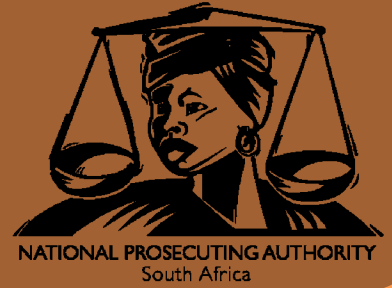


April / May 2015

# KHASHO



ENSURING PROSECUTIONS WITHOUT FEAR, FAVOUR OR PREJUDICE



**Welkom Cluster  
officials reach out  
to patients**

**Sentence  
restores hope  
in the Criminal  
Justice System**

**“Prosecutor is  
my hero” Rape  
survivor**

**NPA service  
delivery  
roadshow held**



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## Letter from the Managing Editor

In this edition of Khasho we bring you a second instalment of the "Ethics in Action" series, as it unpacks the relevance of the Public Sector Integrity Management Framework.

As you have come to expect, we share with you the commendable work done by our prosecutors on the cases they have prosecuted. It is heartening to see our prosecutors being praised by victims of crime for the way they handle their cases, as we share a rape survivor's story and harshest sentencing of the accused. We also share a story of hope in our criminal justice system as one of our strategic focus is to ensure public confidence in our criminal justice system. It is comforting to know that the citizens of our country still believe in our justice system.

We share a story whereby the cooperation between the German Prosecutorial Authorities and the National Prosecuting Authority (NPA) is an indication that indeed we go the extra mile to ensure that justice prevails and we prosecute without fear, favour or prejudice. This enhances our image and thereby instilling confidence to the public.

Recently, the NPA in KwaZulu-Natal, in conjunction with SAPS, the Department of Health, and Ubuhlebezwe Local Municipality organised a service delivery roadshow. Among other things, the aim of these roadshows is to partner with government and non-governmental entities and to take services to communities. Once again this re-affirms NPA's commitment to service delivery and living up to its vision:

justice in our society so that people can live in freedom and security. NPA officials from the Welkom cluster also played their part in improving the lives of the less fortunate by donating comfort packs to the patients in the Welkom crisis centre. The crisis centre accommodates rape victims. We share this amazing story of giving on page 15.

We wish to thank all of you who participated in our internal communication survey which was conducted during March 2015. The purpose of that survey was to establish the perceptions of employees with regard to the usefulness of our internal communication tools. It also sought to elicit information on how we can improve or strengthen internal communication.

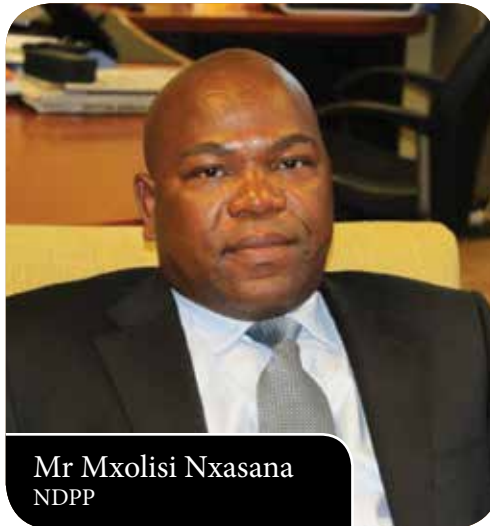
The feedback was absolutely heartening and not unexpectedly, Khasho came out as the most accessible platform, with 78% of the respondents reporting that they have received and read Khasho. We will publish the full report on the intranet if you are interested in more detail, but for us this was the most valuable input to set us in the direction of improving our internal communication platforms and be most relevant to you - the staff member and the reader.

We encourage you to continue giving us your feedback, by emailing us to [khasho@npa.gov.za](mailto:khasho@npa.gov.za).

We hope that you will enjoy reading the publication. Best wishes!



## Letter from the NDPP



Mr Mxolisi Nxasana  
NDPP

When you come to the end of any experience, there is always a mixture of emotions – relief that responsibilities are coming to an end, sadness that what you’ve come to enjoy will no longer be there for you. There’s also excitement – in taking what has been learned in the past months and applying it to what is to come. I feel I have learned a lot in the past 19 months.

Allow me to express my utmost gratitude to all of you who have never failed to serve this organisation with admirable endurance. I feel so proud and honored to have been able to lead this excellent team, and deep in my core I wish that my tenure as the NDPP did not have to end so abruptly. I said when I took up the NDPP office that my wish is to serve my country and I signed a ten year contract as a mark of that commitment. It is so unfortunate that that is not to be.

I must admit that all of you have exhibited great loyalty and diligence towards your respective obligations. Truly, I am proud to have such proactive members and thus, I would like to take this opportunity to say that I appreciate each and every single effort and sacrifices made with all my heart.

I would like to thank each and every one of you for your support and assistance during my tenure. It has been a great honour for me and I am indeed grateful. To the NPA leadership, I am glad that I did not lead you astray. I remember Dr Ramaite’s words when he welcomed me; he said “if you lead us, we will follow.” Thank you all for your fervent following.

I am also very grateful to the many people who took the trouble to contact me and to wish me luck and success in my future endeavours.

For as many that I might have offended in one way or the other I want to use this medium to seek your indulgence to forgive all my shortcomings. As you all know, no one is perfect.

During my welcoming event in 2013, the CEO presented me with a ‘gift’ of a Clean Audit Outcome, and it is quite pleasing that I leave the gift as intact as I found it. I am truly proud of all our efforts and appreciation to have not tarnished this status quo during my stay in the organisation.

We have had major accomplishments in the last financial year, and comprehensive detail can be found in the annual report that I have submitted to the Minister for tabling in Parliament in June 2015. I will forever cherish my contribution in the NPA.

