africans, especially those most vulnerable and in the poorest sectors of society.

The NPA is an organisation on the mend. It is on a path of renewal. The prosecutors and all other NPA staff are re-energised and committed to work towards restoring the credibility and integrity of the prosecution service. I have had an opportunity to start engaging with many of them during my on-going regional visits. On 29 – 31 May 2019, senior management of the organisation convened to work on a strategy to achieve the new vision of an independent, professional, accountable and credible NPA. There is new leadership on the horizon, and there is a new Minister of Justice and Correctional Services in the 6<sup>th</sup> Administration.

I look forward to sharing positive progress in the coming years, as the NPA embarks on a challenging but exciting journey to restore its credibility, and restore the confidence of the people of South Africa in the criminal justice system.

Adv Shamila Batohi National Director of Public Prosecutions 3 June 2019

## OVERVIEW OF THE NPA

### 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

## **CONSTITUTIONAL MANDATE**

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, and Special Directors who are assigned specific powers, are responsible for ensuring performance of the NPA's 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 is determined with the concurrence of the Minister responsible for the administration of justice and after consultation with the DPPs. Furthermore, in terms of section 179(6) of the Constitution, the Minister exercises final responsibility over the prosecuting authority, and may 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.

#### National Director of Public Prosecutions (NDPP)

Section 5(2) of the NPA Act establishes the Office of the National Director of Public Prosecutions, with the NDPP as the head of the office and control the Office; Deputy National Directors and Special Directors; other members of the prosecuting authority appointed at or assigned to the Office, and members of the administrative staff of the Office.

#### **Deputy National Directors of Public Prosecutions (DNDPPs)**

In terms of section 11 of the NPA Act, the President, after consultation with the Minister and National Director, may appoint not more than four persons as DNDPPs. Their 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.

#### **Directors of Public Prosecutions (DPPs)**

Under section 13(1) of the NPA Act, the President may, after consultation with the Minister and the National Director, also appoint DPPs as heads of the prosecuting authority at the respective seats of each high court in the Republic, established by section 6(1) of the NPA Act. 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 or in respect of specific offences expressly excluded from his or her jurisdiction.

#### Special Directors of Public Prosecutions (SDPPs)

A SDPP may be appointed in the office of the National Director, in terms of section 13(1)(c) of the NPA Act 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 Government Gazette. The SDPP also has original prosecutorial powers in respect of those specific offences identified in his or her Presidential Proclamation in any area of jurisdiction, but subject to the concurrence of the DPP of the area of jurisdiction concerned. Currently there are four SDPPs to deal with Serious Commercial Crime, Sexual Offences and Community Affairs and Priority Crimes related to terrorism and other priority offences, as well as the Office for Witness Protection, respectively.

#### **Deputy Directors of Public Prosecutions (DDPPs)**

A DDPP appointed by the Minister under section 15(1) of the NPAAct also has original prosecutorial powers in the area of jurisdiction concerned. However, such DDPP must exercise such powers subject to the control and directions of the DPP 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

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 DPP, 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.

#### **Investigating Directorate**

The President may, by proclamation in the Government Gazette, establish one or more Investigating Directorates in the Office of the National Director, in respect of such offences or criminal or unlawful activities as set out in the proclamation. Any proclamation issued in terms of this section shall be issued on recommendation of the Minister, the Cabinet member responsible for policing and the National Director; may at any time be amended or rescinded by the President on the recommendation of the Minister; the Cabinet member responsible for policing and the National Director, and shall perform the powers, duties and functions of the Investigating Directorate concerned subject to the control and directions of the National Director.

#### 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 victim compensation.

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

The Prevention of Organised Crime Act, 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 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 abovementioned Act. This Act makes provision for extraterritorial application in its implementation in certain circumstances.

#### Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004)

The PCLU is also mandated to manage and direct the investigation and prosecution of terrorism, terror financing and related offences as contemplated in this Act. This Act also makes provision for extraterritorial jurisdiction in respect of specific offences as contemplated in the Act.



#### 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 temporary protection, 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 Department of Justice and Constitutional Development (DoJ&CD) with the Director-General as the accounting officer, but is administered by the NPA.

#### Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)

Much of South Africa's anti-corruption legislation has been consolidated in the above Act. The Act provides, among others, for the strengthening of measures to prevent and combat corruption and corrupt activities, for the offence of corruption and offences relating to corrupt activities, for investigative measures in respect of corruption and related corrupt activities, for the establishment and endorsement of a register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts, for placing a duty on certain persons holding a position of authority to report certain corrupt transactions, and for extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities.

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

The Act comprehensively and extensively deals with all legal aspects of, or relating to, sexual offences in a single statute. The Act, inter alia, repealed 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 enacted 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 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 gives effect to South Africa's international obligations in respect of the trafficking of persons in terms of international agreements.

#### State Attorneys Amendment Act, 2014 (Act No. 13 of 2014)

The Act may have an impact on the mandate of the Legal Affairs Division (LAD) in particular, and the NPA as a whole. Therefore, the NPA will have to liaise with the DOJ&CD regarding the envisaged policy to be determined by the Minister, in terms of the Act.

# POLICY MANDATE

## **POLICY MANDATES**

#### National Development Plan 2030 (NDP)

The NDP sets out a long-term vision for government to ensure that, by 2030, all people in South Africa should feel and be safe. This vision can only be achieved if there is a well-functioning criminal justice system in which the police, the judiciary, the correctional services and the NPA work together to ensure that suspects are caught, securely detained where appropriate, prosecuted, convicted if guilty, appropriately punished and rehabilitated. The NDP also provides the basis for the 2014-2019 Medium Term Strategic Framework (MTSF) and supporting delivery agreements.

#### Medium Term Strategic Framework (MTSF)

The MTSF introduces sub-outcomes towards achieving the goals set out in the NDP for the JCPS cluster. The 2014-2019 MTSF suboutcomes will support the primary outcome of all people in South Africa feeling and being safe. The MTSF requires the cluster to focus on seven expected sub-outcomes to achieve this vision (only outcomes relevant to the NPA are discussed below). All seven sub-outcomes are defined and underpinned by activities and timelines that are managed and monitored at the highest executive levels within the JCPS.

The NPA contributes to the achievement of the following sub-outcomes:

- Reduced levels of contact crime
- An efficient and effective criminal justice system
- Secure cyberspace
- Ensure domestic stability
- Corruption in the public and the private sectors reduced

These sub-outcomes are further refined and specific activities and measures are identified for each. In respect of the NPA the following require priority:

- Focus on the prosecution of serious and priority crimes, which includes corruption and contact crimes (especially sexual offences and the trio crimes<sup>2</sup>)
- Participate in the implementation of the Criminal Justice Review 7-point plan
- Contribute to increasing the finalisation of criminal cases, both through trials and alternative dispute resolution mechanisms
- Contribute to cybersecurity through the successful prosecution of cybercrimes
- Contribute to domestic stability through the successful prosecution of criminal and violent conduct in public protests
- Convict persons for serious corruption or offences related to corruption where the amount benefitted per case is more than R5 million, freezing of assets and the recovery of losses and proceeds of crime
- Contribute to the reducing of corruption by government officials through the conviction of persons and recovery of proceeds and government losses

<sup>2</sup> 

Trio crimes consists of robbery at residential premises, robbery at business premises and vehicle robbery / car hijacking (MTSF)

#### National Cyber Security Policy Framework (NCPF)

The fight against cybercrime remains one of the key priorities for the JCPS cluster in particular and government in general. In its effort to fight cybercrime, the JCPS cluster has developed the NCPF 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
- Build confidence and trust in the secure use of information and communication technologies
- A Bill<sup>3</sup> dealing with cybercrime and cybersecurity is currently before Parliament.

The Cybercrime and Cybersecurity Bill, Bill 6 of 2017



<sup>3</sup> 

JURIS SECUNDUM

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NDUM

## **ORGANISATIONAL OVERVIEW OF THE NPA**

#### **Organisational Structure**

Figure 1: High Level Organisational Structure of the NPA



#### **Strategic Objectives**

The NPA has three strategic objectives:

- Ensure vulnerable and intimidated witnesses and related persons are successfully protected
- Ensure that profit is removed from crime
- Ensure threatened witnesses are successfully protected

The National Prosecutions Service (NPS) is primarily responsible for general and specialised prosecutions and the appeals that might follow. This includes resolving criminal matters outside of the formal trial process through alternative dispute resolution mechanisms, settling admissions of guilt for minor offences and considering dockets submitted by the police where persons have not been charged. The Sexual Offences and Community Affairs Unit (SOCA) and the Specialised Commercial Crime Unit (SCCU) within the NPS focus on specialised prosecution services related to sexual offences and complex commercial crimes, respectively. The Priority Crimes Litigation Unit (PCLU) is a small specialist prosecutions unit that manages investigations and prosecutes crimes that impact on state security, nationally and internationally.

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.

The **Office for Witness Protection (OWP)** provides for temporary protection, 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.

The Director-General of the Department of Justice and Constitutional Development (DoJ&CD), as the accounting officer of the NPA, has prepared a full report that incorporates NPA information on its performance against pre-determined objectives and financial statements, as Programme 4 of the DoJ&CD. This information is available in the DoJ&CD's annual report for 2018/19 Overview of Operations and Performance

## NATIONAL PROSECUTIONS SERVICE (NPS)

## NATIONAL PROSECUTIONS SERVICE (NPS)

The NPS is headed by a Deputy National Director of Public Prosecutions (DNDPP). The general prosecutions stream consists of 10 Directors of Public Prosecutions (DPPs) who head up their respective divisions in the provinces, supported by public prosecutors and state advocates in the district, regional and high courts. The prosecutors in the lower courts form the core of the NPS, prosecuting more than 90% of cases in district courts and touching the lives of many individuals. The specialised units, namely, the Priority Crime Litigation Unit (PCLU), Special Commercial Crime Unit (SCCU) and Sexual Offences and Community Affairs Unit (SOCA) all form part of the NPS.

The 2018/19 NPS Annual Performance Plan (APP) sets out the strategic objectives and activities undertaken to ensure successful prosecutions, maintaining a high conviction rate in general prosecutions and in respect of specific crime categories such as organised crime and corruption. In addition, the NPS focused on advancing the rights of victims through initiatives such as the Thuthuzela Care Centres (TCC) and the services offered by the Court Preparation Officers.

#### Highlights of achievement

Some of the main highlights achieved by NPS during this reporting period include:

#### a. Conviction rates:

The prosecutors followed a no-tolerance approach to the ever increasing rate of crime by ensuring quality prosecutions through the implementation of proper screening mechanisms. The impact of their dedication and focused approach is evident from the high conviction rates achieved by all three forums. The message is clear to criminals - if a case is enrolled for trial a conviction is ultimately obtained.

Conviction rates	2014/15	2015/16	2016/17	2017/18	2018/19	Change over prev yr	Change over period 2014/15-18/19
District courts	94.2%	94.7%	95.6%	96.1%	95.7%	-0.4%	1.5%
Regional courts	76.6%	78.4%	79.8%	81.0%	81.7%	0.7%	5.2%
High courts	91.0%	89.9%	91.0%	91.7%	90%	-1.7%	1%
All criminal courts	92.3%	93.0%	94.1%	94.7%	94.3%	-0.5%	2.0%

#### Table 1: Conviction rates per forum

All criminal courts managed to obtain 260 456 convictions with a remarkable 94.3% conviction rate. High courts maintained an 90% rate with 869 convictions, marginally (0.1%) below the target. The regional courts maintained a rate of 81.7% with 22 882 convictions, which represents the highest rate in the past 5 years. The district courts achieved a conviction rate of 95.7% with 236 705 convictions and exceeded the target with 2.7%. From 2014/15 the prosecutors managed to increase the overall conviction rate with 2%. Against this backdrop it is evident that the NPA has successfully upheld its strategic focus to improve the successful prosecution of cases whilst enhancing the quality of prosecutions.

#### b. Plea and sentence agreements:

The number of plea and sentence agreements in terms of section 105A of the Criminal Procedure Act increased slightly from 1 988 to 2 898 agreements concluded. The 2 898 agreements comprise 86 780 counts. Amongst these cases were one fraud cases involving significant number of counts namely 75 397 counts and another case involving 1 647 counts. The plea agreements saved valuable court time as lengthy trials were prevented.

#### c. Specialised crime:

The commitment to curb violent and economic crimes and address the impact of these crimes on the community has also shown some inspiring results:

- i. The target (70%) on the conviction rate for sexual offence cases was exceeded by 4.4% (74.4%) and improved from the previous year by 1.6% (from 72.7% to 74.4%). A total of 4 716 convictions were obtained from 6 341 verdict cases.
- ii. A similar high conviction rate of 73.5% (1 636 convictions) was achieved on reported cases at the TCC's.
- iii. Murder prosecutions maintained a high 78.4% conviction rate, which represents 3.4% more than the target of 75%. A total of 3 490 convictions were obtained from 4 454 verdict cases.
- iv. Organised crime prosecution achieved a conviction rate of 94.8%. A total of 294 convictions were obtained from 310 verdict cases.
- v. A positive impact on trio crimes was made if the three categories of crime are analysed separately. The total of 1 566 convictions represents 2 028 trio counts, which if measured against the total number of trio counts finalised with a verdict, represents a conviction rate of 83.7%. The 2 028 convicted counts comprised 1 045 counts of house robbery, 601 counts of business robbery and 382 counts of vehicle robbery/hi-jacking.
- vi. Serious commercial crimes achieved a conviction rate of 95% which is 2% more than the target of 93%. A total of 760 convictions were obtained from 800 verdict cases.
- vii. A remarkable 96.9% conviction rate was maintained in tax cases which is 6.9% above the target of 90%. A total of 188 convictions were obtained from 194 verdict cases.
- viii. An outstanding 100% conviction rate was maintained in 87 money laundering cases finalised with a verdict.
- ix. A remarkable 98.2% conviction rate in environmental crime was achieved. This represents 1 221 convictions from 1 243 verdict cases. The dedicated focus on rhino and related matters resulted in the achievement of a 95.4% conviction rate, by obtaining 62 convictions from 65 verdict cases.
- x. Cybercrime prosecutions managed again to achieve a remarkable 99.1% conviction rate with 440 convictions from 444 verdict cases. A year on year increase is noted in the number of convictions obtained.
- xi. Copper theft prosecutions including essential infrastructure resulted in a similar high 85.6% conviction rate with 462 convictions from 540 verdict cases. Broken down, copper theft achieved a conviction rate of 87.2% with 285 convictions whilst 83.1% conviction rate was achieved in essential infrastructure prosecutions.
- xii. The conviction rate in violent protests and industrial action prosecuted (68.8%) is still below target of 74%, but the number of convictions increased with 7 cases compared to the previous year from (88 to 95 convictions).
- xiii. The NPA is dedicated to contribute to the fight against corruption. To this end, 17 persons were convicted of corruption where the amount involved is more than R5m whilst 210 government officials and 143 private persons were convicted for offences related to corruption.

#### d. Decision dockets:

The prosecutors also deals with decision dockets that include all criminal matters presented to the prosecutors to consider the institution of a prosecution. These exclude dockets in cases enrolled. The prosecutors excelled as 966 474 dockets were received and 964 897 were dealt with, representing a clearance rate of 99.3%. The rapid turnaround time on decision dockets is an indication that prosecutors are committed to high levels of service delivery to all victims of crime.

#### e. Victims of Crime

In its plight to serve the community the organisation has embarked on a process to become a victim centric organisation. Victims are given the right to participate through victim impact statements and when they are affected by the decisions to resolve a matter through ADRM or the evidence before the court. Central to this approach is the court preparation officers who not only attend to the needs of victims of crime but ensure that they are given a greater role in the process of achieving justice. A total of 110 181 witnesses were assisted by the CPO's whilst 10 539 victim impact statements were facilitated. To address the harm caused by crime, the prosecutors have furthermore obtained 689 compensation orders to the value of R70 114 742.

Against this backdrop it is evident that the prosecutors made an impact on serious crime and achieved their strategic intent of focusing on quality prosecutions and serious crime, whilst augmenting the rights and needs of the victims of crime.

PERFORMANCE AGAINST STRATEGIC OBJECTIVES AND PROGRAMME INDICATORS

## PERFORMANCE AGAINST STRATEGIC OBJECTIVES AND PROGRAMME INDICATORS

#### Overview of the performance delivery environment

The NDP 2030 sets the long terms strategic vision for South Africa. The Medium Term Strategic Framework 2014 – 2019 period outlines sub-outcomes towards achieving the goals set out in the NDP 2030. For the JCPS Cluster the 2014 – 2019 sub-outcomes support the primary outcome of 'all people in South Africa are and feel safe'. The sub-outcomes relevant to the NPA are reduced levels of contact crime, an efficient and effective criminal justice system, secure cyberspace, ensuring domestic stability and reduced corruption in the public and private sectors. These are discussed in the NPA APP for 2018/19.

The NPA APP has three strategic objectives:

- Objective 1: Ensure vulnerable and intimidated witnesses and related persons are successfully protected
- Objective 2: Ensure that profit is removed from crime
- Objective 3: Ensure threatened witnesses are successfully protected

Each of these objectives has been assigned to a business unit. Objective 1 is the primary responsibility of the NPS inclusive of the specialised units (SCCU and SOCA), with exception of Priority Crime Litigation Unit. The indicators reflected in the NPA APP relevant to the NPS have been included in the 2018/19 NPS APP.

The NPS is primarily responsible for general prosecutions and the appeals that may follow. The NPS is also responsible for the resolution of criminal matters outside of the formal trial process through Alternative Dispute Resolution Mechanisms (ADRM), the setting of admission of guilt for offences and consideration of dockets brought by the police where persons have not been charged.

#### Performance against ENE targets

The NPA is Programme 4 within Vote 21 of the Estimates of National Expenditure (ENE) allocated to the Department of Justice and Constitutional Development. The ENE covers key policy areas, programme objectives and service delivery targets whilst presenting performance information (audited, preliminary and projected) for seven financial years. The ENE therefore links performance targets to budgeted expenditure. Severe resource constraints, negatively impacted the performance against these ENE targets and the prosecutors in the NPS component achieved only 75% (3 out of 4 ENE indicators) during this financial year.

#### Table 2: Progress on ENE Indicators

	Performance Against Target						
Strategic Objective	Annual Target	2017/18	2018/19	% Deviation from target	Progress over prev year		
	90%	91,7%	90%	0%	1 70/		
Conviction rate in high courts	958	890	869		-1,7%		
Conviction rate in regional	78%	81,0%	81,7%	3,7%	0.70/		
courts	23 706	24 976	22 882		0,7%		
Conviction rate in district	93%	96,1%	95,7%	2.70/	0.40/		
courts	277 819	293 234	236 705	2,7%	-0,4%		
Number of persons convicted of corruption where the amount involved is more than R5m	30	37	17	-43.3%	-54.1%		

Noteworthy is the marginal decline in the conviction rates of both the high and district courts when compared to the previous year. A matter of concern is the downward trend in the number of persons convicted of corruption where the amount involved is more than R5m.

#### Strategic Objectives and programme performance indicators

Strategic performance management is applied by the organisation to monitor progress against strategic objectives in pursuit of the organisation's long term vision whilst the operational performance measurement system aims to monitor the efficiency level upheld by all offices in pursuit of strategic objectives. A collective approach between all partners in the criminal justice value chain ensured improvement in some of the strategic indicators, proof that persistent stakeholder collaboration and integration is critical for successful performance.

Table 3: Achievement against Strategic Objectives and programme performance indicators

Chrononia Obiostina	Performance Against Target						
Strategic Objective	Annual Target	2017/18	2018/19	% Deviation from target	Progress over prev year		
Conviction water in high counter	90%	91,7%	90%	0%	1 70/		
Conviction rate in high courts	958	890	869		-1,7%		
Conviction rate in regional courts	78%	81,0%	81,7%	3,7%	0.7%		
	23 706	24 976	22 882		0,7%		
Conviction rate in district	93%	96,1%	95,7%	2.70/	0.49/		
courts	277 819	293 234	236 705	2,7%	-0,4%		
Conviction rate in priority	80%	85,0%	75,0%	-5,0%	10.0%		
crime cases	0	1	3		-10,0%		

Stratagie Objective	Performance Against Target				
Strategic Objective	Annual Target	2017/18	2018/19	% Deviation from target	Progress over prev year
Conviction rate in complex	93%	92,1%	95,0%	2.0%	2.0%
commercial crime	801	783	760	2,0%	2,9%
Conviction rate in organised	90%	93,8%	94.85	4.00/	1 1
crime	384	346	294	4.8%	1.1
Conviction rate in	85%	96,3%	98,2%	13,2%	1,9%
environmental crimes	346	501	1 221	13,270	1,770
Conviction rate in sexual	70%	72,7%	74,4%	4,4%	1,6%
offences	4 602	5 004	4716	י ד,ד	1,070
Conviction rate in trio crimes	85%	82,9%	82,2%	-2,8%	-0,7%
	1 579	1 723	1 566	2,078	0,7,70
Conviction rate in murder	75%	77,7%	78,4%	3,4%	0,7%
prosecutions	3 404	3 601	3 490	5,170	
Conviction rate in violent	74%	68,8%	68.8%	E 20/	0.1%
protests and industrial actions prosecuted	75	88	95	-5,2%	0,1%
Conviction rate in cybercrime	95%	98,5%	99,1%	4,1%	
prosecutions	268	330	440		0,6%
Conviction rate in copper theft	74%	88,9%	85,6%	11 (0)	2.2%
prosecutions	220	287	462	11,6%	-3,3%
Number of persons convicted of corruption where the amount involved is more than R5m	30	37	17	-43.3%	-54.1%
Number of Government officials convicted for offences related to corruption	230	213	210	-8,7%	-1,4%
Number of persons convicted of private sector corruption	Baseline	n/a	143	n/a	n/a
Number of victims assisted at TCC sites	29 800	33 973	34 558	16,0%	1,7%
Conviction rate of TCC	70%	74,5%	73,5%	2.50/	1.00/
reported cases	1 633	1 899	1 636	3,5%	-1,0%
Conviction rate in money	75%	1	100,0%		
laundering	Baseline	n/a	87	25,0%	n/a
Number of criminal matters finalised	1 061 869	1 065 240	1 013 928	-4,5%	-4,8%

	Performance Against Target				
Strategic Objective	Annual Target	2017/18	2018/19	% Deviation from target	Progress over prev year
Clearance ratio on decision	85%	94,1%	92,8%	7,8%	1.20/
dockets received	781 884	920 651	964 897		-1,3%

#### Conviction rates in high courts

The high courts received a total of 846 new cases and finalised a total of 965 cases. The number of cases finalised decreased by 0.6% from the previous year, although the number of new cases decreased by 14.4%, from 988 to 846 cases. The conviction rate decreased from 91.7% to 90%. This downward trend is indicated below:

Figure 2: Conviction rate by high courts:



The manner in which the high courts dealt with case flow is indicated below.

#### Figure 3: Cases finalised by high courts



The number of formal bail applications in the high courts decreased remarkably by 60% from 56 to 33. The reason for such decrease could mainly be attributed to the increase in bail applications in the lower court before the cases are transferred to the high courts.

#### Noteworthy cases:

**S v Snyman (ECD):** The accused was arraigned in the Port Elizabeth High Court on 24 charges ranging from housebreaking with intent to rape, intent to rob and robbery with aggravating circumstances as well as 12 counts of rape. Between 2011 and 2014, either late at night or in the early hours of the morning, the accused broke into houses in the KwaZakhele area in Port Elizabeth. He threatened his victims with a knife or firearm and robbed and raped them. The accused was linked via DNA. The accused was sentenced to five terms of life imprisonment.

**S v Mdlolo (GLD):** The man dubbed "One Man" for single-handedly terrorising Soweto communities was sentenced to four life sentences plus 240 years in jail by the Johannesburg High Court. Innocent Lungisane Mdlolo (35) became famous for evading justice, after he escaped from the Palm Ridge Magistrates Court on 2 December 2014, the day he was supposed to be sentenced by the late Judge George Maluleke. "One Man" had been on the run since 2015, and was recaptured in Nigel, Ekurhuleni in December last year and consequent thereto, the matter was set down before Judge Ratha Mokgoatlheng to deliver the judgement as written by Judge Maluleke before his death.

Mdlolo was of the view that the death of Judge Maluleke would render his case re-trialled before another Judge. Judge Mokgoatlheng explained that proceedings will be finalised as prescribed by Section 275 of the Criminal Procedure Act 51 of 1977, which states that; any judicial officer of the court may, in the absence of the judicial officer who convicted the accused or passed the sentence, pass sentence on the accused or take such steps as the judicial officer who is absent.

Mdlolo was convicted on three counts of rape, one of murder, ten counts of house breaking with intent to rob, five counts of robbery with aggravating circumstances and illegal possession of firearms and ammunition. In the interim of his reign of terror, the accused would accost victims in their motor vehicles, break and enter their homes, point a firearm at them and demand money, cellphones and laptops. He raped his victims on three occasions and on one occasion he shot and killed Sinethemba Kakaza, who arrived at his home to find Mdlolo in the act of raping his sister.

In his judgement, the late Judge Maluleke considered amongst others, the impact of the crimes on victims, stating that one of the complainants was now disabled as a result of stress and had left her work as a teacher. Deputy Director of Public Prosecutions, Elaine Moonsamy maintained that Mdlolo should receive multiple life sentences.

**S v Gwebu (MD)** - Gwebu started his terror of frightening people of Vosman from 2004 to 2014, where he would break into the victims' houses at night, threaten them with a knife or at gun point and rape them in front of their families. He would sometimes rob them of their belongings like cell phones and cash, with his face covered with a balaclava. Gwebu robbed one of his victims of her cell phone and gave it to his girlfriend. During the police investigation, the same cellular phone was found in the girlfriend's possession and the accused was arrested. DNA samples were taken and Gwebu was positively linked with other crimes. The High Court sitting in Delmas sentenced Gwebu to 12 life sentences and an additional 194 years imprisonment after he was convicted on multiple counts of rape, housebreaking, contravening of Section 21(2) of the Sexual Offences Act, robbery with aggravating circumstances and pointing of a firearm.

**S v Doorenwand and another (NWD):** Two white farmers caught the deceased stealing sunflower on their farm. They assaulted him and threw him out of their moving vehicle and he fell to his death. This was a racially motivated incident which led to public violence and destruction of shops and houses in Coligny. The two accused were sentenced to an effective 18 years and 21 years in prison, respectively.

#### Conviction rate and progress of regional courts

The regional courts, addressing mostly serious crime, enrolled 51 551 cases, 1 758 fewer cases than the previous year. Notwithstanding severe resource constraints, the regional courts still made an impact on serious crime by finalising 30 477 cases, obtaining 22 882 convictions (81.7%) from 28 001 verdict cases. A total of 2 476 cases were resolved through ADRM. This represents a finalisation rate of 0.6 cases per court per day.



Effective stakeholder engagement coupled with dedicated prosecutors ensured consistent performance. A comparative analysis with previous years indicates year on year improvement in the conviction rates achieved by regional court prosecutors which confirms their dedication to improve the level of service to the victims of serious crime.



Figure 5: Conviction rate by regional courts:

In addition to the cases finalised including ADRM, the prosecutors in the regional courts finalised 6 310 court and criminal matters which include a range of additional functions that take up valuable court time. From the list below it is evident that formal bail applications (64.4%) coupled with the application for leave to appeal (23.8%) utilised the most court time.

Table 4: Progress on court/criminal matters finalised

COURT/CRIMINAL MATTERS FINALISED	TOTAL	% OF TOTAL
SUSPENDED SENTENCES	351	5,6%
CONVERSION OF MAINTENANCE TRIAL TO ENQUIRY	6	0,1%
APPLICATION FOR LEAVE TO APPEAL	1 499	23,8%
COMMITTAL TO MENTAL INSTITUTION	269	4,3%
CONVERSION OF SENTENCE	98	1,6%
FORMAL INQUESTS	0	0,0%
CJA: PRELIM INQUIRIES	26	0,4%
FORMAL BAIL APPLICATIONS	4 061	64,4%
TOTAL MATTERS FINALISED	6 310	100,0%

The victims of serious crime were also served through quality decision making outside the court arena. A total of 153 705 dockets were considered for decision, which represents 21 617 (16.4%) more than the 132 088 received in the previous year. A positive clearance ratio was maintained by dealing with 154 250 dockets, 16.9% (22 277) more than the 131 973 dealt with during the previous year.

Severe resource constraints impacted negatively on screening process throughout all regions. A total of 10 762 cases were withdrawn, which is 4.1% (425) more than the 10 337 withdrawals during the previous year.

#### Conviction rate and progress of district courts

The district courts enrolled 740 498 new cases, which is 11.2% (93 258) fewer cases than the 833 756 new cases enrolled during the previous year. The courts finalised 394 335 cases comprising of 247 342 verdict cases (62.7% of the total finalised cases) and 146 993 ADRM cases (37.3% of the total finalised cases). This represents a finalisation rate of 3.4 cases per court per day.



Figure 6: Cases finalised by district courts:

Effective stakeholder engagement whilst aiming to increase successful prosecutions, enabled the district court prosecutors to maintain high conviction rates. A total of 236 705 convictions were obtained which represents a remarkable conviction rate of 95.7%. A comparative analysis with previous years indicates a general upward trend in the achievement of conviction rates by the district court prosecutors, although a marginal decline is noted during the reporting period. Notwithstanding this decline, the overall high conviction rates still reflect the dedication and commitment of prosecutors to ensure quality prosecutions.



Figure 7: Conviction rate by district courts:

In addition to the cases finalised including ADRM, the prosecutors in the district courts finalised 65 929 court and criminal matters. From the list below it is evident that formal bail applications (78.5%) and preliminary inquiries in terms of the Child Justice Act (14.2%) utilised the most of the court time.

Table 5: Progress on court/criminal matters finalised

COURT/CRIMINAL MATTERS FINALISED	TOTAL	% OF TOTAL
SUSPENDED SENTENCES	3 125	4,7%
CONVERSION OF MAINTENANCE TRIAL TO ENQUIRY	560	0,8%
APPLICATION FOR LEAVE TO APPEAL	275	0,4%
COMMITTAL TO MENTAL INSTITUTION	483	0,7%
CONVERSION OF SENTENCE	188	0,3%
FORMAL INQUESTS	152	0,2%
CJA: PRELIM INQUIRIES	9 380	14,2%
FORMAL BAIL APPLICATIONS	51 766	78,5%
TOTAL MATTERS FINALISED	65 929	100,0%

The district court prosecutors received 795 997 dockets for decision, which is 3.3% (25 085 dockets) more than the 770 912 received during the previous year. A total of 794 217 dockets were dealt with, which is 3% (23 404) more than the 770 813 dockets dealt with during the previous year. 92 930 cases were withdrawn which is 9.6% (8 154) more than the 84 776 withdrawals during the previous year.
# Conviction rate in priority crime cases

The Priority Crimes Litigation Unit (PCLU) finalised 4 cases and obtained a conviction rate of 75%.

