

SECTION 2: DELIVERY

Programme 4: National Prosecuting Authority

In terms of the Constitution, the mandate of the NPA is to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental thereto. To this primary responsibility carried out by the National Prosecutions Service (NPS), have been added, since the NPA's formation, several business units, namely: the Asset Forfeiture Unit (AFU), the Witness Protection Unit (WPU), the Sexual Offences and Community Affairs Unit (SOCA), the Priority Crimes Litigation Unit (PCLU), the Specialised Commercial Crime Unit (SCCU) and the Directorate of Special Operations (DSO). It has also developed a support services component, Corporate Services (CS), which manages a wide range of support functions, including finance and procurement, information management, human resources, security, research and others.

DELIVERY IS THE PROCESS BY WHICH THE NPA ENSURES THAT JUSTICE IS DELIVERED TO ITS CUSTOMERS.

NPA service delivery environment overview

The NPA has to ensure service delivery within a complex and diverse society with huge disparities in income and access to justice. In this society, dealing with crime effectively has become one of its top concerns.

The NPA is one of the key institutions of the state, dealing with crime and delivering justice to people. It cannot do its work properly without working with a range of partners, as the CJS depends on the cooperation of many role-players to ensure that justice is delivered effectively.

The high crime levels, the continuously changing nature of crime, and the growing sophistication of crime syndicates, perpetrators and their methods, place a huge burden on the justice system. The challenge therefore is to find innovative and smart ways to ensure that the justice system can deal effectively with these demands, but also to find ways to reduce the demands on the system.

The general skills shortage in the country is also felt by the justice system and particularly so, by the NPA. In addition to this, the physical infrastructure constraints, particularly at the Lower Courts, in terms of factors such as accommodation, working conditions and other resources, are reaching serious proportions. These constraints impact on the ability of the system and its people to work productively and to deal with cases effectively.

While dealing with crime effectively is a huge challenge, an increasing focus on crime prevention is important. This is already a strong focus for the SAPS, and the NPA has started to explore various ways in which it can work with the SAPS, communities and other stakeholders to make a contribution in this regard.

NPA organisational environment overview

From its inception in 1998, the NPA has grown into its role and usually had sufficient funding to develop to the next level. Unfortunately, this hasn't been the case in the past two years. The NPA has been severely hindered by a limited budget, especially in the area of goods, services and capital, which has prevented it from tackling its responsibilities as vigorously as it should.

Together with a slow-moving recruiting process and uncompetitive salaries in certain key posts, the NPA has become seriously understaffed. Many key positions are presently filled by persons who are increasingly frustrated by having been acting in their posts for two years or more.

The relatively high staff turnover of especially skilled and experienced employees is a real concern. Top NPA employees are a good catch for many companies, but the NPA should ideally retain the wealth of rare experience and expertise embodied in its people, to be passed on to next generations of prosecutors and advocates, investigators and analysts. Steps taken to try to retain NPA employees include addressing factors that impact on employee satisfaction, such as improving their working conditions. The NPA works



The employees of the NPA strive for service excellence in spite of less than ideal working conditions.



closely with the DoJ&CD in addressing the resourcing needs of the Lower Courts. The NPA has also embarked on a strategic project to ensure that it becomes an employer of choice.

A new, accelerated recruiting process and the resulting campaign now underway to fill 800 out of 1 300 identified posts, are a notable step in the right direction, but there remains a long way to go.

NPA strategic overview and key policy development

Legislation pertaining to recommendations of Khampepe Commission

On 28 June 2006, Cabinet endorsed the decision of the National Security Council (NSC) to accept in principle the recommendations of the Khampepe Commission of Inquiry into the mandate and location of the DSO. Cabinet charged the Directors-General of the NSC to develop proposals, including the amending of legislation, to specifically enable the state to implement these recommendations. The DoJ&CD, in consultation with the NPA, has drafted a Bill that will give effect to the recommendations of the Khampepe Commission. These include, among others, to provide for the:

- mandate of the Independent Complaints Directorate to cover complaints against the conduct of Special Investigators
- establishment of Coordinating and Operational Committees as sub-committees of the Ministerial Coordinating Committee, to assist the latter Committee in the exercise and performance of its powers, duties and functions
- Minister of Safety and Security to have political oversight and responsibility for the law enforcement component of the DSO
- amendment of sections 27 and 28(1)(a) of the NPA Act so as to further regulate the conducting of investigations by the DSO.

The Criminal Procedure Amendment Bill

This Bill emanates from a Report of the South Africa Law Reform Commission on the simplification of criminal procedure, and aims at providing a Director of Public Prosecutions with a right to appeal on a question of fact. The principle that the state should be allowed to appeal on the facts of a case, is fully supported by the NPA.

Criminal Law (Sentencing) Amendment Bill, 2007

The above Bill aims to:

- Expedite the finalisation of certain serious criminal cases
- Punish offenders of such cases appropriately
- Avoid secondary victimisation of complainants, which, inter alia, occurs when vulnerable witnesses have to repeat their testimony in more than one court.

To achieve the above objectives, the Bill:

- grants Regional Courts jurisdiction to impose a sentence of imprisonment for life in cases where it is prescribed
- repeals the provision requiring a Regional Court to refer an accused for sentencing to a High Court
- provides an automatic right of appeal in cases where a person is sentenced by a Regional Court to imprisonment for life
- requires the NDPP to adopt policy directives that set out which prosecutions must from the outset be instituted in the High Court and not in the Regional Court
- identifies circumstances that should not "constitute substantial and compelling circumstances justifying the imposition of a lesser sentence" in respect of the offence of rape.

Prosecution Policy

The NPA's Prosecution Policy³ was reviewed and amended during this reporting period. Among others, the amendments relate to:

- plea or sentence agreements
- a decision whether a case should be diverted.

Service delivery improvement

The NPA has engaged in a focused drive to improve its service delivery through various initiatives and strategic projects launched during the reporting period. In brief, these included the following:

- The design and documentation of standardised delivery processes to ensure uniform and consistent best practice processes throughout the NPA.
- Projects around Case Flow Management, case backlogs, capacity planning and operations management.
- Projects on new approaches to justice, such as Restorative Justice and Community Prosecution, with the focus on bringing the NPA closer to its customers and to understand their wants, needs and expectations.
- A project to build a customer management methodology for the NPA, and initiatives such as a court preparation programme to support victims and witnesses, and educational brochures on the role of the NPA and its units.
- Closer engagement with various stakeholders in designing solutions for service delivery, developing annual business plans for units, and the roll-out of strategic projects.



All prosecutors are guided by the mandate of the NPA and its legal framework.

Sub-programmes

The NPA's programme provides for: prosecution services guided by the Bill of Rights; witness protection within certain parameters; and the investigation of serious, complex and organised crime. Its three sub-programmes are:

- Sub-programme 1: Public Prosecutions, which deals with prosecuting services. Cases include prosecutions in the Lower and High Courts, alternative dispute resolutions, diversions, sexual offences and community affairs, priority crimes litigation and specialised commercial crimes.
- Sub-programme 2: Witness Protection, which provides protection, support services and related services to vulnerable and intimidated witnesses and related persons in judicial proceedings.
- Sub-programme 3: Special Operations, which deals with the disruption and prosecution of serious, complex and organised crime through the DSO, and the removal of the proceeds of crime through asset forfeiture.

Service delivery objectives and indicators

Due to the change in strategic approach and a significant improvement and bolstering of the performance measures of the various business units, as well as the roll-out of a set of strategic projects to support and improve performance, the NPA reports on its performance for the financial year 2006/07 through the standard ENE reporting table supplied by National Treasury (Table 3), and supports this reporting with a detailed performance reporting table (Annexure B⁴, Table 23), providing performance progress against annual plans of business units and strategic project plans.

³ A copy of the NPA's revised Prosecution Policy as amended during this reporting period is available from the Office of the NDPP, tel (012)845-6000. Private Bag X752, Pretoria, 0001.

⁴ Annexure B: Performance Information Reporting on Delivery 2006/07. Table 23 of this annexure provides detailed information and progress reporting on the deliverables and activities identified to attain these objectives.

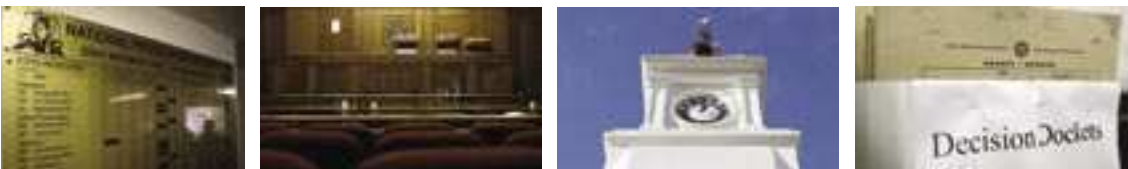


Table 3: Key measurable objectives for the NPA as reflected in the ENE

Sub-programme	Output	Measure/Indicator	Target
Public Prosecutions	Prosecution of criminal cases	Conviction rate	High Courts: 85% convicted
			District Courts: 85% convicted
	Prosecution of cases involving women and children	Conviction rate in sexual offences courts	70% convicted
Witness Protection Programme	Effective and efficient support services to vulnerable and intimidated witnesses	Number of witnesses or family members assassinated or harmed while on the programme	Zero witnesses or family members
		Number of witnesses abandoning the programme	Zero witnesses
Special Operations	Disruption of organised crime	Conviction rate for organised crime	95% convicted
	Disruption of crime by asset forfeiture	Number of asset forfeitures completed	180 forfeitures
		Success rate in asset forfeiture cases	85% successful

Sub-programme 1: Public Prosecutions

Introduction

This Sub-programme deals with the service delivery operations of the NPS, SCCU, PCLU and SOCA. These NPA units are responsible for public prosecutions in terms of their respective mandates, as discussed hereafter.

Measurable objectives

The measurable objectives for this Sub-programme as contained in the ENE framework for this period are:

- Prosecution of criminal cases
- Prosecution of cases involving women and children.

In order to enhance focus, service delivery and alignment with the NPA's newly adopted Strategy 2020, the following additional annual measurable objectives for service delivery were built into the business plans of these Units:

- Contribute to crime prevention and community justice
- Contribute to better crime investigations
- Deal with cases efficiently and effectively
- Ensure joint problem-solving and cooperation with partners and stakeholders.

Service delivery objectives and indicators

The delivery objectives and indicators relating to this Sub-programme, and progress reporting on these indicators, are reflected in Table 4. Further detailed reporting on these and all additional delivery objectives and indicators included in the annual plans of the NPS, SCCU, PCLU and SOCA is to be found in Annexure B⁵, Table 23.

Table 4: Sub-programme 1 - ENE Service Delivery Objectives and Indicators

Sub-programme	Output	Measure/Indicator	Target	Actual	Reasons for deviation
Public Prosecution	Prosecution of criminal cases	Conviction rate	High Courts: 85% convicted	A total of 1 185 High Court trials were finalised with 1 016 convictions, giving a conviction rate of 85.7% A total of 1 209 section 52's were finalised with 988 convictions, giving a conviction rate of 89.5%. The High Court overall conviction rate achieved was 87.8%	Key reasons that contributed to targets not being met for High and Regional Courts and for cases involving women and children: <ul style="list-style-type: none"> • Teething problems with the introduction of Case Flow Management • A vacancy rate of 24% • Reduction in court hours • Increase in number of diversions
			District Courts: 85% convicted	NPS finalised a total of 295 233 cases, (with verdict), in District Courts with 258 172 convictions, giving a conviction rate of 87.4%.	
			Regional Courts: 75% convicted	NPS finalised a total of 36 831 cases in Regional Courts with 26 618 convictions, giving a conviction rate of 72%. SCCU finalised a total of 1 844 cases in Regional Courts with 1 515 convictions, giving a conviction rate of 95.56%. The Regional Court overall conviction rate achieved was 72%	
			Overall: 80% convicted	The overall conviction rate achieved was 85.8%	
	Prosecution of cases involving women and children	Conviction rate in sexual offences courts	70% convicted	NPS finalised a total of 5 964 cases with a verdict involving women and children with 3 869 convictions, giving a conviction rate of 65%.	

⁵ Annexure B: Performance Information Reporting on Delivery 2006/07. Table 23 of this annexure provides detailed information and progress reporting on the deliverables and activities identified to attain these objectives.



Adv Mokotedi Mpshe, SC,
Deputy National Director of
Public Prosecutions, and Head: NPS.

Service delivery achievements: NPS, SCCU, PCLU and SOCA

National Prosecutions Service (NPS)

Purpose

In terms of Section 179 (2) of the Constitution, the NPS has the primary national responsibility for instituting criminal proceedings and performing related functions on behalf of the state.

The NPS is the largest single unit in the NPA and houses the public prosecutors and state advocates manning the nation's District, Regional and High Courts. Apart from the prosecution of cases and arising appeals, NPS employees are also responsible for matters such as litigation in ancillary matters, involving the resolution of criminal matters outside the formal trial process. These include diversions, admissions of guilt, and providing data on court performance.

Measurable objectives

A number of the key performance indicators for the NPS are reflected in Table 5, which track performance over a five-year period.

Table 5: NPS Service Delivery Performance Indicators - 2002/03 to 2006/07

National Prosecutions Service								
	2002/03	2003/04	2004/05	2005/06	2006/07	Change over previous year	Change over period	Notes
Cases finalised including diversions	422 338	414 488	399 966	411 417	378 926	-7.9%	-10.3%	Total fairly stable due to increased diversions
Admission of Guilt ⁶				464 015	471 497	1.6%	1.6%	New indicator measured from April 07
Diversions	14 808	17 952	18 946	37 422	44 474	18.8%	200.3%	Increased focus on diversions for juveniles
Cases finalised excluding diversions	407 530	396 536	381 020	373 995	334 452	-10.6%	-17.9%	Decrease continues, mainly due to abolition of Saturday and additional courts
Cases finalised (Saturday and Additional Courts)	29 969	23 380	11 751	1 432	1 522	6.3%	-94.9%	
New cases	1 117 879	1 117 488	1 084 137	1 069 724	1 062 147	-0.7%	-5.0%	Slight decrease due to better screening
Decision dockets received - Lower Courts	484 547	514 355	523 169	517 101	489 213	-5.4%	1.0%	Stable after increasing due to screening
Withdrawals	414 211	363 391	318 767	311 078	305 901	-1.7%	-26.1%	Significant decrease due to better screening
Outstanding roll	188 691	185 423	206 005	198 990	206 508	3.8%	9.4%	Slight decrease

⁶ Data only recorded by DoJ&CD from 05/06.