As your NDPP, I have had the privilege of representing you at a wide range of events over the last year. I have been struck at all times by the esteem in which the organisation is held.

This country has high expectations of the NPA. They expect a prosecuting authority that takes decisions promptly, without fear, favour or prejudice, and the NPA should not fail them.

Continue to work together to deliver a South Africa that we will all be proud to live in. The path towards success is full of obstacles. Should you fall, pick yourself up and continue your chosen path with refined vigour.

As a parting shot let me warn you colleagues that in the execution of your duties you must be mindful of the power that you have, that it can inadvertently be abused and that can lead to undesirable consequences.

I thank you!





## Letter from the CEO



Ms Karen van Rensburg  
CEO

I am pleased to announce that we are at the end of the process of finalising our annual financial statements and consolidating our annual report to that of the Department of Justice. This was not an easy process, but with close co-operation with the responsible officials in the Department I believe that we have achieved a major feat in ensuring that our information is properly consolidated within the required timeframes.

My heartfelt appreciation goes out to all of you for ensuring that the required information is submitted timeously and accurately, and the team that worked tirelessly to prepare our inputs. You are a dream team and a pleasure to work with.

While it would be premature for me to make a determination about the final audit outcome for the NPA until the Auditor-General has finalised their report, I am quite encouraged that so far our level of compliance in many of the important audit areas has improved.

The time for performance contract renewals has arrived and these must be signed and submitted to HRM&D by Friday 29 May. You are also urged to finalise performance assessments for the 2014/15 financial year so that the moderation processes can commence.

We recently announced the Department's restructuring project which entails realignment of the NPA Corporate Services with the Department. As you would have seen in the Minister's Budget Vote speech that he delivered on 19 May which was circulated internally, plans are afoot to ensure that this project is teased out for details very soon.

As I previously communicated to you, I will keep you regularly informed of progress and deliberations from the special task team that the DG has assembled, in which the NPA is adequately represented. Please note that to date this team has not met.

The process of rationalisation of courts is continuing in earnest, and I trust that you have found the communique in Rationalisation News informative as to the organisation's progress in addressing all pertinent issues, including the process of the approval of transfer applications. You can also follow this link to stay informed about Rationalisation of Courts: [http://npamoss/cs/comm/ithala Rationalisation%20of%20Courts/Forms/AllItems.aspx](http://npamoss/cs/comm/ithala%20Rationalisation%20of%20Courts/Forms/AllItems.aspx)

# “Prosecutor is my hero” - Rape Survivor

Luxolo Tyali



“Khunjulwa’s hero is Regional Court Prosecutor Siphso Sintwa, who argued for the harshest sentence,” reported the Daily Dispatch newspaper in its article headlined “Mom’s Rape Sacrifice”. Khunjulwa Mkile, 44, is a rape survivor whose heroics caught news headlines after the person who raped her was sentenced to life by the Mthatha Magistrates court. She gave permission to the media and Khasho to publish her and her daughter’s names to encourage other women to be “survivors instead of being victims of rape”.

In her much publicised story, the Mthatha business woman credits Acting Regional Court Prosecutor Siphso Sintwa’s meticulous handling of her case for reviving her faith in the Criminal Justice System.

“If it was not for the diligence, patience, hard work, understanding and compassion of Mr Sintwa the monster that violated me in the worst manner one can imagine would probably be still roaming the streets, or worse continuing to rape other women,” Mkile maintains.

The man convicted of raping Mkile, her neighbour, Malusi Sihele, 32, was sentenced to life imprisonment and an additional 15 years.

Sihele was convicted of rape, housebreaking with intent to commit rape and robbery with aggravating circumstances for which he was sentenced to one life term, eight years and 15 years, respectively, with the two latter sentences ordered to run concurrently.

In the early hours of January 16, 2014, armed with a knife, Sihele broke into the home of Mkile who was sleeping in one room with her 19-year-old daughter. As a neighbour, he had earlier been asked by her to fix the same door he broke to gain entry. Once he got inside he accused Mkile’s son of having raped his girlfriend and threatened to rape her daughter to avenge himself. To protect her daughter, the mother told Sihele to rather hurt her than her young daughter. He then violently raped the mother in the presence of her daughter threatening to kill them should they scream. After the rape, he took their cell phones and R500 in cash promising to come back and hurt them.

In the victim impact statement handed to the court it was stated that both the mother and her daughter needed psychological counselling due to their violation by the convicted rapist.

Sihele maintained his innocence throughout the trial and only admitted to having had sexual intercourse with Mkile when he was confronted with DNA results linking him to the crime. It is for that reason that Sintwa argued for the court to give the harshest sentence, despite the defence’s pleas to the contrary.

After the sentencing, Mkile had all the praises for the National Prosecuting Authority (NPA) and the way her case was handled.

## Commentary by Advocate Siphso Sintwa



This is one of the most traumatic cases I have ever dealt with. This woman indeed became a hero not only to her child but other women out there. She sent a strong message that a mother’s love is unconditional.

Coming to the case; after a thorough two day consultation, I decided not to call the second witness, the daughter of the victim. She was a 19-year-old child, six months pregnant and we had to protect her and her unborn child. In addition, there was forensic evidence strengthening our case.

At the end of the day, I was happy with the sentence. It was fulfilling to see that the survivor of the rape had regained her confidence in the justice system. The whole experience of the case has made me to realise that we are indeed gatekeepers of justice and the community out there put so much faith in us prosecutors as their true representatives. After all it’s about justice and closure.