Four terrorism-related cases in court are either part-heard or at a pre-trial stage. These cases are well defended and legal challenges are brought throughout the process. In two of the cases requests for mutual legal assistance (MLA) have been made to a number of foreign states. The MLA processes are extremely slow and dependent on stakeholders both inside and outside the country for execution. The investigations are also complex and in many cases dependent on the analysis of digital evidence. This results in delays in finalising prosecutions.

A decision was taken to prosecute a former Security Branch member for the murder of Ahmed Timol, who died in detention in 1971. The defence immediately brought an application for a stay of prosecution and, given the complexity of the issues raised, the matter was referred to a full bench of the high court for argument and judgment is awaited. Similarly, a prosecution was instituted three years ago against three former Security Branch members for the kidnapping and murder of Nokuthula Simelane. To date the trial has not commenced due to various legal arguments raised by the defence.

A number of cases relate to contraventions of the laws relating to military trade, nuclear trade and weapons of mass destruction (WMD). All three sets of legislation require dolus in the form of intention. In almost all of the cases investigated and referred for decision, the prerequisite guilty knowledge is absent. Consequently, no prosecutions could be instituted. A presentation on this issue was given to the Chairperson of the Non-Proliferation Council and the Council indicated it was satisfied with the explanations given for non-prosecution. The PCLU has recommended that the laws be amended so as to make negligence a prerequisite for guilt, which will increase the number of convictions.

The PCLU has also received requests from various non-governmental organisations (NGOs) to investigate international crimes committed outside South Africa by foreign nationals on foreign victims. The Constitutional Court has ruled that such complaints must receive attention and the matters / enquiries may only be closed if a pre-investigation establishes that a full investigation would be futile. From the nature of the complaints the authorities only have very limited access to victim statements and are unable to do the necessary verifications due to the countries where the crimes were committed not being prepared to allow for investigations there. This obviously impacts on the feasibility to prosecute.

#### Conviction rate in complex commercial crime

The Specialised Commercial Crimes Unit (SCCU) maintained high conviction rates. The impact on serious economic crime is evident as the advocates finalised 800 verdict cases and obtained 760 convictions, representing a conviction rate of 95%. Not only was the target of 93% exceeded, but compared to the previous years, an improved performance is noted. This achievement should be viewed against serious resource constraints that are still experienced in some offices.



#### Figure 8: SCCU Conviction rate

## Noteworthy cases:

**S v Mohapi (FSD):** A Bloemfontein crime intelligence police official, Warrant Officer Teboho Japhta Mohapi was on 26 March 2019 slapped with a six year prison sentence after he was convicted of four counts of fraud by Bloemfontein Commercial Crime Court. Mohapi defrauded crime intelligence of R38 000 between January and September 2016. Mohapi would get crime related information from his informers and thereafter lodge a claim for the informers to be paid.

**S v Lerm (GDP):** The accused is a former employee of the Tshwane Municipality, who flouted supply chain management regulations, causing the city a loss of more than R50 million. A 2010 report by the City's Standing Committee on Public Account found that he flouted the supply chain management policy by creating orders and procuring quotes for services from suppliers, instead of going through the procurement system. The accused then split up orders into smaller amounts to stay under the radar of the R300 0000 cap.

He was charged with fraud and corruption, and entered into a plea and sentence agreement with the state. He was convicted and sentenced to 15 years imprisonment, 5 years of which were suspended on certain conditions. The accused will thus serve an effective term of 10 years direct imprisonment. Although the AFU was involved in the matter, they did not find any assets for restraint.

**S v Logan (GDP):** The accused was arrested for contravention of Regulation 3(1) of the Exchange Control Regulations 1963, to the amount of R608 000. He pleaded guilty and was convicted and sentenced to a fine of R250 000 or 5 years imprisonment. The motor vehicle used in the commission of the offence, as well as the R608 000 found in the accused's possession were confiscated by the AFU.

**S v Makhanya (GDP):** The accused was charged and convicted of the offences of fraud and money laundering involving an amount of 700 000. He was sentenced to 8 years imprisonment, 3 years of which were suspended on certain conditions. He will thus serve an effective term of 5 years direct imprisonment.

**S v Visagie (GDP):** The accused was a financial officer in the employ of Zwartkop Hoerskool, responsible for amongst others, to make monthly payments to SARS on behalf of the school. She was, for a period of 21 months, supposed to pay an amount of just over R3 million to SARS on behalf of the school, but instead paid same into her bank account. Although she pleaded not guilty to 19 counts of theft, she made admissions in terms of section 220 of the Criminal Procedure Act, and was convicted as charged. The accused was sentenced for 8 years imprisonment, 3 years of which were suspended for 4 years on certain conditions. She will thus serve an effective term of 5 years direct imprisonment.

**S v Khan and Another (GLD):** The accused were charged and convicted of six counts of fraud, whereby they used particulars of another person to open a bank account and apply for home loans, overdraft facilities and credit to the value of R9 350 000. They were charged and convicted of six counts of fraud, and were each sentenced to terms of 15 years direct imprisonment.

**S v Ginindza (GLD):** The accused was employed by ABSA bank as a Customer Service Clerk. The accused, without the complainant's permission, accessed the latter's portfolio, issued a new combination card on the portfolio and created a pin on it. The said bank card was then linked to the complainant's accounts. The limits on the issued card total limit were increased and the Notify Me Service, which alerts the client of transactions on his account was cancelled. The accused then unlawfully and fraudulently transferred an amount of R3 million from the complainant's Depositor Plus account to the complainant's cheque account. A payment in the

amount of R380 000 was effected from the complainant's cheque account to a car dealership's bank account for the purchase of a BMW M125i and a further ATM payment of R2m was unlawfully paid into another account. The accused was charged and convicted of one count of fraud and sentenced to a direct term of 9 years imprisonment.

**S v De Beer (GLD):** The accused was employed at a firm of attorneys as a bookkeeper. In respect of the theft charges, she cashed cheques not due to her and appropriated the cash. In respect of the fraud charges, she defrauded the firm of attorneys. The total amount involved was over R5 million. The accused pleaded guilty to 527 counts of theft and fraud. In respect of the theft counts, she was sentenced to 15 years direct imprisonment, and in respect of the fraud counts, she was sentenced to 15 years direct imprisonment. The accused will thus serve an effective term of 15 years direct imprisonment.

# Conviction rate in organised crime

The NPA achieved a high conviction rate of 94.8%, which is 1.1% more than the previous year. A total of 310 cases was finalised by the dedicated personnel dealing with organised crime. A comparison of the conviction rate and number of cases finalised is reflected on the table below:

	<b>GUILTY &amp; SENTENCE</b>		CASES FINALISED WITH VERDICT
2012/2013	273	90,7%	299
2013/2014	394	88,9%	442
2014/2015	474	92,2%	510
2015/2016	359	88,9%	398
2016/2017	386	92.1%	428
2017/2018	346	93.8%	369
2018/2019	296	94.8%	310

Table 6: The comparison of organised crime cases finalised with verdict

**S v Sibanda (GLD):** This organised crime matter related to several bank robberies. 9 Accused were convicted on charges of robbery with aggravating circumstances, attempted murder, possession of unlicensed firearms and ammunition as well as racketeering in terms of POCA. Life imprisonment was imposed.

**S v Taleni and another(GLD):** The accused were convicted on racketeering and 3 counts of money laundering as well as 3 counts of fraud in the Johannesburg Regional Court. The charges related to the defrauding of the Department of Justice and Constitutional Development to the amount of R 3 221 734. The accused was sentenced to an effective term of 8 years imprisonment. The co-accused was sentenced to R 100 000 fine, which was suspended.

# Conviction rate in environmental crime

South Africa is known to be a mega-biodiverse country; endowed with various plant and animal species not found in other parts of the world. It is therefore imperative to ensure these species are protected for future generations as well as to ensure a current

healthy environment. Specific attention and dedicated prosecutors were directed at the illegal hunting, dealing and possession of rhino and rhino horns, ivory, abalone, cycads, waste and pollution cases, amongst the prioritised focus areas that impact on the environment.

The Department of Environmental Affairs (DEA) Environmental Management Inspectorate has close working relations with the SAPS, Department of Justice, NPA including AFU, SARS and the Financial Intelligence Centre (FIC). Various forums and committees enable this coordination, including at a national level the Priority Committee on Wildlife Trafficking (falling under the National Joint Operational and Intelligence Structure (NATJOINTS)), the provincial joints structures within the 9 provinces as well as the National Biodiversity Investigators Forum (NBIF) where wildlife and police investigators meet to discuss specific investigations and targets.

The number of environmental crime cases finalised with a verdict increased from the previous year by 139% - from 520 to 1 243 cases. The conviction rate also increased by 1.9% - from 96.3% to 98.2%.

Challenges in environmental compliance and enforcement are faced by a variety of organisations at all levels of government, internationally and locally. In order to meet these challenges, environmental authorities are required to develop creative and innovative solutions to meet the requirements of a dynamic and complex regulatory environment. The NPA participated in a multinational workshop hosted by the Endangered Wildlife Trust, in collaboration with the British High Commission, to identify which support can be rendered to wildlife prosecutors, to discuss the enhancement of wildlife crime enforcement as well as to discuss strategies for the enhancement of regional corroboration in combatting transnational wildlife crime.

The NPA noted an increase in the poaching and the cross-border smuggling of live pangolins from neighbouring countries. This prompted the NPA to strictly monitor the prosecution of these cases, to engage stakeholders from both the public and private services, to provide evidence in aggravation and to further scientific studies on this species, which is internationally recognised as the most trafficked in the world. The NPA finalised 12 prosecutions during the reporting period.

Rhino poaching is a national priority and the NPA performs a pivotal role in combatting rhino poaching by not only rendering prosecution services, but also in participating in Operation Rhino 8 as well as the National priority committee on wildlife trafficking, which are a coordinating multi-stakeholder committee to collaborate on anti-poaching operations, investigations, prosecutions which enable the addressing of challenges. Illegal wildlife trade has become a lucrative transnational crime. Worth billions per year, this trade threatens international security, national sovereignties, impoverished rural communities, and countless animals. A special focus is placed on the prosecution of rhino and related matters in order to curb this growing transnational phenomenon. The enhanced focus resulted in a significant increase in the number of convictions and verdict cases finalised, indicating the dedication and commitment of the prosecutors to curb this growing transnational phenomenon. A total of 65 verdict cases was finalised with 62 convictions, representing a remarkable 95.4% conviction rate.

Illicit mining is on the rise in South Africa and presents challenges that need to be addressed from a range of perspectives. The NPA has committed itself to certain targets as stipulated in the National Co-ordination Strategic Management Team (NCSMT) strategic plan. The latter was formed to deal with and eradicate illegal mining through a multi-disciplinary approach. The NPA exceeded the target of finalising 400 cases by finalising 558 with a conviction, whilst only seven acquittals were obtained. Direct imprisonment was imposed in 137 of the cases involving 491 illegal immigrants.

Noteworthy is the 12 convictions obtained in Limpopo in relation to chrome, despite the deficiencies in the legislation to adequately address these offences. The arrest and involvement of juveniles in illicit mining activities is concerning, as in both the Free State and Mpumalanga juveniles as young as 15 years old, were arrested. The NPA prosecuted two accused successfully for money laundering in terms of Section 6 of POCA. The following table indicated the prevalence of illicit mining in the various regions:

REGIONS	TOTAL CASES FINALISED	% of National
Free State Division	288	51,6%
Mpumalanga Division	190	34,1%
Gauteng Local Dision	49	8,8%
Limpopo Division	14	2,5%
Gauteng Division	10	1,8%
North West Division	4	0,7%
Nothern Cape Division	2	0,4%
KZN Division	1	0,2%

The enhanced focus of prosecutors on curbing this growing phenomenon evident from the sentences imposed by the courts.

# Noteworthy cases:

**PMB CAS 43/01/2018 (KZND):** Accused found in possession of pangolin was found guilty of possession of an endangered animal and sentenced to a fine of R240 000 or 3 years imprisonment, wholly suspended for 5 years on conditions.

**S v Blignaut and Others and S v Brown and Others (ECD),** eighteen persons, including the well-known leaders, Blignaut and Brown, in abalone related crime enterprises were convicted of racketeering in which marine living resources environmental offences formed the foundation of their illegal business affairs. Both of them managed enterprises through which divers, transporters and storemen of poached abalone were utilised to conduct the illegal abalone related activities. The main role players were sentenced to 25 years imprisonment, with the lesser role players being sentenced to direct imprisonment ranging from 12 to 18 years imprisonment.

**S v Antonio Xavier Vasconcelos Freitas (LD)** The accused faced 15 charges of rhino poaching and related charges. He was convicted and sentenced to 10 years imprisonment or a fine of R10 million.

# Conviction rate in sexual offences

Focusing on the victims of sexual crimes assists to combat and prevent further violence against women and children. Accordingly, through the establishment of dedicated courts and pure dedication, the prosecutors managed to increase the conviction rate on sexual offence cases. A total of 6 341 sexual offence cases were finalised with a verdict and 4 716 convictions were obtained. This represents a conviction rate of 74.4%, the highest in the past 5 years - a clear indication of the commitment of the prosecutors to act decisively against perpetrators of sexual violence. The upward trend in the conviction rate is illustrated below:

Figure 9: Overview of sexual offences conviction rate:



The enhanced focus of the regions to curb sexual violence and act decisively is evident from the number of convictions obtained coupled with the severe sentences imposed by the courts:

# Noteworthy cases:

**S v Lombard (GDP):** Rape and sexual assault - The accused raped and sexually assaulted a 7- year old family member who stayed in the same house. There were no eye witnesses or DNA, the only evidence was of the child and the person to whom the first report was made. Sentenced to 15 years for rape and 5 years for sexual assault. Regardless of the fact that accused was in his early 20's and a first offender.

**S v Phasha (GDP):** Rape and robbery - The victim asked the accused for directions as she found herself in an area that she did not know. Instead of helping her, he raped her twice that night and also took her cell phone. She ran to a nearby garage and was assisted by a person unknown to her, to whom she made her first report and this person took her to the SAPS. The accused was later linked to the crime with DNA. He was sentenced to life imprisonment on each of the counts of rape and 15 years.

**S v Willemse (GDP):** The accused is the uncle of the victim. Over a long period he sexually assaulted her and the nature of the incidents escalated until he raped her. They were close family, living on the same premises. She eventually disclosed to a councillor at school. Accused was sentence to life imprisonment.

**S v De Vries (GLD):** The accused was involved in the peddling of child pornography on the internet. This was the first case in which Google Hangout was used to lead evidence of persons based in the USA. The accused was sentenced to 835 years direct imprisonment.

**S v Nembani (GLD):** The accused, a serial rapist was convicted of 14 counts of rape. He was sentenced to 13 terms of life imprisonment plus an additional 231 years imprisonment.

**S v Malumbela (GLD):** The accused was a serial rapist operating in the Tsepisong area in Kagiso. He was charged with 61 counts, involving the kidnapping, rape and robbery of 12 victims. He was sentenced to an effective 15 life sentences for rape, accomplice to rape and compelled rape.



**S v Mahloma (GLD):** This Tembisa serial rapist was sentenced to 20 terms of life imprisonment plus an additional period of 520 years imprisonment. He was convicted of 94 counts relating to sexual offences, robbery with aggravating circumstances and possession of unlicensed firearm and ammunition.

**S v Bird (WCD):** The accused, a former Mitchells Plain pastor turned serial rapist and murderer, entered into a plea and sentencing agreement with the state. The court sentenced him to fifty years direct imprisonment after he pleaded guilty to two counts of murder, seven counts of rape and to four other counts of crimen injuria and theft.

# S v Juba (LD)

The 27-year old accused requested two minor children, a boy and a girl to accompany him to his homestead to fetch a jersey and later took them to the nearest bush, where he raped the minor girl in the presence of the minor boy. The accused was sentenced to life imprisonment in Lebowakgomo Regional Court.

# Conviction rate in trio crimes

Trio crimes encompass three categories of crime which impact the perception of safety within the community. This includes house robberies, business robberies and vehicle robberies/hi-jacking.

Prosecutors finalised 1 904 trio cases with verdict and 1 566 convictions were obtained. This represents a conviction rate of 82.2%.

Various measures were implemented in the regions to increase performance in all trio crimes. These include continuous stakeholder engagement with SAPS with respect to resourcing and quality of investigations, ensuring accurate identification of cases and prosecutor guided investigations from the first appearance, and ensuring fast tracking of these cases through the court system.

The downward trend in the conviction rate is depicted in the graph below:





A positive impact on trio crimes was however made, if the three categories of crime are analysed separately. The total of 1 566 convictions represents 2 028 trio counts, which if measured against the total number of trio counts finalised with a verdict, represents a conviction rate of 83.7%. The 2 028 convicted counts comprised 1 045 counts of house robbery, 601 counts of business robbery

and 382 counts of vehicle robbery/hi-jacking. Further analysis indicated that a high conviction rate of 85.7% was achieved in house robberies, whilst both business robberies (82.7%) and vehicle robbery/hi-jackings (80.4%) obtained a below norm conviction rate.

Table 7: Trio counts overview:

2018/19	CONVICTIONS	AQUITTALS	CONVICTION RATE
HOUSE ROBBERIES	1 045	175	85,7%
BUSINESS ROBBERIES	601	126	82,7%
VEHICLE ROBBERY/HI-JACKING	382	93	80,4%
TOTAL TRIO COUNTS	2 028	394	83,7%

## Noteworthy cases:

**S v Masha (GDP):** Robbery of vehicle and kidnapping. The accused robbed the complainant of his vehicle and the accused was linked with fingerprints on the vehicle after its recovery. Sentenced to 15 years imprisonment for the robbery and 5 years for the kidnapping.

**S v Lekgothwane (GDP):** Robbery with aggravating circumstances and kidnapping (TRIO m/v). The complainant was robbed of his vehicle and kidnapped. He was dropped at a deserted place and had to walk a long distance to reach help. He also identified the accused on an ID Parade. Accused was sentenced to 15 years for robbery and 5 years for kidnapping.

**S v Mailoane (GLD):** The accused was convicted of 29 counts of robbery with aggravating circumstances relating to a spate of house robberies. He was further convicted on 41 counts related to sexual offences. The accused was sentenced to 11 terms of life imprisonment plus an additional 970 years imprisonment.

**S v Sibanda (GLD):** This organised crime matter related to several bank robberies. 9 Accused were convicted on charges of robbery with aggravating circumstances, attempted murder, possession of unlicensed firearms and ammunition as well as racketeering in terms of POCA. Life imprisonment was imposed.

# Conviction rate in murder prosecutions

The conviction rate in murder prosecutions mainly aims to show the impact of prosecutions in curbing the increasing violence in South Africa. A very high rate of murders, on average of 57 murders per day, were reported during the reporting period. Murder is defined as the intentional, unlawful killing of another human being. However, to enable accurate reporting, murder prosecutions are recorded to include all competent verdicts in terms of Section 258 of the CPA.

The prosecutors are passionate in curbing the increasing rate of violence and by serving the community they managed to finalise 4 454 verdict cases and obtain 3 490 convictions which represents a conviction rate of 78.4%, well above the norm of 74% that is expected. Noteworthy is that the 4 454 murder verdict cases relate to 4 641 counts of murder. This constitutes on average, 1.04 counts per murder case.

Compared to the previous year, a slight decline is noted in the number of verdict cases as 174 fewer verdict cases were finalised compared to the 4 636 finalised during FY2017/18. Notwithstanding this decline, the prosecutor's dedication and commitment during this reporting period is clearly seen from the improvement in the conviction rate on all murder related prosecutions.



Figure 11: Progress of murder conviction rates:

The enhanced focus of the regions to curb serious crime is evident from the number of convictions obtained coupled with the severe sentences imposed by the courts:

# Murder: Intimate-partner femicide

Violence against women (often referred to as gender-based violence) is common, serious, and takes many forms. The murder of an intimate partner is one of the most extreme consequences. Due to the prevalence of intimate partner violence against women, the organisation adopted a renewed commitment to prioritise its resources to address this scourge of gender-based violence and to monitor the results of this intervention.

A total of 66 cases was finalised, of which only two acquittals were obtained and thus achieving a conviction rate of 97%. The enhanced focus of the regions to curb this gender based violence is evident from the number of convictions obtained, coupled with lengthy sentences imposed by the courts:

#### Noteworthy cases:

**S v Sekhoto and another (FSD):** A Bethlehem woman and her lover were on 24 August 2018 sentenced to life imprisonment each for murder of her husband and 15 years for possession of a firearm. Annah Sekhotho (44) and Dika Piet Mosikili were sentenced for murder of David Sekhoto that took place on 14 July 2019. Annah Sekhotho Piet Mosikili approached a Vereeniging man who was supposed to organise two other men to kill the deceased. The deceased was killed at his house after the killers entered the house pretending to be handymen. The case was prosecuted by Advocate Lucky Bontes.

**S v Shilubane (GLD):** The accused and deceased was involved in love relationship. The accused was poisoned by the deceased, her lover and buried him in shallow grave. The accused was sentenced to 13 years imprisonment in the high court.

**S v Dube (GLD): T**he accused and the deceased used to be in a love relationship. On the day of the incident, the deceased was with her new boyfriend entering a taxi when the accused opened fire on them. He fired multiple shots at the deceased killing her. He also fired shots at the boyfriend. The accused was convicted and sentenced to an effective term of life imprisonment.

**S v Rhode (WCD):** The accused was the CEO of a prestigious international realty company convicted for the murder of his wife and defeating or obstructing the administration of justice. The accused was married to the deceased for 22 years and three daughters were born form this marriage. The accused had an extra marital affair in 2015 and the wife subsequently discovered the affair. Events leading to the murder started on the weekend of 22 – 24 July 2016 when the international realty held its annual conference at Spier Hotel in Stellenbosch. The state pathologist determined that cause of death of deceased was consistent with asphyxia following manual strangulation and external airway obstruction. The deceased sustained substantial and distinct injuries before her death. The court found that the manner, cause of death and nature of injuries sustained showed that the accused had the direct intention to kill Susan Rohde. During the sentencing proceedings the court found that the crimes the accused were convicted of a very serious in nature. The court accepted the evidence on intimate femicide. The accused was sentenced to 18 years direct imprisonment for the murder of his wife and five years direct imprisonment for defeating or obstructing the administration of justice.

## Conviction rate in violent protests and industrial actions prosecuted

Particular focus on violent protest has increasingly become necessary over the past few years, as it poses a serious challenge to political and/or domestic instability if not actively managed. Although a focused approach was followed by all regions, the inherent challenges within these intricate cases, which include reluctance of witnesses to testify, identification of perpetrators and discrepancies between the evidence of state witnesses, resulted in a low conviction rate. A conviction rate of 68.8% was attained, a marginal increase (0.3%) compared to the previous year. The number of convictions increased by 8%, from 88 convictions to 95 convictions.

Training is provided to the police units attending to riots and marches as well as to investigating officers in the detective branch of SAPS, to address the factors that impede successful prosecutions.

#### Noteworthy cases:

**S v Khanyile (KZND):** Accused was during 2016 an activist that participated in the #FeesMustFall protests and was a student at the Durban University of Technology. He faced several charges including public violence and inciting violence. In August 2018, he was convicted on charges of public violence, failing to comply with a police instruction and possession of a dangerous weapon. In January 2019, he was sentenced to three years under house arrest and a R5 000 fine. He must also undergo community service every month and refrain from taking intoxicating substances.

# State v Shabangu and others (LD)

Thirteen members of a vigilante group were convicted of murder and contravening the Riotous Assemblies Act by the Polokwane High Court. Sipho Shabangu, 32, was sentenced to an effective 10 years imprisonment without the option of a fine for the murder of 27-year-old Joel Nkgapele, who he hacked to death with an axe near a tavern in February 2017. Shabangu's fellow mates each received 6-years imprisonment without the option of a fine for contravening the Rioters Assemblies Act.

#### Conviction rate in cybercrime prosecutions

A special focus is 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, target or a means for perpetuating further crimes. These cases are very complex in nature and encompass a high level of technical evidence.

The prosecutors and advocates of the SCCU finalised 444 verdict cases and obtained 440 convictions representing a remarkable conviction rate of 99.1%. A hundred-and-ten (110) more convictions were obtained compared to the previous year coupled with a marginal (0.6%) increase in the conviction rate maintained during this reporting period.

Compared to the previous years, the conviction rate of 99.1% is the highest achievement over the past five years. This clearly indicates the commitment and dedication of the prosecutors and advocates to curb this growing international phenomenon. This remarkable achievement is illustrated in the figure below:



# Figure 12: Conviction rate in Cybercrime

# Noteworthy cases:

**S v Nhleko (GLD)** - The accused was employed by Assetfin Gauteng as an IT Technician. The accused introduced or caused to be introduced or loaded into the company computer system a computer software which had the capacity to allow an unauthorised person to remotely access the company's user access codes, online bank account portal and users' online banking passwords. On 22 October 2016, unknown persons remotely accessed the company's accounts and stole R703 079 belonging to the company. The accused was charged and pleaded guilty to two counts of fraud, and was sentenced to 10 years imprisonment, 3 years of which were suspended on certain conditions. The accused will thus serve an effective term of 7 years direct imprisonment.

# Conviction rate in copper theft

Theft of copper increased dramatically and caused severe interruptions such as traffic congestions, stranded commuters, delayed housing projects, electrocutions, financial losses, etc. The NPA, with other role players, embarked on a special focus to clamp down on these offences by introducing a target at regional level on the conviction rate. 462 convictions were achieved compared to the 287 during the previous year, reflecting a conviction rate of 85.6%.

Essential infrastructure plays a crucial role in the normal performance of the economy and society. Damage and destruction of such infrastructure impacts negatively on the production and services of business and domestic communities. During the past year, 177 convictions were achieved under the Criminal Matters Amendment Act, Act 18 of 2015, which commenced on the 1st of June 2016. Another 84 accused are appearing in criminal courts on charges in terms of this Act. A further 285 convictions were obtained in cases relating to copper theft. A remarkable conviction rate of 87.2% was recorded in the cases relating to copper theft. The NPA,

as part of the NFMCCC (Non-Ferrous Metals Crime Combating Committee), identified the need for a training manual that explains the Criminal Matters Amendment Act, Act 18 of 2015. A multi-disciplinary committee had several meetings on the contents of the document and the final draft was signed off by the Commander of SAPS FLASH in September 2018.

# Noteworthy cases:

S v Mohlabane and Another: The accused were convicted of murder, attempted murder, public violence and a contravention of the Explosives Act. Two of the accused were acquitted. The accused were former employees of a bus company who were dismissed because of participating in an illegal strike. They set a bus alight where a person was killed and another seriously injured. They were sentenced as follows - 15 years imprisonment for murder, 10 years imprisonment for attempted murder, 10 years imprisonment for damage to essential infrastructure, 5 years imprisonment for public violence and 3 years imprisonment for contravention of the Explosives Act.

**S v Bovu and others** - The high court sitting in Kagiso heard the matter against the 5 accused for theft of copper cable to the value of R48 000, in the process killing 1 security guard and seriously wounding another. Accused 1 entered into a plea bargain with the state and was sentenced to 20 years' imprisonment. He testified against his co-accused who was sentenced to life plus 20 years' imprisonment.

**S v Nyamakavi (WCD)** - Accused was charged on 2 counts, Housebreaking and c/s3 (1) of Act 18 of 2015. Section 105A plea. Accused convicted on both counts. He and another man broke into the Vodacom Tower at Keurboomstrand late at night. After removing 16 Vodacom backup batteries, the police arrived. The accused was hiding under a tree nearby and found. Both counts taken together for purposes of sentencing and accused sentenced to 15 years imprisonment of which 6 years are suspended.

# Number of persons convicted of corruption where the amount involved is more than R5m

The SCCU participates in the Anti-Corruption Task Team (ACTT) which was set up to focus on fast tracking the investigation and prosecution of serious corruption cases, and to increase the success in fighting and preventing corruption in South Africa. Members of the SCCU were instrumental in drafting the strategic plan for the ACTT, and are actively involved in the ACTT Secretariat.

The SCCU represents the NPA in the Financial Action Task Force (FATF) and the Organisation for Economic Cooperation and Development (OECD). The SCCU significantly contributes to the NPA's finalisation of money laundering cases, and the co-ordination of enforcement action in the form of the prosecutions instituted and finalized.

A total of 17 persons were convicted for corruption or related offences where the amounts involved is more than R5m. Many more cases of corruption were handled, but there were few that fit the category of amounts that exceed R5m. By their very nature, these matters are complicated and take a long time to finalise in both the investigation and prosecution phases. The number of convictions have grown gradually over the previous four years but decreased by 56.8% in the past financial year as depicted in the table below – from 39 to 17 accused persons.

# Table 8: Persons convicted of R5m corruption:

Financial Year:	R5m corruption
2012/2013	42
2013/2014	34
2014/2015	23
2015/2016	24
2016/2017	29
2017/2018	39
2018/2019	17

# Noteworthy cases:

**S v Kriek (GLD):** The accused misrepresented himself to certain businesses and or entities that he was an accountant and or a registered tax practitioner. He submitted and or caused to be submitted fraudulent VAT refunds claims on behalf of the said businesses and or entities, and SARS paid out refunds totalling R43 435 913 to the said entities. After the entities received the said VAT refunds, the accused informed them that SARS overpaid them and that he should be repaid a third of the refund for his accounting services, totalling R12 343 408.

The accused was charged with 29 counts of fraud, 21 counts of contravening section 4(b)(i) of POCA (money laundering) as well as 1 count of contravening section 4(1)(b)(i) of PRECCA (corruption of a public official). He was sentenced to an effective term of 20 years' direct imprisonment.

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

South Africa has developed quite a wide-ranging legislative framework for combating corruption, ranging from the Prevention and Combating of Corrupt Activities Act, through the legislation dealing with financial and organized crime, public finance management and procurement legislation, to legislation promoting the public's access to information held by the public and private sectors. Various commissions of Inquiry have been promulgated in Government Gazettes to investigate allegations of corruption, financial mismanagement and fraud in the Public Sector including organs of the State. South Africa is also a signatory to several international conventions and treaties and is thus continuously intensifying its efforts to defeat the scourge of corruption.

In line with the Medium Term Strategic Framework (MTSF) and National Development Plan (NDP), a special focus was placed on the prosecution of corruption to improve investor perception and trust to invest in South Africa. The total number of government officials convicted of corruption during the current year amounted to 210 officials. This is slightly lower than the target of 230 officials to be convicted. The increase over the previous years is displayed in the table below.