Backlog cases (cases older than 12 months in HC, older than 9 months in RC, 6 months in DC)			33 595	37 216	36 130	-2.9%	0.0%	Increase mostly in Regional Courts (04/05 excludes High Courts)
Awaiting trial detainees (March average)	58 744	54 157	52 371	48 807	48 196	-1.3%	-18.0%	Target: 10% decrease this year. About 8% of outstanding Regional Court cases are absconded cases
Court hours	04:09:09	04:08:04	04:07:58	04:06:34	03:59:18	-2.9%	-4.0%	Increased from 3:40 in 1999/00. Target= HC: 4:00, RC: 4:30, DC: 4:45
Conviction rate ⁷	81.6%	83.5%	85.1%	85.7%	85.8%	0.1%	5.1%	Increased from 80% in 1999/00

Highlights of achievements

During this reporting period an average of 1 559 courts (High and Lower Courts) finalised 378 926 cases with a conviction rate of 85.8 per cent. A total of 44 474 cases were diverted. At the end of March 2007, a total of 1 062 147 cases were enrolled, of which 722 361 were removed from the roll. The latter includes cases withdrawn, transferred, struck from the roll and warrants issued. A total of 5 177 fewer cases were withdrawn, constituting a 1.7 per cent decrease from 2005/06. All courts managed an average of 3h59:18, which is a marginal decrease from the 4h06 managed during 2005/06.

The court roll increased from 198 990 to a total of 206 508 cases. The backlog of cases (cases exceeding a cycle time of six months in Lower Courts and 12 months in High Court) has been reduced to 36 130 cases, from 37 216 recorded at the end of March 2006.

In the High Courts, 84 per cent of cases had been finalised within three years of first appearance in the District Court, compared to a mere 53 per cent the previous year. The conviction rate over the past three years was stable at 86 per cent on all trial cases. The number of convictions confirmed, in cases referred to the High Court for the purpose of imposing compulsory sentences, remained stable at 89 per cent.

The Lower Courts have maintained high conviction rates. The District Courts exceeded their target of 85 per cent by maintaining an 87 per cent conviction rate. The Regional Courts managed not only to exceed their target of 70 per cent by two per cent, but showed an improvement on the rate of 71 per cent, maintained during the previous year.

On average 59 Regional Courts dedicated to sexual offences finalised a total of 6 323 cases (including diversions), with a 65 per cent conviction rate.

The number of diversions has been improved by 19 per cent compared to the figures of the previous year. A total of 44 474 cases were diverted, compared to the total of 37 422 diversions during 2005/06.

A total of 471 497 payments for admission of guilt were received during the current reporting period.

From 1 April 2006 to 31 March 2007, a total of 1 139 agreements, comprising of 28 416 counts, were finalised by means of plea agreements.

Five backlog Regional Courts were established. The impact of these backlog courts from 1 November 2006 until the end of March 2007 was remarkable: 852 cases were finalised with a conviction rate of 77 per cent, and 510 cases were withdrawn, totalling 1 362 cases disposed of in an average court hours count of 3h23.

Thus far an average of 12 Community Courts has been established and these are fully functional, while negotiations are underway for the roll-out of a further 13 courts. The performance of these courts remains on par with a conviction rate of 95 per cent and a total of 12 887 cases finalised.



The management team of the NPS:
From left to right (front row), Adv Lungisile Mahlati, SC (DPP Eastern Cape Division), Adv Shamila Batohi (DPP Natal Provincial Division), Adv Mokotedi Mpshe, SC, (Head of the NPS), Adv Ivy Thenga (DPP Northern Cape Division) and Adv Charin de Beer, SC (DPP Witwatersrand Local Division). (Back row), Adv Rodney de Kock (DPP Western Cape Provincial Division), Adv Sibongile Mzinyathi (DPP Transvaal Provincial Division), Adv Johan Smit, SC (DPP Bophuthatswana Division), Mr Humphrey Lusu (DPP Transkei Division) and Adv Andreas du Toit, SC (Acting DPP Orange Free State Division).

⁷ The number of cases finalised with a guilty verdict, expressed as a percentage of the number of cases finalised with a verdict.



The High Courts have improved their performance during 2006/07.

Service delivery achievements

Court Performance

High Courts: Reduction in appeal backlogs

The aim was to reduce the backlog in High Court appeals, as identified by the Directors of Public Prosecution (DPP's), by 40 per cent. The Transvaal Provincial Division was selected as the pilot site. The first matters were only enrolled for the last week of March 2007, but all 12 appeals enrolled before the end of March were finalised.

High Courts: Conviction rate above target

The High Court average conviction rate of 85.7 per cent exceeded the 85 per cent target, with Bophuthatswana (92 per cent), Cape of Good Hope (93 per cent) and KwaZulu-Natal (91 per cent) being the Provincial Divisions registering exceptional performances. These performances exclude cases convicted in the Regional Courts but referred to the High Court for the passing of sentence (minimum sentence cases). The conviction rate of the Regional Courts was confirmed in 89.5 per cent of the minimum sentence matters referred to the High Court.

High Courts: Drop in number of cases finalised

The High Courts finalised 1 185 criminal trial cases, compared to the 1 374 in the previous financial year and 1 507 cases in 2004/05. The minimum sentence cases referred to the High Courts for sentencing also declined from 1 491 cases to 1 209 cases.

High Courts: Marginal improvement in court hours

Average High Court hours increased by one minute over the previous financial year – from 3h19m to 3h20m. Valuable court time is spent on appeals, motion applications, reviews and bail applications, yet these activities are not currently included in the calculation of actual hours spent in court.

Lower Courts: Reduction in case backlogs

Case backlogs are defined as the number of cases that exceed their targeted maximum cycle time of six months. At the end of March 2007, a total of 35 961 cases (18 per cent of the outstanding roll of 205 369 cases) were backlogged in the Lower Courts, which is a 3.1 per cent reduction on the previous year.

District Courts: backlogs

The NPS aims to ensure that the number of District Court backlog cases does not exceed 10 per cent of the outstanding court roll. At the end of March 2007, the backlog in the District Courts comprised 10 per cent (16 480) of the total of 158 951 outstanding cases. The backlog has been reduced from 11 per cent of the outstanding cases recorded at the end of March 2006.

Figure 2: Status of backlog cases in the Lower Courts

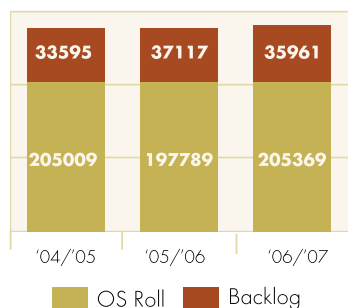
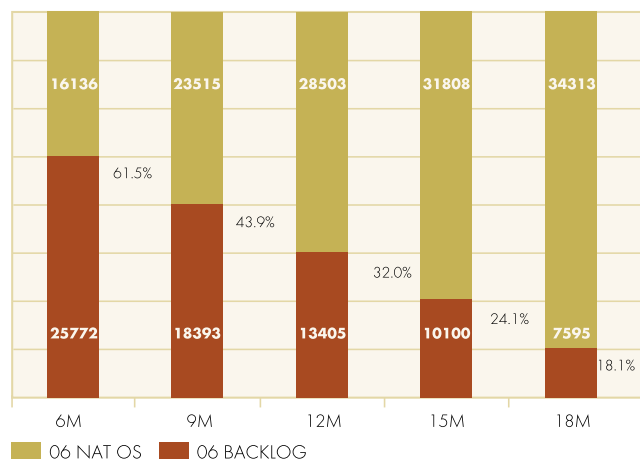


Figure 3: Backlog/outstanding cases ratio



Regional Courts: backlogs

The target is to ensure that the number of Regional Court backlog cases does not exceed 25 per cent of the outstanding court roll. The number of backlog cases remained constant at 43 per cent of the outstanding court roll. An audit conducted on outstanding cases at the end of November 2006 revealed that the case cycle time of six months is not realistic for Regional Court cases. The reason for this is that the complexity of the cases has increased.

Lower Courts: Diversions

The diversion process is a proven judicial method for offering effective justice to first time offenders in less serious matters. It aims to rejoin offenders to the law-abiding community in a manner that discourages them from re-offending. Diversions are also effective in preventing people from being incarcerated for

trivial matters. The number of diverted cases increased by 18.8 per cent compared to the previous year. The Vaalrand Cluster in particular should be commended for diverting 33.3 per cent (14 812) of the total number of cases diverted nationally in this year.

Increased use of alternative dispute resolutions or mechanisms, such as plea bargaining and admission of guilt

Alternative Dispute Resolution (ADR) is an umbrella term used to describe various ways of successfully resolving disputes outside the orthodox judicial process, with the intention of reducing unnecessary trial cases.

Admissions of Guilt

Admission of Guilt gives the accused the option of admitting his/her guilt by means of a predetermined fine. According to figures requested from the DoJ&CD, an increase of 1.6 per cent over the previous year was recorded. This can be ascribed to a focused approach by the NPA to reduce the trial cases in appropriate circumstances, so alleviating the burden of the trial courts.

Plea Bargains

Although many commentators without a deep understanding of the judicial system may view plea-bargaining as an easy way out – particularly for the wealthy – it is in fact a valuable tool for allowing justice to be wielded appropriately and without taking up unnecessary court time. The number of plea-bargain agreements decreased slightly from 1 204 in 2005/06 to 1 139 in this period. In 27.4 per cent of these cases custodial sentences were imposed.

Consistent conviction rates

The District Courts maintained an 87.4 per cent average conviction rate for the third successive year, while the Regional Court conviction rate increased to 72 per cent compared to the 71 per cent in 2005/06 and 70 per cent in 2004/05.

Number of cases finalised

The overall decline in finalised cases is disappointing. However, this result should not be viewed in isolation, as it is partly a consequence of positive results in other parts of the justice equation. The NPS finalised 376 538 cases, constituting a 8.5 per cent decline. (Refer Figure 5).

The District Courts finalised 295 233 verdict cases, an 11 per cent decline on the previous year's performance. However, the number of diverted cases increased by 18.9 per cent, which demonstrates the focused approach of the NPA to reduce the trial cases through alternative means.

The Regional Courts finalised 36 831 verdict cases, representing a 5.8 per cent decline compared to the previous year. In these courts fewer matters were diverted due to the seriousness of offences. The total finalisation rate of 37 266 is therefore only 4.5 per cent below the 39 386 total finalisation rate of 2005/06. The fruits of the national focus on case backlogs are clearly evident.

Improvement in court hours

In 2006/07 the NPA focused on the finalisation rate of a court as opposed to the average court hours per court. However, average court hours still remain a good indicator of the effective utilisation of the courts. In Figure 7, the comparison of the average court hours achieved over the past three financial years is illustrated.

Average hours maintained by the District Courts decreased by 2.6 per cent compared to the previous year, from an average of 4h08m to 4h02m. Alternative measures to reduce trial case matters are a positive means of expediting justice, but it has the effect of reducing recorded court hours. Time spent on alternative methods to reduce trial cases is not recorded as court hours. When the NPS' recommended ratio of two prosecutors per court is attained, recorded court hours will inevitably rise as out-of-court negotiations can be handled by the second prosecutor. Regional Court average hours also fell 2.6 per cent to 3h55m compared to the average of 4h02m achieved during 2005/06.

Figure 4: Diversions in the Lower Courts

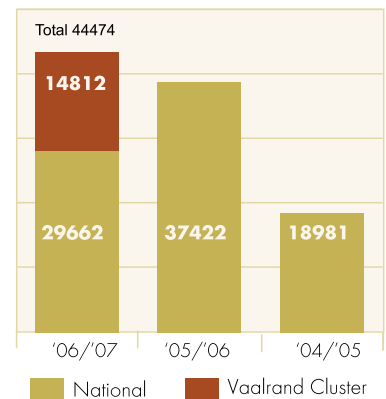


Figure 5: Conviction rates in the Lower Courts

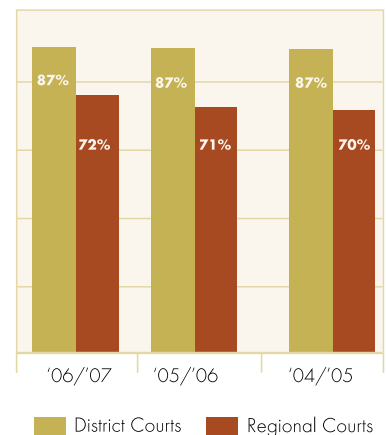


Figure 6: Finalisation rates in the Lower Courts

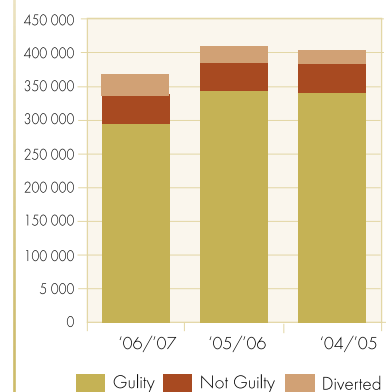
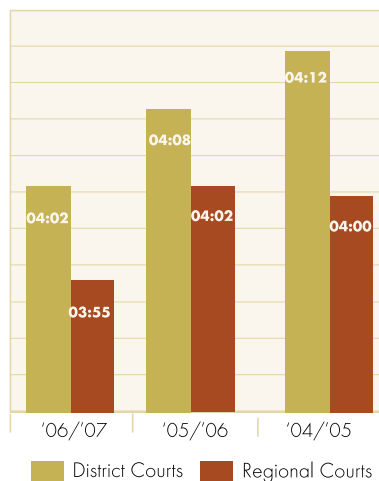




Figure 7: Average court hours in the Lower Courts



Programmes and projects

Community Courts

Community Courts can be defined as courts that utilise an integrated approach to combating crime, improving access to justice and promoting community participation. The NPS is cooperating with the DoJ&CD in rolling out additional community courts. Thus far, 12 Community Courts are fully functional and negotiations are underway for the roll-out of a further 13 courts.