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# North West High Court sentences Elias Masango to three life terms

Frank Lesenyego

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NPA Performance

Elias Masango, aged 34 was charged in the North West High Court, sitting in Mogwase Court on eight counts, including one count of murder, three counts of rape, two counts of robbery with aggravating circumstances and two counts of assault with intent to do grievous bodily harm. He pleaded not guilty but was convicted on all eight counts and subsequently sentenced to one life sentence for the charge of murder, two life sentences for two rape charges, 10 years for a charge of rape, 15 years on both robbery with aggravating circumstances and three years respectively on both charges of assault with intent to do grievously bodily harm.

On 12 October 2008, the deceased, Michael Philipus Jordaan and his girlfriend, the complainant, who laid the charge on two counts of rape and robbery with aggravating circumstances were at a secluded place in Rustenburg called Cashan Mountain. They were approached and the deceased was attacked with a baseball bat that the accused disarmed him of, and hit him to unconsciousness.

The deceased died five days later as a result of head injuries sustained. Thereafter, the accused forcefully pulled the girlfriend from the car, dragged her to the nearby bushes and raped her twice.

On the night of 11 December 2008, the accused attacked Pieter Jacobus Briel and his girlfriend. In this case, the accused assaulted Briel with an unknown object and further physically assaulted his girlfriend.

When Briel was incapacitated, the accused raped the girl and stole her necklace and sunglasses.

The NPA congratulates Advocate Ponka Maila for the job well done. This judgement and sentence reaffirms our commitment to the war declared against all perpetrators of violence against the vulnerable. We trust that this sentence will deter the potential offenders from committing these barbaric crime.

## Khasho asked Advocate Ponka Maila some questions about the case



### How do you feel now that this case is finalised?

I am happy that the victims and their families are satisfied with the manner in which the case was conducted and the sentence imposed. I believe that finalisation of this matter will bring them closure. Both justice and the interest of the community were served and the accused is paying for his crimes. Furthermore, a strong

message has been sent to likeminded people, that the courts will not tolerate such behaviour. Hopefully the community will regain their confidence in the criminal justice system.

### What was your position during the trial?

This case was very complicated for there was only DNA evidence that linked the accused to these offences and the presentation of such evidence had to be dealt with cautiously. The challenge is that if the chain of evidence is not handled properly it could present a problem when the court has to determine the probative value of such evidence.

### Any lessons learnt as you move forward to deal with other cases?

It is crucial to work closely with your investigating officer and prepare properly for the trial. Always treat your witnesses with respect and implement Batho Pele principles which encourages public servants to provide the public with quality service and serve your clients with respect.

# SAFA Referee sentenced to four years direct imprisonment for lying under oath

Eric Ntabazalila



A state witness, who was a South African Football Association referee, has been sentenced to four years direct imprisonment after he lied under oath. Clifford Matwaleni Malgas was also convicted of corruption.

In June 2011, Garankuwa United and Mpumalanga Sevutsa Stars played in the Vodacom National League playoff at the University of the Western Cape and the Philippi soccer grounds. Ramakhange 'Mr Jones' Setshed, was sent to Cape Town to influence the referee of the game as well as the game between Baroka FC and Mpumalanga Sevutsa Stars. The intention was for Mpumalanga Sevutsa Stars to win these games. On 7 December 2012, Setshedi was sentenced to three years direct imprisonment and a further five years was suspended for five years.

Before the start of the matches, all referees including Malgas were called to a meeting. Cedrick Muvhali, also a state witness and present at the meeting indicated that Malgas had told him about a man who was offering money to fix the matches. When confronted, Malgas denied this. The man in question was Micheal Ndlovu.

During the trial at the Bellville Specialised Commercialised Crime Court, Advocate Louis van Niekerk asked Malgas whether he had made any contact with Ndlovu. He denied this.

During a lengthy cross examination Advocate Van Niekerk told Malgas that telephone records in possession of the state reflected three phone calls between Malgas and Ndlovu on 6 June 2011. He again denied this.

In the end the court ruled that he did not answer frankly and honestly.

## Commentary by Advocate Louis van Niekerk

The accused Phil "Mr Jones" Setshedi is a soccer legend in South Africa, having captained one of the oldest and one of the most popular teams in South African football, Orlando Pirates. He later became an assistant coach of our national team, Bafana Bafana. He remained in this position during the reign of Clive Barker when Bafana Bafana became the African Cup of Nations champions in 1996.

The state had to call 15 witnesses whose evidence was placed under intense scrutiny. I had to prove in detail section 252A trap evidence. Section 212 (3) of the Criminal Procedure Act, was used to place the evidence of Adv Nollie Niehaus SC before court. This made it unnecessary for me to call him from Cape Town. This prevented him from being cross-examined on his role in authorising this

trap.

Only after these witnesses were called, did the accused make admissions in terms of section 220. These admissions confirmed all the allegations in the charge sheet and he was found guilty of corruption.

Before the sentencing proceedings, it became apparent that the trial regional magistrate was seriously considering handing down a non-custodial sentence. This galvanised me to pull out all stops in putting evidence of an aggravating nature before the court. I was also fortunate that a different magistrate came on board as the trial magistrate had resigned to take up a position in the private sector. Four witnesses, including two executives from SAFA were called by the State. Evidence on Operation Dribble by the SAPS to prevent match fixing in soccer, the report by the enquiry led by Adv Semanya SC and a report by Interpol on the Integrity in Sport were presented. It is estimated that soccer corruption is a US \$100 billion industry worldwide. In the end, Setshedi received three years direct imprisonment and a further five years suspended for five years. No application for an appeal against sentence was brought.

All along the investigating team, adeptly led by Major Bamebelela Ngxaki and Colonel Mike Hlophe, knew that the paymasters behind Setshedi were still at large. Investigations in this regard are continuing.