# Table 9: Government Officials convicted of corruption:

Financial Year:	Officials convicted of corruption
2012/2013	104
2013/2014	73
2014/2015	130
2015/2016	206
2016/2017	224
2017/2018	213
2018/2019	210

During the financial year 2014/15 the NPA broadened its vision in line with the new MTSF document released by government and included all government departments as opposed to only JCPS officials recorded from 2012 to 2014. Since September 2016 however, all national as and provincial departments, inclusive of local authorities and government agencies are included.

Table 10: Breakdown of accused per Departmental level:

Financial Year	National Department	Local Authority	Provincial Department	Government Agencies	NPA employees
2017/2018	136	40	18	9	10
2018/2019	115	46	27	18	4

#### Noteworthy cases:

S v Lioma and 10 others (FSD): Eleven officials who were employed by the Department of Education in the Free State were on 3 July 2018 sentenced for fraud, corruption, money laundering and Contravention of the Public Finance Management Act (PFMA). Free State Education Deputy Director-General, Tebogo Lioma was sentenced to 10 years. Lawyer, Nelson Majola received five years, two years suspended. Seven other people including business people and education senior administrator were given correctional supervision and suspended sentences for their involvement in tender corruption. The case, that first came to court in 2001, relates to learner support material in the province worth R30 million. Lioma is said to have used his position and office to promote certain enterprises and gave tenders to preferred candidates. They colluded in tender rigging.

**S v Shushu (ECD):** The accused was a clerk at the SAPS, involved in the fraudulent capturing and payment of false purchase orders linked to the funeral of the former President Mandela. She was convicted of fraud (5 counts), corruption (3 counts) and money laundering (1 count). She was sentenced to 15 years imprisonment, 2 years of which were conditionally suspended for 5 years. She will thus serve an effective term of 13 years' direct imprisonment.

#### State v Lebese (LD)

Former Hawks' constable Papi Jonathan Lebese (41), was convicted on three counts of corruption and sentenced to 14 years imprisonment by Mokopane Regional Court on 22 October 2018.

Between April 2014 and February 2015 Lebese, who was then attached to the Hawks' Serious Corruption Investigation unit in Limpopo, was investigating a case of fraud and he demanded a R65 000 bribe from an accused in order not to oppose bail. This money was paid to Lebese on different dates. The matter was reported to the Hawks and he was arrested by the Hawks' Serious Corruption Investigation unit after investigations positively linked him to the crime.

He was convicted and sentenced on three counts of corruption. On count 1 & 2 he was sentenced to a total of 8 years direct imprisonment and on count 3 he was sentenced to 6 years direct imprisonment. These sentences are to run concurrently.

**S v Mashaba (GLD):** The accused, a former prosecutor, was charged and convicted of contravention of section 3(a) (i) (aa) of PRECCA, in that he accepted an undue benefit of R1000 in the execution of his duties as prosecutor, to withdraw criminal charges. He was sentenced to a direct term of 10 years imprisonment.

**S v Pope (WCD):** The accused is a member of SAPS who, acting on information, conducted a search and seized cannabis plants. He demanded a bribe from the suspect, and after he received the same, he disposed of the plants seized but proceeded to arrest the suspect. The accused was charged with and convicted of 1 count of corruption and 2 counts of defeating and obstructing the ends of justice. He was sentenced to 3 years direct imprisonment in respect of the corruption charge, and 6 years direct imprisonment in respect of the 2 counts of defeating and obstructing the course of justice. The Court ordered that sentences in respect of all counts should run concurrently, thus the accused will serve an effective term of 6 years' direct imprisonment.

**S v Sinden (WCD):** This matter was finalised in the Somerset West Regional Court on 8 February 2019. The accused SAPS official was sentenced to an effective 5 years imprisonment on counts of corruption and other charges.

**S v Franke (WCD):** This matter was finalised in the Strand Regional Court on 28 February 2019. The accused SAPS official was sentenced to an effective 5 years imprisonment ito sec 276(1)(i) on a count of corruption.

**S v Toto (WCD):** This matter was finalised in the SCCU Regional Court on 29 March 2019. The accused SAPS official was sentenced to an effective 3 years imprisonment on a count of corruption.

**S v Abrahams and 8 Others (WCD):** The Abrahams matters involves a syndicate that arranges fraudulent roadworthy certificates for transport companies or fleet owners at an average cost of R2000 each. The vehicles are never tested and are not even presented at the testing stations. The first leg of the investigation involved the De Aar Testing Station and 2 officials, one from the Testing Station and one from the City of Cape Town. They were arrested with Abrahams and his girlfriend. During Abrahams' arrest, cash in the amount of R3.7 million was seized at his house. In the second leg, a private testing station in Port Elizabeth is involved. During a sting operation 4 employees and the owner were arrested together with Abrahams. The PE testing station issued 1400 roadworthy certificates for vehicles registered in the Western Cape. The accused also arranged that vehicles be "dealer stocked".

Both these matters are on the Bellville Court roll. The convictions of 16 accused truck owners in 16 separate cases, who obtained roadworthy certification for their vehicles through Elton Abrahams were reported in previous reporting periods, together with the substantial asset recovery orders of various sorts. Adv Orban drafted a comprehensive charge sheet to combine the two matters. The charges are corruption, fraud and money laundering. The charge sheet has three schedules that set out the eNaTIS transactions for De Aar, PE and the dealer stocking and weight reduction transactions. Two schedules were drawn up listing the corrupt transactions for De Aar and PE, respectively. The annexures were extracted from eNaTIS by an expert from the Department of Transport on specific instructions as to what was required for the charge sheet.

Since the inception of the Abrahams project, the following finalisations have been recorded: 23 sec 105A plea and sentence agreements, including 4 custodial sentences.

## Number of persons convicted of private sector corruption

The focus on corruption was intensified in this financial year and the measure of corruption broadened to private sector corruption. A total of 143 convictions was obtained, of which 10 convictions consisted of legal entities or companies convicted.

#### Noteworthy cases:

**S v Twebe (ECD):** The accused was convicted of 9 counts of forgery and 2 counts of corruption, in terms of Section 3 of PRECCA, involving the forging of motor vehicle licence discs and matric certificates. The accused (the target of an authorised entrapment operation in terms of Section 252A of Act 51 of 1977) accepted gratifications from the agent in order to produce forged documents. He was sentenced to an effective term of 5 years imprisonment. As the amount of R250 that was used to pay for the forged documents was state money, the court ordered that the said amount of R250 and the equipment used to produce the forged documents should be forfeited to the state.

**S v Madaka (ECD):** The accused pleaded guilty to theft and money laundering in contravention of Section 4 of POCA, involving an amount of R 1.1million. She stole the inheritance of her adoptive son, and was sentenced to 10 years imprisonment in respect of the theft charge, and 5 years imprisonment in respect of the money laundering charge. The court ordered that the sentences should run concurrently, to the effect that the accused will thus serve an effective term of 10 years' direct imprisonment.

**S v Sharp (ECD):** The accused was employed as a bookkeeper at a local firm in PE. Her duties included the capturing of payments to creditors of the complainant company. Over a period of four years, she misappropriated funds from her employer by substituting the banking particulars of creditors with that of her own and/or her husband's. In that manner more than R 3.3 million was stolen. The Accused, who had a previous conviction (in fact she committed this offence whilst on trial in the previous case) pleaded guilty and was sentenced to 13 years imprisonment for fraud and 5 years imprisonment for money-laundering. The court ordered that the sentences should be served concurrently, wherefore the accused will serve an effective term of 13 years' direct imprisonment.

## Conviction rate in money laundering

The target was exceeded as 100% conviction rate was achieved from all 87 cases prosecuted. The NPA is actively involved with the monitoring of progress on money laundering as part of the international standards set by the Financial Action Task Force (FATF). FATF recommends that countries identify, assess and understand the money laundering and terrorist financing risks within their jurisdiction and then take action and apply resources to mitigate such risks, based on a risk-based approach.

#### Noteworthy cases:

#### Number of criminal matters finalised

This indicator measures the effort of the prosecutors on tasks allocated outside the formal court process and provide therefore a holistic picture of the workload of prosecutors coupled with the service delivered to community.

A total of 1 013 928 criminal matters were finalised, 47 941 fewer than the target of 1 061 869. The table below indicates the progress of this indicator and its sub-categories:

# Table 11: Progress on criminal matters finalised

Number of criminal matters finalised	2017/18	2018/19	Progress
CASES FINALISED WITH A VERDICT	335 161	276 309	-17.6%
CASES FINALISED THROUGH ADRM	159 654	149 469	-6.4%
DOCKETS FINALISED	490 794	510 856	4.1%
ADMISSION OF GUILT PAYMENTS	2 946	3 039	3.2%
CRIMINAL/COURT MATTERS FINALISED	74 460	72 533	-2.6%
APPEALS FINALISED	2 225	1 722	-19.8%
TOTAL CRIMINAL MATTERS FINALISED	1 065 240	1 013 928	-4.8%

# Number of criminal court cases finalised with verdict

Severe resource constraints within the NPA as well as within other key stakeholders had a negative impact on the achievement of this indicator. The prosecutors finalised 276 309 verdict cases, which is 65 051 (19.1%) less than the target (341 360) set for 2018/19. The district courts, responsible for almost 90% of the national caseload, finalised 18.5% fewer cases with a verdict compared to the previous year whilst a disconcerting 9.2% decline is noted in the number of serious criminal cases finalised by the regional courts.

This decline in performance should be viewed not only against serious resource constraints experienced in the prosecutorial component but also against the declining court utilisation and inflow of new cases. Both these factors played a contributory role in the decline in verdict cases when compared to the previous year. The progress of verdict cases is indicated in the table below:

FORUM	2017/18	% of National	2018/19	% of National	Progress
HIGH COURT	971	0.3%	966	0.3%	-0.5%
REGIONAL COURT	30,837	9.2%	28 001	10.1%	-9.2%
DISTRICT COURT	303,353	90.5%	247 342	89.5%	-18.5%
ALL	335,161	100.0%	276 309	100.0%	-17.6%

# Table 12: Comparison of criminal court cases finalised with verdict

A decline in court utilisation is clearly noted in all the lower court forums during this financial year. The efficient use of available court days by a criminal court has a direct positive impact on the output of that court. The court utilisation by the regional courts was reduced by 2.9% (2 111) court days utilised whilst the district courts recorded 2 344 (1.3%) fewer court days. Noteworthy is the increased use of court days by the high courts – 313 more days utilised compared to the previous year. This decline is indicated in the table below:

# Table 13: Comparison of court days utilised

FORUM	2017/18	% of National	2018/19	% of National	Progress
HIGH COURT	8 919	3.5%	9 232	3.7%	3.5%
REGIONAL COURT	72 549	28.3%	70 438	27.9%	-2.9%
DISTRICT COURT	174 739	68.2%	172 396	68.4%	-1.3%
ALL	256 207	100.0%	252 066	100.0%	-1.6%

In addition to the fewer court days utilised, the lower courts also spent less court hours per day on criminal cases. An average of 3h04 was maintained by all criminal courts which is a 1.2% decline from the average of 3h06 maintained during FY 2017/18. The optimum use of court hours through effective case flow management is critical to finalising more cases. A significant decline is noted by the regional courts whilst the district courts have dropped to below the 3h00 mark. The number of average court hours utilised per forum is indicated in the table below:

# Table 14: Comparison of average court hours utilised

FORUM	2017/18	2018/19	Progress
HIGH COURT	02:47	02:50	1.6%
REGIONAL COURT	03:22	03:16	-3.4%
DISTRICT COURT	03:00	02:59	-0.2%
ALL	03:06	03:04	-1.2%

The number of plea and sentence agreements in terms of section 105A of the Criminal Procedure Act increased slightly from 1 988 to 2 898 agreements concluded. The 2 898 agreements comprise 86 780 counts. Amongst these was one fraud case involving 75 397 counts and another case involving 1 647 counts. The plea agreements saved valuable court time as lengthy trials were prevented.

Coupled with a low inflow of cases, it was also noted that an increase in the number of cases enrolled with multiple accused and/ or charges continued to cause bottlenecks in many courts. This has a negative impact on the finalisation of cases, which in turn negatively affected the outstanding roll and backlogs. The impact of a reduced finalisation is seen from the increased outstanding roll indicated in the table below:

FORUM	2017/18	% of National	2018/19	% of National	Progress
HIGH COURT	1,130	0.6%	971	0.5%	-14.1%
REGIONAL COURT	41,114	23.0%	42,683	23.5%	3.8%
DISTRICT COURT	136,789	76.4%	138,258	76.0%	1.1%
ALL	179,033	100.0%	181,912	100.0%	1.6%

# Table 15: Number of outstanding cases

An increase of 1.6% (2 879) in the number of outstanding cases is noted at the end of this reporting period whilst a total of 181 912 cases are carried forward to the next financial year. The decline in court utilisation and finalisation of cases by the lower courts resulted in a growing outstanding caseload. The regional courts recorded 1 569 more cases compared to the previous year whilst the district courts recorded 1 469 more cases. The high courts recorded 159 fewer cases which is correlated by the increase court utilisation maintained during the reported period.

The reduced finalisation resulted in a growing backlog of cases. A similar increase is further noted in all forums, notwithstanding the improved performance by the high courts. Overall the backlog figure increased by 12.2% (3 699 criminal cases):

FORUM	2017/18	% of National	2018/19	% of National	Progress
HIGH COURT	220	0.7%	237	0.7%	7.7%
REGIONAL COURT	14 798	48.7%	17 097	50.2%	15.5%
DISTRICT COURT	15 363	50.6%	16 746	49.1%	9.0%
ALL	30 381	100.0%	34 080	100.0%	12.2%

# Table 16: Number of backlog cases:

Severe resource constraints did not only result in a declined performance in verdict cases finalised but the number of withdrawals also increased, indicating the decline in quality screening processes as a result of the shortage of prosecutors. The screening teams and/or control prosecutors, responsible for screening dockets and cases before enrolment, are assisting in courts to prevent operations from being halted which left proper screening processes lacking. This Increase of the number of withdrawals during the reporting period, is noted in the trend analysis below:



# Figure 13: Number of cases withdrawn

Except for the past financial year, the number of cases withdrawn by prosecutors showed a steady year-on-year decline. However, compared to the corresponding period during the previous year, 8 602 more cases were withdrawn as a total of 103 760 cases were withdrawn by all criminal courts.

# Number of criminal cases finalised through ADRM

In addition to verdict cases finalised, the prosecutors also finalised 149 469 cases through ADRM. A decline in performance is again noted similar to the decline in the finalisation of verdict cases as the prosecutors finalised 12 034 (7.5%) less ADRM matters than the target of 161 503 for the reporting period. The number of cases found suitable for disposition through ADRM was also reduced by 6.4% (10 185). This comparison is indicated per forum in the table below.

The majority of ADRM matters, 98.3%, are dealt with by the district courts while a low 1.7% is indicated by the regional courts.

FORUM	2017/18	% of National	2018/19	% of National	Progress
REGIONAL COURT	2 409	1.5%	2 476	1.7%	2.8%
DISTRICT COURT	157 245	98.5%	146 993	98.3%	-6.5%
ALL COURTS	159 654	100.0%	149 469	100.0%	-6.4%

# Table 17: Comparison of criminal court cases finalised through ADRM

Alternative dispute resolution encompasses diversion and informal mediation as methods of resolution of disputes between the parties. During this reporting period 39 040 cases were diverted after enrolment, 4 434 cases were diverted before enrolment in terms of the Child Justice Act and 105 995 cases were successfully mediated on an informal basis. Compared to the previous year, 7 003 fewer cases were diverted after enrolment, representing a decline of 15.2%. Diversions in terms of the CJA were reduced by 12.2% (615) whilst 2 574 (2.4%) fewer matters were found suitable for informal mediation. The table below show the progress per indicator:

# Table 18: Comparison of ADRM cases per indicator

INDICATOR	2017/18	% of National	2018/19	% of National	Progress
DIVERSIONS AFTER ENROLMENT	46 043	28.8%	39 040	26.1%	-15.2%
DIVERSIONS ITO CJA	5,049	3.2%	4 434	3.0%	-12.2%
INFORMAL MEDIATION	108 562	68.0%	105 995	70.9%	-2.4%
TOTAL	159 654	100.0%	149 469	100.0%	-6.4%

# Number of criminal cases finalised including ADRM

The NPS has set high goals for prosecutors to achieve during the FY2018/19. Notwithstanding the prosecutors' efforts to increase successful prosecutions and maintaining high conviction rates, the overall number of cases finalised including ADRM was reduced compared to the previous year. The prosecutors managed to finalise 425 778 cases including ADRM which constitutes a reduction of 14% (69 037) fewer cases compared to the total of 494 815 cases finalised during the previous year.

The negative impact on the number of cases finalised including ADRM is evident from the figure below:



Figure 14: Trend analysis of criminal cases finalised including ADRM

All three forums showed a reduction, although the reduction is only marginal in the high courts. The high courts finalised 5 (0.5%) fewer cases, the regional courts finalised 2 769 (8.3%) fewer cases whilst the district courts finalised 66 263 (14.4%) fewer cases.

FORUM	2017/18	% of National	2018/19	% of National	Progress
HIGH COURT	971	0.2%	966	0.2%	0.5%
REGIONAL COURT	33 246	6.7%	30 477	7.2%	-8.3%
DISTRICT COURT	460 598	93.1%	394 335	92.6%	-14.4%
ALL COURTS	494 815	100.0%	425 778	100.0%	-14.0%

Table 19: Comparison of criminal court cases finalised including ADRM

The prosecutorial component does not work in a silo but is highly reliant on the co-operation of other stakeholders. The level and quality of performance or a decline in the productivity of stakeholders will accordingly affect the performance of this component negatively, and subsequently, hamper the achievement of set goals. As indicated, the severe resource constraints, the decline in court utilisation and efficient use of available court days are the main factors that hampered the court performance during the reporting period. Other factors that impacted the performance of the prosecutorial component are the inflow of cases coupled with the quality of investigations received from SAPS.

A trend analysis of new cases received indicated a downward trend in the influx of new cases over the past five years, with a sharp reduction during the past financial year. As a direct relationship exists between the number of new cases received and the number of finalised cases, it may be deduced that the declined inflow contributed to the decline in the number of cases finalised during this reporting period.





Compared to the previous year, the courts enrolled 10.7% (95 158) fewer new cases. The district courts enrolled 93 258 (11.2%) fewer criminal cases whilst the regional courts enrolled 1 758 (3.3%) fewer criminal cases. A decline of 14.4% (142 cases) was recorded by the high courts. The decline of 1 900 cases, in both the high and regional courts, is however a concern as it will become increasingly more difficult for the courts to increase successful prosecutions in serious crimes should the volumes continue to decline.

# Table 20: Comparison of new cases received

FORUM	2017/18	% of National	2018/19	% of National	Progress
HIGH COURT	988	0.1%	846	0.1%	-14.4%
REGIONAL COURT	53 309	6.0%	51 551	6.5%	-3.3%
DISTRICT COURT	833 756	93.9%	740 498	93.4%	-11.2%
ALL COURTS	888 053	100.0%	792 895	100.0%	-10.7%

# Number of criminal and court matters finalised

In addition to cases finalised, the prosecutors deal also with other criminal and court matters in their plight to serve the community. A total of 72 533 court/criminal matters were finalised which comprise of 152 formal inquests, 763 committals to mental institutions, 566 conversion of maintenance trials to an enquiry, 2 042 applications for leave to appeal, 286 conversion of sentences, 3 476 suspended sentences imposed, 9 406 preliminary inquiries held in terms of the CJA, and 55 842 formal bail applications. The progress per indicator is indicated in the table below:

# Table 21: Progress on criminal and court matters finalised

COURT/CRIMINAL MATTERS FINALISED	2017/18	% of National	2018/19	% OF TOTAL	Progress
FORMAL INQUESTS	124	0.2%	152	0.2%	22.6%
COMMITTAL TO MENTAL INSTITUTION	783	1.1%	763	1.1%	-2.6%
CONVERSION OF MAINTENANCE TRIAL TO ENQUIRY	320	0.4%	566	0.8%	76.9%
APPLICATION FOR LEAVE TO APPEAL	2 699	3.6%	2 042	2.8%	-24.3%
CONVERSION OF SENTENCE	627	0.8%	286	0.4%	-54.4%
SUSPENDED SENTENCES	4 235	5.7%	3 476	4.8%	-17.9%
CJA: PRELIM INQUIRIES	10 083	13.5%	9 406	13.0%	-6.7%
FORMAL BAIL APPLICATIONS	55 589	74.7%	55 842	77.0%	0.5%
TOTAL MATTERS FINALISED	74 460	100.0%	72 533	100.0%	-2.6%

The decline of 1 927 (2.6%) criminal and court matters compared to the previous year can be ascribed to serious resource constraints experienced by the NPA as well as the decline in court utilisation.

# **Appeals Finalised:**

The high court also deals with appeals and motion applications emanating from criminal cases. There has been a decrease in the number of appeals received and finalised as indicated in the table below. There is still a remarkable number of appeals, inclusive of petitions, reviews and motion applications, outstanding as 1 434 of these cases are yet to be enrolled.

Financial Year	Newly Received Appeals	Finalised	Appeals Unsuccessful	% Unsuccessful
2011/2012	1 328	1 922	645	33,6%
2012/2013	2 249	2 418	791	32,7%
2013/2014	2 762	2 422	878	36,3%
2014/2015	2 651	2 423	899	37,1%
2015/2016	3 065	2 520	944	37,5%
2016/2017	2 520	2 439	941	38.6%
2017/2018	2 495	2 225	781	35.1%
2018/2019	2 507	1 722	679	40.5%

Table 22: Criminal appeals dealt with

# Clearance ratio on decision dockets

A total of 966 474 dockets were received during this financial year. This is 45 563 (4.9%) more dockets than 920 911 received during the previous year. A positive clearance ratio was again maintained by all lower and high court prosecutors as they managed

to deal with 964 897 dockets whilst obtaining a clearance rate of 99.3%. Noteworthy is the fact that the prosecutors managed to deal with 44 246 (4.8%) more dockets that the previous year whilst a total of 510 856 dockets were finalised which also represents 20 062 more dockets finalised compared to the previous year.

This high clearance rate confirms the commitment from prosecutors to deliver a high level of service to the community that they serve. The progress compared to the previous year is indicated in the table below:

Decision dockets	2017/18	2018/19	Progress
New Dockets Received	920 911	966 474	4.9%
Prosecution instituted	108 732	124 654	14.6%
No. of Admission of Guilt Payments	2 946	3 039	3.2%
Diversion: Adult	159	204	28.3%
Informal Mediation	2 403	2 197	-8.6%
Further investigation	321 125	329 387	2.6%
Decline to prosecute	488 232	508 455	4.1%
Clearance ratio	99.4%	99.3%	-0.1%
Dockets dealt with	920 651	964 897	4.8%
Dockets finalised	490 794	510 856	4.1%

Table 23: Progress on Decision dockets

# **Regional Priority Areas**

In addition to the strategic drive of the organisation, the regions deemed it necessary to focus on certain problematic areas within their respective jurisdictions to achieve the mandate of the organisation to make the community feel safe.

Combatting gang violence emanating from the northern areas of Port Elizabeth, was identified in the **Eastern Cape** as a regional priority area. One dedicated advocate at the office of the DDPP Port Elizabeth and three dedicated regional court prosecutors at the Port Elizabeth Magistrates Court, have been tasked to attend to gang-related cases. They receive new dockets, conduct prosecutor-guided investigations, deal with bail applications and prosecute cases in the regional or high court. The offences covered are murder, attempted murder, housebreaking with intent to rob and robbery, and unlawful possession of firearms and ammunition.

At present this team is dealing with 457 cases, of which 118 matters are on the court rolls. These include all cases that have been placed down for trial, the matters that are part-heard and the matters that have been postponed for the investigation to be completed. The dedicated team achieved various successes throughout the reporting period due to a number of initiatives to fast track all gang related matters:

- All cases are prioritised as a standard rule, although priority is given to witnesses who are on the witness protection programme;
- All efforts are made to convince complainants and witnesses to leave the area they reside in where their lives are in danger; and
- Prosecutors visit the crime scenes, even at night, in order to ascertain first hand whether proper identifications can be made.

There are however many challenges, including:

- Witnesses are being intimidated and threatened to change their statements and to refuse to testify. Two prosecutors are under protection after their lives were threatened;
- Violence amongst gangs lead to state witnesses in one case actually being accused in another case and as such awaiting trial in prison together with the accused they need to testify against. This leads to withdrawal statements made by these witnesses in prison;
- In cases where there were acquittals, it transpired during evidence that witnesses might have a motive to falsely implicate accused due to prior events the prosecutor was not aware of;
- Witnesses leave the witness protection programme and return to the danger area where they run the risk of being executed;
- There is an increase of witnesses going onto the witness protection programme. Many witnesses are themselves gang members with pending cases and they attempt avoiding going into custody by going into witness protection. These cases take priority for consultation with the witnesses and for leading their evidence in court as soon as possible;

High speed cases have become a regional priority in the **Free State**, due to many speeding contraventions and diversions were deemed no longer an option. On 8 November 2018 a provincial circular was issued instructing prosecutors to no longer refer matters for diversion. Mr Sello Mathloko, the Chief Prosecutor for the Bloemfontein Cluster, was appointed provincial coordinator. Follow-up meetings were held together with the provincial traffic department and SAPS and needs were identified. In addition, regional meetings were held all over the province at the hotspots where there were volumes of arrests and high-speed cases, inter alia, in Villiers, Kroonstad, Winburg, Theunissen and Welkom. Follow-up meetings were held to address challenges identified. Through co-operation, uniform bail prescriptions were set for the whole province.

Ongoing training is being given to traffic officials and prosecutors. The prosecutors managed to achieve great success with this initiative:

- Bloemfontein cluster: 970 guilty findings with 99% conviction rate.
- Welkom cluster: 1260 guilty findings with 92% conviction rate.

Stock theft is also set as a regional priority in the **Free State.** Various high level engagements with organised agriculture took place. On 30 October 2018 a Stock Theft Indaba was held at Clarens and in attendance was the acting Director of Public Prosecutions, the Provincial Commissioner of SAPS, Stock Theft Unit Commanders as well as Free State Agriculture and the Provincial Chairperson of the Red Meat Producers Organisation. The impact of stock theft on the Free State economy was highlighted and various problems within the production chain and the justice cluster was debated.

All high profile cases of stock theft are forwarded to the Office of the DPP to ensure quality investigations and prosecutions and that these areas are prioritised. A senior state advocate co-ordinates prosecutions and liaises with the SAPS Stock Theft Units and other stakeholders. Dr Jane Buys of the Free State Agriculture monitors the negative commercial impact on Agriculture of property-related crimes, which includes stock theft also attends these meetings. Stock theft cases are dealt with as standing items at the SAPS Cluster Meetings, which prosecutors attend. Twelve matters were finalised in 2018/2019 by the dedicated senior advocate. This area remains a priority in the region, notwithstanding the successes achieved during the reporting period:

- Welkom cluster: 88 guilty findings with 86.2% conviction rate.
- Bloemfontein cluster: 19 guilty findings with 100% conviction rate.

In the **Gauteng Local Division** all district courts with outstanding rolls in excess of 100 cases per court have been identified as priority courts. The performance of these courts is continuously scrutinised. Overall district court performance remained above operational targets set. Sexual offences, trio crimes, fraud and corruption, drug related offences, prosecutions relating to violent protests and industrial action and overall performance of the district and regional courts in this division are identified as the top

provincial priority areas. Cases emanating from OR Tambo International Airport are prioritised in Kempton Park courts. In the Johannesburg Cluster gang related violence and cases relating to cash-in transit matters have been identified as priority areas.

In the **Northern Cape Division**, the SCCU office in Bloemfontein, who had the necessary capacity, became involved as prosecutors in some of the Output 3 and "Clean Audit" (Municipality) cases of the Northern Cape. This dedicated capacity prioritises every Output 3 and "Clean Audit" case whilst guiding the investigation. Since approximately 444 cases are circulating between the Deputy of SCCU (the Acting Deputy who was appointed as the deputy in December 2017) and two junior state advocates (the total component of the SCCU Kimberley) and SAPS, the volumes coupled with resource constraints are the biggest challenge to successful prosecution of these cases.

Quarterly case discussion meetings are held and chaired by the Acting DPP of the Northern Cape. Usually present at the meetings, are the relevant commanding officers of SAPS, the investigation teams, members of AFU and members of the SCCU. The status of the investigations is discussed, progress is evaluated, guidance given and target dates set. Commitment of frequent stakeholder engagements resulted in the finalisation of the investigation in several priority cases. Cases where AFU was not yet involved were identified and referred to AFU. To relieve the burden on SCCU, members of the DPP office were allocated to decide over certain SCCU-dockets. Two cases, which were regarded as possible "quick-wins", were handed to SCCU Johannesburg, to compile the charge sheets. One of the prominent Output 3 cases, S v Trifecta, S v John Block was finalised after prolonged court proceedings which stretched over 7 years.

In the **Kwa-Zulu Natal division** sexual offences, trio crimes and murder prosecution have been identified as priority areas. A total of 1 071 sexual offences verdict cases were finalised and 763 convictions were obtained with a conviction rate of 71.2%. Noteworthy is the fact that 1 071 cases comprised of 10 565 counts. 277 convictions were obtained in trio crime cases with a conviction rate of 78.7%. A total of 665 convictions were obtained in murder prosecutions with a conviction rate of 79.1%.

## National ad-hoc priorities

In addition to the strategic objectives of the organisation, ad-hoc issues of importance are also addressed.

#### Drug and related matters:

The virulent increase in reported drug cases is a cause for grave concern and necessitated additional focus. The increase in reported drug cases is a cause for grave concern and necessitated additional focus. Various initiatives were introduced by the regions which resulted in 46 073 convictions of 51 799 verdict cases during the period April to March 2018/19. This represents a conviction rate of 88.9% in all drug and related matters. With reference to possession and dealing charges, high conviction rates were maintained.

Quarter	Q	1	Q2		Q3		Q3		Q4		Prog-	Progress:	Progress:
	Convic- tion rate	Convic- tions	Con- viction rate	Convic- tions	Con- viction rate	Convic- tions	Con- viction rate	Convic- tions	ress: Convic- tion rate	Convic- tions against Q3	Convic- tions against Q2		
Dealing in Drugs	87,2%	770	86,4%	669	85,9%	385	86,9%	338	1,0%	-12,2%	-49,5%		
Posses- sion or Use of Drugs	89,1%	15 888	88,3%	14 490	87,7%	4 231	87,3%	4 633	-0,4%	9,5%	-68,0%		

Table 24: Progress on drug and related matters

The progress during the financial year indicated a significant decline in possession cases during the quarters 3 and 4 compared to quarters 1 and 2. It is evident that the recent Constitutional decriminalisation of possession of dagga by an adult for private use in a private dwelling impacted negatively on the number of dagga arrests by SAPS, which resulted in fewer cases finalised by the district courts. However, the regions continue to play an active role in curbing the increase in drug and related crime.