Table 6: Performance of Community Courts as at the end of March 2007

	Total cases finalised	Total new cases received	Conviction rate	With verdict	ADR
2006/07	12 887	27 660	95%	6 914	5 973
2005/06	23 192	43 110	96%	16 753	5 753

Community Prosecutions

The NPA has been exploring problem-solving and proactive means of dealing with crime and resolving conflict by testing alternative law enforcement mechanisms. Ideally, these would involve the community, law enforcement agencies and other partners and stakeholders in crime prevention strategies.

Consequently, the Community Prosecutions Project commenced in March 2006, with the main objective of defining the role of the NPA in crime prevention. This Project has already attracted considerable media attention and its initial results are most promising. During the year of review, nine pilot sites were established, one in each province, and community prosecutors were deployed to explore the NPA's role in crime prevention.

National Backlog Project

The objective of this Project was to reduce the case backlogs in District, Regional and High Courts by 20 per cent. The Project focused on five Regional Courts (Pietermaritzburg, Port Elizabeth, Pretoria, Bellville and Protea) that had the highest percentage of case backlogs. The intervention (in the form of additional courts) commenced on 1 November 2006.

Additional full-time assistance was provided and ex-magistrates, additional prosecutors and legal aid practitioners were brought in to assist. Saturday Court sessions were held at the Protea (Soweto) Regional Courts from 1 November 2006 to 15 February 2007, specifically because of accommodation challenges that made establishing full-time additional courts with additional staff impossible. Since March 2007, a full-time court was established in nearby Lenasia, enabling the Saturday sessions to be terminated.

A further 20 additional regional backlog reduction courts were consequently established at court sites with the highest number of backlog cases⁸.

A comparative analysis has shown that the backlog was reduced by 8.9 per cent at the identified hotspot sites, although the first five roll-out sites show a reduction of 14.6 per cent, against the initial target of 20 per cent (baseline figures of June 2006).

This 20 per cent target was set in accordance with a roll-out of additional courts at all identified hotspot sites, but only 25 per cent of these courts were actually established in this financial year. This, therefore, constitute an excellent performance.

Court and Case Flow Management System

A Case Flow Management (CFM) system has been adopted by the DoJ&CD, the NPA and other role-players in the CJS. Effective CFM will speed up the finalisation of cases and reduce backlogs, though all role-players in the CJS must play their parts. The negative financial impact on all stakeholders of multiple postponements of cases, incarceration of awaiting-trial prisoners and loss of court days can and should be

⁸ Cases on the Regional Court roll for longer than six months.



Guidelines for community prosecutors assist them in establishing relationships with stakeholders.



Through its Community Prosecutions Project, the NPA is working with the community, partners and local government to solve and prevent crimes that affect the local community.

minimised. Lower Court prosecutors are being trained on the CFM system. A digital template was designed and implemented to monitor CFM and to measure the work load of prosecutors, who to a large extent are still sidetracked by non-core duties and record case information manually rather than digitally.

The database assembled from this template is being used to plan the effective allocation of resources, to design interventions when a need is identified, to monitor the overall progress of the courts and to report on outcomes. Detailed analysis of these outcomes will enable the NPS to assess the impact of policies, programmes and projects in conjunction with budgetary requirements.

Organised Crime Initiative

The growing threat of organised crime has led the NPS to agree to a joint anti-organised crime initiative with the AFU and the SAPS. This Project was initiated in August 2006. A structure has been developed and a formal agreement is well under-way.

Joint teams will use the PGI methodology to co-locate specialised, organised crime prosecutors around the country with AFU operatives and investigators from the SAPS Organised Crime Units. The current roster of organised crime cases and investigations has been audited and particular matters prioritised for action.

As a result, the NPS has requested the creation of 68 posts for specialised prosecutors within all provinces (in addition to the 17 posts created in 2006), to be coordinated by the relevant Deputy Directors or senior personnel in their regions.

Specialist Tax Units

Specialist Tax Units (STU's) were created during 2003, but it has taken time, experience and research to determine how these Units should be organised for optimum efficiency.

Despite significant vacancies, the STU's have been a great success and are already making a major impact on tax compliance. A recent successful judgment in the Supreme Court of Appeal demonstrated that tax-related offences are viewed in a serious light by the judiciary.

In 2004/05, 301 accused persons and/or entities were convicted. In the following year (2005/06), successful prosecutions delivered 382 convictions, a 27 per cent increase in productivity. A total of 458 cases were finalised in this financial year. The conviction rate in the STU's is above 95 per cent.

The STU's also play a major role in the NPS's organised crime operations and the South African Revenue Service (SARS) has requested that STU's become more involved at earlier stages of their investigations. Acceding to this request will doubtlessly result in more effective prosecutions, but will also significantly increase the workload of the already overburdened STU's. Immediate expansion of the STU's is needed, as these Units can certainly have an even bigger impact on tax compliance and organised crime.

Project 24/7

Commenced late in 2006, Project 24/7 is examining the increased accessibility of prosecutors and defining the concept of being available 24 hours a day, seven days a week in the current environment. Its mandate and scope are being prepared before the concept is tested.

Project Clean-up

Project Clean-up mandated prosecutors to work on Saturdays on an overtime basis between November 2006 and March 2007 to increase efficiency. It entailed dealing with non-court trial duties such as inquests, case preparations, consultations with witnesses, maintenance matters, appeals, representations, decision dockets and general guidance to investigating officers. The results of Project Clean-up by the end of March 2007 were as follows:

- 1 998 NPS staff participated
- 3 447 dockets were prepared for court and screened
- 2 957 inquests were dealt with
- 839 outstanding files were finalised
- 34 736 decision dockets were dealt with
- 131 consultations with witnesses were conducted
- 156 reports were drafted
- 2 231 administrative tasks were undertaken.



NPA strives to deal efficiently with community crime issues.



The NPA and its partners made good progress in reducing case backlogs.



Court Preparation Programme

The support and assistance rendered by Court Preparation Officials to assist victims of crimes and abused children in particular, continued in this period. There are presently 68 Court Preparation Officials, with an additional 69 to be appointed with effect from 1 March 2007.

A work study has been done to determine areas for expansion and a request submitted to create a further 72 Court Preparation Official posts and five additional Supervisor posts.

Restorative Justice (RJ)

The Restorative Justice Project is exploring the concept of Restorative Justice in the South African context and is establishing best practices to be implemented by the NPA. This Project also seeks to extend the use of diversions as an alternative method of delivering justice. In this period a national conference on RJ was hosted in which prosecutors engaged the concept and application thereof. This has been followed up with regional awareness sessions that commenced in March 2007.

Awaiting Trial Detainees Project

Another strategic project of the NPA for the 2006/07 period, was to reduce the numbers of awaiting-trial detainees, especially detained children and juveniles. This Project's objectives are to develop criteria for filtering detainees according to the severity of charges, in order to effectively manage awaiting-trial children and to participate in relevant provincial structures. The Department of Correctional Services (DCS) confirmed that the number of awaiting trial detainees decreased by 1.3 per cent from the previous year, proving that this NPS initiative is having an impact.

Awaiting-trial Detainee Guidelines were compiled and distributed in April 2007 to assist prosecutors to manage awaiting-trial detainee cases. These Guidelines identify several measures to try to reduce the number of awaiting-trial detainees.

The Guidelines contain tools specifically for managing children and juveniles, such as case-screening, case-review task teams, statistical information sheets, and case cycle times. Guidelines for interaction with other role-players are also provided.

Noteworthy cases

State versus Fanuel Sitakeni Masiya

From the date of this judgment, the common law definition of rape has been extended to include acts of anal penetration of females. Prior to this judgment, anal penetration of a female would have been regarded as indecent assault, which carries a lighter sentence than rape. This judgment acknowledges the seriousness of the violation, and convictions could result in life sentences being imposed. This groundbreaking decision was recently confirmed by the Constitutional Court.

The "Baby Jordan" case

A defenseless baby was murdered by killers contracted by the girlfriend of the biological father of the baby. The three accused, including the girlfriend, were found guilty and sentenced to life imprisonment. The two young offenders were sentenced to 15 years' imprisonment each.

The "Fancy Boys" Case

All the accused (with the exception of the fourth accused) were members of a gang known as the "Fancy Boys". The NPS successfully prosecuted the accused in the High Court under the Prevention of Organised Crime Act (POCA), and they received lengthy sentences of imprisonment. The gang derived its income from dealing in drugs and house robberies. Their modus operandi would be to identify a prospective victim by tracing the victim's personal details through a vehicle ownership query, which they did through contacts at the local traffic department. They exclusively targeted people from affluent suburbs in and around Cape Town. To avoid detection, they would steal motor vehicles as transport to and from house robberies.

The Brett Goldin murder

Well-known actor Brett Goldin, and his friend, Richard Bloom, a fashion designer, were hijacked by a gang

The aspirant prosecutor programme of the NPA ensures that newly deployed prosecutors are fully equipped to deal with the demands of the courts.



Communities and business support the NPA in creating a suitable environment that enables abused children to tell their story to the court.

in Sea Point and later executed. The deceased, Brett Goldin, was about to perform in the play Hamlet, for the Royal Shakespeare Company in the United Kingdom, therefore their murders received international publicity. The accused entered into plea agreements with the state at the last moment and particularly lengthy jail terms were imposed. The NPS' involvement and the outstanding assistance rendered to the family of the deceased by Ms Janene Rheeder, the Regional Court Control Prosecutor at Wynberg Court, resulted in the family nominating her for the Woman of the Year award. Ms Rheeder is currently one of the finalists.

The Rattray murder

David Rattray, an internationally renowned historian who actively promoted battlefield tourism in Zululand, was shot dead by a group of armed men. The case against one of the accused was finalised in the High Court within weeks of the murder. This case highlighted an initiative in KwaZulu-Natal to deliver speedy justice by fast-tracking court cases in which the accused indicate their intention(s) to plead guilty. Several other cases were finalised in this way, including a case that was finalised within a week of the murder. This initiative, which has been ongoing in KwaZulu-Natal for about three years, aims at building confidence in the CJS.

State versus Dr Devandra Perumal

The accused was charged with one count of racketeering and 207 counts of fraud for supplying false medical information on alleged injuries sustained in motor vehicle accidents, which enabled claimants to institute false claims against the Road Accident Fund (RAF). The accused was found guilty on all counts and sentenced to 15 years' imprisonment and a R1 million fine, or 15 years' imprisonment and a further 15 years' imprisonment suspended for five years. This was the first conviction on a count of racketeering involving false claims against the RAF. The wide publicity this judgment received, resulted in other possibly false RAF claims being withdrawn and witnesses coming forward to report further possibly false claims. The RAF has since reported a decline in the numbers of claims submitted.

Stakeholder engagement

The NPS engages with a wide range of stakeholders within and related to the CJS. Prosecutors and state advocates in courts across South Africa engage on a daily basis with magistrates and judges, officials from the DoJ&CD, officers from SAPS, and with the various metropolitan policing forces. The Head of the NPS, Adv M Mpshe, SC, is a member of the joint Exco with the DoJ&CD and its operations sub-committee. The DPP's also engage with the judiciary through the Lower Courts Management Committee (LCMC).

The NPS' Specialised Tax Units work closely with SARS, SABRIC and Business Against Crime (BAC). The Community Prosecutors are developing working relations with various local organisations such as community policing forums. Prosecutors, advocates and court preparation officials interact regularly with NGOs that support victims of crime. Other stakeholders include Mondi, Sappi, Eskom, the petroleum industry, the Consumer Goods Council and others. Environment-focused organisations are also valued stakeholders.

Internationally, the NPS gains insights from, and offers input into, the International Association of Prosecutors (IAP) and the Africa Prosecutors Association (APA).

Social citizenship

Witness Care Centre (Thlokomelo Ya Dipaki)

This initiative is a pilot project of the Hatfield Community Court in partnership with the Tshwane University of Technology. Other partners are the Sunnyside and Brooklyn SAPS stations, NGOs, the City Improvement District Committee and the DoJ&CD. A holistic approach is followed ensuring that witnesses are:

- Kept informed of developments in their cases
- Informed of reasons for decisions made
- Assisted in having concerns, fears and needs identified and addressed.



Overcrowded prisons place a heavy burden on the Department of Correctional Services. The NPA has embarked on a strategic project to contribute to reducing the numbers of awaiting trial detainees.



Effective and efficient prosecutions ensure that justice is delivered.



The NPA works with its partners to seek solutions to collectively enhance the Criminal Justice System.

Assistance to victims of sexual offences

The Eastern Cape Division established mini one-stop sexual trauma centres for sexually abused persons. Its rationale was to extend the specialised services offered at TCC's throughout this region, but on a smaller scale. At each centre a prosecutor is on standby to be called to the trauma centre once a victim has been brought there by the SAPS. The prosecutor is involved from the moment the victim is first seen by the doctor, to ensure that the medical examination report is completed properly and that vital evidence is secured.

Timber theft

In KwaZulu-Natal, paper manufacturers Mondi and Sappi experienced an increase of timber theft from their plantations. The NPS met with the stakeholders and a joint initiative was undertaken. Sappi and Mondi were advised to mark their timber with proper identification marks that would enable a successful investigation and prosecution. The NPS then advised the chipping plant management, truck drivers and the community leaders of the implications of receiving and possessing suspected stolen property. These community leaders in turn informed their communities, and the Zululand Observer (local newspaper) published a warning to would-be offenders. It was reported that the theft of timber stopped completely.

Tourism Initiative

Since the end of 2005, the NPS in the Eastern Cape has had a structure in place with the Provincial Department of Safety and Liaison (DPSL) to prioritise crimes against tourists. The Tourism Board alerts the DPSL of any tourists moving into the more risky areas, and they then inform the SAPS to keep a special lookout over the safety of these tourists. If an offence is committed against a tourist, special measures to fast track the case kick in. The SAPS alerts the NPS of such a case, which ensures that the case is enrolled and evidence from the tourist(s) is immediately led so that the person/persons can continue travelling. During the Grahamstown Annual Art Festival, a dedicated court is established to deal similarly with matters that may arise during the course of the event.