In terms of section 204 of the Criminal Procedure Act, witness Clifford Malgas was not afforded indemnity by the court.

## Malgas matter:

This then led to a further trial against Malgas of corruption on the same facts as above, and a count of perjury. I led five witnesses during the state's case and the accused testified. The court in its judgment said that not all the state witnesses were entirely frank and honest, nor did they reveal all that they knew in the extent of corruption or about all other people involved in this corruption. Here the court referred specifically to the state witnesses, Setshedi and the referee Ndlovu.

Despite this, the state's case relied further on a single witness who is known as Mr. M and whose identity is protected by way of a court order. What specifically helped, was that I provided this witness beforehand with information explaining in great detail how corruption by way of the bribery of referees was conducted. Mr. M's evidence subsequently was pure joy to lead. That contributed to a finding of the court that Mr. M's evidence was particularly satisfactory and credible. The court's finding was that he did not

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fabricate his version. The court also find that the accused knew that match fixing is corrupt and an offence in South Africa and he elected not to report Sethsedi while there was a duty on him to report that he was approached by others in the very same matches at the very same time that he provided the accused name and phone number to Sethsedi, the court found that it was not coincidence.

Meticulously preparing all witnesses thus assisted in obtaining a conviction. Malgas was found to be an accomplice to the corruption of Setshedi and guilty of perjury as well. He was sentenced to two years imprisonment on each count, not to run concurrently. Thus four years direct, nothing suspended. His

application for leave to appeal his sentence and the conviction failed.



## A Day in the Life of a Deputy CEO

Nomilo Mpondo

Congratulations on your appointment as deputy CEO. You are filling big boots Ms Makeke.

### How does it feel to fill such humongous boots?

It is a good feeling and while the thought of it was a bit daunting at first, I have embraced it as an opportunity to learn and develop, while I also have a lot to contribute to the organisation.

### You are highly experienced yourself Ms Makeke. What do you bring into this position?

My area of expertise and comfortable space of operation for over 20 years has been communication. I previously worked in public relations in the private sector on a consultancy basis, and for the past 10 years I have been involved in government communication. So, naturally I have always seen my path continuing in that direction and never really saw myself taking a tangent. Of course, working in NPA Communications regularly afforded me a glimpse into the bigger picture of the organisation. Also, I have previously acted in the Chief Director positions for the Strategy Office and the Integrity Management Unit, in which positions I learned a great deal about the work of these units and how they contribute to governance of the organisation.

### In a nutshell, what is the role of your office?

The overall purpose of the job is to assist the CEO in ensuring effective management of the NPA in consultation with the National Director of Public Prosecutions (NDPP) and to assist the CEO in fulfilling her delegated functions of Accounting Officer and to ensure that Corporate Services provides effective administration support to the NPA. Over and above that, I still perform the functions of Chief Director: Communications.

### The NPA prides itself with a clean audit record of two years. Between the office of the CEO and your office who is the driver of this function?

The position of Deputy CEO is a full support role to the CEO. As you are aware, the CEO has been instrumental in driving our performance in ensuring that we achieve and maintain the clean audit. However, the big job of ensuring that we get a clean audit has been a collective effort by all Corporate Services

managers and staff, with tremendous support from core business.

### You assumed your new position in April and I do sense already that the going has been tough since day one. Take us through your experiences in this new role.

It is a busy portfolio. The CEO sits with the powers of accounting officer delegated to her by the DG, for the overall management of the NPA. This means that there are high volumes of matters from all offices that require her attention, decision-making and authorisation on a daily basis, so I assist with the consideration thereof. Importantly, my role as agreed with all the Chief Directors as well, is to work closely with them in a supervisory capacity and make sure that their respective portfolios are properly resourced and provide them with the necessary support. It is also to identify and manage risks affecting and impacting on the service delivery of the NPA.

### What kind of support do you need from the global NPA to perfectly deliver your functions as acting deputy CEO?

The office of the CEO generally relies heavily on the entire organisation operating within the legislative prescripts and government's regulatory framework. If we all do our part by understanding the NPAs policies and complying with them, and contributing accordingly in terms of performance, to ensure that the organisation achieves its strategic goals, then the work of the office of the CEO can run smoothly and effectively.



Acting Deputy CEO, Bulelwa Makeke



# Stepfather sentenced to four life terms imprisonment

Mashudu Malabi



Anthony Swarts, aged 42 was arrested on 28 October 2011 for the rape of his stepdaughter who was 13 years old at the time of the first incident. According to the complainant, the accused raped her on four different occasions during 2011 in their family home in De Aar. The first and second incidents took place whilst the family were sleeping in one bedroom. The accused got up from where he was sleeping with his wife, the mother of the complainant, and raped her. The third and fourth occasion occurred during the day whilst the accused and the victim were alone at home. The complainant did not immediately disclose the rapes and only opened up after she discovered that she was pregnant. She testified that the accused threatened to kill her if she told anybody about the rapes.

The complainant fell pregnant as a result of the rapes. A DNA test proved that the accused was the father of the unborn child. The unborn child was later aborted at the Kimberley Hospital. It also transpired during the course of the investigation that the accused was HIV positive and aware of his status when he had unprotected sexual intercourse with the complainant without her permission. In addition to the four counts of rape, he was also charged with four counts of attempted murder. The accused throughout the trial denied that he was aware of his HIV status but was willing to admit that he had consensual sex with the complainant. He even lied that the complainant was the one who was HIV positive when he had sex with her. Fortunately, the complainant did not contract the virus from the accused.