- **FSD:** The Bloemfontein cluster initiated a special project at a local branch court to curb the severe drug problem in the area. Cases were prioritised, stakeholder interaction was enhanced. This special initiative resulted in 159 verdict cases finalised with 100% conviction rate was achieved.
- **GDP:** In the Cullinan district, the senior prosecutor drafted instructions and training notes to members of SAPS to ensure proper identification of cannabis as the identification of cannabis seems to be consistently lacking in cases. A further concern is that law enforcement officials appear to be concentrating on "small fry" possessors and little effort is made in terms of the setting of traps for dealers or suppliers. The "stop and search" practice of SAPS without reasonable grounds for a search also persists. In the Atteridgeville district, various cases were withdrawn as the magistrate refused to grant remands due to unavailability of lab reports. In the Vereeniging district the number of cases has decreased significantly whilst members of SAPS do not adhere to instructions, and illegal searches are still being conducted

Other districts reported that the prevalence of drug related matters gave rise to an influx of serious crime in certain areas as the perpetrators have now graduated to more dangerous dependence-producing substances. Cases like murder, rape and robbery are steadily increasing and directly related to drug addiction. This unfortunate consequence could only be dealt with through a collective intervention by all stakeholders.

- **GLD:** The biggest challenge facing the communities of Kliptown and Lenasia are drug related offences. Operation Fiela is still ongoing for the Soweto West area. Drugs are the priority in the West Rand. Efforts are made to curb this phenomenon at school level. Committees consisting of different stakeholders are now busy with various measures to address this situation. A high number of drug dealing cases are outstanding on the district court roll of Kempton Park. These cases emanate from O R Tambo Airport where drugs are being transported into or out of the country. Forensic reports and the services of foreign interpreters are the main stumbling block in getting these matters to finality. Non-compliance with the instructions from prosecutors at the Randburg office seems to be the main reason for cases being struck from the roll. The importance of ongoing stakeholder engagement is crucial to curb this phenomenon.
- **KZND:** In Durban cluster, senior/control/court prosecutors contact the Forensic Science Laboratory to ascertain the availability of analysis reports. Branch commanders are contacted to address arising issues.

In Empangeni cluster, there is high outstanding number of "drunken driving" cases at Vryheid which are withdrawn because reports are outstanding. Interrogations of the reasons for delays revealed that the average days the blood sample is stored at the SAPS before it is taken to the laboratory is 19 days. The average days the blood sample report is with the SAPS before it gets filed in the docket is 74 days. In total the average time that the blood sample and report is with the SAPS and it eventually gets filed is 118.5 days.

In the Pietermaritzburg cluster, SAPS have been guided on what evidence is required for enrolment of these cases. The results are very slow. Continued engagement is ongoing. The Organised Crime component has initiated projects targeting the suppliers of drugs in KZN. Many of the well-known drug dealers do not 'deal' themselves and have runners. Unfortunately, no one is willing to testify against them. DPCI are not addressing the main drug dealers in the areas. They are arresting the runners.

In the Ntuzuma cluster, Phoenix has been identified as a priority area regarding drugs. All cases involving large quantities of drugs are referred to Verulam court on first appearance for dedicated prosecutors to deal with the cases on inception. Drug cases are being enrolled with the proviso that the arresting officers clearly specify (in detail) their experience and knowledge in dealing with these cases. These details are a challenge in statements we have to deal with on a daily basis. The greatest challenge with drug cases at the Stanger office, is the unavailability of the analysis reports. We maintain a database in the office of cases where there is no proof of forwarding the exhibits to the FSL as this was one of the greatest challenges in respect of delays. This information is relayed to Generals and the relevant Brigadiers in SAPS.

In the Port Shepstone cluster, the availability of laboratory reports are constantly monitored to ensure that the reports are available whilst rehabilitation is being encouraged in the Scottburgh communities with parents taking a more active role in promoting same. The media is being used to send out the message of drug issues and consequences to like-minded offenders.

- **MD:** A SAPS (Project Fiela at Middelburg Magistrate Office) driven project with operations every Thursday focuses on possession of drugs and illegal immigrants. Drug cases are mainly dealt with by dedicated prosecutors in the organised crime component. The delay in obtaining of forensic reports is still a cause for concern. Drug & drug related cases are not enrolled prior to the availability of forensic reports except if other information under oath is available to justify enrolment. Forensic reports often identify substance as 'not an illegal substance' in terms of Act 101 of 1965, which can result in civil claims at a later stage.
- NWD: Drug and cannabis related offences especially at the North West University Potchefstroom campus remains a challenge. Although the SPP works hand in hand with management at the University is there a steady increase in these offences. A decision was taken that a zero tolerance approach will be followed especially at the Potchefstroom courts. No diversion will be considered and admission of guilt fines will be fixed.

The NPA is in consultation with the Independent Police Investigative Directorate (IPID) in order to finalise a Memorandum of Understanding that would assist in dealing with cases involving members of SAPS, more effectively and speedily and to have these matters fast tracked. Apart from meetings on the MOU, the NPA and IPID also regularly meet to discuss, identify and solve problems relating to the reporting of cases presented to these Departments. Meetings to build mutual respect, trust and good faith between the two Departments also take place at regional levels and resulted in a much better working relationship over the past year.

# Deaths due to initiations:

According to COGTA there has been a spike in deaths of initiates and indicated 34 reported deaths of initiates, of which 20 originated from the Eastern Cape. The underlying problems are lack of competence, lack of supervision, and lack of regulation. All regions are committed to curb this growing increase.

No cases were finalised although some pending matters were reported by the regions.

- **ECD**: There were no convictions secured during the reporting period. There are however two pending cases relating to the unlawful circumcision in the East London and Mdantsane courts. In another matter a warrant of arrest has been issued for the accused.
- **FSD:** One conviction obtained in the Bloemfontein Cluster with two other cases pending. Challenges are experienced with unwilling witnesses and the secrecy surrounding the initiations.

# Taxi violence:

Over the last 30 years South Africa's taxi industry has grown tremendously. At the moment, 15 million South Africans rely on taxis for their daily commute. Taxi violence is a fundamental challenge in South Africa. Most disturbing is the prevalence of innocent passengers, including children, who become the victims of this form of violence.

**ECD:** There are various pending cases in court in this region emanating from taxi violence. The DPP office in Bhisho has two pending matters in the high court and a further two pending matters in the regional court. The Bhisho office reported encountering numerous difficulties in starting with these prosecutions. These obstacles include the following:

- Witnesses, out of fear and intimidation, are not always willing to co-operate even when witness protection is offered to them;
- The ad-hoc SAPS task team members do not properly and speedily investigate these matters;
- Investigations are heavily reliant of confessions and pointing-outs, with little objective supporting evidence;
- Because of various role-players and outstanding suspects it is not always possible to join the cases.

All efforts are made to train and educate members of the SA Police Service to follow prudent and acceptable investigation methods. Much time is spent during consultations with witnesses in order to restore their faith in the criminal justice system.

**GLD:** In the Johannesburg Cluster the SAPS has set up a Task Team to deal with these matters. These matters are only decided by Senior Public Prosecutors in the Johannesburg Cluster. The Senior Public Prosecutor in Tembisa continues to interact with taxi owners in an effort to address concerns through dialogue and in an effort to ensure that, it does not spill over into violence.

**KZND:** Dedicated advocates maintain a database of all taxi violence cases and consult with the investigating officers, guide and monitor investigations. Challenges speedy finalisation of these matters include long outstanding investigations due to the high workload of SAPS members and uncooperative witnesses who are too scared to depose affidavits or enter the Witness Protection Programme.

**WCD:** A deputy director of public prosecutions represents the division on the PROVJOINTS Priority Committee on Public Transport Safety. This Committee is chaired by the Department of Transport and involves numerous role players, including SAPS and the City of Cape Town Law Enforcement (city police and traffic).

# Trafficking in persons:

To give effect to South Africa's obligation to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Person, especially women and children, the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No.7 of 2013) was introduced. The Act deals comprehensively with trafficking in persons in all its various forms and in particular provides for the protection of and assistance to victims of trafficking. Persons engaged with trafficking will be liable on conviction to a severe fine or imprisonment, including imprisonment for life, or such imprisonment without the option of a fine or both. Trafficking in persons is a serious crime and a grave violation of human rights. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. To curb this growing phenomenon, the regions has assigned dedicated prosecutors to deal with this grave violent crime.

**ECD:** One part-heard matter pending in the High Court in Port Elizabeth, State v Nxasana and Others, in which three accused are arraigned for human trafficking of a mentally disabled child. In the matter State v Omotoso and Others the presiding judge recused himself and the matter will start de novo. There are a further two matters on the Regional Court roll where the trial will commence shortly.

**FSD:** The witnesses refused to continue in one case whilst another accused was found guilty under the Immigration Act. The progress of pending matters depends on continuous stakeholder interaction.

GLD: One case was finalised in the high court.

**KZND:** The region did not finalise any human trafficking case during the reporting period. There are two (2) part-heard matters and allocated to an advocate in the Organised Crime Component.

## Noteworthy cases

**S vAnaku and another (GLD):** Two human traffickers, Frank Anaku and Ilo Promise Somadina were sentenced to life imprisonment in the Johannesburg High Court on 17 August 2018. The state alleged that, during the period between January to February 2016, the accused met up with the complainant in Upington, Northern Cape. The complainant was unemployed. The accused promised the complainant employment and accommodation in Johannesburg if she agreed to leave with them to Gauteng. The complainant agreed to this arrangement and her transport was paid by the accused. However, on arrival in Johannesburg she never got the promised job but was instead kept against her will at the accused's premises in Randburg where the accused operated a brothel. During this period, the accused took photos of the complainant and posted them on the internet as advertisements for services of a prostitute. Between February and April 2016, the complainant was sexually exploited for monetary rewards and all proceeds were pocketed by the accused. During this period, accused 1 (Anaku) raped the complainant several times. The only compensation the complainant got for performing various sexual acts with different men, were drugs supplied by the accused. On 18 April 2016, the complainant reported her ordeal to her relatives and following this report the accused were arrested on the premises where they kept the complainant captive.

# Victims of crime:

In its efforts to serve the community, the organisation has embarked on victim centric initiatives. Apart from testimony, victims are provided the opportunity to contribute at sentencing through victim impact statements and when they are affected by decisions to resolve a matter through ADRM. Central to this approach is the court preparation officers who not only attend to the needs of victims of crime but ensure that they are given a greater role in the process of achieving justice.

The NPA has the mandate for Court Preparation Services and Victim Impact Statements. The purpose of NPA's Ke Bona Lesedi Court Preparation component is to prepare the NPA's victims (witnesses and their family) for testimony namely the most vulnerable who are, inter alia, women, children, the elderly and those with special needs such as a disability or medical condition; empowering them to testify. This process is prosecutor guided.

The National Director has, in accordance with section 179(5)(b) of the Constitution and section 21(1)(b) of the NPA Act, issued policy directives which must be observed in the prosecution process. The Prosecution Policy Directives (Revision Date: February March 2011) Part 20: dealing with witnesses at court, requires prosecutors to ensure witnesses receive court preparation and to implement victim impact statements at sentencing stage of the trial. Norms and standards for Court Preparation Services (2010); Standard Operating Procedures, Integrated Service Delivery Protocol (2008) and monitoring and evaluation processes are in place. Accredited and empirically evaluated age appropriate programmes which are specialised for child, adolescent and adult witnesses and their caregivers or support persons are standardised.

In compliance with S v Mhlango 2016 (2) SACR 611 (SCA) 2016 (2) the NPS Court Preparation Component has strived to ensure that victim impact statements (VIS) form an integral part of the sentencing phase of the trial. Thus assisting the court in arriving at a decision that is fair to the offender, the victim and the public at large. Comprehensive guidelines, protocols and model VIS instruments have been drafted and the relevant training of officials have been successfully achieved. Community VIS has been successfully facilitated with a knock-on effect of reduced threatened public demonstration.

CPOs conduct community education and awareness programmes aimed at crime prevention and the promotion of victims' rights as enshrined in the Bill of Rights and Victims Services Charter). The increased number of education and awareness campaigns (518) conducted during FY2018/19, as opposed to the 374 rendered during FY2017/18, reflects the commitment of the CPOs in this regard.



During this reporting period the component contributed towards the Draft Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 Of 2007): Regulations Relating to Sexual Offences Courts where the role of CPOs are substantial in the victim centric approach within NPA. The component participated in the National Summit on Gender Based Violence 2018 addressing violence against women (VAW) and gender non-conforming individuals, transgender and other gender categories (# Total Shutdown), and contributed input towards the "Response, Care and Support" streams for the summit and its declaration. Finally, assistance in numerous high profile and noteworthy matters were provided.

During the reporting period, a total of 110 181 witnesses were assisted by the CPOs whilst 10 539 victim impact statements were facilitated. Compared to the previous year, 9 133 (7.7%) fewer witnesses were assisted and 2 118 (16.7%) fewer VIS completed which is mainly due to severe staff constraints coupled with the unavailability of witnesses. The latter also impacted on the number of VIS used as 136 (3.6%) fewer victim impact statements were used during this reporting period.

FINANCIAL YEAR	2017/2018	2018/2019	PROGRESS
NO OF VIS COMPLETED	12 657	10 539	-16.7%
TOTAL WITNESSES	119 314	110 181	-7.7%
NO OF VIS USED BY PROSECUTOR	3 810	3 674	-3.6%
% VIS USED	30%	35%	4.8%

Table 25: CPO performance

In addition to the VIS facilitated by CPOs, prosecutors recorded a total of 3 651 VIS used during court proceedings. To address the harm caused by crime, prosecutors have furthermore obtained 689 compensation orders to the value of R70 114 742.

# SPECIALISED PROSECUTIONS



# **SPECIALISED PROSECUTIONS**

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

# **Performance Overview**

The SCCU, headed by a Special Director of Public Prosecutions is mandated to deal with serious, complex and organised commercial crime. There are 10 dedicated courts based in Pretoria, Johannesburg, Durban, Port Elizabeth, Free State and Cape Town. The offices in Mmabatho, Kimberly, Mthatha and the Port Elizabeth's satellite office of East London do not have dedicated courts. Although the SCCU offices within the Limpopo and Mpumalanga provinces have been established, commercial crime work there is still dealt with by prosecutors of the SCCU Pretoria, as most of the vacant posts within these offices are yet to be filled.

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. SCCU prosecutors are in general experienced and highly skilled in the area of commercial crime due to the principle of dedication to commercial crime and this accounts for the units' successes. The system of co-location with the police and courts also plays a critical role in the expeditious finalisation of cases.

The SCCU also has a dedicated programme focused on skills development and training of its staff and members of the SAPS who are seized with commercial work. The SCCU, has however, experienced a number of challenges which has led to an increase in the number of backlog cases on the dedicated court rolls and an increased turnaround time in decision making. This has negatively impacted on the number of cases enrolled and finalisations.

The primary challenge the SCCU experiences is the non-filling of vacant posts. The SCCU had a vacancy rate of 20, 92% and operated with the lowest number of prosecutors since 2010. Other challenges include the lack of dedicated courts in some regions, the length of time investigations take to finalise and the length of time taken to finalise cases in court, which involve extensive pre-trial litigation.

Despite these challenges, the SCCU met 6 out of 7 of its targets during the performance period. The SCCU did not meet the target of persons convicted of corruption involving R5 million or more, and had 16 persons convicted against the target of 30 persons.

However, the SCCU enjoyed significant success in its focus areas of corruption, cybercrime and money laundering. The impact of criminal prosecutions in the fight against serious commercial crime is best measured by the conviction rates achieved and the probable deterrent effect of the sentences imposed. The SCCU exceeded the yearly target by attaining a conviction rate of 95% against the target of 93%, and finalised 760 cases with a conviction.

The SCCU contributed to the NPA's victim centric approach by obtaining compensation orders to the value of R 61 891 578, 50 for victims of commercial crime. This exceeds the target of R26 million set in the SCCU's Annual Performance Plan.

# Corruption

In line with the MTSF, a special focus was placed on the prosecution of corruption to improve investor perception and trust to invest in South Africa. This is aligned to the priority focus of government in dealing with corrupt government officials.

The NPA secured convictions against 210 government officials, 103 of which were contributed by the SCCU, exceeding the target of 94 persons set for the unit.

The SCCU finalised the following noteworthy cases involving government officials:

# The State v Bongo Nombiba

The accused was an ANC councillor in the employ of the Nelson Mandela Metropolitan Municipality. He inflated a request for funding submitted by an NGO, and then insisted that the NGO withdraw the money so received and hand the cash to him. The accused was charged and convicted of fraud (1 count) and money laundering (1 count – Section 4 of POCA), and was sentenced to an effective term of 5 years direct imprisonment.

The court made an order in terms of Sec 18 for an amount of R20 000, payable to the Nelson Mandela Bay Metro.

# The State v Nomfundo Shushu

The accused was a clerk at the SAPS, involved in the fraudulent capturing and payment of false purchase orders linked to the funeral of the former President Mandela. She was convicted of fraud (5 counts), corruption (3 counts) and money laundering (1 count). She was sentenced to 15 years imprisonment, of which 2 years were conditionally suspended for 5 years. She will thus serve an effective term of 13 years direct imprisonment. The matter has been referred to the AFU and their proceedings are underway.

# The State v N Pako

The accused was a clerk in the employ of the Department of Home Affairs, Umgeni Road. She unlawfully processed and issued a South African identity document to a foreign national. The foreign national paid her an amount of R1800, but later on had second thoughts on how she had received her SA ID, and reported the case. The then Minister Gigaba personally reported the case to the police. The accused was charged and convicted of corruption and fraud. She was sentenced to 8 years imprisonment, 3 years of which were suspended on certain conditions. The accused was thus sentenced to an effective term of 5 years direct imprisonment.

# The State v Donovan Pope

The accused is a member of SAPS who, acting on information, conducted a search and seized cannabis plants. He demanded a bribe from the suspect, and after he received same, he disposed of the plants seized but proceeded to arrest the suspect.

The accused was charged with and convicted of 1 count of corruption and 2 counts of defeating and obstructing the ends of justice. He was sentenced to 3 years direct imprisonment in respect of the corruption charge, and 6 years direct imprisonment in respect of the 2 counts of defeating and obstructing the course of justice. The Court ordered that sentences in respect of all counts should run concurrently, thus the accused will serve an effective term of 6 years direct imprisonment.

# The State v Bhekhumuzi Patrick Masoka

The accused was employed by the Department of Rural Development and Land Reform. He was the principal planner at the Ladysmith District Office and was the project leader responsible for the acquisition of the farm Kuick Vlei, for the beneficiaries represented by the Mvelwenhle Community Trust. The accused created the Mvelwenhle Community Trust which was not registered at the Master's Office. The "trustees" of the said trust were members of his family, which he failed to disclose to the department. He as well prepared the memorandum relating thereto, for approval by the Director General of the Department. The farm was thus transferred to the trust based on the memorandum prepared by the accused. The department paid on behalf of the trust to the seller R 3 365 650 for the farm, R634 350 for livestock, R19 636 for the costs of the transfer and R1 100 480 which was the balance of the grant that was approved by the department for this project. The total amount paid by the department was R5 120 117.

The accused was charged with the commission of the offence of fraud, and was convicted and sentenced to an effective term of 10 years direct imprisonment.

In respect of AFU, the farm was transferred back to the department per forfeiture order. The S18 application on the matter is pending.

# The State v Mzamani Mashaba

The accused, a former prosecutor, was charged and convicted of contravention of section 3(a)(i)(aa) of PRECCA, in that he accepted an undue benefit of R1 000 in the execution of his duties as prosecutor, to withdraw criminal charges. He was sentenced to a direct term of 10 years imprisonment.

# The State v James Matloga

The accused was employed at the Culture, Art, Tourism and Sport Sector Education and Training Authority (CATHSETA). The accused transferred, on 93 occasions, money from the CATHSETA account to his personal account, totaling R5 516 091. He was charged and convicted of 93 counts of theft, and was sentenced to an effective term of 12 years direct imprisonment.

The AFU was involved in the matter, but found no realizable assets for forfeiture.

# The State v Sizani

The accused is the wife of the current ambassador to Germany and previous chief whip of the ruling party. She was convicted of 15 counts of fraud and 9 counts of money laundering in respect of a fraudulent scheme involving the creation of ghost workers in the Department of Education where she was employed at the time of the commission of the offences. The matter has been postponed to 1 July 2019 for sentencing.

# Serious corruption

The NPA participates in the Anti-Corruption Task Team (ACTT), which was set up to focus on fast tracking the investigation and prosecution of serious corruption cases, and to increase the success in fighting and preventing corruption in South Africa. The SCCU was instrumental in crafting the draft strategic plan for the ACTT, and its members actively participate in its secretariat. The target to convict at least 30 people of corruption where the amount involved is more than R5 million was, however, not met, as only 16 persons have been convicted.

Failure to meet this target was brought about by the fact that although serious corruption cases were on court rolls, they are rather complex and take long to finalise due to, amongst others, applications brought by the defense. Further, although a number of serious corruption cases were still under investigation, such investigations as well take long to finalise before the matters can be enrolled. As a result, even though cases targeted for enrolment and finalisation were identified prioritised, this failed to yield the desired results of reaching this target.

# Cybercrime

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. The SCCU focuses on cases which are complex in nature and encompass a high level of technical evidence or involve the operation of syndicates. The SCCU performed exceptionally well in the area of cybercrime and maintained a high conviction rate of 100% against a target of 95%, with 252 convictions against the projected of 134 convictions.

The SCCU finalised the following noteworthy cases involving cybercrime:

# The State v Candice Morgan

The accused was employed by an entity styled Traclo (Pty) Ltd as a Creditors' Clerk. She paid moneys due to creditors into her own account on 69 occasions. The total amount involved was R1 769 387. The accused pleaded guilty and was convicted of 69 counts of fraud. She was sentenced to 10 years direct imprisonment.

# The State v Atisha Rajpal

The accused was employed by an entity styled Baughan (Pty) Ltd as a paymaster and human resources manager. She, without the knowledge and authorisation of her employer, increased her own salary and bonus payments by manipulating the payroll documents over a period of time. As a result, the accused was paid R700 000 extra in respect of her salary and bonuses. She pleaded guilty to 6 counts of fraud and was sentenced to 7 years direct imprisonment.

## The State v Nanny Muamba

The accused is a Congolese adult woman. She opened a savings bank account with Mercantile Bank with a Congolese passport bearing the name of Nicole Rosenberg. On 31 October 2016, a fax communique was sent to Puelaetco Bank with instruction purportedly signed by Arnaud de Limburg Stirum (a Belgian citizen), to transfer 63 400 Euros (R 1.2 million) to the accused's bank account with Mercantile Bank. Puelaetco Bank did the necessary verifications and confirmed with Stirum that the fax instruction did not come from Stirum but was fraudulent. The transaction was thus not proceeded with. The accused was charged and pleaded guilty to one count of fraud, and was sentenced to 10 years imprisonment of which 3 years was suspended for 5 years on certain conditions. The accused will thus serve an effective term of 7 years' direct imprisonment.

#### The State v Themba Mchunu

The accused presented cloned bank cards at various merchants. Although the state was unable to determine the amount acquired by the accused through the use of the cloned cards, he was charged with fraud and contravention of the ECT Act. He was convicted as charged, and was sentenced to 8 years direct imprisonment.

#### The State v Sikelele Banya

The accused was charged with the commission of the offences of fraud and 2 counts of contravening the provisions of the ECT Act. He withdrew a sum of R2 500 from the bank account of the first complainant, which was the subject of the fraud charge. He was convicted as charged and the court took the 3 counts together for the purpose of sentence, and sentenced the accused to 8 years' direct imprisonment.

#### The State v Mziwodumo Ludidi

The accused was employed by Nedbank as a branch manager. He stole sums of money totalling to R1.5 million from bank accounts of a deceased person. He started by issuing bankcards on the said bank accounts, and made withdrawals and transfers therefrom.

He was charged with, and convicted of the theft of the said R1.5 million, and was sentenced to a direct term of 10 years imprisonment.


#### The State v Josaya Malinga

The accused was involved in the depositing of property registration fee, to the amount of R647 887, into a fraudulent account. He was charged with the commission of the offences of fraud and contravention of the ECTA, and was convicted as charged. The accused was sentenced to a direct term of 8 years imprisonment.

#### The State v Mbewu

The accused was employed by Anglo American as an accountant administrator. Part of her duties was to pay suppliers of Anglo American, who submitted approved invoices. She captured the invoices on the SAP System, and submitted the invoices for approval and payment. The accused, however, changed the vendors' or suppliers banking details to that of two of her personal bank accounts. Payments were then made into such bank accounts. R 6.2 million was stolen, and the accused was charged and convicted of theft involving R3.7 million. She was sentenced to 15 years imprisonment, 5yrs of which was suspended for a period of 5yrs on certain conditions. The accused was thus sentenced to an effective term of 10 years direct imprisonment.

A confiscation order in terms of section 18 of POCA, involving a cash amount of R3.7 million recovered from the different bank accounts, as well as money paid into an attorney's trust account by the accused, was obtained. The money recovered will be paid over to Anglo American.

#### The State v Lesley May Parsonson

The accused was employed at an entity styled Lugejane Developments (Pty) Ltd and was, inter alia, responsible for the payment of creditors. Instead of paying creditors, she diverted some of the funds to her bank account. She was charged with 404 counts of theft in the amount of R19.7 million, and she pleaded guilty to all the counts. The court took all counts together and sentenced the accused to an effective term of 22 years direct imprisonment.

#### The State v Mnisi

The accused was employed by Barko Financial Services as a branch manager, tasked with receiving payments from companies, ensuring that loans are being paid by clients, and supervising loan consultants. As he had access to profiles of all clients, he created fictitious loans for them, and took the cash equivalent to the loan for his own benefit. The accused was charged with the commission of the offence of fraud involving an amount of R500 000. He pleaded guilty to the charge, was convicted and sentenced to 8 years direct imprisonment.

#### The state v Leonard Herbst

The accused was employed as a bookkeeper at Blakes Maphanga Inc Attorneys. He fraudulently transferred money from the attorneys' account on 317 occasions into his personal account in the amount of R11.8 million. The accused was charged and convicted of 317 counts of fraud, and was sentenced to an effective term of 15 years' direct imprisonment.

#### The State v Andre Dreyer

The accused was employed at O-Line (Pty) Ltd as General Manager. He manipulated the payment system to suppliers to unlawfully transfer a total of R2.5 million into the account of an entity named All Africa Mining CC, of which he was the owner. The accused was charged and convicted of two counts of fraud, and was sentenced to 15 years imprisonment on each count. The court ordered that the two sentences should run concurrently, thus the accused will serve an effective term of 15 years direct imprisonment.

#### The State v Sivalingum Naidoo

The accused was an employee of an entity styled Profert Transport and he transferred over R5 million into his and another person's bank account over a period of about 2 years .This was done under the guise of paying creditors of the company. He was charged and convicted of 41 counts of fraud, and was sentenced to undergo 15 years imprisonment, 8 of which were suspended 5 years conditionally. The accused will therefore undergo an effective term of 7 years direct imprisonment.

#### The State v Lindy Sharp

The accused was employed as a bookkeeper at a local firm in PE. Her duties included the capturing of payments to creditors of the complainant company. Over a period of four years, she misappropriated funds from her employer by substituting the banking particulars of creditors with that of her own and/or her husband's. In that manner more than R 3.3 million was stolen. The accused, who had a previous conviction (in fact she committed this offence whilst on trial in the previous case) pleaded guilty and was sentenced to 13 years imprisonment for fraud and 5 years imprisonment for money-laundering. The court ordered that the sentences should be served concurrently, wherefore the accused will serve an effective term of 13 years direct imprisonment.

The trial of her husband was separated. He is in the process of making representations to have charges against him withdrawn.

#### **Money Laundering**

The SCCU performed exceptionally well in the area of money laundering and maintained a high conviction rate of 100% against a target of 85%, with 64 convictions against the target of 47 convictions.

The SCCU finalized the following noteworthy cases involving money laundering:

#### The state v Gregory Rabotho

The accused received payment in the amount of R1.5 million into his account which was fraudulently transferred on the instruction of a bank employee from Standard Bank South Africa. He was charged and convicted of contravening section 6 of POCA, and was sentenced to an effective term of 10 years direct imprisonment.

#### The State v Mary Madaka

The accused pleaded guilty to theft and money laundering in contravention of Section 4 of POCA, involving an amount of R 1.1million. She stole the inheritance of her adoptive son, and was sentenced to 10 years imprisonment in respect of the theft charge, and 5 years imprisonment in respect of the money laundering charge. The court ordered that the sentences should run concurrently, to the effect that the accused will thus serve an effective term of 10 years' direct imprisonment.

#### Other noteworthy convictions attained by the SCCU:

#### The State v Khanti Mabanga

The accused was the only member of an entity styled Mega Works. Mega Works submitted fraudulent acceptance of tender letters to the Gauteng Department of Roads and Transport, as having been contracted to upgrade and maintain certain roads in Gauteng. The Department made two payments to Mega Works in the amounts of R988 978 and R975 551, whereas the company never did any work. The accused was charged and pleaded guilty to 2 counts of fraud totalling R1.9 million, and she was sentenced to 7 years direct imprisonment.

#### The State v Zandisile Mrhali (PE)

The accused, a cash loans employee, stole cash to the amount of R 1.1 million and made false entries on the accounting systems, showing that clients were refunded for money overpaid. She was convicted of theft and sentenced to 15 years direct imprisonment. The accused lodged an application for leave to appeal the conviction and sentence, which was refused by the court.

Although the AFU was involved in the matter, there were no assets for forfeiture.

#### The State v Bongani Lawrence Mazibuko

The accused was the sole director of an entity known as Tuma Investment (Pty) Ltd. The entity held a business account with Nedbank, and the accused was the sole signatory on the account. During April 2012, an entity named PrepQuip placed an order for drill bits with Tuma Investment and was invoiced an amount of R1.3 million, which was paid to Tuma investment in two instalments of R400 000 and R943 803. From 5 to 31 April 2012, three transfers were made from the Tuma Investment into two other accounts. The amount paid by PrepQuip was misappropriated and not used for the purchase of the drill bits as ordered by PrepQuip and as a result, the drill bits were never delivered to PrepQuip.

The accused was charged and pleaded guilty to two counts of fraud. He had four previous convictions of theft. All counts were taken together for purposes of sentence and the accused was sentenced to 15 years imprisonment half of which (7 years 6 months) was suspended for 5 years on certain conditions. He was thus sentenced to an effective term of 7 years 6 months direct imprisonment.