Education of the youth

The NPS has embarked on a community outreach campaign in order to stay in touch with the community and to uplift the youth. Schoolchildren were taken to the Goodwood Prison in groups of 50 and were accompanied by at least two prosecutors, who addressed them on the dangers of drugs and crime in general. In the Vaalrand, children are also educated on drug abuse. In Pretoria, schoolchildren visited the local courts to be educated on crime and crime prevention.

KwaMashu Community Court

Due to its high crime rates, KwaMashu was identified as requiring a community court. Prior to setting up the court, numerous meetings were held with role-players and service providers to get their buy-in, as their support was regarded as vital to its success. Various service providers such as Khulisa, Nicro, Life Line, and government departments including the DSD and DCS, are based at the court so that a holistic approach can be utilised for delivering justice.

Emanang Nokeng Day Care Centre

The prosecutors of Vanderbijlpark and Sebokeng, with the help of Vesco Community Enterprises (VCE), assisted in upgrading and painting the Emanang Nokeng Day Care Centre in Vanderbijlpark.

These initiatives are but a few examples of community projects which prosecutors participate in throughout the country. The prosecutors perform these functions after hours and without any remuneration. They often fund these initiatives themselves. Activities that prosecutors perform include: feeding schemes, adopting a school, hosting Christmas parties for needy or sexually abused children and the elderly, uplifting needy crèches, providing clothing, toys and blankets.

The NPS actively encourages its divisions and individual employees to involve themselves in projects that uplift or support communities and vulnerable groups of people. The number of projects that are voluntarily supported by employees around the country, are proof that the NPA is an organisation filled with people who genuinely care.



The NPA strives to resolve cases justly, effectively and efficiently.

Professional memberships

International Association of Prosecutors

Four NPS prosecutors attended the Annual Conference of the International Association of Prosecutors (IAP) in Paris, France in September 2006. The IAP is non-governmental, non-political and the first and only world organisation for prosecutors. Both the Society of State Advocates and the Prosecutors Union are founding members of the IAP, with the NPS' Adv R Meintjes, SC, serving on the executive committee since 1996 and elected as vice-president (Africa) in 2001. The NPA itself became a member in 2000 and hosted the 5th IAP Conference in Cape Town. Over the years, the NPA has ensured that as many prosecutors as possible are exposed to these most informative annual conferences.

Africa Prosecutors Association

The previous National Director, Mr Bulelani Ngcuka, initiated the establishment of the APA, with its inaugural conference hosted by the NPA in March 2003. Adv M J Mpshe, SC, current head of the NPS, was elected the first president of the Association. The next APA Conference is scheduled to be held in Angola in July 2007.

A forecast for the 2007/08 period

The NPS has a key role to play in a young society characterised by an unequal distribution of wealth, resulting in a large segment of the population living in poverty. While other agencies of government strive to resolve this problem, the NPA must fulfil its responsibilities in making the CJS work in the face of the resulting and unacceptable crime levels.

It is clearly evident that this task is getting bigger and is demanding more resources. The NPS continues to complete a staggering amount of good work, although hampered by a lack of skilled personnel and resources which is reaching critical proportions.

Given the resources, the people and good work by stakeholders in the CJS, the NPS can raise the execution of its duties to new levels of excellence and effectiveness.



Most prosecutors prepare their cases after-hours and go to court to act as lawyers for the people.

Specialised Commercial Crimes Unit (SCCU)

Purpose

The purpose of the SCCU is to effectively investigate and prosecute complex commercial crime cases emanating from the SAPS Commercial Crime Branch. The SCCU presently has offices in Pretoria, Johannesburg, Durban, Port Elizabeth, Cape Town and Bloemfontein. A key element of the SCCU's operations is its PGI methodology, in which a prosecutor is involved in the case from the start of the investigation. Co-location of the SCCU office, the SAPS Commercial Branch and the Commercial Court in common or nearby premises is also critical.

Measurable objectives

A number of the key performance indicators for the SCCU are reflected in Table 7, tracking performance over a five-year period.



Adv Chris Jordaan, SC, Special Director of Public Prosecutions, and Head: SCCU.

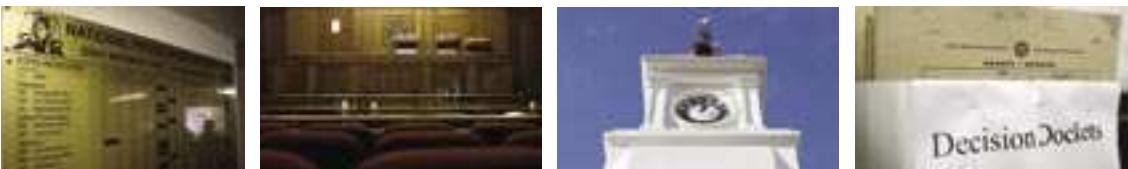


Table 7: SCCU Service Delivery Performance Indicators - 2002/03 to 2006/07

Specialised Commercial Crime								
	2002/03	2003/04	2004/05	2005/06	2006/07	Change over previous year	Change over period	Notes
Number of courts	2	2	4	4	7	70.8%	241.7%	Pretoria (2), Johannesburg(3), Durban(2), PE(1), Bloemfontein(1), Cape Town(1)
Convictions	283	491	653	857	1 515	76.8%	435.3%	Significant increase as new courts become fully operational
Conviction Rate	95.9%	95.0%	94.8%	94.6%	95.6%	1.0%	-0.3%	
Cases enrolled for trial	524	625	935	1 431	1 844	28.9%	251.9%	Significant increase as new courts become fully operational
Cases finalised	1 315	1 357	1 772	2 271	3 574	57.4%	158.2%	

Service delivery achievements

Several major cases were successfully prosecuted, resulting in convictions and long prison sentences. These high-profile cases include the convictions of prominent business people, NPA personnel, senior police officials and other civil servants. Sentences of direct imprisonment were imposed in 134 cases. The SCCU maintained a high conviction rate of 95.6 per cent, with 3 574 cases finalised, which is a satisfying 36 per cent above the previous financial year. Court hours for SCCU cases averaged 4h34 minutes per day. In terms of its Customer Charter, the SCCU met its target of ensuring that at least 60 per cent of all new customers must be given the contact details of the prosecutor assigned to their case(s), plus a copy of the Customer Charter and a feedback form on customer satisfaction. The SCCU Customer Charter was distributed to all relevant community forums. The quality of the SCCU's service rendered to the community remains outstanding, with:

- convictions averaging an exemplary 95.96 per cent
- 3 574 matters finalised, an increase of 57.4 per cent over the previous year
- a satisfactory court case hours rate of 4h34m per working day
- a significant 31 per cent increase in the use of section 105A of the Criminal Procedure Act, 1977 guilty pleas, otherwise known as plea-bargaining. This healthy rise can be attributed to the high quality of prosecution-guided investigations in the SCCU.

The roll-out of the SCCU to Cape Town and Bloemfontein has largely been finalised, with just the Bloemfontein Commercial Court still to be commissioned. A specialised prosecutor was made available at the East London Magistrate's Court to extend the accessibility of the SCCU in the Eastern Cape.

Noteworthy cases

TP Cornwell Tshavunghwa, a former Deputy Director of Public Prosecutions at the DSO, was convicted of committing fraud, perjury and driving under the influence of alcohol during the course of his duties. He was sentenced to seven years' imprisonment.

GA Keet, a former Magistrate, was convicted of 28 counts of corruption and sentenced to eight years' imprisonment.

B du Preez, a former SAPS Superintendent, was convicted of theft of R4.6 million and sentenced to eight years' imprisonment.

SK O'Reilly was convicted of 28 counts of fraud and sentenced to 15 years' imprisonment.

M Momberg was convicted of fraud and sentenced to 20 years' imprisonment.

M Kamara was convicted of black dollar fraud and sentenced to seven years' imprisonment.

R. Rwexana was convicted of fraud in connection with RDP housing and sentenced to six years, of which two years were suspended.

VB Arumugam and three others were convicted on charges of fraud relating to RAF touting and sentenced to 12 years, of which six years were suspended.

S Ghassan was convicted of offences relating to the Counterfeit Goods Act and sentenced to five years' imprisonment.

The trial of P Ghavalas, who is charged with pension fund fraud involving R400 million rand, is scheduled for October 2007.

The RAF project is still running successfully, with numerous cases being prosecuted.

A project with the South African Federation against Counterfeit Theft (SAFACT) is now fully underway, with two contracted prosecutors being appointed to the campaign.

Projects

The SCCU plays a leading role in developing the PGI methodology emanating from the NPA's Strategy 2020. Adv SC Jordaan, SC, the Head of the SCCU, is the leader of this Project, which is designed to improve the quality of investigations by ensuring earlier and closer cooperation between prosecutors and investigators. This Project is already 46 per cent completed, which is considerably above the 33 per cent target set for this financial year.

Stakeholder engagement

The SCCU's mandate of prosecuting commercial crime, requires constant cooperation with the SAPS Commercial Branch, the DoJ&CD and the AFU. Other regular stakeholders include the SABRIC, BAC the SA Reserve Bank, SAFACT and the RAF.

Social citizenship

All offices in the SCCU have taken steps to engage with and support the community, as the examples below demonstrate:

- The SCCU's Port Elizabeth office partnered with the Department of Welfare, the SAPS and several local businesses to donate food and gifts to needy street children. This office also treated a group of aids orphans to movies and a lunch.
- The Durban office has adopted the Msunduzi Aids Orphanage as its community project and provides food and other assistance each month.

A forecast for the 2007/08 period

The recent implementation of the Prevention and Combating of Corrupt Activities Act, 2004 which replaced the previous and unwieldy Corruption Act of 1992, is a key instrument in the state's battle against corruption.

With economic crimes growing as a percentage of overall crime statistics, an increased flow of corruption-related cases to the SCCU is expected, which will require close cooperation with the AFU and the SIU.

As its work-load increases, it is envisaged that the SCCU will need specialised support posts to raise performance capacity. The PGI initiative of the NPA, in accordance with its Strategy 2020, will definitely impact on SCCU activities. As this project moves closer to implementation, it will demand more resources and additional specific posts for its full implementation phase.

Average prosecutor case loads are expected to rise, especially as case lead times are not decreasing. The case load per prosecutor is alarmingly high in Pretoria (64 cases), Johannesburg (108 cases), Durban (93 cases) and Port Elizabeth (69 cases).

A dedicated court needs to be established in Bloemfontein soon, and a third commercial court is probably required in Pretoria. Additional magistrates experienced in commercial cases are also needed in Cape Town, Durban, Port Elizabeth and Bloemfontein.



The management team of the SCCU: From left to right (front row), Adv Alicinia Coetzee (Regional Head Free State), Adv Glynnis Breytenbach (Regional Head Gauteng), Michelle Ramoorthy (DDPP Head Office), Adv Malini Govender (Regional Head Western Cape). (Back row) Adv Hansraj Cheetan Lal (Regional Head KZN), Adv Theunis Goosen (Regional Head Eastern Cape) and Adv Chris Jordaan, SC, (Head: SCCU).



Commercial courts located in common premises with the SCCU offices ensure easy access to the investigators and prosecutors.



Adv Anton Ackerman, SC, Special Director of Public Prosecutions, and Head: PCLU.

Priority Crimes Litigation Unit (PCLU)

Purpose

The PCLU was created by Presidential proclamation to prosecute crimes that impact on state security. The PCLU is grouped with other specialist units (SCCU, SOCA, and WPU) in the NPA's National Specialist Services Division (NSSD), which is headed by Deputy National Director of Public Prosecutions, Dr Silas Ramaite, SC. The PCLU is mandated to manage investigations and prosecutions relating to the following alleged contraventions:

- The Non-Proliferation of Weapons of Mass Destruction Act, 1993 and related nuclear legislation. This mandate includes all chemical, biological and nuclear proliferation matters.
- The National Conventional Arms Control Act, 2002.
- Mercenary and related activities.
- The Rome Statute of the International Criminal Court.
- National and International Terrorism.
- Matters emanating from the TRC where persons were refused or failed to apply for amnesty.
- Investigations of Missing Persons (persons reported as missing in the final report of the TRC).

Service delivery achievements

In this financial period, the PCLU participated commendably in international community initiatives to combat terrorism and related crimes. The unit regularly applied PGI methodologies in most investigations, and continuously informed stakeholders of developments affecting their interests. Pro-active measures were taken to protect witnesses and sensitive information.

Noteworthy cases and projects

Nuclear non-proliferation

The PCLU is currently working on proposed amendments to the Non-Proliferation of Weapons of Mass Destruction Act, 1993 and the Nuclear Energy Act, 1999.

State versus Messrs Geiges, Wisser and Krisch Engineering

In 2003 the interception of a cargo ship en route to Libya, carrying sensitive uranium-enrichment equipment, resulted in the exposure of an international nuclear weapons syndicate headed by prominent Pakistani scientist Abdul Qadeer Khan. The consequent investigation led to several countries, including South Africa. In September 2004, a joint PCLU/SAPS raid on an engineering works in Vanderbijlpark uncovered integral parts of a weapons-grade uranium enrichment plant packed in containers ready for shipment to Libya. Messrs Meyer, Geiges and Wisser were arrested and charged, but Meyer consequently turned state witness and the charges against him were withdrawn. The case is scheduled to commence in September 2007 in the Pretoria High Court. The PCLU's preparations for the case have been extremely time and resource-consuming, with the state needing to call over 250 local and foreign witnesses and to place approximately 20 000 pages of documentary evidence before the Court. This complex case is set to break new legal ground in South African and international law. The PCLU has helped other countries to investigate branches of the syndicate operating in their territories. Rulings and the judgment delivered in South Africa will probably have major legal ramifications for international law and consequent legal proceedings in the other involved nations.

Theft at the Nuclear Energy Corporation of South Africa (Necsa)

Several thefts of redundant and inoperable nuclear equipment occurred at Necsa's Pelindaba premises. It was evident that insiders were involved, but after carefully scrutinising the available evidence, the Unit decided that insufficient evidence existed to justify a prosecution against any of the suspects. The PCLU also advised on a task force to thwart further thefts, which has apparently solved this problem.