On 18 February 2015, the accused was convicted of four counts of rape and four counts of attempted murder. The rape and attempted murder charges for each incident were taken together for sentencing purposes and the accused was sentenced to four life terms imprisonment.

In sentencing, the court commented on the absolute lack of remorse on the part of the accused. The Magistrate noted that even during cross examination, when the accused was caught out that he lied about his HIV status and he later admitted the truth, he showed no remorse. The Magistrate also emphasised the

fact that although the accused was not the biological father of the complainant, it was still his duty to protect and to care for her but instead he violated her in this horrific manner.

## Commentary by Advocate Willem Vister



This was one of the first major cases I prosecuted in the Regional Court. When the trial proceedings started in July 2014 I had only four months experience in the Regional Court. Fortunately I was backed by a great team and a dedicated investigation officer who stopped at nothing to secure the presence of the key witnesses at court.

We experienced some challenges to secure the attendance of the medical doctor who was always outside the country when we needed her to testify. It was also very difficult to get the complainant to open up and to gain her trust. She often broke down during consultations and at some stage indicated that she just wants to end her life.

Dealing with the case opened my eyes on behaviours that can sometimes show how a child who has been sexually abused views that abuse and attempts to cope with it. I also learnt that child victims of sexual abuse face secondary trauma in the crisis of discovery and that the power imbalance between a child and adult makes it difficult for a child to stop the abuse.

In conclusion, I am glad that justice was served. I know that after what happened to the complainant, her life will never be the same but hopefully the sentence imposed will bring some closure for the complainant and her mother and will deter others who might be tempted to commit offences of this nature.

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# ETHICS IN ACTION SERIES

## Relevance of the Public Sector Integrity Management Framework – Part 1

As part of our responsibility in the NPA's Ethics Promotion Office we are obliged to alert officials to any new legislation, regulation or policy, especially those that have a direct bearing on our individual roles. Part of our mandate is to promote and manage an ethics and compliance culture, to the benefit of the entire organisation. In the next few editions of *Khasho*, the Ethics in Action Series will unpack the Public Sector Integrity Management Framework into tangible bite-sizes, so that officials can appreciate its implications and relevance, and where possible leverage of the Framework, to their benefit and that of the organisation. The Department of Public Service and Administration (DPSA) are the custodians of the Public Sector Integrity Management Framework; a piece of legislation which contains a compendium of ethical and good governance measures, from which we all can benefit, if applied appropriately.

Unfortunately we currently have a myriad of challenges when it comes to the implementation of a strong ethics and anti-corruption culture in the public service, and we are always seeking new ways of halting the scourge of unethical practices, while also looking for creative ways of reversing the culture of non-compliance and weak enforcement. Based on the current culture in the public sector, it is easy to give context to the introduction to the Public Sector Integrity Management Framework. We should begin by understanding this framework in the context of our specific roles as public officials. Maybe the following appropriate scenarios can highlight the relevance of its introduction.

We are all aware that it sometimes takes several months for a disciplinary process to get started and in some instances officials are often suspended on full pay for months, if not years. In some instances we witness significant inconsistencies in the type of sanctions applied during these processes. Sometimes allegations of corruption which are reported to the anti-corruption hotline are referred back to respective departments for follow-up, and since most departments do not have sufficient or appropriately trained investigative capacity, investigations are never completed. Numerous

reports show the ineffectiveness of the Protected Disclosure Act, of 2000, which has also resulted in the lack of confidence in blowing the whistle against unethical conduct and corruption across the public service.

This new framework, the Public Sector Integrity Management Framework, is therefore very significant, given the high levels of frustration being experienced by those involved in the fight against corruption. In the context of the current scourge in corruption levels, the framework is intended to strengthen the existing measures and standards for improving the management of integrity and promoting an ethical ethos in the public service. This framework intends to give credence to the current provisions for managing unethical conduct that can arise as a result of financial interests, gifts, hospitality and remunerative work outside the public service. Further proposals are also being made in respect of deployment of ethics officers in the public service and the introduction of minimum conduct requirements. Some of these measures will require legislation to become enforceable. The DPSA will also conduct communication and awareness workshops to explain all measures contained in the framework and assist departments with implementation through developing implementation guidelines.

As part of our mandate for the NPA, the Ethics Promotion Office, in collaboration with other related departments, will perform these responsibilities. In the next edition of *Ethics in Action* we will explain the scope of the application of the framework, and also highlight some of the serious implementation and policy gaps in the anti-corruption and good governance space. For further information on the work of the Ethics Promotion Office and the Public Sector Integrity Management Framework, officials can contact our Ethics Officers on 012 845 6978 or 012 845 6871.

# Agenda Setting Media Conference in Vienna, Austria

Nomilo Mpondo



The Chief Director of Communications, Bulelwa Makeke and NPA Spokesperson, Velekhaya Mgobhozi attended the 15th Agenda Setting Media Conference organised by Media Tenor in Vienna, mid-February this year. Makeke was a panellist in one of the workshops and her presentation topic was: **'Regaining trust in the legal system: the impact of the political environment on perception and reputation management'**.

The purpose of the conference was to gain insights and share knowledge and experience with peers, stakeholders and opinion leaders from around the world. The conference also presented opportunities to discuss the latest trends around media impact, agenda setting with experts from different countries and regions.

Brand SA was appropriately represented by its Chairperson, Ms Chichi Maponya who accepted the winning prize for South Africa in the Africa Country Image Award category.



