



SUB-PROGRAMME 2:
WITNESS PROTECTION



10. Sub-programme 2: Witness Protection

Introduction

The OWP provides a support service to the CJS by giving protection to threatened or intimidated witnesses (and related persons) by placing them under a protection programme, thus ensuring that they will testify in criminal and other defined judicial proceedings.

Purpose

The OWP provides protection, support and related services to vulnerable witnesses and related persons in judicial proceedings.

Measurable Objectives

To reduce the number of witnesses who abandon the witness protection programme.

Service Delivery Achievements

A number of key performance indicators in dealing with witnesses and related persons on the witness protection programme are reflected in table 4, which tracks performance over a five- year period.

Table 6: Witness Protection Service Delivery Performance Indicators-2005/06-2009/10

Witness Protection							
Indicator	2005/06	2006/07	2007/08	2008/09	2009/10	Change over prev yr	Notes
Witnesses	220	229	231	218	398	+82.6%	As at 31 March 2010
Total including families	488	497	428	431	743	+72.4%	As at 31 March 2010
Witnesses harmed	0	0	0	0	0	0	Taking into account witnesses and related persons who walked off (old definition), the figure is 6,1%
Walking off program (%)	3%	3%	24%	19.2%	28.0%	+45.8%	
Formal grievances laid (%)	1%	2%	2%	2.4%	0%	+0.0%	

Highlights of performance

- For eight years in succession there has not been any witness or related person on the programme threatened, harmed or assassinated.
- For the first time in five years, there has not been a formal grievance laid. The reason has been a focus on “people care” by the unit.
- Operation Siyaya was significant in that a large task team was deployed to do court protection in the Cape Town High Court during the trial of notorious gangsters. Despite serious threats of violence no harm was done to any witness.

Challenges Experienced

- Lack of capacity of manpower remained a challenge; however, a request has been submitted for approval for OWP to increase capacity.





SUB-PROGRAMME 4: **ASSET FORFEITURE**



11. Sub-programme 4: Asset Forfeiture

Introduction

The purpose of the AFU is to seize criminal assets that are proceeds of crime or have been involved in the commission of an offence either through a criminal or civil process.

Measurable Objectives

Contribute to reducing the incentive of crime by removing its proceeds from the control of criminals and by increasing the value of freezing orders (court orders to freeze an individual's assets) from R330 million in 2008/09 to R420 million in 2011/12.

Service Delivery Performance Indicators

Table 7: AFU Service Delivery Performance Indicators-2005/06-2009/10

Asset Forfeiture Unit							
Indicator	2005/06	2006/07	2007/08	2008/09	2009/10	Change over prev yr	Notes
New restraint orders (no.)	252	252	223	276	315	+14.9%	A significant increase in past year
Value of new restraints (R'000)	R 344,129	R 1,294,569	R 395,229	R 320,254	R491, 011	+53.3%	Steady upward trend with fluctuations reflecting big cases.
Completed forfeiture cases (no.)	221	242	223	277	271	-2.2%	Steady upward trend with some leveling off in last year
Value of assets forfeited (R'000)	R 106,748	R 100,600	R 127,322	R 271,588	R184,960	-31.9%	Steady upward trend with fluctuations reflecting big cases.
Money paid to CARA	R 18,823	R 19,291	R 45,564	R 65,933	R51,657	-20.9%	Significant upward trend in past 3 years
Success rate (overall)	88%	88%	88%	86.5%	92.4%	+6.8%	A good result but not comparable with previous years due to new definition ²
Success rate in judgments	72.4%	81.8%	80.0%	63.2%	57.7%	-8.7%	Remains disappointing

Highlights of Achievement

In terms of its quantitative outputs, the AFU probably had the best year of its existence and managed to achieve excellent performance in the 2009/10 financial year, despite the fact that there was considerable uncertainty in the NPA.

Number of cases

- 315 new restraints were obtained (276 in 2008/09), 13% above target and the highest ever achieved.
- 1 051 orders in total were obtained (1 018 in 2008/09), 11% above target and the highest ever achieved.
- The number of judgments obtained was 28 (38 in 2008/09) against a target of 33, this is 6.7% below target.

Value of cases

- The value of new restraints was R491 million (R323 million in 2008/09), 36% above the target and the second highest ever achieved.

² The success rate was recalculated to make it consistent with the requirements of the Auditor-General and is now based on all matters finalised, rather than initiated, during the year.



- The value of confiscation or forfeiture orders was R185 million (R271 million in 2008/09), 23% above target and the second highest ever achieved.
- The value of deposits into the CARA was R51.7 million (R65.3 million in 2008/09) against a target of R26m, 48% above target and the second highest ever achieved.
- The value of orders in favour of the victims of crimes was R52.3 million (R42.1 million in 2008/09). This is 50% above target and the second highest ever achieved.

In terms of its qualitative outputs, the AFU also had a very good year, and maintained a very high overall success rate of over 92%. However, the low judgment success rate remains a serious concern.

Increase the impact of asset forfeiture

Several projects were undertaken to document and improve the business processes in the AFU.

- The AFU continued to implement and refine its Electronic Case Management System (ECMS), and to migrate data.
- A new version of the asset forfeiture business process map was agreed to in March 2010 which clarifies the relationship with the DoJ&CD
- There is also an ongoing project to improve the work flow between the AFU and the Masters Office.