Further investigations being overseen by the PCLU into nuclear non-proliferation issues are at a very advanced stage and are too sensitive to be reported on at this time.

Non-proliferation of weapons of mass destruction (WMD)

Top-Cape Technology/Asher Karni

In 2004, the US Attorney General commended the PCLU for assisting in securing the conviction of Israeli citizen, Asher Karni, on charges relating to trafficking in trigger spark caps used in nuclear weapons. The US Attorney General advised that Karni was willing to cooperate with South African law enforcement authorities in bringing other role-players to book.

Conference in The Hague and lectures

The PCLU was invited to form part of the South African delegation to an international conference on chemical and biological weapons in The Hague, Netherlands. This proved an invaluable opportunity to establish contacts with international non-proliferation bodies and renew contact with the International Criminal Court.

Several other matters were referred to the PCLU for consideration, but the circumstances and evidence were such that the Unit declined to prosecute.

Mercenary Activity

The PCLU furnished input regarding amendment to the Prohibition of Mercenary Activities and Regulations of Certain Activities in Country of Armed Conflict Bill (B42B-2005).

Terrorism

The PCLU's activities in this area of responsibility included the following:

- attending a UN Counter-Terrorism Conference in Namibia and a conference in Midrand on Combating Terrorism in Africa
- drafting a legal opinion to the United Nations Office on Drugs and Crime (UNODC), through the Department of Foreign Affairs (DFA), on whether South Africa has a central authority in place to combat terrorism
- representing the NPA at a Counter-Terrorism Working Group chaired by the DFA.

Rome Statute

In this period the PCLU:

- drafted a legal opinion regarding South Africa's jurisdiction in taking over cases from the Rwandan International Criminal Tribunal
- rendered assistance to the Belgian Government regarding the murder of Belgian peacekeepers in Rwanda during 1994
- received a complaint regarding the deportation of a Pakistani national that may constitute an offence in terms of the Rome Statute.

Civil Litigation

Singh v The Minister for Justice and Constitutional Development and others

The PCLU submitted a legal opinion to senior counsel that had a major influence on reformulating the legal requirements for obtaining a nolle prosequi certificate. This ruling also probably saved the NPA a considerable amount of time and money on court proceedings that were no longer necessary.

Mutual Legal Assistance

S v Geiges, Wisser & Krisch Engineering (Pty) Ltd

This Unit submitted applications for MLA to the USA, UK, Spain, Switzerland, Malaysia and France. The PCLU has been commended on the quality of its applications and issued the requests, which were all accepted by the respective foreign Justice Ministries without query. Of interest is that the Swiss and German



Dr Silas Ramiate, Deputy National Director of Public Prosecutions, and Head: NSSD (SCCU, SOCA, WPU and PCLU).



governments had been unsuccessful in their earlier efforts to obtain assistance from Malaysia, which approved South Africa's request without reservation, despite the absence of a bilateral treaty.

Failed coup d'état on Equatorial Guinea

Germany requested assistance relating to a witness in South Africa who could confirm the torture of a German citizen while in custody in Equatorial Guinea. The PCLU traced this person and two other persons who witnessed the incident, and then assisted the German legal authorities to compile a request for this evidence to be used formally. Following a London meeting between UK authorities and the PCLU head, the British authorities have requested South African assistance to prosecute UK citizens who took part in the attempted coup d'état. The PCLU has recommended that this assistance be provided and Ministerial approval is awaited. The PCLU assisted the UK authorities on an informal basis during a visit to South Africa.

Contribution to Crime Reduction Strategies

Non-Proliferation Council

The PCLU regularly advised the Chairperson of the Non-Proliferation Council on proliferation threats and requested the NIA to take proactive steps to combat these.

Mozambique

The SAPS sought the PCLU's advice on the issue of arresting Mozambican criminals who were in hiding in Gauteng. At short notice, the PCLU researched the extradition treaties between Mozambique and South Africa, and also advised SAPS on possibly linking these criminals to local crimes, pending the lodging of extradition papers by the Mozambique Justice Ministry.

Legal Research and Opinions

The PCLU regularly provided legal research and opinions to other NPA units on request. The PCLU delivered a presentation to the international Nuclear Suppliers Group (NSG) on loopholes in international legislation regulating nuclear technology. A senior member of the NSG indicated in writing that the presentation offered invaluable insights and would influence the amending of international nuclear control regulations.

Missing Persons Task Team

Ten exhumations were performed and seven missing persons positively identified through DNA testing, much to the relief of their surviving families and friends. In the previous reporting year, the Minister of Justice and Constitutional Development appointed an interdepartmental team, which included the Missing Persons Task Team, to develop a national exhumations policy for approval at Cabinet level. Although investigations into missing persons are ongoing and continue to uncover vital new evidence, actual exhumations were halted until this new policy could be finalised. In this period, an additional investigator joined the Missing Persons Task Team to enhance its investigative capacity. Six of the ten exhumations were conducted in Mafikeng, three in Thohoyandou and one in Mamelodi. Seven identifications were completed through the use of DNA testing.

Stakeholder engagement

The PCLU regularly provided assistance and advice to the:

- Office of the NDPP and the DoJ&CD on techno-legal matters relating to international mutual legal assistance
- DFA with the correct formulation of notes verbales and on techno-legal matters relating to international mutual legal assistance
- Czech Republic, regarding its investigation into an international arms smuggling network
- UK and Switzerland on two occasions.

The Unit further regularly engaged with a broad range of South African and international organisations, which include:

- The International Atomic Energy Agency (IAEA)
- Various national government departments
- SARS, SAPS and all South African intelligence agencies
- International intelligence agencies and special services such as the CIA, FBI and MI6
- Prosecutorial authorities from around the world
- The US Department of Energy
- The Non-Proliferation of Weapons of Mass Destruction Council
- The UK and USA customs authorities
- The National Conventional Arms Control Council (NCACC)
- The International Criminal Court (ICC)
- The Financial Action Task Force (FATF)
- UNODC.

Social Citizenship

The PCLU is too small and specialised to get involved in hands-on community initiatives, but the impact of its work on the national and international community is immense. The PCLU's mandate and work are designed to keep South African society and the broader global community safe from serious threats such as unlawful nuclear technology, weapons of mass destruction, international terrorism and arms smuggling. It is also helping to heal the wounds of South Africa's apartheid past through its ground-breaking work on missing persons and the consequences of the TRC process. The PCLU continued to be a world leader in the performance of its mandate to protect mankind from itself.

A forecast for the 2008/09 period

Besides any new cases arising from its mandate, the PCLU already has a lengthy roster of ongoing cases and activities that are straining its present capacity to the hilt. It is clearly evident that the PCLU needs to create new prosecutorial, research and support posts, and be allocated larger premises and operational equipment, to continue to professionally handle its usually high profile responsibilities.

The *State versus Geiges, Wisser and Krisch Engineering* trial, which is likely to commence in the 2007/08 reporting year, will undoubtedly draw keen interest from nations and judiciaries around the world due to its probable impact on non-proliferation cases pending in other countries.

Ongoing post-TRC investigations and exhumations of missing persons from the pre-1994 era have attracted – and will in all likelihood continue to attract – considerable public interest. The PCLU will continue its investigations and make recommendations in accordance with its mandate in this area.

Sexual Offences and Community Affairs Unit (SOCA)

Purpose

SOCA was established in 1999 through a Presidential Proclamation in terms of section 13(1) (c) of the NPA Act. SOCA focuses primarily on issues involving the victimisation of women and children with emphasis on the following matters:

- Formulating policy on capacity building, sensitisation and scientific functional training for the prosecution of sexual offences, domestic violence and maintenance cases, as well as managing young offenders.
- Coordinating the establishment of Specialised Sexual Offences Courts for adjudicating sexual offences.
- Facilitating and formulating research techniques for prosecuting sexual offences, domestic violence and maintenance cases, as well as for managing young offenders.



Adv Thoko Majokweni, Special Director of Public Prosecutions, and Head: SOCA.



- Developing and implementing community awareness programmes and plans for the participation of NGOs in processes and procedures aimed at preventing or containing sexual offences, domestic violence, maintenance issues and the management of young offenders.
- Developing training programmes and mechanisms for the prosecution of sexual offences, domestic violence and maintenance cases, as well as for managing young offenders.

Embedded in this proclamation is a regard for human rights underpinned by a problem-solving approach to justice, which is performed through the SOCA's four operational sections. These are the:

- Sexual Offences Section, which deals with relevant common law offences and offences in terms of the Sexual Offences Act, 1957 and related legislation such as the Films and Publications Act; Criminal Procedure Act, Child Justice Bill, Sexual Offences Bill.
- Domestic Violence Section, which deals with offences committed in terms of the Domestic Violence Act, 1998 and other relevant legislation, aims to eliminate or minimise domestic victimisation.
- Maintenance Section, which deals with civil and criminal maintenance matters in terms of the Maintenance Act, 1998 and other relevant legislation, and intends to ensure access to maintenance for any person legally entitled to it, and to minimise the feminisation of poverty.
- Child Justice Section, which deals with young offender management as captured in the Child Justice Bill, 2002, and other relevant legislation, to ultimately ensure fair and rehabilitative management of child offenders.

The SOCA's goals and values are based on the principle that all people should live in freedom and security. The Unit has adopted a goal-orientated and project-based approach to achieving its objectives, and is achieving significant progress in combating violence against women and children, while also reducing secondary victimisation. 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, so that all groups in society can make their meaningful and unhindered contributions to society.

Measurable objectives

A number of the key performance indicators for the SOCA and NPS in dealing with the prosecution of cases involving women and children are reflected in Table 8, tracking performance over a five-year period.

Table 8: SOCA/NPS Service Delivery Performance Indicators - 2002/03 to 2006/07

Sexual Offences - NPS and SOCA								
	2002/03	2003/04	2004/05	2005/06	2006/07	Change over previous year	Change over period	Notes
Number of dedicated courts	22	41	53	67	59	-12.4%	166.7%	Due to dedicated prosecutors plus better victim service. About 20% -26% of cases in Regional Courts are sexual offences. 50% of victims are younger than 16. About 25 more courts are required.
Conviction rate: Dedicated Courts	64%	61%	63%	70%	65%	-7.3%	1.4%	Against below 50% in other Regional Courts (last year 42%).
Number of TCC's	3	5	5	10	10	0.0%	233.3%	Integration of services from all departments brings conviction rates about.
Conviction rate: TCC's	74%	82%	80%	80%	83%	4.2%	12.6%	95% at well-established TCC in Wynberg.

Service delivery achievements

The UN General Assembly has recognised the "Thuthuzela⁹ Model" of multidisciplinary care centres as a "world best practice model" in the field of Gender Violence Management and Response.

SOCA developed and launched its "365 National Action Plan (NAP) on No Violence against Women and Children" on 8 March 2007 (the internationally recognised Women's Day). NAP is aimed at streamlining initiatives between government departments (provincial and local), the private sector and NGOs. For this purpose a calendar of national and provincial events was endorsed by the Deputy President and the Deputy Minister of Provincial and Local Government (DPLG), before being distributed to all stakeholders.

SOCA hosted a consultative session with Southern and Eastern African governments and NGOs regarding violence against children in these regions, with the results also presented to the European Union.

The establishment of new Thuthuzela Core Centres (TCC's) remains on track in accordance with the roll-out roadmap. SOCA has also developed an auditing tool to determine service delivery levels at the TCC's. Planning for national escalation of TCC's has been completed. The location of roll-out of these TCC's was guided by gender violence crime statistics and reflected in the footprint and road map documents developed by the Unit. SOCA intends to open an additional five TCC's by March 2008. Processes for these TCC's were mapped according to the blueprint document and other relevant documentation.

A Programme Steering Committee for the Trafficking in Persons Inter-sectoral Task Team was established to monitor, evaluate and provide strategic guidance for task team activities. This initiative was designed to develop an integrated strategy on trafficking in persons.

The following initiatives were implemented in accordance with the Maintenance Project of the NPA:

- A project to investigate and offer solutions to streamline and improve maintenance service delivery
- Design and development of a new brochure on maintenance
- Compilation of a baseline research report on the "current status of maintenance management"
- The appointment of maintenance investigators (45 in North West and Limpopo) and maintenance officers (34 in Limpopo and Northern Cape) in conjunction with the DoJ&CD
- The design of processes for Civil and Criminal procedures in line with the Maintenance Act
- The establishment of Maintenance Forums in all nine provinces.

⁹ Thuthuzela means "comfort" in Xhosa.



Table 9 records maintenance enquiries finalised between January and March 2007 in the listed provinces.

Table 9: Maintenance enquiries finalised

Province	Enquiries dealt with	Enquiries finalised
Eastern Cape	2 102	918
KwaZulu-Natal	4 112	2 126
North West	6 087	5 041
Northern Cape	1 710	998
Mpumalanga	2 268	1 226
TOTAL*	16 279	10 309

*Enquiries handled by 29 maintenance prosecutors.

Programmes, Projects and Training

SOCA has several national initiatives that are supported by international donor funding. Denmark confirmed in March 2007 that funding was approved for initiatives focusing on gender-based violence in terms of the Anti-Rape Strategy Framework, with emphasis on prevention, response and support. Projects currently under way include the following:

Thuthuzela Care Centres

A study by the Bureau of Justice Assistance that commenced in 2000 eventually resulted in an Interdepartmental Management Team (IDMT), chaired by SOCA, which developed a national anti-rape strategy. The result was 54 Sexual Offences Courts around South Africa, with 15 more scheduled for each year. These specialised courts are designed to ensure that women and children, both as complainants and witnesses, feel safe in the court environment. Complainants and witnesses are taken to comfortable and victim-friendly waiting areas where they are not exposed to accused persons.

These courts are supported by TCC's that provide medication and counselling to rape survivors. These multi-disciplinary care centres streamline the process of reporting, care-giving, investigation of cases and the subsequent prosecution of the case. The TCC concept has proved to be a world leader and enables the integrity of the evidence to be preserved, with a view to securing a conviction. A victim-centred approach is adopted, with reporting and management of rape cases removed from police stations to a victim-friendly centre situated within a hospital. Rape survivors have 24 hours access to assistance from medical staff, investigating officers, prosecutors, counsellors and emergency support services.