Although the AFU was involved in the matter, they did not find any realisable assets for forfeiture.

#### The State v Mark Anthony Raath

The accused was the principal estate agent of Fortune Property. He misrepresented to the complainants that certain properties were for sale, and that he required deposits to secure the purchase of the said properties to them. He, however, had no mandate to sell the properties, and he used the deposits paid into his bank account for his own gain, and did not deposit same into a trust account. The accused was, in this regard, charged with fraud involving an amount of R2.5 million.

Further, the accused stole R12 600 from one of the complainants in respect of monies paid for a lease, and misrepresented to another complainant that upon payment of R250 000, he would become a partner in his estate agency business. He was, in this regard, charged with theft and fraud, and he pleaded guilty to all charges. He was convicted as charged, and in sentencing, the court took the counts together for the purpose of sentence, and sentenced him to 15 years imprisonment, 7 years of which were suspended on certain conditions. The accused will thus serve an effective term of 8 years direct imprisonment.

The curator that was appointed by the Estate Agents Board advised there was no money in the accused's account. However, the Estate Agents Board paid the money back to the complainants because the accused had a valid fidelity account. The AFU was thus not involved in the matter.

#### The State v Zola Maziyana and another person

Accused 1 was mandated by the Twelve Apostles in Christ Church in East London to investigate the non-payment by Sanlam of affinity fees, which the Church believed it was entitled to. The accused falsely claimed that the NPA and AFU were investigating the matter and, inter alia, found that Sanlam had made the payments to a group of church members who had purchased properties with the proceeds. He further claimed that the money was needed to be paid for a variety of expenses incurred during the course of the investigation.

As a result of these misrepresentations, the head of the church made 53 transfers from the church and his personal funds to the bank accounts of accused 1 and 2. Both accused were convicted of fraud (53 counts) and money laundering (122 counts). Accused 1 was sentenced to an effective 15 years imprisonment, whilst Accused 2 was sentenced to an effective 9 years imprisonment.

#### The State v Remegius Jali

The accused was charged with two counts of fraud and two counts of uttering forged documents, in that he supplied false particulars when applying for vehicle finance in respect of high end luxury vehicles. The total amount involved was R1 821 494. He pleaded guilty and was sentenced to 10 years imprisonment on each count of the fraud charges, and 6 months imprisonment on each count of the uttering charges. The court ordered that the sentences should run concurrently, to the effect that the accused will serve an effective term of 10 years direct imprisonment.

#### The State v Morne du Plessis

The accused was employed as a sales executive at Mercedes Benz, Malmesbury. He misrepresented, inter alia, to the complainants that he was able and willing to provide them with certain goods and/or funds in exchange for funds and/or goods to be furnished in advance by the complainants. The accused failed to provide the said goods and/or funds and unlawfully and intentionally misappropriated the same for his own use and benefit. The total value of the prejudice was about R1.1 million. In some instances the accused would receive monies from the buyers and thereafter issued forged cash receipts. He was charged and convicted of 9 counts of Fraud and 2 counts of Forgery, and was sentenced to 14 years imprisonment, half of which was suspended for five years on certain conditions. The accused will thus serve an effective term of 7 years direct imprisonment.

There was no AFU order as the accused had no assets.

#### The State v Andries Marais & Bhekuyise Damane

The accused were charged and convicted of various counts of fraud, forgery, uttering, and perjury involving the forgery of emails in order to facilitate the removal of a railway track between Rosmead and Steynsburg. Accused 1 was declared a habitual criminal in terms of Section 286 of Act 51 of 1977 and accused 2, who was a Transnet employee at the time of the commission of the offences, was sentenced to 10 years' direct imprisonment.

The AFU was not involved in the matter, as Transnet instituted a civil action against the accused.

#### The State v Mofasi Kulube

The accused submitted false documentation in his applications for vehicle finance to Wesbank. The accused was charged, and he pleaded guilty to 3 counts of fraud involving an amount of R 1 202 000 00. He was sentenced to 15 years imprisonment, 5 years of which were suspended for 5 years on certain conditions. The accused will thus serve an effective term of 10 years' direct imprisonment.

#### The State v Mazibuko and another person

The matter relates to a Ponzi Scheme, whereby the two accused took R64 million from more than 3 000 investors in less than 2 years. They operated their Trade for Life scheme in the northern KwaZulu-Natal, encouraging those they knew in Ladysmith, and Newcastle communities to participate in their "get rich quick" plan. They had previously been involved in another illegal scheme called Travel International Venture ("TVI"). This Trade for Life Scheme was discovered during investigations into TVI by the South African Reserve Bank.

The accused were charged and convicted of 24 counts of fraud, and were each sentenced to a term of 15 years' direct imprisonment.



## SEXUAL OFFENCES AND COMMUNITY AFFAIRS (SOCA) UNIT

### SEXUAL OFFENCES AND COMMUNITY AFFAIRS (SOCA) UNIT

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

To achieve the aforementioned, the Unit focuses its activities & interventions in 5 sections, namely; sexual offences, child justice, domestic violence, maintenance, and trafficking in persons.

#### **Sexual Offences**

SOCA participated in the (Presidential) National GBV Summit arranged by DOJCD and other relevant departments. Representatives from SOCA were instrumental in prior arrangements and content development for discussion at the various breakaway sessions. Of note, from the Summit, is the establishment of a national coordinating structure to drive GBV matters / issues (and the management thereof) in the Office of the President which will include all relevant stakeholders. Noteworthy was the acknowledgement by the President of the successes from the TCC-model towards sexual offences management and an undertaking by the President to source additional funding to enhance further implementation of the TCC-model.

SOCA plays a vital role in the Child Death Reviews (CDRs) project implemented by the Children's Institute in collaboration with UCT and the Department of Health (DOH) in KZN, based on their expertise and providing prosecutor-guided investigations in child death related cases. The unit was instrumental in the development of the National Policy Framework on the Child Justice Act facilitated by DOJCD.

The unit hosted three international delegations from respectively the USAID, Unicef & UN Women from Palestine and Egypt and Argentina. The focus of these visits was specifically on the Sexual Offences Legislation and related case law, TCC-model, court preparation model, intermediary system and the Sexual Offences Courts.

#### Thuthuzela Care Centre (TCCs)

The TCC model specifically focussing on survivors of sexual offences is regarded as an international best practise model in successfully addressing rape care management. The focus of the model is to reduce secondary victimisation, reduce the cycle period from reporting to the finalization of the case and to improve the conviction rate of these cases. Hence the model is court directed, victim centred with prosecutor guided investigations and stakeholder cooperation.

During this financial year, the unit focused on improving services at the sites with assistance from the relevant stakeholders, because due to the financial limitations in the NPA we could not establish any new sites. However, the unit went ahead with the identification of possible sites, an exercise which is done with our stakeholders to be prepared for when funding is available.

Currently there are 55 TCC-sites (based on the verification criteria) providing services for victims of sexual gender based violence. These sites are based in all 9 provinces. The number of matters reported at the TCCs during this financial year increased with

1.7% overall from the previous financial year. This reflects a total number of 34 558 matters reported, which is 585 more matters as in the previous financial year, with 33 973 matters reported. With reference to the 2016/17 financial year, the number of matters reported increased with 7.2% from 32 239 to 34 558, an increase of 2 319. The Unit achieved an average conviction rate for TCC-reported cases to be 73.5% for this FY (which is 3.5% above the NPA APP target). This is the fourth year that we have achieved a conviction rate of above 70%. When placed in perspective, for the 2011/12 FY the conviction rate was 60.7%, therefore a considerable improvement of 12.8% over a period of seven years regarding the conviction rate of TCC-reported cases as compared with the 2018/19 FY. This is a considerable improvement since the year 2000 where the conviction rate was 48% conviction rate for sexual offences (Monitor Group Research).

When victims / survivors report these matters at TCCs they receive support services by victim assistance officers and are also referred for trauma containment counselling. Once police dockets are registered, the dockets are submitted to TCC case managers for prosecutor-guided investigations. When these cases are trial-and-court-ready, they are referred for prosecution, either by the case managers or by prosecutors that have received specialised and sensitised training in sexual offences. It must be noted that in approximately 35% of matters reported by adults, the victims only required the TCC-services and opted not to proceed with registering a police docket for investigation.

There is an increase in the number of non-arrest dockets and "stranger rapes<sup>4</sup>" reported at a number of TCC-sites, which evidently resulted in fewer cases being referred for prosecution due to these cases not being trial and court ready. Unfortunately, the vacancies of prosecutor posts also had a negative impact on the finalisation rate of these cases, resulting in less cases being finalised with a verdict compared with the previous financial year.

Regarding the impact and value of the TCC-model in relation to reported cases, herewith a table that illustrates the sentences imposed on offenders that were convicted of serious sexual offences during this FY and including a comparison with the previous two FYs. Furthermore, it must be noted that the offence of rape (section 3 of Act 32/2007) equals approximately 64% of all sexual offences being reported at the TCCs.

Sentencing Term:	Number of sentences (per offender and per charge)						
	2018/19	2017/18	2016/17				
Life Imprisonment	264	348	255				
20 – 25 years' imprisonment	188	180	160				
10 – 19 years' imprisonment	693	770	705				
	Number of victims:						
Under 18 years of age	988	1 102	1 011				
Above 18 years of age	960	1 047	849				
Gang rape cases	33	36	37				
Serial rapist cases	26	41	18				

#### TCC cases - sentencing breakdown

The NPA received an allocation of R16 million from the CARA funding for the TCC-project over a period of 3 years. Amongst others, the funds will be utilised for the establishment of 5 new sites and the upgrading / maintenance of current existing sites. With reference to new TCC-sites being identified, specific criteria were developed as a guiding tool for the selection process which resulted in 7 sites being shortlisted for possible establishment. The readiness and suitability of these sites will be the determining factor, which will be based on specific site-visits and inspections to ultimately select the 5 sites for establishment.

<sup>4</sup> 

Sexual offences committed by unidentified alleged offenders

During this FY, the legal officials from SOCA (TCC-case managers and senior state advocates), prosecuted or commenced thereof with a number of TCC-reported cases as reflected in the table:

Number of cases prosecuted or commenced with:	244 cases						
Status of cases, being postponed or part heard:	202 part heard & postponed for trial / judgment						
Cases finalised with a verdict:	36 convictions and 6 acquittals (85.7% conviction rate)						

#### **Domestic Violence**

The Rapid Response Team for LGBTI matters (chaired by DOJCD with SOCA participating), reported at the end of December 2018, that the number of LGBTI related cases were 32 nationally. Additional 10 new cases were reported during the fourth quarter. Out of the 42 pending cases in total, 16 cases are finalized with convictions, and 6 were provisionally withdrawn due to outstanding DNA results. Amongst the finalized cases was the high profile case of Ms Lerato Moloi; the accused in this case was sentenced to life imprisonment for both the rape and murder charges. At the end of the financial year there were 20 related cases outstanding.

#### **Public Awareness Campaigns**

SOCA participated in several public awareness and community projects on gender based violence, human trafficking and relevant legislation nationally in line with the "365 National Action Plan of no violence against women and children". This intervention entailed a combination of public awareness campaigns with relevant stakeholders but also radio interviews / discussions, focussing inter alia on the following topics: the essence of gender based violence, TCC-services, influence of drugs and alcohol at schools, child pornography, reporting of GBV-matters, LGBTI-cases, sexual violence / abuse at schools and tertiary institutions, importance of forensic medical examinations and post-trauma consequences of GBV, ukuthwala-practices, existence of sexual harassment and what it entails, human trafficking specifically for sexual exploitation and etc.

#### **Skills Development and Training on SOCA Mandate**

SOCA developed comprehensive training manuals for skills development of prosecutors including an integrated training program for TCC-stakeholders and staff. These manuals are reviewed annually to ensure they are in line with the latest developments in case law and legislation.

48 training sessions were delivered attended by 1060 delegates, whilst the SOCA APP target is 38 sessions for the financial year. This was achieved despite financial constraints. A breakdown of formal training delivered during this year is as follows:

- Sexual Offences: 3 sessions, attended by 36 delegates
- Child Justice: 3 sessions, attended by 32 delegates
- Domestic Violence: 2 sessions, attended by 31 delegates
- Maintenance: 4 sessions, attended by 58 delegates
- Trafficking in Persons: 2 sessions, attended by 38 delegates
- Integrated training for stakeholders at TCC-sites: 22 sessions, attended by 587 delegates
- USAID FHI360 sponsored integrated training sessions delivered by SOCA; 12 sessions attended by 278 delegates
- VAOs from the TCC-sites trained on the Court Preparation, three sessions attended by 36 delegates

SOCA has also commenced with the research and development of a forensic psycho-social evidence training manual, in line with the CARA project plan (project 4). This process is for related expert witnesses who are in many instances crucial to the investigation and prosecution of sexual offence cases. A draft framework has been developed, the process will proceed in the 2019/20 financial year.

#### Trafficking in Persons (TIP)

SOCA attended the SADC Counter Trafficking in Persons Peer Review Workshop, during March 2019 in Maputo, Mozambique. Representatives from 10 countries in Africa attended the workshop, whilst the focus of the program was to understand the current status of TIP and related responses in the SADC and also to create a networking opportunity between prosecutors in the region to strengthen collaboration and mutual assistance between prosecutors and countries, amongst other things.

The DOJCD, in conjunction with UNODC, hosted a National Policy Framework Validation Workshop in Pretoria during October 2018. SOCA officials participated in the workshop and contributed extensively to the development of the National Policy Framework for Trafficking in Persons. The purpose of the workshop amongst other things was to ensure that the Prevention and Combating of Trafficking in Persons National Policy Framework (NPF) is in line with international best practices on comprehensive anti-trafficking responses.

#### Maintenance

Senior maintenance prosecutors from SOCA are responsible for, inter alia, the overall management of maintenance matters in the provinces. They provide support and guidance to maintenance officers and prosecutors and also deal with contentious maintenance matters regarding both the civil and criminal process. They are also responsible for skills development in their respective provinces. A total of 225 381 formal and informal maintenance enquiries were processed, 145 477 (64.5%) were finalised in this financial year. The number of civil attachments on Section 26 of the Maintenance Act facilitated and finalised are 19 976 an increase of 858 or an improvement of 4.5% on the SOCA APP target.

The relevant training manuals were previously researched and developed by SOCA and annually during the Q1-period the content is reviewed & updated to ensure it is in line with the latest developments in legislation and case law.

#### Noteworthy cases (reported at TCCs)

#### State v B William

The accused faced four counts of rape, three counts of sexual assault, one count of compelled sexual assault and 55 counts of possession / creation of child pornography. Children of between 9 and 11 years are involved. The case is part heard and postponed.

#### State v Ngobeni,

The accused has numerous charges on rape, with victims between the ages of 7 to 46 years. The accused was linked by DNA. Case remanded for trial in High Court in the new financial year.

#### State v Ngesi

The accused was convicted of rape. He raped the complainant due to his belief of "corrective rape" and sexual orientation of the victim. He was arrested, granted bail, absconded and re-arrested in 2018. He is now in custody and the matter is postponed to May 2019 for sentence.

#### State v November

The accused was convicted on nine charges of rape, six for robbery with aggravating circumstances, three for assault GBH and one for murder. The case involves nine victims aged between 20 and 47 years. The accused was linked by DNA with an almost identical modus operandi in all of the dockets. He is in custody and the case is postponed for High Court trial in the new financial year.

#### State v Pitso

The accused is a self-appointed Bishop with five charges of rape and three for sexual assault, the accused. One of the victims was raped over a period of 3 years and the matter received media attention on a national level. The Court denied an application for the charges to be quashed. Currently, the matter is postponed to April 2019 for trial and the accused is in custody.

#### State v Manyiki

The accused charged with 3 counts of rape, kidnapping and the murder of one victim. Her body was charred and she was 15 years old, the other victims were respectively 17 and 57 years old. He was convicted on the 3 rape charges and the murder charge, sentenced to 4 life imprisonments.

#### State v Johannes

The accused had several charges of rape and compelled rape with 14 victims between the ages of 8 and 13 years old. He was treated as a serial rapist and matched with DNA. He was sentenced to 3 life terms and 210 years imprisonment on other charges.

#### State v Witbooi

The accused was charged with abuse and rape of a minor child, who passed on because of her injuries. The 5 year-old sister was a crucial witness. He was convicted of rape and murder and received life imprisonment sentences.

## PRIORITY CRIME LITIGATION UNIT (PCLU)

FIRE

## PRIORITY CRIMES LITIGATION UNIT (PCLU)

The PCLU is a special directorate in the Office of the NDPP. It is mandated to manage and direct investigations and prosecutions specified in its Presidential Proclamation and the NPA's policy directives dated 1 June 2015. Key crimes dealt with by the PCLU include international crimes, terrorism, non-proliferation and cases arising from the Truth and Reconciliation Commission (TRC) process.

The PCLU established an excellent reputation with stakeholders in being able to deliver on its mandate. DIRCO's inter-departmental working group on terrorism appointed the PCLU to make key addresses at the plenary of the onsite visit by the Counter-Terrorism Executive Directorate (CTED) of the Security Council of the United Nations and also to chair the working group on legal systems.

The US government has indicated that it will again request the PCLU to participate in training on weapons of mass destruction (WMD) related issues.

The South African National Defence Force (SANDF) has requested the PCLU to participate in further training for its soldiers on war crimes.

As a result of the findings at the reopened Timol-inquest (the deceased died in detention in 1971), a prosecution was instituted against a former security branch member who was present at the time of the death of the deceased.

Two prosecutions have been instituted relating to the incidents which form part of the Marikana killings. The main accused in these matters is the former deputy provincial commissioner of the North West province and officers under his command. They face murder and defeating the ends of justice related charges. The matters will proceed on trial in June and August 2019.

The newly appointed Acting Special Director was designated as the nodal point for the State Capture Commission led by Deputy Chief Justice Raymond Zondo, and is tasked with assisting it with its investigations relating to NPA matters.

#### Convictions

The failure to obtain the prescribed number of convictions is due to the complexity of cases being dealt with by the PCLU during the reporting period.

The PCLU has 4 terrorism-related cases in court, either part-heard or at a pre-trial stage. These cases are well-defended and legal challenges are brought throughout the process. In two of the cases, requests for mutual legal assistance (MLA) have been made to a number of foreign States. The MLA processes are extremely slow and dependent on stakeholders both inside and outside the country for execution. The investigations are also complex and in many cases dependent on the analysis of digital evidence. This results in delays in being able to institute and conclude prosecutions.

A decision was taken to prosecute a former security branch member for the murder of Ahmed Timol who died in detention in 1971. The defence immediately brought an application for a stay of prosecution and given the complexity of the issues raised, the matter was referred to a full bench of the high court for argument. To date the judgment is still awaited. Similarly a prosecution was instituted three years ago against three former security branch members for the kidnapping and murder of Nokuthula Simelane. To date the trial has not commenced due to various legal arguments raised by the defence.

A number of cases relate to contraventions of the laws relating to military trade, nuclear trade and weapons of mass destruction (WMD). All three sets of legislation require dolus in the form of intention. In almost all of the cases investigated and referred for decision the prerequisite guilty knowledge is absent. Consequently no prosecutions could be instituted. A presentation on this issue was given to the Chairperson of the Non-Proliferation Council and the Council indicated it was satisfied for the explanations

given for non-prosecution. The PCLU has recommended that the laws be amended so as to make negligence a prerequisite for guilt which will increase the number of convictions.

The PCLU has also received requests from various Non-Governmental Organisations (NGOs) to investigate international crimes committed outside South Africa by foreign nationals on foreign victims. The Constitutional Court has ruled that such complaints must receive attention and the matters / enquiries may only be closed if a pre-investigation establishes that a full investigation would be futile. From the nature of the complaints the authorities only have very limited access to victim statements and are unable to do the necessary verifications due to the countries where the crimes were committed not being prepared to allow for investigations there. This obviously impacts on the feasibility of being able to prosecute.

#### Legal opinions

The PCLU on an ongoing basis provided advice to DIRCO's Counter-terrorism Working Group and to SAPS: Legal Services. These requests were all timeously submitted and accepted by the requesting agency. A key contribution made by the PCLU was to an inter-departmental working group established to amend the counter-terrorism law (POCDATARA Act 33 of 2004). The Chairperson of the group confirmed that all the key amendments were proposed by the PCLU which also played a key role in determining the text of the Bill.

DIRCO was frequently assisted on issues surrounding draft declarations relating to terrorism issues being proposed by multi-lateral organisations and proposed new Security Council resolutions.

The PCLU also provided the NDPP with an opinion on new Military Disciplinary Code. Opinions were also provided on diverse other matters.

#### Missing Person Task Team (MPTT)

As a sub-component, the MPTT is tasked with the tracing of the remains of persons who disappeared during the period covered by the TRC and other assignments given by the Minister of Justice. The MPTT made significant progress with the Gallows Exhumation Project in that 15 extra bodies were exhumed. The Minister approved a request by the Angolan Government that the MPTT conduct the exhumation of the remains of the former UNITA leader Jonas Savimbi. His remains were recovered and his identity confirmed by DNA tests.

#### Handover of remains

18 remains were exhumed and positively identified. In 2 other cases the sites where the victims were killed were located but the remains had been totally destroyed with explosives. These two cases were referred for spiritual repatriation. 9 other cases were closed as the remains could not be located despite diligent searches. In 4 cases it was established the deceased died in neighbouring Ssates and no further action can be taken in the absence of an executive decision authorising exhumations in such foreign States.

#### **Closing Cases**

The target of 35 cases closed was achieved.

# ASSET FORFEITURE UNIT (AFU)

ANNUAL REPORT NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS 2018/19

### **ASSET FORFEITURE UNIT (AFU)**

The 2018/19 financial year was overshadowed by two major issues. The one was the constant lack of resources impacting on the unit's ability to achieve the high targets set. The second issue was the highly complex and large state capture cases that the unit was working on. The unit dedicated capacity from different offices to deal with these matters which had an impact in the regions due to some of their staff dealing with these cases. It was hoped that the unit would be able to obtain orders in some of the state capture cases in the course of the year. The unit was however faced the reality that these cases take long to investigate and prepare the appropriate applications. Experience also showed that these cases are hotly and diligently contested, which means that significant effort is required to ensure that the applications and orders are complete and beyond reproach. The risk of setting bad precedent is also bigger hence the additional caution and delays in bringing the applications.

It is however very significant to note that the unit only under achieved an already ambitious target of 500 completed confiscations and forfeitures by 1% and exceeded the number of freezing orders. This means that the unit was working at and obtaining the volumes of orders but the values were unfortunately not achievable.

#### Number of completed forfeiture cases

During the year under review, the AFU completed 495 forfeiture cases. This is 1% under the target of 500. It also needs to be noted that the target was increased from 399 to 500 for the year under discussion. This means that the unit exceeded the original target by 24%. The total was however less than the 563 confiscations and forfeitures completed for the 2017/18 financial year.

Table 26: Annual comparison of number of completed forfeiture cases

Indicator	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Number of completed forfeiture cases	302	390	466	418	569	562	495
Target	300	320	340	420	430	366	500

#### Value of completed forfeiture cases

The AFU obtained forfeiture and confiscation orders to the value of R3.13 billion against a target of R6 billion. The value of completed forfeiture cases in the 2017/18 financial year was R351 million. The principal reason for the underachievement is due to undue delays in the finalisation of litigation and settlement of high value state capture matters which are taking much longer to finalise, due to the extent and complexity of the cases.

Table 27: Annual	comparison	of value of	completed	forfeiture cases

Indicator	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Value of completed forfeiture cases	R119m	R296.4m	R1.94bn	R349.6m	R423.6m	R350.95m	R3.13bn
Target	R167m	170m	R180m	R210m	R230m	R600m	R6bn

#### Number of freezing orders

The AFU obtained 273 freezing orders against a target of 264 orders, thus exceeding the target by 3%. The positive result can be attributed to a focus on Chapter 6 preservations.

Table 28: Annual comparison of number of freezing orders

Indicator		2013/14		2015/16	2016/17	2017/18	2018/19
Number of Freezing Orders	276	363	342	326	377	324	273
Target	324	281	281	321	324	261	264

#### Value of freezing orders

The unit obtained R455 million in freezing orders against a target of R10bn, underachieving by 95%. This result is 90% below the value of R4.4bn frozen in 2017/18.

Table 29: Annual comparison of value of freezing orders

Indicator	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Value of Freezing Orders	R518m	R701.5m	R2756m	R778.9m	R1.194b	R4.4b	R455m
Target	R600m	R710m	R755m	R1.1bn	R1.1bn	R1.2bn	R10bn

### Value of freezing orders relating to corruption or offences related to corruption where the amount benefited is more than R5 million (including State Capture Cases)

During the year under review, freezing orders to the value of R262 million were obtained against a target of R8 billion, resulting in an under achievement of 97%. In the previous financial year the amount frozen was R4.4 billion.

#### Value of recoveries in terms of POCA

Recoveries in terms of POCA to the value of R3.05 billion were obtained, exceeding the target of R3 billion by 3%. The table below reflects the performance of the AFU from 2012/13 to 2018/19.

Table 30: Value of recoveries over seven years

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Payments to Victims	R28.6m	R84.4m	R1 658m	R390.2m	R149.4m	R195.8m	R2.88bn
Payments into CARA	R34.8m	R98.5m	R58.2m	R54.2m	R69.1m	R107m	R166m
Value of Recoveries ito POCA (Victims + CARA)	R63.4m	R182.9m	R1 716.2m	R444.2m	R219m	R308.8m	R3.05bn

#### Success rate

A success rate of 98.9% was achieved, exceeding the target of 93% by 6%. The result can be attributed to a cautious approach in case selection in big complex cases being handled in terms of Chapter 5 and a more aggressive approach in pursuing cases using Chapter 6. The unit also achieved a success rate of 98.4% in the previous financial year.

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

A result of R2.84 billion was achieved against a target of R2.5 billion, thus exceeding the target by 14%. The cause of the deviation is due recoveries made in state capture cases.

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

A result of R172 000 was achieved against a target of R2.5 million, thus not meeting the target by 93%. The cause of the under achievement was due to no convictions being obtained in sufficient matters where there was potential for asset forfeiture.

As part of its endeavour to continue making an impact on several crime typologies, the AFU made a concerted effort to undertake cases addressing several priority crime areas such as drugs, fraud corruption, environmental crimes and illicit financial flows, amongst others. The cases mentioned hereunder are some of the notable cases that were undertaken to address such focus areas.

#### Addressing drug dealing activities through Asset Forfeiture

The AFU obtained 93 freezing orders to the value of R16.2 million in drug related matters and completed 62 Forfeitures/ confiscations to the value of R3m.

#### **Addressing Corruption**

#### NDPP v Zeranza (Pty) Ltd and others

National Treasury paid a total of R2 billion in grants in terms of the Division of Revenue Act (DORA) to the Nelson Mandela Bay Metropolitan Municipality (NMBM) for the Integrated Public Transport System Project (the IPTS).

Pursuant to forensic investigations it was found that a number of entities and individuals were paid in terms of corrupt relationships with NMBM employees.

The AFU PE obtained restraint orders against houses of Zeranza and Wessels valued in excess of R10 million. Further preservations orders to the value of R1.3 million were obtained in respect of properties that were acquired with proceeds of unlawful activities.

#### **Addressing Environmental Crimes**

#### NDPP v Mudau

A vehicle was confiscated as an instrumentality in the smuggling of a pangolin.

#### **NDPP v Morne Blignaut**

Blignaut and his associates were convicted of racketeering, they were involved in abalone poaching with a cumulative benefit of approximately R67 million. The AFU obtained a preservation and forfeiture in this matter.

#### Addressing Money Laundering and Illicit Money Flows

#### NDPP v Gulfstream Model III Aircraft

A Gulfstream Executive Jet belonging to Bishop Shepherd Bushiri was preserved as the proceeds of crime for contravening the Reserve Bank Regulations and fraud.

#### NDPP v Nielsen and Hayat

The AFU assisted Denmark in recovering monies and property bought with proceeds of fraud committed by Nielsen whilst in the employ of the Danish Government. She created false beneficiaries of social grants and paid the funds to herself.

#### NDPP v Saleh

An amount of R9 million (USD 630 700) in cash was found concealed on the person of the suspect whilst traveling to Dubai from ORT International Airport. The cash was preserved by the AFU.

#### Addressing Fraud/Economic Crimes

#### NDPP v Umnotho

The AFU obtained a preservation order for proceeds of tender fraud committed in the Eastern Cape to the value of R18 million.

#### **NDPP v Siyenza**

The AFU obtained forfeiture of a house valued at R13.5 million which was bought with the proceeds of tender fraud.

#### **Addressing State Capture**

#### NDPP v TEGETA Exploration and Resources and others\environmental rehabilitation funds

The AFU Pretoria obtained a forfeiture order in respect of Mining Rehabilitation Fund funds to the amount of R1.75bn in March 2017 for the Koornfontein and Optimium mines which were being misused in contravention of Section 41 of the Mineral and Petroleum Resources Development Act 28 of 2002, read together with National Environmental Management Act (NEMA).

#### **NDPP v McKinsey**

The AFU obtained a preservation order for R1bn in consultancy fees unduly paid to McKinsey during the previous financial year. Through the intervention of the AFU the order resulted in a settlement in terms of which McKinsey paid back R906.5 million to Eskom.

## OFFICE FOR WITNESS PROTECTION (OWP)

## **OFFICE FOR WITNESS PROTECTION (OWP)**

The OWP provides temporary protection, protection, support and related services to vulnerable and intimidated witnesses and related persons in judicial proceedings in terms of the Witness Protection Act (1998).

The Office for Witness Protection is an independent covert office and derives its mandate from the Witness Protection Act 112/1998. All OWP's functions are classified secret so as to ensure the safety of witnesses, their related persons and OWP officials. Witnesses and their related persons must voluntary agree to be admitted onto the Witness Protection Programme (WPP).

Judicial proceedings are defined as:

- Criminal proceedings
- Proceedings before a commission or a tribunal
- Proceedings under the Inquest Act
- Proceedings relating to investigations conducted by the IPID
- Proceedings referred to in Chapters 5 and 6 of POCA

#### **Performance Highlights**

OWP achieved and exceeded all its targets in the reporting period. It is particularly notable that OWP for the past 18 years achieved its key performance indicator (KPI), "no witnesses or related persons harmed, threatened or killed whilst on the programme who complies with the rules of the programme".

During the reporting period, no incidents were recorded of witnesses being harmed, threatened or killed whilst on the Witness Protection Programme.