Stakeholder Engagement

Prosecutor Placement Programme (PPP)

The programme sponsored by the UNODC to place prosecutors from SADC countries in AFU offices for training continued during 2009/10 with a total of 6 placements from Zimbabwe, Namibia and Botswana working alongside AFU litigators for two months.

Law Enforcement

The AFU is represented at quarterly meetings of the SAPS National Organised Crime Secretariat.

It has also worked closely with the SAPS Organised Crime Expert Group Meeting to develop a new Financial Investigator strategy for the Hawks.

The AFU also provided four financial investigation training sessions to the Hawks Commanders and Project Managers and other partners.

Develop jurisprudence

Noteworthy cases

Many of the cases decided in the 2009/10 financial year continue to deal with the interface between POCA and other areas of law.

The complex interface between the proprietary consequences of marriage and the economics of crime featured in two cases:

In **Du Preez v NDPP** the husband committed fraud and, after prosecution commenced, transferred the family house to the wife in terms of a divorce settlement. The NDPP claimed the house was an affected gift, but the court held that it was bound by the divorce order and that it was incumbent upon the NDPP to first set aside the divorce order before the house could be attached.

The rights of concurrent creditors to execute against restrained property were considered in **Rollex (Pty) Ltd v NDPP**. Following *Fraser v Absa Bank Ltd* 2007 (3) SA 484 (CC), the court held that a restraint order puts the restrained assets beyond the reach of concurrent creditors, and that their interests are only to be considered at realisation.

Bosch conducted a brothel from her house, but the trap evidence to substantiate a criminal prosecution was illegally obtained. In an application to forfeit the house as an instrumentality of crime, the court held that the rules of criminal procedure regulating illegally obtained trap evidence did not apply to civil proceedings, and set out factors which a civil court would consider in allowing such evidence. The house was declared forfeit.





The relationship between the International Cooperation in Criminal Matters Act and the POCA was considered in **Alexander Falk 3**. Falk was charged before a German court of rigging share prices and a German restraint order was registered in South Africa against an amount of EUR5,2 million held in a bank account and various shares. Falk was eventually convicted but the German court refused a final confiscation on the grounds that Falk did not benefit, and lifted its own restraint. The prosecution appealed. The German court suspended its lifting of the restraint pending the appeal. Falk now applied in South Africa to set aside the second restraint on the basis that section 17(b) of the POCA provides that once a defendant is sentenced without making a confiscation order, the proceedings are concluded and any restraint lapses. The NDPP contended that the variation of the restraint was to be determined under section 26 of the International Cooperation in Criminal Matters Act. The court did not decide this question, but held that there was an appeal pending in Germany and on any interpretation the restraint remained in force.

There have also been a number of cases interpreting the requirements of instrumentality and proportionality for a forfeiture under Chapter 6. Most of the decided instrumentality cases concerned the use of cars in crime. In **Mncube**, a Hi-ace and BMW used merely to transport stolen money after a cash-in-transit robbery were held to be instrumentalities of the continuing crime of theft. However, in **Maisela**, the court held that a car used to travel to meetings to set up a bribe and eventually to deliver the documents and receive the bribe was only incidental to the crime of corruption and in **Borotho**, accepting the owner's evidence that he acted opportunistically, the court held that a car used to load manhole covers and remove them from a University's premises was likewise used incidentally.

The issue of proportionality again appeared in the case of **Van der Merwe 2**, whose only income was derived from a second home which the court found she knew was being used as a drug house but had taken some steps to control in the past. The court held that it would be disproportionate to deprive her of the house.

Other noteworthy cases

The **Tannenbaum** matter relates to an alleged Ponzi or pyramid scheme involving over 782 investors nationally and internationally. The returns that were offered to them were 15% to 20% over a period of 12 to 15 weeks. It appears that initially funds were invested according to the presentations made to investors. Soon, false orders and invoices were produced and the money of new investors was used to pay older investors. The estimated value involved is R4 billion and increasing. A high-level joint task team was established between the SA Reserve Bank, SARS, the FIC and NPS to work together on the matter and to liaise with counterparts in Switzerland, Australia and the United States. A preservation order for R45m was granted on 31 July 2009.

Emerging crime types

The AFU has also worked with the SAPS and others to take action in a number of areas where traditional law enforcement penalties are low but the profits are high. The result has been a significant increase in the organised commission of crime in these areas including cigarette and rhino horn smuggling, stealing cable and illegal mining.

The **Mastermind** matter involved the manufacture of cigarettes for the local and export market and the submission of fraudulent documentation that defrauded Customs of more than R48 million in customs and excise duties, and more than R8 million in VAT. A confiscation order was obtained for R60 million, of which R27 million was paid to SARS as the victim. A confiscation order for R175 000 was also obtained against Mr Mahbeer who transported the cigarettes.

The AFU in several provinces has taken action against those involved in rhino horn smuggling, including a number of vehicles and monies paid as bribes.

The AFU has also taken action in a number of cases of theft of cables or other non-ferrous metals, mainly seizing the vehicles used to transport the stolen goods. They involved Eskom copper cables, electrical copper cables from a mine and Transnet metal railway sleepers.

Theft of gold from the gold mines in the Mpumalanga province is also a major problem. The AFU worked with the Mpumalanga SAPS Organised Crime Unit and obtained several preservation orders.

Corruption

The AFU dealt with a number of corruption matters involving provincial and local government in Mpumalanga and Free State provinces.