TCC's are linked to sexual offences courts, with dedicated prosecutors, closed circuit television (CCTV) systems for children to testify, intermediaries for children, counselling services and separate waiting areas for complainants.

Project Ndabezitha

Project Ndabezitha, launched in March 2007, in partnership with the DoJ&CD and National House of Traditional Leaders, focuses on Restorative Justice as a viable option in tackling domestic violence cases in rural communities. Unit standards for SAQA-accredited Integrated Domestic Violence Training Modules were assessed in terms of providing a standardised and accredited training curriculum.

Project Ndabezitha was inspired by the realisation that criminal prosecution is not the most effective intervention for all reported cases of domestic violence. This Project is empowering traditional leaders to deal with domestic violence in rural areas. The Project:

- takes justice to communities

- decreases backlogs in domestic violence cases
- reduces secondary victimisation
- introduces early intervention.

Domestic Violence Management Sites

This Project was conceptualised to provide a structured and multi-disciplinary response to domestic violence cases. Critical components of this Project are the following:

- Early intervention services
- ADR and Conflict Management services
- Domestic violence
- Court Services¹⁰
- Life skills and education capacitating.

This project aims to provide early and effective interventions to incidents of domestic violence. The needs of the victims are prioritised and attended to in an environment that offers integrated services under one roof. The intention is to restore family peace, love and unity, especially for first offenders.

Child Justice

A growing concern is the involvement of younger children in criminal activities. SOCA commissioned the Institute for Security Studies (ISS) to report on child offending in South Africa, and how diversionary methods can be deployed in this area. SOCA has to date trained 156 delegates on the following topics to ensure uniform and effective implementation of diversion practices:

- National Policy on Diversion
- Generic Trial Processes, including preliminary enquiries on diversion
- Minimum Standards on Diversion
- Rehabilitation programmes
- Restorative Justice principles
- Applicable Case Law
- Children’s Act, 2005, principles of the Child Justice Bill and Children’s Amendment Bill.

As a key participant in the Inter-sectoral Child Justice Committee (ISCCJ), SOCA has designed a national strategy to reduce the number of awaiting-trial children through case review teams. This strategy is part of the NPA Awaiting Trial Detainees (ATD) Project, and was initially implemented in the Western Cape and KwaZulu-Natal. The ATD Project is currently being rolled out to other provinces, starting in the Eastern Cape and Gauteng. Statistics received (Table 10) from the DCS show that the number of awaiting-trial children began dropping as from April 2007.

Table 10: Status of awaiting-trial children

Period (2007)	Total Number of Children
31 January	1 089
28 February	1 081
14 March	1 091
4 April	1 039



Community involvement and education are critical factors in preventing crime.



Children are assisted and supported when they go to court and the environment is adapted to be friendly and inviting.

¹⁰ Court Services entail Domestic Violence Criminal and Civil Courts only.



Human Trafficking

Following a seminar in 2003, a Trafficking in Persons Inter-sectoral Task Team chaired and administered by SOCA was mandated to define and implement a coordinated strategy for dealing with human trafficking. The consequent six pillar national strategy on trafficking in persons includes the following aspects:

- Information
- Capacity building and development
- Victim assistance and integration
- Policy and legislation development
- Liaison and consultation
- Monitoring and evaluation.

SOCA has since hosted a conference on human trafficking in which South Africa's neighbouring countries were invited to develop a regional solution for this scourge through operational planning and coordinated legislation.

Maintenance

Project Clean-up was initiated to tackle Maintenance Courts that are not effectively enforcing and implementing all provisions of the Maintenance Act, 1998. Problems include perceptions that courts are not prioritising maintenance cases, inefficient court administrative systems, insufficiently skilled court personnel, reluctance of employers to enforce court orders, and a general lack of understanding of the Maintenance Act by the members of public. This Project examined problems, reviewed existing practices and suggested ways and means of effectively implementing justice in terms of the Maintenance Act.



Women patiently wait to lodge their complaint for the non-payment of maintenance.

Training

The multidisciplinary training of role-players dealing with offences against women and children is an essential component of SOCA's service delivery. In this year, a total of 651 people were trained on matters relating to child pornography and child sex offenders, young offender management, sexual harassment policy, maintenance and child victims. Traditional leaders (Project Ndabezitha) and prosecutors were trained on the Integrated Domestic Violence Manual.

Table 11: SOCA training conducted

Course	Number of Course Modules	Total Trained
Child pornography prosecutions training	1	84 delegates
Young offender management training	6	156 delegates
Sexual harassment policy training	6	156 delegates
Maintenance Implementation Act training	1	64 maintenance prosecutors
Advanced skills on dealing with child victims and prosecuting of child sex offender training	1	82 delegates
Project Ndabezitha and integrated domestic violence training	4	109 delegates



Domestic violence disrupts the home environment and can have a negative impact on children witnessing this.

Stakeholder engagement

SOCA works closely with all fellow CJS stakeholders, and the community aspects of its mandate, its care centres and public awareness campaigns result in working relations with many NGOs. As a primary funder of the TCC's, the government of Denmark is a key stakeholder, while the NGOs will include organisations that work against gender-based violence and support abused women and children.

Social citizenship

SOCA has embarked on public awareness campaigns to increase the reporting rates of rape and sexual crimes. Younger people are especially targeted by these campaigns through initiatives such as the Schools Project and Adopt a School Project, which are conducted in partnership with the Department of Education (DoE). These Projects are designed to empower women by teaching them how to react to unlawful advances and how to access the support of SOCA and associated organisations.

Forecast for the 2007/08 Period

SOCA's strategy for the immediate years ahead is already well mapped out. The Unit must maintain the roll-out of further Sexual Offences Courts and TCCs, while building capacity in its areas of responsibility through training, filling new posts and launching public awareness programmes.



A great focus is placed on children as the future of the country.

Sub-programme 2: Witness Protection Programme

Introduction

This Sub-programme deals with the service delivery operations of the Witness Protection Unit (WPU).

Measurable objectives

The measurable objective for this Sub-programme, as contained in the ENE framework for this period, is to ensure:

- Effective and efficient support services to vulnerable and intimidated witnesses.

This objective is pursued by the WPU. In order to enhance focus and service delivery, the following additional annual measurable objectives for service delivery were built into the business plan of the WPU¹¹:

- Contribute to crime prevention and community justice
- Contribute to better crime investigations
- Manage WPU cases effectively and efficiently.

Service delivery objectives and indicators

The delivery objectives and indicators relating to this Sub-programme, and progress reporting on these indicators are reflected in Table 12.

Table 12: Sub-programme 2 - ENE Service Delivery Objectives and Indicators

Sub-programme	Output	Measure/ Indicator	Target	Actual	Reasons for deviation
Witness Protection Programme	Effective and efficient support services to vulnerable and intimidated witnesses	Number of witnesses or family members assassinated or harmed while on the programme	Zero witnesses or family members	Zero harmed	
		Number of witnesses abandoning the programme	Zero witnesses	3% of witnesses	Witnesses voluntarily walk off the program as a result of having interactions with the accused. On average 67% of those walking off, reapply when their lives are endangered.

¹¹ Annexure B: Performance Information Reporting on Delivery 2006/07. Table 23 of this annexure provides detailed information and progress reporting on the deliverables and activities identified to attain these objectives.



Witness Protection Unit (WPU)

Purpose

In terms of the Witness Protection Act, 1998 the purpose of the WPU is to provide secure protection, support and related services to intimidated, vulnerable witnesses and related persons in judicial proceedings. Protection, support and related services are provided so that witnesses - without fear of harm to themselves, their families and other related persons – can provide essential evidence. In terms of the Act, the WPU is an independent and covert agency that does not have prosecution or police functions, but offers its services to all partners in the CJS. Witnesses and related persons requiring protection and support services are referred through partners such as the SAPS, NPA, other law enforcement agencies and international prosecution authorities, special courts and tribunals. A key principle is that the WPU safeguards witnesses without coaching them, thus ensuring the integrity of the testimony they can provide.

Highlights of Achievements

Internationally, the WPU is recognised as being in the top five in the world. No witnesses or related persons on the programme have been threatened, harmed or assassinated for the past six years. The reduction of grievances from witnesses on the programme dropped from 90 per cent in 2001/02 to a mere two per cent in 2006/07. The reduction in the number of voluntary walk-offs from the programme dropped from 40 per cent in 2001/02, to three per cent in 2006/07. The conviction rate of cases with witnesses on the programme increased from 80 per cent in 2005/06 to 90 per cent in 2006/07.

A number of the key performance indicators for the WPU in dealing with effective and efficient support services for vulnerable and intimidated witnesses are reflected in Table 13, tracking performance over a five-year period.

Table 13: WPU Service Delivery performance indicators - 2002/03 to 2006/07

Witness Protection Unit								
		2003/04	2004/05	2005/06	2006/07	Change over previous year	Change over period	Notes
Witnesses	375	422	247	220	229	4.1%	-38.9%	Had to cut post trial care for budget reasons
Total including families	735	865	499	488	497	1.8%	-32.4%	Had to cut post trial care for budget reasons
Conviction rate in cases involving WPU			85%	95%	95%	0.0%	0.0%	New indicator
Jail terms from evidence (years)	2 626	2 542	3 227	1 923	3 621	88.3%	37.9%	Consolidated
Life terms from evidence (years)	72	128	159	383	542	41.5%	652.8%	Consolidated
Witnesses harmed	0	0	0	0	0	0.0%	0.0%	Seven years in a row
Walking off program (%)	30%	1%	6%	3%	3%	7.7%	-90.0%	2001 was 40%
Formal grievances laid (%)	40%	10%	3%	1%	2%	100.0%	-95.0%	Reduced from 90% in 01/02
Cycle time (months)	54	42	30	30	24	-20.0%	-55.6%	2001 was five years

Setting international standards

Redesign, transformation and modernisation of the WPU continued, ensuring that it retains its prestigious position as a world leader in witness protection. The WPU's best practices philosophy has caused it to be consistently acclaimed as among the top five witness protection agencies in the world.

Service delivery achievements

The WPU offers its services only to vulnerable, intimidated witnesses and related persons in judicial proceedings, which are not restricted to criminal proceedings. On 31 March 2007, the WPU had 229 witnesses and 268 related persons on the programme. Not a single deserving witness or related person was refused assistance.

The programme has shown considerable improvement yearly over the past six years as described in its discussion on highlights of achievements.

The primary challenges when providing witness protection services, are maintaining the independent and covert status of the Unit in terms of its mandate, security, and dealing with capacity and budget constraints. In practice, growing numbers of protected people cannot return to their homes and previous lives after testimony, as they remain in real danger. This reality and other inescapable factors have inflated witness protection expenditure. Nevertheless, in this financial year the WPU remained within budget and recorded a projected saving of R1.6 million. The Unit's budget allocation for the period was R63.2 million, with approximately 70 per cent of expenditure being directly related to protection, support services and related services in terms of the mandate. There were no virements due to the budget saving and no roll-overs were requested.

Programmes and projects

The WPU ensures that it stays abreast of – and even leads – the field of witness protection via two ongoing programmes, named Project Pappillon and Project Continuous Redesign. Through Pappillon, the WPU constantly reviews developments in witness protection best practices, processes, training and technology to ensure that the WPU maintains its world standards. Project Continuous Redesign ensures that selected best practices are implemented and ongoing operations and processes adapted accordingly.

Stakeholder engagement

Cooperation with African and international agencies

As a recognised world leader, the WPU shares its expertise by advising, helping to build capacity in Africa, and sharing best practices globally. Major examples from this period include the following:

- Joint training of International Criminal Court (ICC) Witness Protection staff during February 2007
- Responding to a request from Germany for internships in South Africa in which Germans can learn from the WPU's witness protection best practices
- Assistance to Kenya to set up a Witness Protection Unit in terms of South African best practices
- Assistance provided to United Nations Tribunals such as the ICTR and the ICTY
- Assistance to the UNODC to develop witness protection best practice guidelines.

Due to the WPU's growing reputation for competence, other countries are requesting to enter into Special Witness Protection Protocol Agreements with South Africa. The WPU has also been invited to send staff members to take up one-year contract posts with the ICC.

The WPU's global commitments are growing steadily, but the Unit welcomes the opportunities to contribute to the international witness protection community. Africa in particular, needs to harmonise its witness protection legislation and set up best practice-based units – a process in which the WPU is more than willing to assist.

Social citizenship

Witnesses are a key component of any justice system. The protection of the right of witnesses to give evidence by ensuring their safety from criminal harm is a critical function in the pursuit of justice and the safeguarding of society. By protecting witnesses, the WPU ensures that more witnesses will cooperate with



The NPA serves with pride and integrity.

investigators and prosecutors, and will be willing to testify. This gives the CJS the capacity to pursue major cases in which witnesses would previously have felt too endangered to give evidence. The work of the WPU therefore enhances the state's capability to protect the fabric of society from elements that challenge the state's authority to implement law and wield justice.

Forecast for 2007 – 2008 period

The current deep transformation process of the NPA, with the accompanying redesign of its macro-structure, raises the questions of where the WPU should be located in future: in the DoJ&CD, in the NPA, or spun off as an independent and covert office as intended by the Witness Protection Act, 1998.

Other challenges faced by the WPU in 2007/08 are not all new, but certainly require attention. Apart from budgetary concerns, these challenges include the following:

- the ability of the CJS to fast-track cases, impacts on how much time witnesses spend on the programme and utilise the WPU's budgetary resources
- the difficulty to predetermine how many witnesses will require protection at any given time
- increasing international commitments regarding crimes against humanity, organised crime and terrorism stemming from the WPU's growing global stature
- increasing numbers of witnesses and related persons requiring protection as the SAPS right-sizes over the next few years and more arrests and prosecutions inevitably follow
- more people requiring witness protection stemming from the CJS's growing focus on organised, dangerous and violent crimes.