For the period under review, 3 witnesses and 1 related person walked off the witness protection programme out of 389 witnesses in total. Of the 389 witnesses managed there were originally 171 witnesses in the year under review plus a carried over number of 218 admissions. Witnesses are not kept under 24-hour guard; they are placed in places of safety so as to re-integrate into society. They are admitted into and signed off the programme on a voluntary basis. Witnesses and related persons must voluntary agree to be admitted. Walk-off witnesses do not inform OWP that they leaving or have left the place of safety. 99.9% witnesses who walked-off, testify. After walk off is detected the I.O and prosecutor is immediately notified to ensure that the witness is detected and brought to court to testify. In high profile cases where there is a walk- off, OWP readmit the witness, taking into account the bigger picture.

There are a number of interrelated reasons for walk-offs, including:

- Strict conditions of the Protection Agreement;
- Removal from historical homes (danger area)
- Removal from family support, community support and comfort zone;
- Trauma
- Profiling of witness e.g. Section 204

#### Nature of cases (crimes and charges) in which protected witnesses are expected to testify

Since charges are changed, added or withdrawn by DPPs and prosecutors, OWP does not keep updated information of all the charges against the accused persons in which the protected witnesses must testify. However, at the time of admission the predominant crimes are murder, robbery, rape, gang violence, drug trafficking, environmental crimes (rhino poaching, etc.), crimes against the state and Organized Crime (POCA) and other judicial proceedings. In addition international witnesses who are required to testify at the International Criminal Court for crimes identified in the Rome Statute are also kept.

#### The total average costs for the protection of witnesses and related persons

The average cost per month to protect a witness and related persons is R14 821. This amount excludes the salaries and other related costs of protectors and support personnel, the use of official vehicles and operational accommodation/places of safety. In addition, special hired vehicles and special rented accommodation are used for operations.

#### Number of operations and the operational expenditure

The number of operations during the reporting period totalled 622.The all-inclusive average cost of operations amount to R 30 088.49 per operation. The cost of fuel increases had a negative impact on the operational budget.

#### Value for money

OWP continues to make a crucial contribution to the successful investigation and prosecution of very serious criminal cases and other judicial proceedings. In 2017/18 OWP's contribution of witnesses on the programme testimony resulted in the conviction of 48 accused persons and the following sentences.

Table 31: Number of	jail terms and life	sentences in cases inve	olving witnesses in t	he witness protection programme

Quarter	Number of jail terms	Number of life sentences
01	41	0
02	579	2
Q3	8	0
Q4	41	0
Total	669	2

Table 32: Summary of finalized cases referred to above

Ref No.	Case No. and charges	Number of accused	Verdict	Number of jail terms	Number of life sentences	Accused
WC 12/17	Ocean View 32/03/16 Murder	2	1 Guilty	15	0	J Wood & J Newman
KZN 6/13	Dundee CAS 247/05/2013 - Rape	1	Guilty	16	0	Buthelezi
KZN 37/16	Umlazi CAS 836/08/2016 - Murder & Att Murder	7	Guilty	10	0	Mbele & 6 others
NW 05/17 NW 23/17	Marikana CAS 47/12/2016	14	8 guilty - 20 years each	160	0	Khabudikazi and 13 others
ECP 29/16 ECP 30/16	Bethalsdorp CAS 97/06/2016	2	2 guilty – 89 years each	178	0	Deon Harmse & Nealon Redhouse
KZN 45/14	Kwambanambi CAS 72/10/2014 (Murder & Kidnapping)	3	Acquitted - murder, guilty kidnapping	5	0	Mbuyazi & 2 other
KZN 05/17	Inchanga CAS 109/08/2017 (Murder; Attempted Murder)	6	Guilty	138	0	Shezi & 5 others
WC 55/16	Lutzville CAS 74/03/15 Murder, Assault GBH	1	Guilty	0	2	Martin Visser
WC 39/16 WC 40/16	Atlantis CAS 791/07/16 Murder, Attempted murder	1	Guilty	23	0	Gershwin Philander @ Ore
WC 06/15 WC 66/14 WC 67/14	Manenberg 575/06/14 Kidnapping, Standfontein 8/06/14; Manenberg 758/11/14 Att Murder	4	3 guilty 1 discharged	43	0	S Dalwai, J Shaid, G Owies & S S Makula
GP 17/16	Johannesburg Central Corruption and Fraud	4	Guilty	32	0	Taleni & others
KZN 22 & 23/18	Empangeni CAS 424/03/2018 (Att Murder x 3, Pointing of firearm/Defeating the ends of Justice)	1	Guilty i.t.o. Sect 105	8	0	Nzima
11/17NW	Coligny CAS 77/04/2017 and 92/04/2017	2	Guilty Acc. 1 Acc. 2	23 18	0	Dooreward & Schutte

#### **Resettlement Agreements (Aftercare)**

60% of the witnesses in any given year cannot go back to their homes. OWP uses alternative humanitarian approaches in resettlement agreements. Due to budget constraints, OWP is unable to enhance its existing after care standard operating procedure. Despite the limited after care there has still been 100% successful resettlement - after care.

90 witnesses with 76 related persons were discharged, resettled/relocated in a humane manner through amicable resettlement agreements after completing their testimony or after it was decided by prosecution not to use them as witnesses. 12 witnesses returned to the danger area in the reporting period.

Over the past 18 years, there were no complaints, grievances or litigation by witnesses that were discharged/resettled. Witnesses were satisfied with OWP's after care. Prior to discharge OWP enters into negotiations with the witnesses and/or related persons and a formal agreement is entered into. The witnesses complete a secret exit interview on OWP's service quality. There are financial implications in resettlement agreements, the office of the Auditor General audits the OWP processes.

There was one witness who prior to discharge and resettlement attempted to enrich himself at the expense of tax payers. He approached the Public Protector and his lawyers. After OWP provided all information to refute allegations and claims the Public Protector and his lawyer closed their files because the allegations against OWP were unfounded and of no substance.

#### National and International Stakeholder and Partners Relations Co-operation

The Director of OWP continued to provide high level training on witness protection to prosecutors at Justice College training programmes. The director also continued to provide good practice recommendations to DPSA in the field of whistleblower protection.

OWP works closely with the Institute for Security Studies (ISS) on capacity building and sharing good practice in Africa. OWP provided high-level training and guidance to Namibia to assist them in developing their Witness Protection Law, after the country promulgated its Witness Protection Act, which is largely based on the RSA Witness Protection Act.

#### Conclusion

The CARA allocation that was made in 2011 was mainly used for ACTT cases and was depleted in March 2017. The average monthly expenditure on ACTT witnesses is R 261 689 and as at 31 March 2018 the total expenditure was R 3.1 million.

In view of the new focus on serious corruption and on ACTT cases it is anticipated that there will be an increase of demand for OWP services. Operation Fiela II will place extra strain on OWP.

## LEGAL AFFAIRS DIVISION (LAD)

## LEGAL AFFAIRS DIVISION (LAD)

The strategic goal of LAD is to deal with civil litigation and to provide sound legal advisory services to the National Director. It contributes to the following NPA strategic objectives:

- Increased successful prosecution
- Improved prosecution of cases that require specialised prosecution
- Remove profit from crime

#### Overview of volume of work

As reflected below, there has been a rapid increase in the volume of work done by LAD. However, there has been little increase in capacity and staff have been placed under immense pressure. Thus, it is imperative that there be a significant increase in capacity if it is to continue doing its work effectively.

#### Taking over of civil litigation

The NPA (LAD and finance) met with the staff from the Office of the Chief Litigation Officer (CLO) of the DOJ&CD on 16 March 2018 and with the DG on 26 April 2018, to discuss taking over of NPA's civil litigation processes and reporting on contingent liabilities. It was agreed that the NPA will report on contingents on all new matters, with effect from 1 April 2018. DOJ&CD will report on and continue dealing with old matters already on their books. The DNDPP responsible for LAD and the CLO met with the auditors to discuss their requirements. The position remains as is for applications. Delegations were amended on 4 June 2018 whereby the DNDPP received a delegation to instruct the state attorney, authorise briefing of counsel and authorise settlements.

The LAD has taken on the additional functions without extra resources. The LAD now has the responsibility to instruct state attorneys in writing on a letterhead to register contingent liabilities, to ensure authorisation and payment of settlements and payment in terms of court orders. All these processes will be audited.

#### **Civil claims**

LAD achieved its best ever performance in 2018/19. It dealt with 1 861 cases, an increase of 7.4% over the previous year.

This is a considerably lower rate of increase than the average increase of about 25% per year in the previous 5 years, due to the fact that LAD has improved its effectiveness in dealing with these claims since it was first established.

The increase in civil claims is reflected in the table below. The rate of increase has slowed down in the last 2 years, although still very high at about 25%.

#### Table 33: Annual rate of increase in civil claims

Civil claims per year	2012/ 2013	2013/ 2014	2014/ 2015	2015/ 2016	2016/ 2017	2017/ 2018	2018/ 2019	% years Increase (6 years)	Average annual increase
Target	n.a.	n.a.	n.a.	n.a.	1 200	1 400	2 100	+75% (2 yrs)	
Number of claims	509	736	847	1 109	1 383	1 732	1 861	+266%	24.1%
v target	n.a.	n.a.	n.a.	n.a.	+15.3%	+29.6%	-11/4%	-	-
% increase pa	-	+44.6%	+15.1%	+30.9%	+24.7%	+25.2%	+7.4%	+240%	+27.8%

#### Applications

Applications increased little during the last 3 years, last year increased but there is now a decrease for 2018/19. The LAD received 9, 9% less applications than 2017/18.

Table 34: Applications

Applications per year	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019
Target	-	-	-	-	250	250	280
Number	122	136	258	248	256	287	267
v target					+2.4%	+14.8%	
% increase pa		+11.5%	+89.7%	-3.9%	+3.2%	+12.1%	-4.6%

#### Overview of performance in 2018/19

The reduction can be ascribed to less applications from NGO'S and the DPP's being cited and dealing with the applications in the ordinary course.

#### Service Level agreements

The LAD dealt with 46 service level agreements in 2017/18 and 38 service level agreements in 2018/19. This is a significant reduction.

#### Percentage of civil claims won

This year the LAD won 62 out of 82 cases, which is 20, 6% above the target of 55%.

#### Percentage saved in civil claims

For the past two years LAD set a target for the amount saved of the amount claimed in civil claims finalised.

#### Table 36: Performance against target on amount saved on civil claims

Performance 18/19 v target		Performance v	Performance v best ever			
Target 18/19	Performance 18/19	% above	Performance 18/19	% increase	Best	% increase
90%	92.4% (R163.9m of R177.4m)	+2.4%	77.3%	+15.2%	95.5%	-3.1%

In the current year, the unit saved R163.9m of the R177.4m claimed. This represents a saving of 92.4%, which is well above the target of 90%.

#### **Capacity of LAD**

The capacity of LAD has increased only slightly in the past years, and is lagging far behind the huge increases in the volume of work. The consequence is that staff members are working under huge pressure and are finding it increasingly difficult to make meaningful input into cases.

They essentially have to focus on ensuring that processes run smoothly, and are seldom able to take any active part in actual litigation. This matter requires urgent attention in the new financial year, to ensure better alignment between capacity and the organisation's needs.

#### Noteworthy cases

#### Ismael Simon Mesa and Others v Minister of Justice And Others

The applicants are seeking to have Section 87 of the CPA declared inconsistent with the Constitution and invalid to the extent that it fails to afford an accused person who is tried in the high court the right to appeal a decision to refuse further and better particulars. Currently the relief is available in the lower courts only.

#### Minister of Safety and Security and the NDPP v Marius Schuster and Darryl Campher

The SCA found that the provisions of Section 60(11)(a) of the CPA are peremptory and accused need to be detained in custody until their bail application is heard. In this case the accused were re-arrested and succeeded with their claim in the civil court a quo that the prosecutor was liable for unlawful detention, because they would have been released on bail without a formal application had the prosecutor informed the court that the police were no longer opposing bail, and had the prosecutor applied his mind not to oppose bail. The court a quo's judgment was reversed with costs.

Minister of Justice and Constitutional Development and Others v Prince The Constitutional Court has declared sections 4(b) and 5(b) of the Drugs Act, read with Part III of Schedule 2 of the Drugs Act and sections 22A(9)(a)(i) and 22A(10) of the Medicines Act, read with Schedule 7 of the Medicines Act, to be inconsistent with the right to privacy guaranteed by section 14 of the Constitution, but only to the extent that they prohibited the possession and cultivation of cannabis in private by adults, for personal private consumption.

The court decriminalised the use or possession of cannabis by an adult in private for that adult person's personal consumption in private; and the cultivation of cannabis by an adult in a private place for that adult's personal consumption in private. However, the

use or possession of cannabis by a child anywhere, or by an adult in public, is not decriminalised. The effect of the judgment in a nutshell: (a) an adult person may use or be in possession of cannabis in private for his or her personal consumption in private, (b) the use, including smoking, of cannabis in public or in the presence of children or in the presence of non-consenting adult persons is not permitted, (c)The use or possession of cannabis in private other than by an adult for his or her personal consumption is not permitted and (d) the cultivation of cannabis by an adult in a private place for his or her personal consumption in private is no longer a criminal offence.

The ruling does not extend to the cultivation or possession of cannabis with the intention of selling it. This means that it is still a criminal offence to grow dagga commercially or to deal in dagga. Although the order was suspended until Parliament can fix the defect in the law, the court provided interim relief that will make it unlawful for the police to arrest adults who privately cultivate, possess or use relatively small amounts of cannabis. However, the judgment does not indicate how a police officer will determine whether a person cultivates or possesses cannabis for private use and intends to sell that cannabis to others.

The court did not impose specific limits on the quantities that a person is allowed to possess before it will be assumed that that the person is dealing in dagga and no longer merely possessing it for private use. The court instead provided some guidelines on how a police officer may reach a conclusion that a person is dealing with dagga and no longer possessing it for personal use. In determining whether or not a person is in possession of cannabis for a purpose other than for personal consumption, an important factor to be taken into account will be the amount of cannabis found in his or her possession.

A police officer who finds a person in possession of cannabis, he or she may only arrest the person if, having regard to all the relevant circumstances, including the quantity of cannabis found in that person's possession, it can be said that there is a reasonable suspicion that a person has committed an offence in terms of the Act. This leaves some discretion to the police to arrest individuals who are found in possession of cannabis. However, the judgment minimises the possibility that this power will be abused by an overzealous police officer by making clear that when in doubt, the police officer should not arrest an individual found in possession of cannabis. The court refused to expand the case to include rationality and legality grounds to challenge the constitutional validity of the whole criminalisation of cannabis by various statutory provisions. The court held that it would not be in the interest of justice to widen the scope of the matter beyond the right of privacy as decided by the high court.

The intervening parties were advised to pursue this challenge in the Stobbs trial. This means that accused persons who are charged for dealing with dagga will continue to bring stay of prosecution applications pending the constitutional challenge of the whole criminalisation of cannabis by Stobbs. The court refused to make an order of invalidity that should operate with retrospective effect as the said order could have a disruptive effect on, and, cause uncertainty in, our criminal justice system. The court made an order of invalidity that will operate prospectively. This means that the order does not affect criminal offences which were committed prior to the judgment.

#### PSA v Meintjies and 55 others

The applicants in this matter are Deputy Directors who were appointed in terms of Section 15 and Chief Prosecutors who were appointed in terms of Section 16 of the NPA Act.

The applicants seek enforcement of two collective agreements, on the implementation of an Occupation Specific Dispensation (OSD) for legally qualified categories of employees, between the representatives of government and trade unions with members within the public service.

The applicants further seek to compel the NPA to comply with the approval for the implementation of the OSD by the NDPP dated 29 July 2014 and the CEO's Memorandum dated 24 November 2014.

On 5 July 2007, the PSBC Resolution 1 of 2007 was signed by the representatives of government and the trade unions. The purpose of this Resolution was to introduce revised salary structures for identified occupations with a view to attract and retain professionals. To give effect to the PSBC Resolution 1 of 2007, various other resolutions applicable to professionals in the public



service were signed to implement OSD for professionals, including the OSD for legally qualified categories of employees within the justice cluster.

On 07 February 2008, the GPSSBC Resolution 1 was signed by the representatives of government and trade unions with members within the public service. The GPSSBC Resolution was titled, "Agreement on the implementation of an occupation specific dispensation for legally qualified categories of employees".

On 02 December 2010, the Minister of Justice and Constitutional Development subsequently published a Determination in terms of section 18 of the NPA Act to give effect to GPSSBC Resolution 1 of 2008. The Determination was subtitled "Determination of an Occupation Specific Dispensation (OSD) for legally qualified employees appointed in terms of Section 16 of the National Prosecuting Authority Act, 1998". The OSD for Prosecutors was determined on the same basis as legally qualified professionals as per Resolution GPSSBC 1 of 2008. There is an intepretation dispute about which prosecutors are covered.

On 29 July 2019, the NDPP signed a memorandum for the implementation of the OSD for levels 13 and 14. On 24 November 2014, a memorandum from the CEO was dispatched to the Deputy National Directors informing them that the implementation date for migration to LP 10 is proposed to be 01 April 2015.

The Court must determine whether the applicants are entitled to the relief sought, which in turn requires a determination.

The newly appointed NDPP is seeking to resolve the matter settled amicably to the satisfaction of all parties.

**Patel:** The NPA was held liable for maliciously prosecuting the former Judge President of KZN.

#### **Visham Panday**

The applicant withdrew the two applications. The first was to have the prosecutors found in dereliction of their duties, for declining to prosecute in a car theft case he opened. The second was to have the NDPP's agreement with the decision reviewed and set aside.

He withdrew the applications after his request for a postponement was opposed and refused by the court. The NPA was vindicated for not accepting the advice of senior counsel to agree to a postponement, but to insist on a formal application to oppose setting out the basis on which it should be opposed. Panday can bring another application but first has to pay costs.

# OVERVIEW OF ND PP INTERVENTIONS

### **OVERVIEW OF NDPP INTERVENTIONS**

#### **Representations and Complaints**

Representations and reasons for decisions are governed by Part 6 in the NPA Prosecution Policy Directives. The National Director delegated the powers, duties or functions as envisaged in Section 22 (2) (c) of the NPA Act to the Deputy National Director: NPS. Thus only matters envisaged in Part 4 (paragraph B 3) of the NPA Prosecution Policy Directives, i.e. sensitive or contentious matters, are reviewed by the National Director.

A dedicated email address Repsadmin@npa.gov.za was created to ensure that there is a single point of entry for representations and complaints which is supported by an electronic file management system to enhance service delivery.

A total of 867 representations were received. 655 files were finalised, with 212 pending at the end of the reporting year. A clearance ratio of 75 % was achieved.

A total number of 137 matters were reviewed. In 130 instances the decision of the DPP was confirmed.

Applications requesting centralisation of matters: 20

#### **International Cooperation in Criminal Matters**

#### Mutual legal assistance (MLA), extraditions and related matters

The NPA manages and coordinates incoming formal requests for mutual legal assistance (MLA) where the Minister of Justice has in terms of section 7 of the International Co-operation in Criminal Matters Act 75 of 1996, approved that the request can be executed. Upon receipt from the Central Authority (Director-General: Justice), these matters are coordinated in the Office of the National Director (ONDPP). Execution of requests is rendered by the offices of the Directors of Public Prosecutions (DPP) in whose respective jurisdictions the evidence sought is located.

In cases of incoming requests for extradition, the NPA renders the necessary assistance once the minister has issued a notification in terms of section 5 of the Extradition Act, Act 67 of 1962 and the Central Authority has referred the matter to the NDPP. The office of the DPP in whose area of jurisdiction the fugitive is traced, works with the INTERPOL officers to ensure that an extradition enquiry to determine the extradibility of the subject is held before a magistrate.

The outgoing requests for mutual legal assistance and extradition in cases where South Africa is the requesting state are initiated by the office of the DPP and are submitted to the Office of the NDPP for consideration and approval by the NDPP. The transmittal of requests for MLA is necessitated by the fact that material evidence is often located beyond the borders of the Republic and it is sought for successful prosecution whilst the absence of the perpetrators of crime and convicted persons from the Republic necessitate transmittal of outgoing requests for extradition.

The international regional component started the 2018/19 period with 177 pending files on MLA and extradition requests. During the reporting period, the NPA received one hundred and ten (110) new requests for mutual legal assistance. Seventy-five (75) of these requests were received from foreign states and thirty-five (35) were initiated by South Africa and transmitted to foreign states. The office also received twenty-eight (28) new requests for extradition, thirteen (13) of these were received from foreign state and fifteen (15) were initiated by the RSA. Eighty-two (82) requests for mutual legal assistance and twelve (12) requests for extradition were finalised during the 2018/19 period. Of these, forty-nine (49) were incoming and thirty-three (33) outgoing MLA requests. With regard to the closed extradition requests, eight (8) were incoming and four (4) were outgoing.

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#### Ensuring efficiency in international relations, treaty negotiations and related matters

As a way of strengthening relations and enhancing cooperation in the area of the fight against transnational crime, the NPA concluded Memoranda of Understanding with;

- Directorate of Public Prosecutions of the Republic of Botswana;
- Public Prosecution Office of the State of Palestine; and
- Supreme People's Procuracy of the Socialist Republic of Vietnam.

In order to strengthen working relations amongst the BRICS countries, the NPA has concluded a Memorandum of Understanding with the Office of the Prosecutor-General of the Russian Federation in 2016. Desirous of forging efficient cooperation in the area of fighting trans-national crime, South Africa has transmitted draft memoranda of understanding to Brazil, China and India.

Furthermore, the NPA is working closely with the Chief Directorate: International Legal Relations of the Department of Justice and Constitutional Development as well as the Department of International Relations and Cooperation (DIRCO), to facilitate the conclusion of Extradition and Mutual Legal Assistance Treaties between the Governments of the Republic of South Africa and the Republic of Mozambique. The process of finalising the treaty on Extradition is at the advanced stage.

The for international and regional cooperation component participates in the NPA Anti-Trafficking in Persons Task Team which ensures that the relevant legislation is implemented and that prosecutors are trained on the all relevant aspects including the transnational nature of trafficking related offences and international cooperation.

The NPA has participated in the Inter-Departmental meetings coordinated by DIRCO relating to international engagements.

#### Africa Prosecutors Association (APA)

The NPA is one of the founding members of the APA, which was established to focus specifically on prosecution related matters affecting prosecuting agencies and offices of prosecutors general in the African continent. The NPA participates in the Executive Committee of the APA.

#### International Association of Prosecutors (IAP)

The NPA is a member of the International Association of Prosecutors (IAP), an international body that represents the interests of prosecuting agencies, prosecutors and prosecutors' associations worldwide, with members from all regions of the world. South Africa successfully hosted the IAP's 23rd Annual Conference in Sandton on 9 – 13 September 2018. The theme of the conference was **Prosecutorial Independence – the Cornerstone of Justice to Society.** 

# FINANCIAL OVERVIEW

### **FINANCIAL OVERVIEW**

The NPA experienced serious constraints in respect of the Compensation of Employees as well as Goods and Services budget allocations during the year under review. The Department of Justice and Constitutional Developments has effected a virement of R150 million to the NPA in order to defray the overspending of R 77 million in Compensation of Employees and R 73 million in Goods and Services. This resulted in a 100% spend of the NPA's budget allocation after final virement.

The budget constraints have hampered the NPA in various ways over the last few financial years. The organisation has now reached a point where it will not be able to continue to deliver on its mandate if it does not receive an increase in its budget baseline. The lack of budget within the NPA is a very serious problem. There has been no recruitment since 2016. The impact on the delivery of justice and morale of prosecutors working in extremely challenging conditions, is huge.

The NPA is not a revenue generating department, and does not charge tariffs for services rendered. Neither does it provide free services that would have yielded revenue had a tariff been charged.

Budget allocation as it relates to the core business of prosecution and related services is divided into four sub-programmes, as follows:

		2018/19		2017/18		
Sub- programme name	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	3 058 753	3 058 753		2 946 254	2 946 254	-
Asset Forfeiture Unit	127 795	127 795		126 520	126 520	
Office for Witness Protection	193 539	193 539		189 994	189 994	
Support Services	419 590	419 309	281	480 273	480 147	126
Total	3 799 677	3 799 396	281	3 743 041	3 742 915	126

#### Table 37: Expenditure report

#### Table 38: Budget allocation per economic classification

Sub-Programme	National Prosecutions Service	Asset Forfeiture Unit	Office for Witness Protection	Support Services
Compensation of employees	2 922 462	113 277	100 590	180 899
Goods & services	120 582	8 859	92 245	211 551
Payment of capital assets	2 803	0	225	16 424
Other	12 906	5 659	479	10 435
Total	3 058 753	127 795	193 539	419 309



Expenditure on compensation of employees before final virement, was at 102.38% (R3, 317) billion) which resulted in overspending of R77 million. This overspending was due to the implementation of the cost of living adjustment, which was not fully funded through the increase in the budget baseline. The expenditure on goods & services before final virement was at 120.20% (R 433 million) which resulted in an overspending of R 73 million due to the payment of contractual obligations.

The primary focus of the NPA is public prosecution and 81% of the total allocation was spent on National Prosecutions Service. Support Services provides centralised services such as security, fleet & facilities, human resources and IT services and account for 11% of the total budget allocation. The NPA's expenditure increased only by 1.51% from R3.743 billion in 2017/18 to R3.799 billion in 2018/19.



## PERSONNEL POSITION OF THE NPA
### **PERSONNEL POSITION OF THE NPA**

The NPA's Human Resource Management and Development unit's core business is to provide human capital support for prosecutions. The unit has fulfilled its mandate even under severe budgetary constraints.

The year 2018/19 had its challenges and successes. Amongst other success highlights during the period was the revision of the Performance Management and Development System in line with the Directive and Determination by the Minister of DPSA. The new policy provides clearer roles for both the employees and managers in the performance management and evaluation process. The new Performance Management and Development System was approved for implementation, effective 01 April 2018.

Furthermore, the introduction of the Incentive Policy, which was approved for implementation with effect from 01 April 2019, provides mechanisms for recognition of outstanding performance as well as the recognition of team performance in the form of team rewards. The new system is also more cost effective than the previous policy as it provides for a threshold for the awarding of cash bonuses, thereby putting less strain on the budget.

The use of Employee Health and Wellness Programme continues to gain enormous support, particularly in the area of stress and trauma management for employees dealing with traumatic incident cases. The increasing high volumes of work due to staff shortages is also a factor, as posts are not filled, employees require the services more in order to deal with stress.

The tables below provides employment status in the NPA as at 31 March 2019

Office / Division	FILLED	VACANT	TOTAL	VACANCY RATE
DPP: Eastern Cape Division	349	70	419	17%
DPP: Free State	247	45	292	15%
DPP: Kwa Zulu Natal	592	133	725	18%
DPP: Limpopo	270	44	314	14%
DPP: Mpumalanga	182	65	248	26%
DPP: Mthatha	153	53	206	26%
DPP: North Gauteng	339	106	445	24%
DPP: North West	219	41	260	16%
DPP: Northern Cape	136	42	178	24%
DPP: South Gauteng	450	95	545	17%
DPP: Western Cape	521	111	632	18%
Administrative Support H/O	299	159	458	35%
National Office NDPP(NPS,LAD,PCLU&STATEGY OPERATION)	67	15	82	18%
AFU	117	53	170	31%
SOCA	163	54	217	25%
SCCU	155	40	195	21%
WITNESS PROTECTION	149	16	165	10%
Grand Total	4 408	1 142	5 550	21%

Table 39: Breakdown of total employment in the NPA per office

Table 40: Breakdown per core responsibilities

Functional Responsibilities	Total	Filled	Vacant & Unfunded	Vacancy Rate
Prosecutions	3 620	2 958	662	18%
Legal Administration Support (AFU Investigators, CPO & VAO, etc)	249	188	61	32%
Administrative Support	1 516	1 113	403	27%
Office of Witness Protection (incl. administration)	165	149	16	10%
TOTAL	5 550	4 408 (3 Contracts)	1 142	21%

### Employment equity profile per Office/ Division

Table 41: Status of employment equity per office

OFFICE / DIVISION	А	С	I	w	Total	A	с	I	w	Total Male	Grand Total
					Female						
	4	0	1	2	7	3	2	0	5	10	17
Office of the NDPP	5	1	2	12	20	8	0	0	4	12	32
	6	2	0	3	11	7	0	0	0	7	18
	2	0	1	4	7	4	1	0	2	7	14
DPP: North Gauteng	45	0	3	42	90	85	0	2	30	117	207
	64	3	2	8	77	33	1	0	7	41	118
	3	0	1	1	5	3	0	0	5	8	13
DPP: South Gauteng	55	8	15	53	131	118	1	4	25	148	279
	72	2	10	6	90	62	2	0	4	68	158
	0	0	1	0	1	1	0	1	2	4	5
DPP: Eastern Cape Division	37	15	1	36	89	69	13	3	25	110	199
	59	16	4	9	88	43	7	1	6	57	145
	1	0	0	1	2	4	0	0	0	4	6
DPP: Mthatha	28	3	1	2	34	47	3	0	1	51	85
	31	1	1	0	33	29	0	0	0	29	62
	3	0	0	0	3	3	0	0	2	5	8
DPP: Mmabatho	34	3	0	17	54	67	1	0	14	82	136
	47	3	0	3	53	21	0	0	1	22	75
	0	0	1	0	1	2	0	0	3	5	6
DPP: Free State	27	4	1	39	71	45	3	0	24	72	143
	40	8	0	8	56	36	3	0	3	42	98

		<i>c</i>			Total		c			Table	Construct
OFFICE / DIVISION	Α	С	I	W	Female	Α	C	I	W	Total Male	Grand Total
	0	0	1	2	3	1	0	0	1	2	5
DPP: Mpumalanga	26	2	1	23	52	49	1	1	13	64	116
	29	1	0	4	34	26	0	0	1	27	61
	2	0	0	0	2	3	0	0	1	4	6
DPP: Limpopo	45	2	0	7	54	98	0	0	8	106	160
	65	0	0	0	65	39	0	0	0	39	104
	3	0	4	3	10	3	0	2	1	6	16
DPP: KwaZulu Natal	84	4	59	26	173	126	7	28	24	185	358
	105	10	19	10	144	64	1	7	2	74	218
	1	1	0	0	2	2	1	0	1	4	6
DPP: Northern Cape	9	2	0	9	20	35	11	0	8	54	74
	20	11	0	4	35	18	2	0	1	21	56
	0	3	0	3	6	1	5	1	3	10	16
DPP: Western Cape	21	88	8	61	178	42	62	5	44	153	331
	39	66	7	9	121	23	23	0	7	53	174
	3	2	1	2	8	6	0	2	4	12	20
Asset Forfeiture Unit	9	2	7	8	26	23	8	5	13	49	75
	10	4	1	3	18	3	1	0	0	4	22
	3	0	3	3	9	9	0	1	5	15	24
Specialised Commercial Crimes Unit	24	4	8	13	49	35	6	1	14	56	105
Onit	14	1	0	1	16	8	2	0	0	10	26
	1	0	0	0	1	1	0	0	1	2	3
Sexual Offences and Community Affairs	21	3	3	14	41	19	2	0	2	23	64
Alldits	64	6	1	1	72	24	0	0	0	24	96
	1	0	0	0	1	1	1	0	0	2	3
Office of Witness Protection	30	1	4	9	44	31	9	2	30	72	116
	20	0	1	4	25	4	0	1	0	5	30
	7	0	1	4	12	7	3	2	3	15	27
Administration	41	2	2	9	54	49	6	2	7	64	118
	89	8	0	7	104	45	3	0	2	50	154
TOTAL					2302					2106	4408

### **Skills Development**

The skills development programme was scaled down due to the budget constraints but within the limits of the budget, the following programmes were offered and attended by NPA personnel.