NPA News April / May 2015



## Farewell to Deputy CEO Ambassador Sisulu



NPA members bidding farewell to Ambassador Sisulu

# The long arm of the law and cooperation between DDP's office and the German Prosecutorial Authorities pays off

Tsepo Ndwalaza

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In October 2007, Shantelle Van Rensburg, the driver of a VW Jetta, lost control of the vehicle on the Mount Road off-ramp in Port Elizabeth, crashed through the railings on the off-ramp and the vehicle fell to the road below, landing on another vehicle in motion. Rodwyn Mark Gallant, a passenger in the backseat of the accused's vehicle, and George Neville Krouse, the driver of the vehicle on the road below died from injuries sustained in the accident. The vehicle driven by the accused belonged to her boyfriend, Welkener, a German citizen working in South Africa at the time.

The accused was hospitalised for a lengthy period after the accident. She was later brought before court on two counts of culpable homicide, but in 2011 the matter was struck off the court roll as certain state witnesses could not be traced.

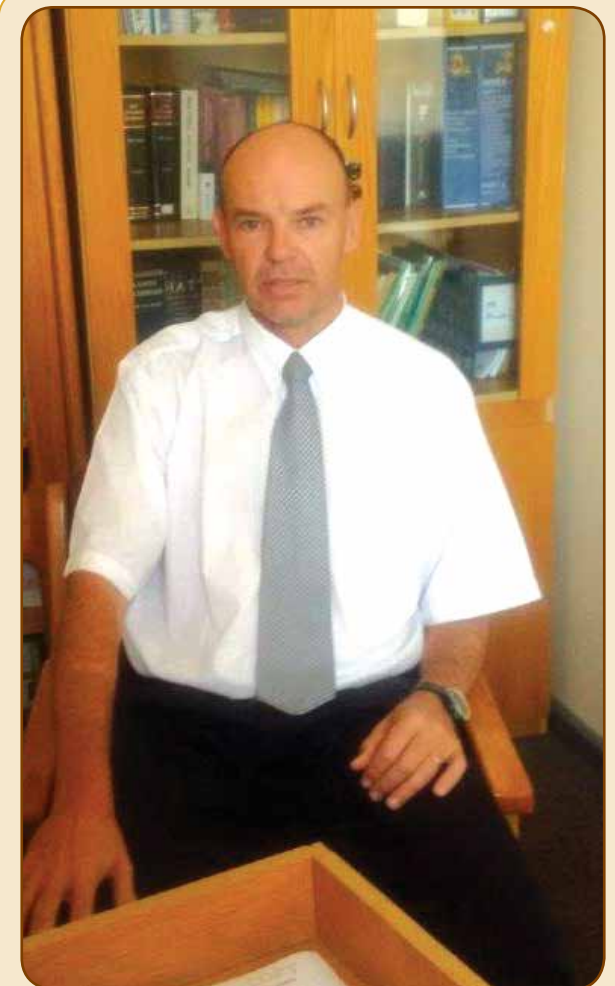
In the inquest that followed in 2012, the inquest magistrate found that the accused was responsible for the death of the deceased. The SAPS liaison officer at the DDPP office, Port Elizabeth advised that the witnesses could be traced and were indeed available. An instruction was sent out requesting the investigating officer to bring the accused before court. But then, it transpired that subsequent to the matter being struck from the roll in 2011, the accused left South Africa for Germany where she married her boyfriend, and changed her name to Shantelle Welkener. The investigating officer traced her mother in Port Elizabeth, who indicated that her daughter had no intention of returning to South Africa and refused to give her daughter's contact details to the investigating officer.

Based on the working relations between the DPP Office and the German Prosecutorial Authorities, the DDPP Office, Port Elizabeth asked the SAPS to obtain a warrant of arrest for the accused. The German police and prosecutorial authorities were furnished with a copy of the warrant but the accused insisted that she was not returning. She was informed that a warrant of arrest would be circulated and INTERPOL would be asked to execute the warrant abroad as she was still a South African citizen. Shortly thereafter, a local attorney contacted the office indicating that he had received instructions to liaise with the office in order for the accused to appear in court. After

lengthy negotiations Welkener, now a mother of a nine month old baby, returned to South Africa on her own accord and at her own expense.

On 20 February 2015, she appeared in the regional court where she pleaded guilty to two counts of culpable homicide. Welkener was sentenced to 5 years imprisonment suspended for 4 years on certain conditions and she was ordered to pay an amount of R10,000 to both the deceased's families.

This is another episode where justice prevailed even when everyone thought of throwing in the towel. The Director of Public Prosecutions in the Eastern Cape, Advocate Lungi Mahlati SC said, "Yes, the arm of the law is long and even longer where cooperation exists with foreign law enforcement authorities."



Senior State Advocate Marius Stander based in DDPP Port Elizabeth

# North West High Court sentences Samuel Ndlovu to two life sentences

Frank Lesenyego



The North West High Court sentenced Samuel Ndlovu to two life terms on two murder charges. On 12 January 2014, Samuel Ndlovu was seen packing his bag and locking the door to his rented shack. One of the neighbours became suspicious when she heard the accused's girlfriend shouting that the accused was strangling the child. The neighbour informed the landlord about her suspicion.

The landlord investigated and found the child lying on the bed. He then followed the accused to the hiking spot and brought him back to his shack. At the shack the accused informed the landlord that he had killed his girlfriend and the child. The police were called and upon entering the shack, two stabbed bodies were found. They were identified as the accused's girlfriend and her one year old daughter.

The court expressed shock at his brutality and further stated that an appropriate sentence must be imposed. The deceased was seven months pregnant and was stabbed 17 times with one of the stabs penetrating the womb and stabbing the foetus. It is alleged that the accused was upset when he learnt that the child was not his and heartlessly killed the mother, her unborn child and her one-year-old child whom she witnessed being gruesomely murdered.