Sub-programme 3: Special Operations

Introduction

This Sub-programme deals with the service delivery operations of the DSO and the AFU. These are the NPA Units concerned with special operations in terms of their respective mandates, as discussed hereafter.

Measurable objectives

The measurable objectives for this Sub-programme, as contained in the ENE framework for this period, are the following:

- Disruption of organised crime
- Disruption of crime by asset forfeiture.

In order to enhance focus and service delivery, the following additional annual measurable objectives for service delivery were built into the business plans of these Units¹²:

- Contribute to crime prevention and community justice
- Contribute to better crime investigations
- Deal with cases efficiently and effectively
- Ensure joint problem-solving and cooperation with partners and stakeholders.

¹² Annexure B: Performance Information Reporting on Delivery 2006/07 of the NPA. Table 23 of this annexure provides detailed information and progress reporting on the deliverables and activities identified to attain these objectives.

Service delivery objectives and indicators

The delivery objectives and indicators relating to this Sub-programme, and progress reporting on these indicators are reflected in Table 14. Further detailed reporting on these and all additional delivery objectives and indicators included in the annual plans of the DSO and AFU is to be found in Annexure B, Table 23¹³.



Society is eager to see that justice is done.

Table 14: Sub-programme 3 - ENE Service Delivery Objectives and Indicators

Sub-programme	Output	Measure/ Indicator	Target	Actual	Reasons for deviation
Special Operations	Disruption of organised crime	Conviction rate for organised crime	95% convicted	85% (214 prosecuted cases finalised out of 250 as target)	<ul style="list-style-type: none"> Lack of resources to investigate and prosecute Nature of cases and complexity result in longer investigation required before prosecution can be instituted Lack of allocated court time
	Disruption of crime by asset forfeiture	Number of asset forfeitures completed	180 forfeitures	243 Completed	
		Success rate in asset forfeiture cases	85% successful	86.5%	

Directorate of Special Operations (DSO)

Purpose

The DSO is mandated to investigate and prosecute individuals who commit and profit from organised crime. The DSO's unique composition enables it to focus its resources and tackle complex crimes under one command. The DSO's strategy remains etched around three main objectives, which are to:

- use a multi-disciplinary and success-driven approach to effectively deal with cases
- be more pro-active, pre-emptive and intelligent in investigating organised crime
- target the top-end perpetrators and the proceeds of priority crimes.

This strategy has generally worked well and should be reinforced. While reviews are good, the past has shown the need for doing more, planning less.

The DSO is an institution of paramount importance in South Africa's effort to disrupt trans-national and high-level organised crime. It should be nurtured, supported and celebrated.



Adv Leonard McCarthy, Deputy National Director of Public Prosecutions, and Head: DSO

¹³ Annexure B: Performance Information Reporting on Delivery 2006/07 of the NPA. Table 23 of this annexure provides detailed information and progress reporting on the deliverables and activities identified to attain these objectives.



Highlights of achievements

The DSO has emerged from the Khampepe Commission, geared to improve its functioning and to enhance the execution of its mandate, in line with Cabinet's decision of 29 June 2006. In this period the Directorate – with a personnel capacity of just 65 per cent - performed well in the fight against organised crime:

- It initiated 368 new investigative assignments and finalised 264 current major investigations; prosecuted 214 cases to conclusion, with a conviction rate of 85 per cent; arrested 617 suspects, restrained assets worth over R1 billion, compensated victims to the amount of approximately R50 million and seized contraband and drugs worth almost R1 billion.
- Major achievements in this year included the arrest in the Kebble murder; the major drug confiscations (R600 million) in Johannesburg and Cape Town; its impact on disrupting Internet-banking and cyber-crime; the *Travelgate* prosecutions that have resulted in 38 of the 40 cases against Members of Parliament being disposed of; its focus on 40 of the Top 100 criminals identified under the Crime Threat Analysis (CTA); the convictions in the Leisurenets prosecution; the motion applications won in the High Court and the success in the *Shaik and Yengeni* appeals.

A number of the key performance indicators for the DSO in dealing with matters falling within its mandate are reflected in Table 15, tracking performance over a five-year period.

Table 15: DSO Service Delivery performance indicators - 2002/03 to 2006/07

Directorate of Special Operations							
	2002/03	2003/04	2004/05	2005/06	2006/07	Change over previous year	Change over period
Investigations finalised (no. of cases)	190	205	325	318	267	-16.0%	40.5%
Investigations new (no. of cases)			334	380	368	-3.2%	0.0%
Arrests (no. of persons)	66	290	471	447	617	38.0%	834.8%
Prosecutions finalised (no. of cases)	180	189	234	243	214	-11.9%	18.9%
Conviction rate	86%	94%	88%	82%	85%	3.7%	-1.2%
Restraint orders with AFU (R'000)		R132 000	R180 000	R236 000	R1 050 000	344.9%	695.4%
Contraband seized (R'000)	R500 000	R1 150 000	R2 460 000	R445 000	R956 580	115.0%	91.3%

Service delivery achievements

The DSO is the first law enforcement organisation in South Africa to have convicted auditors and financial directors for financial statement fraud, to have secured money-laundering and racketeering convictions, and to have carried out large-scale drug seizures in collaboration with international law enforcement agencies.

It has also recently established a project management office to monitor investigations, as well as a Digital Detective Unit with the forensic expertise to tackle cyber crime.

On the DSO's own internal analysis, the Unit is currently functioning at about 60 per cent of ideal performance, measured against optimal capacity. The most important reasons for this performance level are the following:

- Challenges in sourcing the right work
- Complexity of dealing with high-level organised crime
- Lack of capacity and capability to deal with high-level organised crime investigations and prosecutions
- Distorted outsourcing of professional services
- Measuring the DSO's performance in terms of quantitative indicators and substantive impact
- Implementing Cabinet's decision regarding the function and mandate of the DSO and its cooperation with major role players in the CJS.

The DSO has begun establishing a dedicated administrative component as part of its Transformation Programme. More than 280 posts were advertised during this financial year. Presently, the DSO is operating at 65 per cent of optimal staff capacity, but filling the 280 vacant posts will significantly expand the personnel component, especially in investigative capability. The biggest challenge of this process is finding suitable and experienced candidates, to equip them with the requisite skills and to retain them in the DSO.

Some major business imperatives during this reporting period were the following:

- Creating a separate business account for the DSO's financial transactions
- The Top 100 list of criminals and the 40 per cent alignment of current investigations to it
- Increasing general capacity in the DSO, in particular its capacity to deal with high-level organised crime investigations
- The impact of DSO activity results on the crime situation in South Africa
- DSO Head Office's capacity to deal with strategic, risk and effective operational management.

The DSO has reinforced its troika approach to ensure that investigators, analysts and prosecutors are involved in key projects from inception. Early prosecutorial oversight is aimed at ensuring that all evidence and information collected is court-directed. This approach, based on the principle of constant prosecutorial oversight in investigations, is the cornerstone of the success of the DSO.

During this period the Office of the Investigating Director conducted an operational case audit from which the factors impeding operational efficiency have been identified and actions have been agreed on to deal with these.

Highlights of cases, activities, and impact on crime focus areas

The most important activities in this period included wrapping-up cases emanating from the Joint Anti-Corruption Task Team (JACTT) work in the Eastern Cape, a revamping of the DSO's CTA, finalisation of old and priority investigations, and the prosecution of pressing and high-impact cases. Disruption of organised crime was pursued largely through the targeted interdiction of drugs and contraband, and supporting the seizure, confiscation and forfeiture of ill-gotten gains. Major achievements for this year included the following:

- Arrest in the Kebble murder
- Major drug confiscations of over R600 million street value in Johannesburg and Cape Town
- DSO's impact in disrupting Internet banking and cyber crime
- Travelfraud prosecutions, which have resulted in 38 of 40 cases against Members of Parliament being concluded
- Focus on 40 of the Top 100 criminals identified under the CTA
- Convictions in the *Leisurenet* prosecution
- Winning rulings in the *Shaik* and *Yengeni* appeals; the *Shaik* appeal presents a significant victory for the DSO in the application of the law and in pursuit for justice. The ruling of the Supreme Court of Appeal amounts to a ringing endorsement of the investigative techniques and strategies of the DSO
- Other cases of note being investigated or prosecuted are: *Fidentia*, *Saambou Bank*, *Project PC* (cyber crime), *Guanxi* and *Agliotti*. More cannot be said about certain of these matters, either because of the current sensitivities of these investigations, or the *sub-judice* rule.



Serious and complex financial crime

Coolfrog 2: Station Café

This Project involves cyber crime in the banking industry that is committed from the anonymity of Internet cafés. In March 2007, the Gauteng office made a major breakthrough in the case by arresting an IT mastermind, involved in the acquisition and preparation of spy ware that had been placed on South African banking systems. The suspect also played a major role in moving the proceeds of these Internet frauds to bank accounts in New York and other parts of the world. Investigators have thus far quantified the real prejudice to banking clients at R20 million. The DSO is addressing this syndicate that operates widely in South Africa and abroad.

Project PC

In early January 2006, DSO KwaZulu-Natal was approached by the DSD to assist with an investigation into fraudulent grants being created by syndicates, directly on its SOCPEN computer systems. During December 2005, these syndicates had gained access to the SOCPEN system and created more than 700 fraudulent grants, amounting to several millions of Rand in payments. The DSD was further perturbed that the syndicates had managed to obtain the details of official user-names and passwords. It was found that syndicates are using key loggers and/or spy software to infiltrate state computer systems with the objective of creating unlawful payments into bank accounts across the country. At the time of reporting, seven investigations were underway and 25 arrests had already been made.

This Project is also noteworthy as it is a joint prosecution between the DSO and SAPS. Several other stakeholders, such as various government departments and the SITA, have also joined forces with the team to prevent and detect spy software on their computer systems, as well as to raise awareness about this type of crime.

Empire K

The DSO's investigation into the financial affairs of JCI and Randgold & Exploration, listed companies that were linked to the late Brett Kebble, has uncovered a web of financial offences covering a wide spectrum, from financial racketeering to contraventions of the Companies Act. The nature of these offences and the high profiles of certain involved individuals have elevated this matter to having an international impact. Described in certain quarters as South Africa's "Enron", the massive and complex litany of alleged crimes being unveiled could cause major economical fallout on the local financial market. Some companies have already been liquidated as a direct result, and more are expected to go that route. Certain affluent South Africans have literally been living off the proceeds of these crimes, with even their daily living expenses being paid by the perpetrators.

Organised Crime

Guanxi

This Project relates to the illegal activities of East Asian syndicates (Triads) operating in South Africa. During this reporting period, abalone (perlemoen) worth R10.4 million, and counterfeit clothing and cigarettes worth R9.6 million were confiscated, with 17 arrests made.

Bad Guys (BG)

Project BG is one of the DSO's biggest current organised crime investigations. For obvious reasons certain aspects of it cannot yet be revealed. Three legs of this Project have been dealt with successfully. In one investigation leg, seven members of an international drug smuggling syndicate were arrested and R250 million worth of drugs confiscated. In one of the other legs, intensive investigations led to the arrest of Glenn Agliotti, one of the suspects in the Brett Kebble murder.

Redcross

This Project relates to international drug syndicates and drug trafficking. During the reporting period, cannabis to the value of approximately R356 million was seized and several arrests were made. Within one

year after commencement of the investigation, all the accused were arrested, convicted and sentenced. Assets gained from criminal means were recovered and forfeited.

Tanita

This is an investigation into organised diamond trafficking and corruption in the diamond industry in the Western Cape. Large quantities of unpolished diamonds are smuggled into the Western Cape from countries such as Angola and the Democratic Republic of the Congo (DRC). These are illegally sold to diamond cutters and dealers, who cut, polish and sell or export the diamonds in the ordinary course of their legitimate business. In an operation during this reporting period, key individuals were arrested and expensive precious metals seized.

Oakridge

This relates to corruption and fraud committed by employees of the Department of Home Affairs (DoHA) and foreign nationals. It involves the falsification and/or fraudulent issue of identification documents, marriage certificates, temporary residence permits, work permits, passports and other DoHA documents. A total of 33 suspects have been arrested since April 2006, bringing the total to 49 since the inception of this investigation.

Corruption

ITC Travel

This Project is an investigation into alleged fraud, forgery, uttering and/or theft committed against the South African Government by various travel agents, in connection with travel-related services rendered to South African parliamentarians. The fraudulent activities entailed forgery and/or inflation of travel warrants issued to parliamentarians and the subsequent claiming of inflated amounts in payments.

During the reporting period, 38 of the 40 cases against Members of Parliament (MPs) were disposed of.

The investigation of, and subsequent prosecutions in this case, has impacted on internal procedures and processes of the Finance Office of Parliament. DSO recommendations on the management and governance of parliamentary travel facilities were considered when the relevant systems were upgraded.

DSO personnel held regular meetings with Parliament on the repayments by MP's against liquidator claims. They assisted with the claims verification process in order to address many of the differences arising between the MP's and the liquidators.

The DSO also assisted the Legal Division of Parliament in resolving disputed requests for access to information brought by defence lawyers.

Although high-profile and at times controversial, the matter has been positive in terms of re-evaluating governance ethics and the role of MP's.

Apart from the travel agency owners, most of the indicted MP's entered into plea and sentence agreements, which helped to restore the dignity and status of the institution of Parliament. This matter is presently *sub-judice* and the main trial is due to commence in February 2008.



Imprisonment awaits those that participate in organised crime.

Stakeholder engagement

Liaison and trans-national legal assistance

In this period the DSO embarked on a major networking exercise to build sound and practical relations with relevant government departments, private sector bodies and international agencies.