ADVANCED TRIAL ADVOCACY	51
ANNUAL SHOOTING EXERCISES	127
BASIC PROJECT MANAGEMENT	21
CHANGE MANAGEMENT	43
CHILD JUSTICE	29
CHILD PORNOGRAPHY AND RELATED OFFENCES	30
COMPULSORY INDUCTION PROGRAM	180
CORRUPTION AND FRAUD	84
CPO SUPERVISORS PROGRAM	15
CYBER CRIME	30
DOMESTIC VIOLENCE	11
ENVIRONMENTAL CRIMES	22
GENDER BASED VIOLENCE PROGRAM	6
HIGH COURT BRIDGING COURSE	43
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### Discipline

The below table indicates the number of misconduct cases dealt with during the year as well as the nature of finalisation. Most of the cases were resolved through final written warnings followed by dismissals.



### Table 43: Misconduct and Disciplinary Outcome

Nature of misconduct	Number of cases	%
Negligence	9	5.6%
Bringing the name of the NPA into disrepute	2	1.25%
Dishonesty	4	2.5%
Incapacity	1	0.6%
Improper conduct	3	1.87%
Reporting under influence	3	1.87%
Failure to comply with instruction	3	1.87%
Off duty misconduct	2	1.25%
Breach of confidentiality	1	0.6%
Sexual harassment	7	4.37%
Unethical conduct	1	0.6%
Absenteeism	7	4.4%
Financial misconduct (failure to declare financial interest)	116	72.5%
Non-compliance with policy	1	0.6%
TOTAL	160	100%

### Table 44: Outcomes of Misconduct and Discipline Enquiries Finalised

Outcomes of disciplinary hearings	Number	% of total
Corrective counselling	5	4.71%
Verbal warning	32	20%
Written warning	21	13.12%
Final written warning	10	6.25%
Suspension	4	2.5%
Demotion	0	0%
Dismissal	3	1.87%
Not Guilty	0	0%
Case withdrawn	80	50%
Resignation	2	1.25%
Set aside	0	0%
Discharge	0	0%
Closed	3	1.87%
TOTAL	160	100%

Outcomes of disciplinary hearings	Number	% of total
Corrective counselling	0	0%
Written warning	2	12.5%
Final written warning	3	18.75%
Suspension	4	25%
Dismissal	3	18.75%
Not Guilty	0	0%
Case withdrawn	2	12.5%
Closed	2	12.5%
Total	16	100%

The table below indicates combination of grievances, disputes as well as suspensions.

Table 45: Grievances, Disputes and Precautionary suspensions

Labour Matter	Total cases	Total Resolved	Total Referred	Resolution rate
Grievances	178	161	18	90%
Labour Matter	Total cases	Upheld	Dismissed	Success rate
Disputes	42	1	41	98%
Labour Matter	Total Cases	Total Within Time	Total exceeding Time	Total Cost of Suspensions
Precautionary Suspensions	10	3	7	R7 710 008.64

# INTEGRITY MANAGEMENT UNIT

### **INTEGRITY MANAGEMENT UNIT**

The Integrity Management Unit (IMU) of the NPA is responsible for the investigation of cases of possible integrity breaches by NPA staff.

For the 2018/19 reporting period, the IMU was able to attain its objective of helping to improve both the integrity and compliance levels of the organisation.

The Fraud and Corruption Directorate investigated and reported on 75% of its investigation cases and was also able to identify potential fraud and corruption risks through its structured detection programme. More than 350 calls were received through the Anonymous Tip-Offs whistleblowing hotline, managed by a third party company, most of which warranted either an investigation or a referral to an appropriate agency for further investigation.

From a compliance perspective, the IMU assisted the NPA achieve 100% compliance with the financial disclosures of SMS members. Since the introduction of the financial disclosure obligations for levels 12 and below, the IMU attained an 86% compliance rate for the reporting period. In addition, the IMU was able to process 100% of all the requests for remunerative work from NPA officials, and also reported on the gifts, sponsorships and donations received by both the organisation and by individual officials.

Lastly, since a significant part of the IMU mandate is to advocate for better compliance and integrity amongst officials, this was achieved through its numerous programmes facilitated through the Ethics Management and Advocacy Directorate. Formal training sessions were conducted with prosecutors and other officials and various ethics forums were held in all regions. These ethics conversations and training sessions serve to prick the conscience of officials and also act as the insurance against further ethical lapses of officials.

Type of integrity breach	No. of reported cases	Nature of	reporting
		General cases	Hotline cases
Unethical conduct/misconduct	37	14	23
Corruption	9	5	4
Conflict of interest	3	2	1
Prosecutorial discretion	18	_	18
Defeating the ends of justice	1	-	1
Leakage of information	2	1	1
Loss of petty cash	1	1	-
Bank account scam	1	1	-
Abuse of SCM process	1	1	-
Loss of docket	2	1	1
Loss of laptop	1	1	-
Maladministration	1	1	-
Not IMU mandate	2	1	1
TOTAL	79	29	50

Table 48: Reported cases of integrity breaches



Table 49: Status of cases ethical breach matters that were dealt with in the period

Status of case	No. in the State
Cases Finalised	68
Cases unsubstantiated	36
Cases referred	22
Pending	33

The IMU is responsible for managing the Code of Conduct for prosecutors on behalf of the National Director of Public Prosecutions. During the period no amendments were made to the Code of Conduct.

# INFORMATION SYSTEMS MANAGEMENT

### **INFORMATION SYSTEMS MANAGEMENT**

### Information & Systems Management (ISM)'s NDPP Annual Report 2018/19

The ISM business unit has significantly improved operational efficiencies, and some of the interventions are outlined below:

### Implementation of Electronic Case Management System (ECMS)

• Development of system for Thuthuzela Care Centres (TCCs)

A case management system for the TCCs has been developed and implemented. The system allows for the capturing of victim and incident details in sexual offences. The objective is to ensure that case managers can be able to keep the victim updated on the progress of the case until the court outcome.

• Development of Legal Affairs Division (LAD) System

The development of the LAD Information System, which allows users to capture all their cases and monitor progress of each case, improve the ability to report, store and classify any related documentation to a case. The system assists with tracking of civil cases, work load management, timely reminders for specific actions that must occur and performance reporting.

### Integration of Invoice Tracking System with Central Supplier Database (CSD) System

The project of integrating National Treasury Central Supplier Database (CSD) system with the NPA's invoice tracking has commenced and development is progressing. The project is aimed at automating supplier database rotation and expected to be completed during the 2019/20 financial year. The integration will enable SCM to search online for suppliers, real time supplier information and verification of supplier information.

### **Procurement of a Business Intelligence Tool**

The implementation of a business intelligence tool is to provide an improved method of providing dashboards and data extraction for analysis. Procurement of the tool is on progress.

### **Implementation of Enterprise Backup Solution**

The NPA's electronic data (structured & unstructured data) is stored on Storage Area Network (SAN) and thereafter the data is backed up to magnetic data tapes using a backup media, electronic magnetic library. The data backups are run daily, weekly and monthly on magnetic tapes which are then taken to an offsite for safekeeping.

Software designed to back up business critical data and systems were procured. A project to implement systems to backup server data and workstations data (end user data) is completed and is now in maintenance mode.

### Implementation of Email Archiving & Continuity System

The NPA implemented an email Archiving & Continuity solution that delivers a seamless email availability through automatic service failover and failback in near real-time during an email. Email has become the most critical form of business communication, yet it's not always as reliable as it is important. Businesses can no longer afford outage for any length of time.

### **Upgrade of Network Security**

A network security system to block access to websites known to contain malware has been implemented. The filtering solution is used to prevent users from accessing websites and webpages where the risk of encountering online infections is high and for policy configuration.

#### **Implementation of Disaster Recovery Plan**

The disaster recovery plan is aimed putting measures in place in an event of technology calamity. At present, data is being backed up to data tapes which are sent to an offsite storage for safe keeping. A final SITA proposal to cater for NPA's needs for an establishment of a data recovery site is being reviewed.

#### International Association of Prosecutors (IAP) 2018 Conference Website

The IAP September 2018 conference was held in Sandton, Johannesburg, and a South African leg of the event website was developed. The website provided an overview of the conference details and the registration and payment gateway for the delegates.

#### Library and Records Management Services

The NPA law library delivers information services to NPA employees. Legal resources in print and electronic format, i.e. Jutastat, LexisNexis and Sabinet Online, are available for research and case preparation purposes. Print collections comprise of law report series, legislation, textbooks, reference books, newspapers and journals. A set of books is issued to each prosecutor and advocate and these are maintained to ensure relevance.

#### Implementation of ebooks

The following copies of ebooks have been implemented:

Hiemstra's Criminal Law, Litigation Skills for SA Lawyers by Marnewick, Criminal Law by CR Snyman 6th ed, SA Law of Evidence by Zeffert



### **SECURITY MANAGEMENT SERVICES**

### **Protection of NPA personnel**

The Security Management Service coordinated the provision of protective security to prosecutors where a threat analysis has been conducted and protection recommended. The unit also manages security of NPA building facilities and assets.

### Provision of information security (vetting), awareness sessions and pre-employment screening

The unit is responsible for facilitating the vetting process for all senior management through the State Security Agency (SSA). Employees who join the NPA have to be screened before they are confirmed to be employees of the organisation.

### **Occupational Health and Safety (OHS) Measures**

A total of 16 OHS audits were conducted, reports signed off and sent to the respective regions/buildings for implementation. Evacuation drills and HIRA (Hazard Identification and Risk Assessment) were conducted in NPA buildings.

### **COMMUNICATION UNIT**

### **Public Education & Community Outreach**

The NPA's ability to pursue public education campaigns was severely limited in the reporting period, due to the financial constraints facing the organisation. Participation in community outreach events, was mainly conducted in partnership with other partners in the criminal justice system, to inform the communities about the work and performance of the NPA and to report back on specific issues related to those respective communities.

#### **Media Relations**

Most of the communication to inform the public about the work and performance of the NPA was done through the general media, by way of media briefings, press statements and media interviews. The national spokesperson is based in head office and each DPP office and the entire division is represented in the media by the regional spokesperson.

### Social Media

With the advent of the financial constraints facing the organisation, the Communication Unit has significantly relied on social media platforms, mainly Facebook and Twitter, for communicating public education and awareness activities. The NPA facebook page not only provides a message dissemination platform for the organisation, but it is also a powerful tool of engagement and interaction with members of the public.

### **STRATEGY MANAGEMENT**

Strategy Management plays a pivotal role in ensuring that the NPA and its sub-programmes continue to contribute towards the achievement of its strategic and operational imperatives in line with governmental policies and plans.

Strategy includes risk management to ensure that no organisation operates in a risk-free environment.

Generation and preservation of information through research and knowledge management is part of strategy. Information garnered through research and knowledge management is used to inform the strategic direction of the NPA.

Frontline Monitoring, Complaints Management and Service Delivery Improvement Models are Service Delivery programmes in which the NPA participates.

# ANNEXURES

### Annexure A Technical indicators and descriptions

Indicator Title	Conviction rate
Short definition	The percentage of cases finalised with a verdict in which a guilty verdict was obtained
Purpose/importance	Internationally viewed as an indicator of the success of the prosecution. Also regarded by South African public as such
Source/collection of data	High court's, regional court, district courts and SCCU central data sheets
Method of calculation	The total number of cases finalised with a guilty verdict (including Sec 57A) divided by the total number of cases finalised with a verdict reflected as a percentage. Convictions are recorded at the date of sentencing after guilty verdict or verdict of not-guilty. One case may result in conviction of more than one focus area.
Data limitations	Manual system
Type of indicator	Output
Calculation type	Percentage based on cumulative verdict cases for the year
Reporting cycle	Quarterly
New indicator	No
Desired performance	HC 90%, RC: 78%, DC: 93% Priority crime: 80%, Complex commercial crime: 93%, Organised crime: 90%, Environmental crime: 85%; Sexual offences: 70%, Trio crime: 85%, Murder: 75%; Violent protest and industrial action: 74%, Cybercrime 95%; Copper theft and infrastructure: 74%; Sexual offences cases reported at TCCs 70%, money laundering: 75%- baseline
Indicator responsibility	DNDPP: NPS

Indicator Title	Number of persons convicted of private sector corruption
Short definition	Conviction of private sector persons that committed offences relating to corruption
Purpose/importance	To measure whether serious corruption is being successfully dealt within the private sector sphere
Source/collection of data	Private sector corruption register
Method of calculation	Simple count of persons/companies convicted of private sector corruption
Data limitations	Manual count
Type of indicator	Output
Calculation type	Cumulative
Reporting cycle	Quarterly
New indicator	Yes
Desired performance	Baseline 2018/19
Indicator responsibility	DNDPP:NPS

Indicator Title	Percentage of completed forfeiture cases
Short definition	Percentage of forfeiture or confiscation orders obtained
Purpose/importance	It measures the reach of the impact that the AFU has by indicating how many cases were dealt with
Source/collection of data	Case report form that is captured on a central data sheet
Method of calculation	The total number of cases in which a forfeiture or confiscation order was obtained divided by the total number of forfeiture or confiscation order application in the reporting period calculated as percentage
Data limitations	Manual system
Type of indicator	Output
Calculation type	Cumulative for the year
Reporting cycle	Quarterly
New indicator	No
Desired performance	96%
Indicator responsibility	DNDPP: AFU

Indicator Title	Value of completed forfeiture cases
Short definition	Estimated value of the assets of which the persons subject to the order is likely to be deprived as a result of confiscation or forfeiture orders obtained
Purpose/importance	It measures the amount of proceeds likely to be finally removed from the possession of criminals and provides an indication of the depth of the impact made by the AFU
Source/collection of data	Case report form is captured on a central data sheet
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 returned by a person by an agreement reached as a result of the litigation in terms of POCA
Data limitations	Manual system
Type of indicator	Output
Calculation type	Cumulative for the year
Reporting cycle	Quarterly
New indicator	No
Desired performance	R282 million
Indicator responsibility	DNDPP: AFU

Indicator Title	Number of witnesses and related persons harmed, threatened or killed whilst on the witness protection programme
Short definition	Witnesses and related persons harmed, threatened or killed whilst on the witness protection programme
Purpose/importance	Measures the effectiveness of the witness protection programme
Source/collection of data	Central datasheet
Method of calculation	The total number of witnesses and related persons 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
Data limitations	Manual system
Type of indicator	Output
Calculation type	Non-cumulative
Reporting cycle	Quarterly
New indicator	No
Desired performance	No witnesses or related person must be harmed, killed or threatened
Indicator responsibility	DNDPP: Administration & OWP

Indicator Title	Number of persons convicted of corruption or offences related to corruption where the amount involved per case is more than R5 million
Short definition	Conviction of persons for the offence of corruption and/or offences relating to corruption where the amount involved exceeds R5 million per case. The total amount involved in the case is measured
Purpose/importance	To measure whether serious corruption is being successfully dealt with
Source/collection of data	Corruption Register
Method of calculation	Simple counts of persons convicted of corruption in the reporting period, where the amount involved exceeds R5 million per case
Data limitations	Information is provided manually
Type of indicator	Outcome
Calculation type	Cumulative
Reporting cycle	Quarterly
New indicator	No
Desired performance	30 for 2018/19
Indicator responsibility	DNDPP: NPS

Indicator Title	Number of government officials convicted for corruption or offences related to corruption
Short definition	Conviction of government officials that committed offences relating to corruption
Purpose/importance	To measure whether serious corruption is being successfully dealt with inside the government sphere
Source/collection of data	NPA Daily Court return
Method of calculation	The total number of government officials convicted of corruption in the reporting period
Data limitations	Information is provided manually
Type of indicator	Outcome
Calculation type	Cumulative
Reporting cycle	Quarterly
New indicator	No
Desired performance	230 for 2018/19
Indicator responsibility	DNDPP: NPS

Indicator Title	Number of victims assisted at TCC sites
Short definition	The number of victims that received integrated services at the current 55 TCC sites.
Purpose/importance	It provides an indication of the volume of victims that received integrated services including trauma containment according to the TCC-model.
Source/collection of data	TCC data base and TCC register per site
Method of calculation	Manual calculations of the number of victims that accessed TCC services at the 55 sites on a monthly basis.
Data limitations	Manual system
Type of indicator	Outcome
Calculation type	Cumulative
Reporting cycle	Monthly and quarterly
New indicator	Yes
Desired performance	29 800 victims that received services.
Indicator responsibility	Soca: Special Director

Indicator Title	Percentage of freezing orders
Short definition	Total number of freezing orders obtained in the reporting period
Purpose/importance	It measures the reach of the impact of the AFU, and indicates in how many cases alleged criminals were affected by its actions
Source/collection of data	Case report form is captured on a central data sheet
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)
Data limitations	Manual system
Type of indicator	Output
Calculation type	Cumulative
Reporting cycle	Quarterly
New indicator	No
Desired performance	100%
Indicator responsibility	DNDPP: AFU

Indicator Title	Value of freezing orders
Short definition	Value of assets frozen in freezing orders obtained in the reporting period
Purpose/importance	It measures the total value of the proceeds or instrumentalities of crime removed from the control of criminals and provides an indication of the depth of the impact of the AFU
Source/collection of data	Case report form that is captured in a central data sheet
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
Data limitations	The estimate of the value is made at the time when not all the information is available
Type of indicator	Output
Calculation type	Cumulative
Reporting cycle	Quarterly
New indicator	No
Desired performance	R993.4m
Indicator responsibility	DNDPP: AFU

Indicator Title	Value of freezing orders relating to corruption where the amount involved is more than R5 million
Short definition	Value of the freezing orders relating to the offence of corruption and/or offences related to corruption where the amount involved exceeds R5 million per case
Purpose/importance	To measure whether serious corruption is being successfully dealt with by the JCPS
Source/collection of data	Serious corruption register
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 involved exceeds R5 million. The value is estimated and counted at the time when the initial order is obtained
Data limitations	Information is provided manually
Type of indicator	Outcome
Calculation type	Cumulative
Reporting cycle	Quarterly
New indicator	No
Desired performance	R198m
Indicator responsibility	DNDPP: AFU

Indicator Title	Value of recoveries in terms of POCA
Short definition	The amount of recoveries including payments paid to CARA or victims of crime in terms of court orders in terms of the Prevention of Organised Crime Act (POCA)
Purpose/importance	It provides an indication of the total value of cash or property recovered by the NPA which is paid either identified victims who have suffered financial loss due to crime, or to CARA.
Source/collection of data	The proof of payment is reflected on the case report form and captured on the central data sheet. CARA payments are obtained from the CARA bank statements.
Method of calculation	The total amount paid or the net market value of property transferred to the victims of crime or CARA 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
Data limitations	Confirmation of payment may be received late from the victims
Type of indicator	Output
Calculation type	Cumulative
Reporting cycle	Quarterly
New indicator	Yes
Desired performance	R210 million
Indicator responsibility	DNDPP: AFU

Indicator Title	Success rate of litigated cases
Short definition	The percentage of cases litigated by the AFU in which it was ultimately successful
Purpose/importance	It provides an overall indication of the ability of the AFU and its CJS partners to deal with and litigate AFU matters successfully
Source/collection of data	Combined figure derived from registers of cases finally won and cases finally lost
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
Data limitations	The data may occasionally be received late when there is a delay in receiving a judgment after it is made
Type of indicator	Output
Calculation type	Non-cumulative
Reporting cycle	Quarterly
New indicator	No
Desired performance	93%
Indicator responsibility	DNDPP: AFU

Indicator title	Value of recoveries relating to corruption where the amount involved is more than R5 million (proceeds of crime and government losses)
Short definition	The amount of recoveries in cases relating to corruption where the amount involved exceeds R5 million per case
Purpose/importance	To measure whether very serious cases of corruption is being dealt with successfully by the JCPS
Source/collection of data	Serious corruption register
Method of calculation	The total amount paid or the net market value of property transferred to the victims of crime or CARA during the reporting period resulting from orders or agreements obtained in respect of corruption or related offences where the amount benefitted is more than R5m per case. 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
Data limitations	Information is provided manually
Type of indicator	Outcome
Calculation type	Cumulative
Reporting cycle	Quarterly
New indicator	No
Desired performance	R70m
Indicator responsibility	DNDPP: AFU

Indicator title	Value of recoveries for government officials convicted of corruption and other related offences (proceeds of crime and government losses)
Short definition	The amount of AFU recoveries in cases from all government officials in offence of corruption and/ or offences related to corruption.
Purpose/importance	To measure whether the state is successful in recovering the proceeds of corruption from government officials in cases dealt with by the JCPS
Source/collection of data	Monthly office reports are captured on the serious corruption register
Method of calculation	The total amount paid or the net market value of property transferred to the victims of crime or CARA during the reporting period resulting from orders or agreements obtained in respect of corruption or related offences by government officials. 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
Data limitations	Information is provided manually
Type of indicator	Outcome
Calculation type	Cumulative
Reporting cycle	Quarterly
New indicator	No
Desired performance	R500 000
Indicator responsibility	DNDPP: AFU

Indicator Title	Percentage of witnesses and related persons that walked off the witness protection programme
Short definition	Witnesses and related persons that walked off the programme without prior notification
Purpose/importance	Measures the ability of the programme to ensure that witnesses are available to testify in court proceedings where applicable
Source/collection of data	Electronic datasheet
Method of calculation	The number of witnesses and related persons that walk off the programme in the reporting period divided by the total number of witnesses and related persons on the programme
Data limitations	Manual system
Type of indicator	Output
Calculation type	Non-cumulative
Reporting cycle	Monthly
New indicator	No
Desired performance	1.5%
Indicator responsibility	Special Director: OWP

Indicator Title	Percentage of witnesses and related persons successfully discharged and resettled (Aftercare)
Short definition	Comprehensive support or aftercare provided to witnesses and related persons leaving the witness protection programme
Purpose/importance	To reflect a total number of witnesses and related persons officials successfully discharged and resettled
Source/collection of data	Electronic Datasheet
Method of calculation	The total number of witnesses and related persons discharged and resettled divided by the total number of witnesses and related persons on witness protection programme, calculated as percentage
Data limitations	Manual system
Type of indicator	Output
Calculation type	Non - cumulative
Reporting cycle	Monthly
New indicator	No
Desired performance	100%
Indicator responsibility	Special Director: OWP



## LAWYERS FOR THE PEOPLE

A tribute to the thousands of prosecutors and support staff who serve with integrity, commitment and professionalism





### **DELIVERING ON SOUTH AFRICA'S PROMISE**



"Even during the NPA's most challenging times, thousands of our prosecutors and support staff continued to serve with commitment and professionalism."

In recent years, the NPA has too often been in the headlines for the wrong reasons. We suffered inappropriate political interference that impacted negatively on our independence and accountability. We did not always prosecute without fear, favour or prejudice, which seriously compromised our credibility.

But the NPA is committed to once again become an organisation that puts justice first, upholds the rights of victims of crime, and is a prosecuting authority that South Africans can be proud of.

The Constitutional Court has emphasised the pivotal role of the NPA in a well-functioning criminal justice system. We have a central role in prosecuting those who flout the laws of the land, including those who undermine the rule of law to enable their selfish looting of state resources.

The good news is that, even during the NPA's most challenging times, thousands of our prosecutors and support staff continued to serve with commitment and professionalism, often going the extra mile to deliver the justice that our Constitution promises. They have been fulfilling the aims of the National Development Plan and the UN's Sustainable Development Goals by, for example, prosecuting child abuse, sexual and gender-based crime, tax fraud, robbery, murder and environmental crime. We have many good people who in their daily work are striving to build a safe society, tackle racism, protect our natural resources and support economic development.

This is what we are demonstrating in this short supplement to our annual report. It is the beginning of a renewed effort to showcase important prosecutions and profile the dedicated women and men who serve the NPA, the justice system and all of this country's people.

They are representative of a wider truth, that most South Africans are honest, hardworking and committed to building a nation. We are here to serve them as lawyers for the people.

Shamila Batohi National Director of Public Prosecutions

### CONTRIBUTING TO CHILDHOOD DEVELOPMENT





"Clamping down on crimes like this is vital to SA's economy"

Faghre Mohamed

### UPHOLDING SA'S COMMERCIAL REPUTATION

Airport thieves nailed despite cop incompetence

### Gauteng prosecutor Faghre Mohamed had to overcome a chaotic docket to convict the robbers who snatched R24 million in cash from OR Tambo International Airport in March 2017.

The brazen robbery made international headlines as men disguised as police stole the cash in foreign currency off a plane heading to the UK.

The case was complex and made more difficult by poor police work and parallel investigations across at least three provinces. But Mohamed knew a successful conviction was important to South Africa's commercial reputation. "Clamping down on crimes like this is vital to SA's economy," he says. "OR Tambo is one of Africa's most important commercial airports so this sort of security breach is extremely detrimental to how the international community views the country and the continent." A lot of the evidence couldn't be used and some charges had to be dropped because statements weren't collected properly. "The work done by SAPS was shoddy," says Mohamed. "If they'd done their work properly, it would've strengthened the state's case."

The defence challenged flaws in the evidence and Mohamed had a tough time convincing Acting Judge Daniel Mogotsi during the trial at the high court in Johannesburg. Relying mostly on confessions, he managed to secure a combined 90 years behind bars for three of the four suspects.

### THE FRIENDLY FACE OF JUSTICE

"We are often the first person witnesses and victims come in contact with"

Kgomotso Lodi

Picture: Proof Africa/Brett Eloff

# The mothers of the court

The courts can be intimidating for victims and perpetrators of crime, so putting people at ease is in the interests of justice. This is the role of the Court Preparation Officer (CPO), a vital and compassionate part of the NPA support team.

CPOs are the 'mothers of the court,' says Kgomotso Lodi, who serves at the Pretoria Magistrates Court. "We are often the first person witnesses and victims come in contact with, and we help to improve their testimony by making them feel safe and comfortable," says Elizabeth Dlamini, a CPO in the Sebokeng Magistrates Court.

Lodi, 41, is a qualified nurse who fell in love with the

CPO job and changed careers nearly 13 years ago. Today she has a degree in social work.

They have both been CPOs since the NPA introduced the role in 2006. They explain how the courts work, and the duty of each person in the courtroom. They see their work as essential to justice. "Most people have never been to court before and they are scared," says Dlamini.
#### "There's no place for ego in this job"

Elizabeth Dlamini

Picture: Proof Africa/Brett Eloff

"We build a rapport with them," says Lodi, who uses storytelling to put children at ease before their testimony. Working with victims of child sexual abuse is the most challenging, and they are often supported by a psychologist.

"It's impossible not to think of your own children. But you have to stay professional, and remind yourself you're playing a part in justice for them."

Dlamini and Lodi organise their courts' outreach programmes, sending magistrates and prosecutors to speak at schools about children's rights and responsibilities. Cyber bullying, gangsterism and drug use are popular topics.

"We bring the kids to court, teach them about justice, show them the cells and talk about the consequences of crime," says Dlamini. "They're excited when they arrive, but you can see something has changed when they leave."

"A CPO needs to be patient and understanding," says Lodi. "People get emotional and you need to see things from their perspective. There's no place for ego in this job." Court Preparation Officers have a significant impact on the lives of traumatised crime victims

**518** community education and awareness outreach programmes to promote victims' rights **39%** increase on 2017/18

110 181 witnesses assisted

**10 539** victim impact statements facilitated

19 519 witnesses under 18 years

51 844 sexual offences handled

All figures 2018/19



Adv Anne-Marie Bendeman knew she had to do something when a desperate Mamelodi mother came begging for help. Her son had sold everything to buy drugs, even her nurse uniforms.

This was not an isolated case, says Bendeman, who's been a Senior Public Prosecutor at the Mamelodi Magistrates Court since 2013. She sees at least three drug-related theft cases a week, with housebreaking on the rise and children stealing from parents to support their habit.

Bendeman turned her focus to prevention, working with the Department of Social Development to arrange rehabilitation for young drug offenders. She's now a key speaker at dialogues about substance abuse and the Child Justice Act, the result of a collaboration between police and the Department of Justice and Constitutional Development.

The aim is to raise awareness of the social, economic, legal and health consequences of drug use. The events attract hundreds of parents and community members, as well as learners or street children who use drugs.

They have identified depression and loneliness as a driver of drug use, often by the children of single parents who must fend for themselves after school. Minors caught for drug crimes are now referred to the adolescent substance abuse prevention treatment (ADAPT) programme run by the non-profit NICRO. Adult drug users cited unemployment, lack of accommodation, and a need to belong or make a living as the driver of their drug use. Bendeman educates them on the dangers of drugs, and how they can lead to criminal offences, arrest and a court appearance followed by sentencing. Sometimes it ends with rough justice at the hands of a mob. "They need to know that it gets harder and harder to turn back," she says.

When Bendeman gets a theft case caused by drug use, she postpones it and refers the offender for rehabilitation. If the accused completes a rehabilitation programme the matter is withdrawn.

Her job is to ensure justice, but she knows prevention is better than cure. "We want to stop them from using drugs and being arrested in the first place, not wait till they get to court," she says.

Bendeman became a prosecutor in Bloemfontein in 1995 and was appointed as Senior Prosecutor in 2003. She has spent many years training and assessing aspirant prosecutors across the country. She is committed to helping ordinary people to understand the law and exercise their rights, and her offices at the Mamelodi Magistrates Court have no security gates. "Prosecutors must be accessible to the public," she says.





#### **ADV ANNE-MARIE BENDEMAN**

"We want to stop them from using drugs and being arrested in the first place, not wait till they get to court"

#### POLITICAL VIOLENCE



## Tackling political violence

#### An NPA task team investigating politically-motivated crimes in KwaZulu-Natal has secured 22 convictions.

Most cases involve killings, but also under scrutiny are intimidation, arson, malicious damage to property, defeating the ends of justice and assault. KZN's south coast and Kwa-Mashu regions are hot spots for political violence, where people have been assaulted in their homes and at political meetings in wellplanned attacks.