The NPA congratulates Advocate Ponka Maila for the job well done. This judgement and sentence reaffirms the NPA's commitment to the war against all perpetrators of violence against the vulnerable. The NPA trusts that this sentence will deter potential offenders from committing such barbaric criminal acts

## Khasho asked Advocate Ponka Maila some questions about the case



### How do you feel now that this case has been finalised?

I am happy that the family of the deceased got closure. I am also happy that this successful prosecution has strengthened and enhanced the confidence of the community in the NPA and Criminal Justice System. The courts has also made it clear that it will not tolerate unlawfulness. Lastly, the sentence imposed will also serve as a deterrent to perpetrators of crime.

### What was your position during the trial?

During the prosecution of this case, I prepared thoroughly and also consulted with witnesses. I also worked closely with the investigating officer.

### Any lessons learnt as you move forward to deal with other cases?

It is important to be thoroughly prepared for your case. It is also crucial to consult thoroughly with witnesses in line with the Victim's Charter. As a prosecutor, we are the peoples' lawyers and my belief is to have a goal, be patient, stay focussed, commit and dedicate yourself to achieving that goal.

April/ May 2015

NPA Performance



# Welkom Cluster officials reach out to patients at Parys hospital

Phaladi Shuping

The Chief Executive Officer of the Parys District Hospital, Nthabiseng Malinga expressed her gratitude to the NPA officers from the Welkom Cluster for donating comfort packs to the patients in the crisis centre.

Rosy Dube, a Court Preparation Officer, attended a stakeholder meeting that was attended by officials from different departments, including Department of Health where she learnt of the challenges that health officials are confronted with in dealing with the victims of rape.

They cited the example of some rape victims who come to their crisis centre without underwear after being raped because in most cases, the underwear is left at the crime scene or taken by the police for forensic testing and the hospital does not have the means to assist them with the new ones, thus, stripping away their dignity.

Dube, together with her colleagues, donated money which they used to purchase 173 comfort packs comprising of underwear, face cloths, tissues and body lotion which was donated to the hospital on 17

April 2015. They also bought four small plastic chairs, table, colouring crayons and puzzles for children's waiting room.

"I am happy that we could make a difference in the lives of others and show people that we care about their well-being. We will really make a big difference if all of us can work together in assisting those who are less fortunate."

Advocate Navilla Somaru, Chief Prosecutor: Welkom Cluster thanked Dube for her efforts and putting the NPA in a positive light. She said that comfort packs will go a long way to ensure that the victims of rape do not feel neglected by the justice system.

Sister Makatsa appreciated the presence of Dube in Parys for she has not only exposed the challenges in their hospital but this has resulted in many people assisting them with their requests. She welcomed the assistance of the NPA and said that their contribution will ensure that their victims walk out of their facilities as survivors.

Hospital CEO, Malinga was also overwhelmed by the generous donations from the NPA.



Rosy Dube, Navilla Somaru and Aneli van Tonder with comfort packs



Hospital officials receiving comfort packs

# Prosecution demands strong character

Phindi Louw

Three notorious serial rapists recently met their match in Advocate Shubnum Singh who took a mere 19 court days to see all three serial rapists, sentenced to 22 life terms plus 335 years, 13 life terms plus 200 years and 6 life terms plus 230 years, respectively. One of the serial rapists

who was only 17 years old when he was first apprehended, narrowly escaped a harsher sentence because he was relatively young when the offences were committed. The accused were charged with 230 offences ranging from kidnapping, rape, and attempted murder.



April/ May 2015

NPA Performance



## When did you start prosecuting serial rapes and who was the first serial rapist you prosecuted?

I started prosecuting in 2005 at the Madadeni Magistrate Court in KwaZulu-Natal. I also prosecuted at the Ezakheni Magistrate Court before joining the office at South Gauteng. Prior to that, I served as a member of the South African Police Service for eleven years. I also served articles and worked as a professional assistant with a firm of attorneys in Ladysmith.

When I arrived at the Office of the Director of Public Prosecutions in 2008, I was appointed as the junior to assist in the prosecution of the first serial rapist I ever dealt with, Annanias Mathe. I can't say I was appointed to prosecute serial rapists, it is not my speciality. I was just fortunate enough to have those matters allocated to me.

## Please share that first experience with us, including the feeling of knowing that you were responsible for removing one of the cruellest men from society?

To prosecute serial matters is a logistical nightmare, so it is always a relief when the case is finalised. When an accused is convicted of the offences he has been charged with, it is more of a comfort to the victim to know that this person can't hurt them anymore. I am a prosecutor first, so when a person is convicted, there is no sense of elation as such, you simply move onto the next matter. One knows that there are plenty more murders, robbers and rapists on the prowl. There is much more work to be done.

## Which case was the most difficult to prosecute and what led to your breakthrough?

Cases that involve children are always the most difficult. Each case has its own challenges. The most challenging however, was that of the rape and murder of a nine year old child. There were no eye witnesses, the investigation was poorly done, the main witnesses had fled the country, the circumstantial evidence was minimal, and

that coupled with the fact that the community was baying for the blood of the accused, added unnecessary pressure.

## What are the common challenges one may face in dealing with such crimes?

Shoddy investigations, reluctant witnesses and difficult counsel.

## Where do you start with preparing a victim of a shameful and demeaning crime like rape?

I always start by building a relationship of trust with the victim. She is about to share her most unpleasant sexual experience with a stranger and a court full of strange people. She needs to be supported emotionally and knowing that I am there to take her through her paces, requires a strong foundation of respect and humility.

## Your profession demands a strong character, both physically and mentally but as a woman and a mother it must take a toll on you to see victims breaking down in court. How do you deal with this aspect?