The organisation improved its cooperation with internal and external business partners through regional, national and international meetings and operations. The DSO deals regularly with foreign requests for MLA's, and in turn requests MLA's from foreign agencies for DSO investigations. The

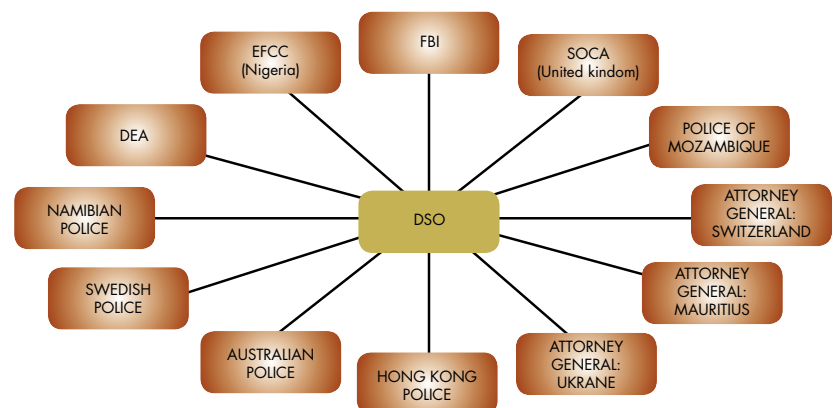


Figure 8: The DSO's stakeholder network



Organised crime are investigated and prosecuted without fear, favour or prejudice.

DSO dealt with close to 20 mutual legal assistance requests in relation to trans-national syndicate activities, offshore investments, transfer pricing, corrupt nominal shareholdings and the extradition of persons. Several joint initiatives were executed between the DSO and the FIC, SARS, FSB, SABRIC, NICOC, the United Kingdom's Serious Organised Crime Agency (SOCA (UK)) and the national departments in the Justice cluster. Figure 9 illustrates interactions with the DSO's international stakeholders.

Social citizenship

The DSO demonstrates its social citizenship through the very nature of its work. In dealing with complex organised crime, corruption and contraband, and ensuring that crime does not pay, its contribution to the growth of the economy and social development helps to build a safer South Africa for all its citizens.

Forecast for the 2007/08 period

The DSO's primary objectives for the near future are to settle the issues around its mandate and functions; to enhance its effectiveness in combating organised crime, particularly major syndicates and racketeering, and to raise the Unit's staff complement and build its resources.

Lessons learnt in the 2006/07 financial year will be carried forward into planning and activities for the current year. The DSO has identified a clear need to revolutionise jurisprudence in POCA, communication legislation, and international assistance. Other actions needed include the following:

- Further improving operational effectiveness in investigating and prosecuting organised crime
- Bedding down an organisational framework for the DSO that will enable it to function optimally
- Sharpening the DSO's capacity to deal with civil litigation and professional pressure by re-engineering its recruitment, growth and retention strategy in a manner that will properly match jobs with the requisite expertise
- Enhancing the workspace in the DSO to make its environment more equitable, competitive and rewarding.

Asset Forfeiture Unit (AFU)

Purpose

The AFU was created in 1999 to ensure the effective implementation of the asset forfeiture provisions in the Prevention of Organised Crime Act, 1998. Chapter 5 of POCA provides for the forfeiture of assets from a person convicted of an offence. Chapter 6 provides for a civil process that is not dependent on criminal prosecution for forfeiting assets that are the proceeds of crime, or have been involved in the commission of crime. Forfeited money is paid into CARA, unless there is an identified victim of crime that has a reasonable claim.

Highlights of achievements

During 2006/07 the AFU continued its upward trend of taking away the profits of crime by initiating 252 cases and freezing assets worth over R1.25 billion. The Unit also completed 242 cases, took forfeited assets worth over R100 million, and won 27 of 33 judgments on contested issues, resulting in a success rate of 82 per cent.

The AFU deposited R19 million into CARA and facilitated the payment of R74 million from CARA to boost the capacity of the SAPS, NPA and SARS to fight crime and assist the victims of crime. The SAPS has not utilised the funds of R33.7 million allocated to them as at 31 March 2007. CARA funding was also allocated to centres for battered women and children, and various other initiatives.

Working with the DSO, United Kingdom (UK) and Guernsey authorities, the AFU was able to freeze an estimated R1 billion to R1.5 billion of alleged proceeds of crime in the *David King* matter. This is by far the most significant case of its kind ever taken on under South African jurisdiction.

Another milestone was the *Delpont* case, in which the AFU obtained a freezing and seizure order of R80 million. To date, this is the largest value of assets ever seized in a single case within South Africa.

The AFU worked with the Nigerian and UK government to recover more than R10 million from a former governor of a Nigerian state. In this case the AFU seized a Cape Town Waterfront apartment bought with the proceeds of corruption.



Mr Willie Hofmeyr, Deputy National Director of Public Prosecutions, and Head: AFU.

In this period the AFU opened an office in Nelspruit, Mpumalanga to ensure that it can make a significant contribution to fighting crime in the area. The AFU now has an office in all nine provinces.

A number of the key performance indicators for the AFU in ensuring that crime does not pay are reflected in Table 16, tracking performance over a five-year period.

Table 16: AFU Service Delivery performance indicators - 2002/03 to 2006/07

Asset Forfeiture Unit								
	2002/03	2003/04	2004/05	2005/06	2006/07	Change over previous year	Change over period	Notes
New restraint orders (no.)	125	228	161	252	252	0.0%	101.6%	Significant increase in delivery
Value of new restraints (R'000)	R131 938	R222 616	R234 406	R344 129	R1 294 569	276.2%	881.2%	Significant increase, King matter contributed at least R1bn
Completed forfeiture cases (no.)	80	148	151	221	242	9.5%	202.5%	Significant increase in delivery
Value of assets forfeited (R'000)	R51 910	R86 741	R172 855	R106 748	R100 600	-5.8%	93.8%	Very large case in 04/05 distorted figures
Money paid to CARA	R17 313	R35 737	R24 500	R18 823	R19 291	2.5%	11.4%	Lower than expected, due to amounts paid to victims but R41m from Shaik due soon
Success rate (overall)	87%	86%	87%	88%	88%	0.0%	1.1%	

Table 17: AFU performance on number of orders

Number of cases	Performance target				Performance against target and previous year		Total
	03/04	04/05	05/06	06/07	% of target achieved 06/07	% of previous year 05/06	1999-March '07
New seizures	165	252	210	252	110 %	120%	897
Cases completed	153	220	160	242	135 %	138%	775
Other orders	312	422	320	449	125 %	132%	1 503
Total number	630	894	690	943	123 %	130%	3 175



Service Delivery Achievements

Number of orders

The AFU had an excellent year in terms of the number of orders it obtained as can be seen from Table 17. The unit exceeded all its targets by a significant margin.

Monetary targets

The value of the restraint and preservation orders for seizures obtained by the AFU during this year was at least close to R1.3 billion - more than triple its previous highest total. This achievement was 332 per cent above the targeted R300 million and was mainly due to the *David King* case, in which the AFU restrained at least R1 billion and possibly as much as R2 billion. The value of confiscation and forfeiture orders for the year was about 16 per cent below the target. Finalising larger cases speedily remains a challenge as these are often heavily litigated.

Criminal Assets Recovery Account (CARA)

The AFU deposited R19 million into CARA, which was 23 per cent below the targeted R25 million for the year. A further R41 million from the *Shaik* case had been expected to be deposited, but was delayed due to Shaik's belated appeal. The AFU facilitated the first payout from CARA of R74 million to boost the crime-fighting capacity of the SAPS, NPA and SARS and to assist the victims of crime. Funds were also allocated in this period for tracing missing persons identified during the TRC process and to support centres for abused women and children.

Table 18: AFU performance on monetary targets and CARA

Monetary targets	Performance target				Performance against target and previous year		Total
	03/04	04/05	05/06	06/07	% of target achieved 06/07	% of previous year 05/06	1999-March 07
	R'm	R'm	R'm	R'm	%	%	R'm
New seizures	222.2	344.1	250.0	1 294.6	432%	138%	2 110.9
Cases Completed	174.3	106.7	100.0	100.6	84%	107%	481.6
Funds into CARA	25.0	18.8	50.0	19.3	77%	38%	113.3

Cases and Judgments

The AFU won 27 of 33 judgments in contested cases - a success rate of 82 per cent. A summary of the important cases and judgments obtained by the AFU follows:

Constitutional Court Judgments

The AFU won two of the three judgments given by the Constitutional Court on AFU cases during the year:

NDPP v Prophet

The court dismissed the appeal by Prophet and held that, although he had been acquitted of criminal charges on various grounds in the Magistrate's Court, forfeiture in terms of POCA could proceed if the evidence showed on a balance of probabilities that the property had been used as an instrumentality of crime.

Fraser v ABSA

The court held that legal expenses could not be granted to an accused at the expense of creditors or victims, without these parties being granted a hearing.

NDPP v Mohunram

The court narrowly found against the AFU, with five judges in favour and six against. The majority of judges required of the AFU to prove some link to organised crime in instrumentality cases before a forfeiture order could be granted. In this case Moseneke DCJ held that the instrumentality of the crime must be shown to be sufficiently connected to the main purpose of POCA, which is to remove the incentive for crime and to serve as an adequate deterrent to the individual concerned and the society at large. The Judge found the forfeiture order to be disproportionate as no such link was shown. Sachs J held that for a court to grant the forfeiture order, the criminal activities must be closer to the primary objectives of POCA.

NDPP v Shaik

Shaik has applied for leave to appeal against the judgment of the Supreme Court of Appeal, as discussed below.

Supreme Court of Appeal judgments

The AFU won three of four judgments given by the Supreme Court of Appeal on AFU cases during the year.

NDPP v Shaik

The court upheld the judgment obtained by the AFU previously and held that:

- the movement of funds through different hands is essential to the concealment of crime and the successful manipulation of its benefits. Multiple confiscation orders are necessary as a deterrent, not only to the principal actors in the criminal activity, but to all those who facilitate such concealment and manipulation
- the proceeds of unlawful activities that can be confiscated means the gross benefit received by the defendant rather than the net profit
- both the shares and the dividends received must be taken into account as direct benefits of the criminal activity.

NDPP v Van Staden

The court upheld the appeal by the AFU and held that:

- a motor vehicle that is driven under the influence of liquor, or while the level of alcohol in the driver's blood exceeds the legal limit, constitutes an "instrumentality" of an offence and is thus capable of being forfeited to the state in terms of POCA
- POCA is not restricted to organised crime, but extends to ordinary crimes committed by individuals.

NDPP v Mngomezulu

The court upheld the judgment obtained by the AFU previously and held that in terms of section 28(1)(a) of POCA, a High Court may authorise a curator bonis appointed in terms of section 28 to sell property under restraint in order to administer properly assets that are under his/her control.

NDPP v Van Rensburg

The AFU lost on a technical point. The court held that the AFU failed to allege facts in its founding affidavit from which it appears that there are reasonable grounds for believing that a confiscation order may be made against the appellant.

High Court judgments

In the *NDPP versus Boekhoud* case, the court accepted the argument by the AFU that hearsay evidence is admissible when undercover agents are still in syndicate.

In another case, *NDPP versus Marinus*, the court accepted the argument by the AFU that the defendants must make a full disclosure of their interests before they can gain access to legal expenses from the estate under restraint.



The management team of the AFU:



Adv Hermione Cronje, Regional Head: Western Cape



Adv Richard Chinner, Regional Head: Gauteng



Adv Monty Moodley, Regional Head: KwaZulu-Natal



Adv William Kingsley, Regional Head: Eastern Cape

**Regional Head: Johannesburg (vacant).*

Stakeholder engagement

The AFU requires the active assistance and cooperation of a range of public and private sector organisations to perform its mandate. The Unit also has MoU's with the DSO and SCCU. Besides ongoing projects or cases, the AFU meets quarterly with the DSO, NPS, SCCU, SAPS, SARS and the FIC.

Social citizenship

In the financial period the AFU deposited R19 million into CARA and facilitated the first-ever payout from CARA amounting to R74 million. These funds were mainly allocated to law enforcement agencies to assist in the fight against crime, but a substantial amount was also paid to organisations that assist victims of crime and abuse. These funds went to four centres that care for abused women and children, and to find missing persons identified during the TRC process. The NPA's SOCA Unit also received an allocation.

The AFU contributed to crime prevention by working with communities to identify unlawful social irritants. This process has resulted in the AFU obtaining restraint orders against nine illegal shebeens across the country. The AFU is also participating in the NPA's community prosecution pilot project to work with communities on crime prevention initiatives.

Forecast for the 2007/08 period

The growing incidence of economically motivated crimes such as smuggling of minerals, drugs and abalone, commercial crime, corruption and other forms of crime leads the AFU to believe that its workload and the need for asset forfeiture will continue growing. The Unit is therefore compelled to:

- expand its skills, capacity and networks to adequately deal with all current cases and increasing case totals in the near future
- further explore and develop joint strategies and working relationships with all partners and stakeholders in the fight against crime
- follow up the promise of its early efforts by further expanding its community and other pro-active activities in crime prevention.

Conclusion: NPA Service Delivery

Looking back on the 2006/07 period, the NPA delivered a satisfactory overall result in spite of severe constraints. Most units matched or exceeded their targets, some by considerable margins, while others missed goals due to challenges in terms of capacity, stakeholders, CJS constraints, working conditions and/or skills levels.

The ability to maintain performance and service delivery efforts is the result of the commitment and passion of many an NPA employee to go the extra mile to achieve objectives. However, the current scenario of being overloaded with cases and/or work demands due to high vacancy levels, or making do because the resources and infrastructure aren't there, or battling through time-consuming systems whilst helping to fight crime and delivering justice, is ultimately unsustainable.

For the NPA to deliver the level of prosecutorial, investigative and specialist services that South Africa and the CJS requires, two things need to happen:

- The NPA must have the staffing levels, the physical facilities and the resources to perform its responsibilities with maximum efficiency. Funds spent on enabling the NPA to enhance service delivery and performance, will be recouped many times over through the NPA's contribution to a safer and more secure society, economic growth and foreign investment into South Africa.
- The NPA must have the support of its broader CJS partners and the state in rolling out new methods of ensuring speedy, fair and equitable justice service delivery to South African society. Concepts such as PGI, community prosecution, restorative justice and ADR are proving to be powerful mechanisms for dealing with crime and rendering justice in appropriate measures. The NPA must be allowed to develop these to full effect and deploy them wherever needed. Furthermore, the focus should move away from purely evaluating performance based on quantifying numbers, but rather towards tracking improved impact, quality of service delivery and increased customer satisfaction.

**DO NOT DISTURB
PROSECUTOR
WHEN COURT
IS IN SESSION**