The task team believes the violence is motivated partly by ambitions to take political positions and their associated salaries. Investigations have been challenging due to a lack of information, unwilling witnesses, testimonies not taken under oath, and resistance to witness protection programmes.

#### **KZN political violence task team results**







accused turned state witness



jail sentences **ofoofoofo** of 3-25 years **ofoofoofoofo** 

life sentences

#### **PROTECTING WOMEN AND CHILDREN**

## Legal precedent in House of Horror prosecution

Picture: Shutterstock/Katerina Lacovides

The conviction of a mother and father on 42 counts of child abuse and neglect, attempted murder, rape, defeating the ends of justice and drug possession brought a landmark case to a close in 2018, with the NPA having set an important legal precedent.

Acting on a tip off from neighbours, police raided a home in Springs outside Johannesburg in May 2014 and found four malnourished children, aged two to 16, in a dilapidated house filled with rats, pornography and fireworks. Four days later, the family's fifth child, aged 11, was found in the Free State town of Warden. He had tried to escape but was captured and beaten by his father. The neglected children were immediately taken into care.

For a decade the father had slapped, punched and shocked his children, tying them up with handcuffs and rope, pepper spraying his eldest son and raping his eldest daughter. Their mother had looked on as they were burnt and shot with a gas pistol. The neglected children were living on bread, chips and noodles. They lacked medical care, with teeth rotten to the bone.

The case, dubbed the 'House of Horror' by media, was tried in the high court in Pretoria and would set an important precedent. According to the Children's Act, an accused can be prosecuted for either neglect *or* abuse. The judge agreed with senior state advocate Jennifer Cronjé, who argued that these parents were guilty of both.

The father was found guilty of rape, attempted murder, attempting to defeat the ends of justice, interfering with police, child abuse, child neglect, drug dealing and drug possession. He was sentenced to 67 years, and will be imprisoned for 35. The mother was found guilty of attempting to defeat the ends of justice, interfering with police, child abuse and drug use. She received a five-year suspended sentence.

The children's testimony was central to the prosecution's case but had to be handled carefully. They testified via closed-circuit television, and social workers monitored their emotional wellbeing. They were not able to see or hear their parents, and media were not allowed to disclose the identities of the children or their parents.

Cronjé remained mindful of the impact on the children of having to testify, and objected to inappropriate questions from defence attorneys. The children are now in foster care.

## Rape survivor runs through the trauma

Running helped Ntombesintu Mfunzi overcome the trauma of a brutal rape, and a fellow runner sent her attacker to jail.

On her way by taxi to defend her 21km title at a race in Mthatha, Mfunzi was assaulted by a serial killer with previous convictions. He hit her over the head with a hammer and left her for dead.

She woke up in hospital and still won her race the next day in an act of extraordinary bravery and perseverance. It was her first day as a rape survivor, but the trauma persisted for three years as she waited for her attacker to go on trial in the high court in Mthatha.

"I wouldn't have survived without running," she says. NPA Advocate Mbulelo Nyendwana became a pillar of support. He was crossing the finish line of his own 21km race in Uitenhage when he heard about Mfunzi's attack, and insisted on taking the case. Mfunzi praises Nyendwana's professionalism and perseverance, and his patience when she took her frustrations out on him. Her rapist was eventually sentenced to 22 years in jail in February 2019 after Nyendwana secured a guilty plea.

Mfunzi didn't have to testify, but has become outspoken about her ordeal. She works in a prison and started by opening up to her inmates. "I told them what I went through, how it made me feel, the damage it did, the trauma and the pain, and the panic attacks when the case came to court."

The power of her shared experience prompted convicted rapists to stand up and apologise, vowing never to rape again. They promised to share their stories with other violent men.

Mfunzi is today a motivational speaker, a champion runner who champions the strength of rape survivors. And she looks forward to running the 2019 Comrades Marathon with Nyendwana.

The power of her shared experience prompted convicted rapists to stand up and apologise, vowing never to rape again. They promised to share their stories with other violent men.

## A precedent for racial abuse

Despite the known physical and emotional violence of apartheid, until recently racial insults would earn little more than a fine or a suspended sentence.

That changed forever after the March 2018 prosecution of Vicki Momberg, who was caught on camera using the offensive k-word 48 times in an infamous racist tirade aimed at police and emergency call centre operators. Senior Public Prosecutor Yusuf Baba ensured Momberg went to jail for two years after a conviction on four counts of *crimen injuria* – the unlawful, intentional and serious violation of the dignity or privacy of another. She became the first person in South Africa to be jailed for this crime.

Baba took to heart a 2017 Constitutional Court judgment in which Chief Justice Mogoeng Mogoeng urged courts to exercise a "very firm and unapologetic response" to racist conduct. Mogoeng made it clear that "nothing that threatens to take us back to our racist past should be glossed over, accommodated or excused". Baba's prosecution had to overcome Momberg's defence claim of nonpathological criminal incapacity, that she lacked intent, and didn't know right from wrong due to emotional stress.

Non-pathological incapacity has often been used in murder cases, but never in a *crimen injuria* case. But Baba found 23 aspects of Momberg's evidence where she showed she was well-spoken and aware of what she was doing when she committed the crimes, "That is why the court rejected her defence," he says.

Baba's hope was that his hard-line approach would serve as a lesson to the wider public. In sentencing, Magistrate Pravina Raghoonandan said it would be a deterrent for 'others who behave in a morally-reprehensible manner'.

Baba has already seen the impact of his work on the Momberg prosecution. He used to see around five racially-motivated cases a month at Randburg Magistrates Court. This has dramatically dropped and he now has just one racial case.

"People were still using the k-word... but this case highlighted how badly the dignitas of every black person has been affected. The public now have more faith in the judicial system for taking this matter so seriously."

Yusuf Baba

#### **BUILDING A NON-RACIAL SOCIETY**

**PROTECTING WOMEN AND CHILDREN** 



Picture: Shutterstock/Andrey Armyagov

#### A former water polo coach at a prestigious Johannesburg school was convicted of 144 counts of sexual assault after 23 teenage boys laid complaints against him.

Collan Rex, a coach at Parktown Boys High School, was sentenced to 23 years in prison on 144 counts of sexual assult and 14 of assault, in August 2018.

Several of the victims attempted suicide. "It was a difficult and emotionally draining case for everyone," says Adv Arveena Persad, who prosecuted the high-profile case in the high court in Palm Ridge.

Psychologists were hired by the school and parents played a vital role in securing testimonies. Persad, herself the mother of a teenager, says it was important to build individual relationships with the victims and to show that she and the NPA were their lifeline to accountability.

The case stands out for its number of victims and the volume of evidence she had to present to the court. Sexual abuse crimes affect more than the victim. "We had many victim impact statements from parents and families who will be dealing with this abuse for years to come."

Rex was found not guilty of one count of rape, 94 counts of attempted murder, exposing children to porn, and sexual grooming.

Sexual crimes affect more than the victim. Parents and families will be dealing with this abuse for years.

#### PROFILE



**ADV JOHANNES MASEHELA** 

# Memory of a mother's justice

More than 30 years after his mother was attacked with a panga and narrowly avoided rape, Adv Johannes Masehela is dedicated to protecting Limpopo's women and girls from sexual abuse.

There were few police stations or courts in the rural province when his mother was attacked in 1986, and the traumatic event was never reported. Masehela was 12 at the time and remembers it clearly.

His mother still has the scar and is immensely proud of her son, now a specialist sexual offences prosecutor at the Mankweng Regional Court.

Masehela joined the NPA in 2005 and in 2015 began to specialise in sexual offences, often working with society's most vulnerable people, including young children, the elderly, and the mentally or physically disabled. He ensures sexual offence cases get individual attention and are treated with special care and patience, with time allocated to psychologists and social workers.

Masehela remembers his first sexual offence case, involving the rape and murder of a young woman. That ended in two life sentences for the accused. Another notable case was that of a 15 year old girl with a mental disability, raped by a labourer who said it was consensual. "She was so small," Masehela recalls, "and she functioned like a three year old." DNA evidence and parent testimonies, as well as evidence from forensic nurses, resulted in a life sentence for the accused. He recalls the girl's gratitude. "She was able to understand that we were helping, and communicated her thanks through her mother. That was very special."

One particularly challenging case nearly pushed Masehela to resign. A social worker was raped by three strangers and lost her unborn child. Good police work got three men arrested, but only DNA evidence could link them to the crime. The accused were defiant in court, and their lawyer challenged the procedures, the evidence and the forensics. One mistake could have seen these rapists acquitted.

Masehela recalls the frustration of having to keep producing more evidence, but with a dedicated support team he eventually secured life sentences for all three rapists.

A father of four and community pastor, Masehela is motivated by the impact of his work on ordinary people. He sees the NPA's role as one of education as well as justice.

"When people learn about the NPA's role, they become aware of their rights. In 1986, my mother did not report her attack. But if it happened today, she may well have had justice."

Masehela is motivated by the impact of his work on ordinary people and sees the NPA's role as one of education as well as justice. "In 1986, my mother did not report her attack. But if it happened today, she may well have had justice." **HENRY MAGALIE** 

A docket is vital to a court case. Henry Magalie's job is to get them to the right advocate in the right court at the right time. He is an essential part of the NPA's prosecution ecosystem.

Dockets are essential to successful convictions and include everything from confidential victim information and police reports to impact statements, crime scene photographs, forensics and other evidence.

One of 12 children, 58 year old Magalie left school at 17 to support his siblings. In 2013, he finished his matric at night school. Magalie has been a messenger for banks, police stations and transport companies, and now works at the office of the Director of Public Prosecutions in Cape Town.

He says his job is to make sure everything happens the way it is supposed to. Magalie also collects prosecutors from the airport, manages incoming and outgoing deliveries, and keeps careful administrative records. "Every day is different, and it's very important work," he says.

Magalie is also very active in his community as a church leader.

Magalie's commitment to his NPA job has seen him achieve his aim of putting his children through university. His eldest son starts work this year after completing a Bachelor of Commerce degree, and the youngest is studying architecture.

#### **PROTECTING CONSUMERS**

## Keeping the courts running

Picture: Proof Africa/Brett Eloff

Henry makes sure everything happens the way it is supposed to. He is an essential part of the NPA's prosecution ecosystem.

## Seizing the loan sharks

Police seized R1 million in cash and a thousand debit cards in a challenging case involving fraudulent loan sharks in the small town of Nigel in Gauteng.

Police raided two businesses and arrested 15 suspects. The NPA secured prosecutions against 11 of the con artists. They were charged with contravening the National Credit Act and sentenced to imprisonment with the option of a fine, with sentences suspended on condition that they don't repeat their contraventions.

A police investigation had found the men were targeting the most vulnerable people in their community. They took debit cards from their customers and drew money to repay loans with interest. They also kept their clients' South African Social Security Agency (SASSA) cards.

The evidence filled nearly 100 lever arch files and the accused faced 940 counts.

The scale and complexity of the case saw the Gauteng Director of Public Prosecutions called in to assist. "The sheer scale of the evidence made this a very unusual case," says Adv Johann Kotzé, who finalised the case and says it ended the accuseds' corrupt practices.



#### PROFILE CAVIN MPHAGA



## A BELIEF IN BEING THE BEST

## Bookworm dedicated to legal knowledge

Cavin Mphaga nearly didn't pursue a legal career. He tried pharmacy at university, then education and commerce, before a student counsellor persuaded him to enroll for a law degree. South Africans can be grateful he followed that advice.

Mphaga is today a Senior Public Prosecutor in Bafokeng in North West province. He is 55 and religious, and believes the courts must serve people with utmost dedication, giving every case 100% of their attention. He says he is inspired by the first National Director of Public Prosecutions, Bulelani Ngcuka, and believes leadership is about changing perspectives.

We can be the best in the country. It's just about changing how we see things."

Mphaga's 31-year career started in the former Bophuthatswana as a translator. In 1994 he was promoted to regional court prosecutor, and then Senior Public Prosecutor (SPP) for Bafokeng in 2002. At the time Bafokeng was seen as a weak link in the justice system, but now ranks first in the country.

A child rape case and a false accusation of corruption meant Mphaga nearly didn't make it to SPP. He had agreed the case wasn't strong enough to go to court, and requested further investigation. A local councillor accused Mphaga of taking a bribe to dismiss the case, a terrible stain on the career of an honest man. Mphaga would clear his name by winning a defamation case in the high court in Pretoria, but only after his family and community had to watch him being labelled as corrupt. "It was the lowest time in my life," he says. But he persevered with the dedication that characterises his entire career.

Mphaga applied for the post of SPP with only an undergraduate degree, beating off candidates with Masters and LLB qualifications. He has since completed a Master's degree, and describes himself as a bookworm, committed to knowing SA law and the Constitution as well as religious leaders know their holy texts.

Mphaga's office has a 'parliament' session every morning, checking in with prosecutors, discussing strategies and sharing challenges. "We are efficient and we don't perform in silos," he says. "I don't want to waste tax payers' money."

Mphaga has seen adults weep in court when reading rape survivor statements, and believes prosecutors need support to process emotional trauma from their cases. "We have to learn to talk. I go for counselling and I encourage debriefing – it's important to detox."

## Mphaga believes the courts must serve people with utmost dedication

#### PROFILE

#### **THABO DHLAMINI**

Thabo Dhlamini never imagined he'd become essential to the running of one of SA's busiest courts. Growing up on the dusty streets of Gauteng's Duduza township, he assumed he'd work as a labourer in the nearby industrial area.

But today this ambitious 35 year old is the personal assistant to the Chief Public Prosecutor at the Johannesburg Magistrates Court, Adv Pumeza Futshane, and helps to run six courts in the cluster.

Dhlamini's job is a juggling act. Every day he logs more than 20 representations from attorneys, then notes and files the outcomes. He answers phones and emails, scans, photocopies, faxes and prints documents, takes messages, manages Futshane's diary, and organises meetings.

Despite all that he is available to help anyone who walks through his door.

"Thabo is known for his kindness and hard work, a people's person who always helps with a smile on his face. He talks and laughs with everyone from cleaners and security to top management," says Senior Public Prosecutor John Metwamere.

In 2016 Dhlamini was recognised as the NPA's best admin clerk in Johannesburg, and in 2017 he got the Kahuna trophy for his excellent work in South Gauteng.

He had an interesting journey to the courts. After getting his management assistant national diploma at Sedibeng TVET College, he worked as a receptionist at a resort, then an admin clerk intern at a hospital.

While serving coffee at Mugg & Bean in 2015 he earned an NPA interview and a job as an admin clerk. Just one month after starting he was promoted to his current position.

Inspired by the prosecutors around him, some of whom started as court interpreters, Dhlamini is studying for a UNISA law degree.

"I want to make positive change in South Africa by being the best prosecutor in the country and to keep the NPA's flag flying high. I want to be a prosecutor who doesn't take bribes, who puts people first, works by the book and abides by the Constitution. I want to see people living freely, not scared to go to the police or prosecutors for help. I want to bring back that faith in our justice system."

Dhlamini has been exposed to both excellence and danger while working at the heart of the justice system. He is admiring of the trust Futshane has gained from community policing forums, which provide information about drug dealing and other crimes.

But he's also made enemies in the service of justice, facing threats from a gangster for refusing to help a drug mule who wanted to fast track a case against the police. "He came at me with knuckle dusters and said I was on his hit list and would die young...it's been traumatic."

The experience made him question his decision to study law, but his commitment to using the law to improve people's lives is greater than his fear.

### Developing potential

I want to make a positive change in South Africa and bring back faith in our justice system

#### **UPHOLDING SA'S COMMERCIAL REPUTATION**

## Crooked butcher's tax fraud shut down

Stealing more than R31m from the South African Revenue Service (SARS) has earned former butcher Johannes Kriek 20 years in jail.

He was convicted and sentenced in the Johannesburg Commercial Crimes Court after he convinced 18 companies to hire him as their tax expert, despite having no formal training.

Kriek submitted 29 fraudulent VAT returns between 2012 and 2015 resulting in SARS paying the companies more than R31 million of undue VAT refunds. Kriek then persuaded his clients that SARS had made a mistake, and forced them to pay half the money into his own company's bank account.

He used the money to gamble and to visit Elvis Presley's Graceland home in the US, also buying a car for his SARS accomplice, the VAT auditor Monica Pretorius. Their crooked scheme was uncovered when Pretorius' colleagues became suspicious of her lifestyle and her insistence on doing VAT audits not allocated to her.

Kriek faced 119 charges of fraud, forgery, money laundering and corruption. Faced with overwhelming evidence, he pleaded guilty, and the NPA's Asset Forfeiture Unit has been tasked with recovering the money.

"Theft of taxes is an attack on South Africa's Constitution," says Senior Public Prosecutor Adv Marius Oosthuizen from the NPA's Specialised Tax Unit. "The government collects taxes to ensure its citizens' basic needs are met. The taxes stolen by the accused were meant for hospitals, schools and the police."

"Theft of taxes is an attack on South Africa's Constitution. The government collects taxes to ensure its citizens' basic needs are met. The taxes stolen by the accused were meant for hospitals, schools and the police."

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Adv Marius Oosthuizen



#### PROFILE EILEEN VILJOEN



## Accountable and impartial under pressure

#### On 1 April 2010 the new Child Justice Act came into effect, almost unnoticed amidst the excitement of the imminent football World Cup in SA.

But two days later the notorious white supremacist Eugene Terre'Blanche was murdered on his farm. The accused were black, one of them just 15 years old.

The new act was now under the spotlight. And so was Eileen Viljoen, the Senior Public Prosecutor selected for the preliminary inquiry in a high-profile case with potential to spark racial conflict and tear open the fresh wounds of apartheid.

The young accused's first court appearance featured a surge of international media, vocal supporters of the ANC and Terre'Blanche's AWB movement, and the then National Director of Public Prosecutions, Menzi Simelane, himself under scrutiny at home and abroad.

"I was nervous," says Viljoen, "but once I got up in court my professional training kicked in and I was fine. I had a job to do, and I needed to be professional, accountable and impartial, regardless of the noise and opposing passions around the case." Viljoen ranks this historic moment as a highlight of her 23-year career. She worked for years at regional courts around Johannesburg, before heading to the North West as Senior Public Prosecutor in Potchefstroom, where she had to adjust to managing people who underpin the justice system in SA. She now looks after seven courts with a team of 13 prosecutors.

"I went from being a prosecutor taking credit for my own cases, to helping others do it to the best of their ability." Viljoen says she thrives on conflict management, and is proud of the relationships in her office, with a team that talks openly about grievances and resolves them together. She loves the challenge of getting prosecutors promoted, making way for new talent, and preparing court managers for new roles.

#### Fifteen years for bank heist explosive smuggler

In September 2018 a young woman entered SA from Zimbabwe with R200,000 worth of explosives hidden in her car. She was sentenced to 15 years in prison after a police expert testified in the Musina Regional Court that this type of explosive was commonly used in ATM and cash-in-transit bombings.



#### **Eight-year case ends in conviction** for corrupt education officials

#### Eleven officials from the Free State Department of Education were convicted in July 2018 of fraud, corruption, money laundering and contravention of the Public Finance Management Act.

Deputy Director General Tebogo Lioma was sentenced to 10 years in jail and his lawyer five years. Seven other officials got correctional supervision and suspended sentences.

The case had been in court since 2001. Lioma had used his position to give R30m in tenders for educational material to bidders who colluded in tender rigging. The case was prosecuted by Adv Mvuseni Ponye.

## NPA works with civil society to jail blackmail rapist

A 56 year old man from Thaba Nchu in the Free State was sentenced to two life terms for raping his five year old niece. The child's mother is a Zimbabwean without proper documentation and the accused, her uncle, had threatened to report her if his sexual abuse was exposed. But civil society organisation World Vision reported the case to social workers and set the prosecution in motion. The case was finalised by state prosecutor Kano Losaba in the Thaba Nchu Regional Court.

### Five life sentences for killer of mother and children

Adv Johan De Nysschen secured five life sentences in August 2018 for a man who murdered his girlfriend and four children. Lehlohonolo Tsiane, from Ratau township in Thaba Nchu, Free State, set her house on fire with the family inside.

#### Hefty jail term for gangsters

The Free State High Court sentenced seven members of the *Born to Kill* gang to 19 to 26 years in prison for murder, assault with intent to cause grievous bodily harm, housebreaking with intent to rob, and robbery. The gang, aged 19 to 24, had terrorised Bloemfontein communities. The case was finalised in March 2019.



## Bloemfontein police officer jailed for fraud

Warrant officer Teboho Japhta Mohapi was sentenced to six years in prison in March 2019 for four counts of fraud. The Bloemfontein Commercial Crime Court found Mohapi guilty of defrauding the crime intelligence unit of R38,000 by stealing money intended for confidential informants.

### Woman and lover sentenced for husband's murder

A Bethlehem woman and her lover were sentenced to life in prison for the murder of her husband, and 15 years for possession of a firearm. Annah Sekhotho and Dika Piet Mosikili were sentenced in July 2018 for the murder of David Sekhoto. The accused hired men to pose as handymen to murder Sekhotho's husband. The case was prosecuted by Adv Lucky Bontes.

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#### **PROTECTING NATURAL RESOURCES**

## NPA shuts down rhino poachers

A determined Eastern Cape prosecutor has jailed three rhino poachers in a complicated case featuring the forensics of phones, chain-saws and dart guns.

SA's biggest rhino poaching trial saw Senior Public Prosecutor Adv Johannes 'Buks' Coetzee painstakingly piece together evidence from 13 cases spanning three years.

When the poachers were arrested in Grahamstown (now Makhanda) in 2016, he called for all unsolved Eastern Cape poaching dockets and proceeded to link them to the suspects, leading to 55 charges including rhino poaching, theft and possession of ammunition.

## Prosecuting wildlife crime

Picture: Proof Africa/Jonathon Rees

Many of the dockets had been closed due to lack of evidence and filed away at small police stations. In some cases, vital evidence had been lost. But Coetzee expertly drove a massive probe into cell phone records that showed the accused had used 70 sim cards and multiple phones over three years. More than 100,000 calls and messages were analysed, linking the suspects to the crimes through their movements and modus operandi.

In a world first, Coetzee used ballistic evidence to link darts found near the rhino corpses to a dart gun. With the help of a forensic expert he linked A rhino poacher in Limpopo also found himself on the wrong side of the law in 2018. Antonio Xavier Vasconcelos Freitas faced 15 charges of rhino poaching and related charges. The hard work of prosecutors Billy Mudavhi and Liezel Del Frate led to him being convicted and sentenced to 10 years imprisonment or a R10 million fine.

a paint chip from one of the crime scenes to a chainsaw found in the suspects' possession.

His prosecuting experience enabled him to elicit formal admissions from the defence.

Coetzee's biggest challenge was getting the court to allow evidence obtained by police in a search and seizure without a warrant. After a week-long trial within a trial the evidence was allowed in the interests of justice.

The poachers' sentences will run concurrently, seeing them jailed for an effective 25 years each.

#### **DETERRING TAXI VIOLENCE**

# Life sentence for pick handle murder



#### A Limpopo taxi owner was sentenced to life in prison after brutally beating a rival taxi owner to death with a pick handle.

Adv Calvin Chauke prosecuted the case in the high court in Limpopo, highlighting an increase in local taxi violence and the accused's previous convictions.

Matjawela Moagi, 37, from Sekororo received life imprisonment for murder, 10 years for attempted murder, five years for assault with intent to do grievous bodily harm, and 12 months for theft.

His Letaba taxi association was in conflict with the De Oaks taxi association over the Tzaneen-Lorraine route. He led a convoy of 10 taxis to meet their rivals, who took refuge at the Maruleng satellite police station. They abandoned their vehicles and fled into the veld, but were pursued and beaten unconscious.

Moagi then took his convoy to Mawetjie taxi rank, where he beat Moses Mtileni to death. He pleaded not guilty but his version of events was rejected after witnesses and survivors testified.

#### PROFILE

#### **DOVHANI MUTAVHATSINDI**

## THE BACKBONE OF JUSTICE



## Dedicated Limpopo man protects and maintains NPA assets

Hardworking Dovhani Mutavhatsindi keeps the NPA running in Limpopo, often working at night and over weekends to protect and manage its cars, courts, facilities and assets.

His career took a roundabout route before he landed at the NPA.

He struggled to find a job after completing a cost and management accounting diploma. Mutavhatsindi spent two years as a driver for a bakery and used his salary to buy stamps and envelopes, making sure he was ready to apply for a better job.

He eventually got construction work on the Gautrain and in 2009 earned an internship at the NPA. In 2010 he became regional asset, fleet and facility manager. This makes him responsible for 53 courts, 42 cars, offices and other assets in the huge province. Mutavhatsindi, 41, says life revolves around his hectic job. He keeps a record of every car, allocates them to prosecutors, and ensures they are well maintained and only deployed for official business.

He knows the exact distance of all routes in the province, and quickly picks up discrepancies in the log book. He runs workshops for colleagues on vehicle management, maintaining records, NPA policies and the consequences of abusing state assets.

Mutavhatsindi is away from home for up to two months a year as he verifies NPA assets across the province, scanning barcodes on every item twice a year.

He also monitors budgets, cleaning of buildings, and he allocates offices to new staff.

#### "The commitment of our administrative and service staff is what keeps the NPA going. They are as much part of the criminal justice system as prosecutors, police and judges."

Ivy Thenga Limpopo Director of Public Prosecutions PROFILE

**BIANCA HARMSE** 



## Mpumalanga prosecutor powers through lengthy court roll

Adv Bianca Harmse works night and day to deliver justice in the small Mpumalanga town of Kwa-Mhlanga, often leaving home before dawn and returning after dark. In just two years she's reduced the local court roll from 153 to 33 cases.

Colleagues compliment her relationships with police and all parts of the court system, and how she's not afraid to collect and deliver all dockets for her region's courts as well as everyone's post. She's often the last person in the office.

Harmse, 43, says her laid-back character helps her handle a huge workload and long hours. "I don't stress easily," she says. "Not much gets me down."

In 2018 Harmse put a serial rapist in prison for life after he raped and robbed five women and two children, using DNA and medical evidence to link the seven incidents. In an unusual twist, she had to prove the rapist had used Facebook photos in a bid to show one of his victims was his girlfriend and they'd had consensual sex. She also prosecuted three women for the brutal assault and attempted murder of a teenage girl during a female initiation ceremony, securing five-year jail sentences after proving the girl could have died.

She feels disheartened when she doesn't get a conviction, "but successful prosecutions make you feel like it's worth carrying on".

"For the complainant it's often the most serious thing that ever happened to them, and when they appreciate the outcome we know we're still fighting a good fight for justice."

Harmse studied at the University of Pretoria and was part of the NPA's Aspirant Prosecutor Programme. Her personal life is as busy as her work. She has four children aged five to 20 and does charity work for two orphanages and a cancer association.

In an unusual twist, she had to prove the rapist had used Facebook photos in a bid to show one of his victims was his girlfriend and they'd had consensual sex

**PROSECUTING MUTI MURDER** 

## KZN cannibal gets life for muti murder

#### A traditional healer and confessed cannibal will spend the rest of his life in prison for murdering a young woman for her body parts.

Healer Nino Mbatha and several accomplices killed the woman in Estcourt, KwaZulu-Natal.

Mbatha was arrested after he went to a police station and pulled a human hand out of his back pack. He also produced a foot still in its shoe.

He claimed he had been held captive and forced to rape women and eat human flesh. Police used DNA tests to establish the woman's identity and show that all the body parts found in Mbatha's house were from the same person.

Senior State Advocate Wendy Greeff secured life sentences for two of the men. Proving Mbatha's case was easy as he confessed to murdering the woman and eating some of her body parts.

But Greeff and Assistant Prosecutor Val Dafel had to work hard to convict Mbatha's accomplice Lungisani

Magubane. She convinced the judge to accept the testimony of two police officers who overheard an incriminating conversation between Mbatha and Magubane while they were in police holding cells. Magubane was heard describing Mbatha's role in the killing, while Mbatha reminded Magubane how he had held down the women's legs while he murdered her.

A third suspect was acquitted due to lack of evidence, while the fourth suspect committed suicide before the trial started.

Greeff often sees muti murder cases. She is currently prosecuting a man who was found with a human head which he planned to sell to a traditional healer. Recent case law has established that belief in witchcraft is no longer a mitigating circumstance in murder cases, especially where the accused have formal education.

Recent case law has established that belief in witchcraft is no longer a mitigating circumstance in murder cases, especially where the accused have formal education

#### Millions of rand meant for poor farmers was fraudulently pocketed by a lawyer and a senior politician, in a daring scheme orchestrated by the chief executive of the Land Bank.

The bank, a key institution in the agriculture sector, was captured and plundered. But the trio were caught and convicted of fraud in Pretoria's Specialised Commercial Crimes Court, and sentenced in 2018 to a collective 49 years in jail.

Land Bank boss Philemon Mohlahlane, attorney Dinga Nkwashu, and former MP and chair of Parliament's Portfolio Committee on Agriculture, Reuben Mohlaloga, plundered the Agri-BEE fund, a support programme set up by the former Department of Agriculture, Forestry and Fisheries. The fund aims to drive transformation by helping small black-owned enterprises to participate in mainstream agriculture.

Mohlahlane instructed the fund's manager to transfer money, without authorisation, into Nkwashu's trust account where it wouldn't be detected. The attorney then shifted the money into various family accounts and to Mohlaloga, who promptly bought two BMWs.

The case was challenging, says Senior Public Prosecutor Adv Dries Janse van Rensburg, as the accused began to cover their tracks once they realised they were being investigated. They complicated the trial by submitting false documents and got approval from the fund's committee for a fake project. The defence then challenged every little fact on the charge sheet.

The accused also paid as much money as possible back into the trust account, and laundered it into a bushveld farm in Limpopo in a bid to hide their criminal actions.

Having seen through their fraudulent scheme and attempted cover-up, Janse van Rensburg now had to convince the court. He turned the fund manager into an excellent state witness, who was able to tell the court about each stage of the crooked transaction.

After six years the three were finally convicted of fraud. Mohlahlane was handed a seven-year prison sentence, while Nkwashu got 24 years and Mohlaloga 20. The bushveld farm and one of the BMWs was seized by the Asset Forfeiture Unit.

"This was a state capture case," Janse van Rensburg says. "They captured the Land Bank, and they captured and looted the Agri-BEE scheme. But we have shown that the NPA will relentlessly prosecute politicians who commit crimes and prejudice the people they're supposed to protect."

Janse van Rensburg also made an important point by charging the attorney's firm for the offences. "I wanted all attorneys to see the consequences of fraud," he says.

"This was a state capture case. They captured the Land Bank, and they captured and looted the Agri-BEE scheme. But we have shown that the NPA will relentlessly prosecute politicians who commit crimes and prejudice the people they're supposed to protect."

Protecting emerging farmers from fraud

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