I think all prosecutors have strong characters. This enables us to deal with this situation favourably. Every prosecutor knows that crime affects a person, and this is the nature of the profession we have chosen. Sometimes it is hard not to get emotional. But if you do get emotional, it clouds your judgement. I try to remember that the victim is not here by choice but rather because of circumstances that she has found herself in. Being a woman and a mother also makes me protective of the victim. I find that hugs and smiles always helps them through a trial.

## Do you think that the organisation is doing enough in providing personnel with supportive mechanism to deal with work-related stress?

Yes, I do. But I don't think an organisation can help you if you yourself don't ask for help. It is not normal to do this kind of job, for any amount of money, and not be affected by what people endure. There should actually be a compulsory debriefing at least every six months for all prosecutors. Talking about your case helps. It needs to be guided by professionals who know when a problem is serious and when you need help.

## Lastly, what message can you share to inspire other junior advocates like yourselves?

I learnt a valuable lesson from a very dear friend. I am a prosecutor first. The behaviour of people when they see themselves as being better than others always fascinates me. We all represent the NPA. There should be respect for everyone, irrespective of who you are and what position you hold. We need to be decent human beings first and foremost. There is no substitute for hard work. Everything else falls into place.

# Uncle sentenced to life for raping his niece

Phaladi Shuping

A 30-year-old man from Pieter Swartz in Bloemfontein has been sentenced to life imprisonment by the Bloemfontein Sexual Offences Court, after he was convicted of raping his 8-year-old niece.

The accused stayed in the back room while his niece stayed in the main house with her mother who is the sister of the accused.

The court heard that on 18 October 2013, the victim was playing in the yard when the accused asked her to wash the dishes outside the house. While she was busy with the dishes, the accused grabbed and forced her into his back room. He forcefully undressed her and proceeded to rape her.

After violating her, the accused allowed the victim to go back to the main house. The victim's younger sister noticed that the victim was walking awkwardly and alerted her mother who called an elder from the church to assist her in enquiring from the victim what transpired.

The victim told them that she was raped by her uncle. The matter was reported to the police and the accused was arrested the following day.

In arguing the state's case, State Prosecutor, Adv Tshegofatso Kelly Kambi informed the court that the state had proved its case beyond a reasonable doubt because the victim and her mother did not contradict themselves and the evidence of the victim was corroborated by medical reports. She further stated that the victim was an honest witness and never exaggerated what had happened.

In court, the accused denied that he raped the child and stated that he was not at home when the incident happened but he could not provide an alibi. He stated that the victim had fallen off a bicycle and this accounted for why she was walking with some difficulty.

Magistrate Monde Mashaya rejected this version. He further stated that the state witnesses were credible and reliable and did not contradict themselves like the accused who contradicted himself on many occasions. She said she is not convinced that the defence had provided the court with compelling and exceptional circumstances to deviate from the minimum prescribed sentence and subsequently sentenced the accused to life imprisonment.

## Commentary by Advocate Tshegofatso Kelly Kambi



The state's case was founded on the testimony of

the victim, the first report and the medical report. The victim sustained injuries on her genitalia and jaws as she was throttled by the accused.

The mother of the victim was credible and reliable because she told the court that at first she did not believe her child because she did not see her brother as someone who could violate his own niece. But with all the evidence that was presented by the victim, she realised that she was telling the truth and not pinning anything on the accused.

What I realised was that the mother of the victim loved both the victim and the accused and just wanted the truth. It could have not been easy for her to testify against her brother, but on the other hand, she was just somebody who wanted justice for her daughter.

It was gratifying to see this matter finalised with a conviction.

# Vigilantism dealt a blow in Khayelitsha

Eric Ntabazalila

Calls for members of the public to stop taking the law into their own hands and the fight against vigilantism, received a much needed boost after a group of Khayelitsha residents were each sentenced to 18 years imprisonment at the Western Cape High Court on 28 April 2015.

Mzwabantu Madiba Mncwengi, Mzimasi Madiba Mncwengi, Buyelwa Nokwandisa Mncwengi,

Lumko Bambalaza, Xolani Mkhaphela and Mawande Siboma were each sentenced to 18 years imprisonment after they were convicted on three counts of kidnapping and three counts of murder. Mzwabantu Madiba Mncwengi, Mzimasi Madiba Mncwengi, Buyelwa Nokwandisa Mncwengi, Lumko Bambalaza were also convicted on charges of assault with



intent to do grievous bodily harm.

The six were convicted for the kidnapping and murders of Sivuyile Rola, Luxolo Mpontshane and Mabhuti Matinise. They grabbed and dragged the young men from their homes, after they accused them of stealing a plasma television set belonging to accused 1, Mzwabantu Madiba Mncwengi. The young men were beaten in front of relatives and a crowd of Harare (Khayelitsha) residents who begged the accused not to beat and kill the young men who repeatedly denied stealing the television. The young men were taken to a secluded area in Macassar where the beatings occurred, and they were left for dead. Their bodies were found by a passer-by. Most of the accused were arrested a day after the incident and spent three years in custody and others were arrested six months later. They all pleaded not guilty.

Advocate Thabo Ntela for the state called 25 witnesses in support of the charges against the accused. During sentencing procedures he argued: "To ensure the safety of the community the accused must be removed from

the community so that they do not have the opportunity to continue committing such heinous crimes." They never showed any remorse for their actions. The accused decided to act as judges, jury and executioners. The television set was never found in their (deceased) possession nor was it ever retrieved. It has not been established that the deceased were indeed the culprits who stole the television set and it will never be known who stole it or how it disappeared."

He asked the court to impose life imprisonment on each of the accused. However, the court ruled that the murders were not premeditated.

Khayelitsha recently experienced several incidents of vigilantism. These incidents were among the reasons that led to the establishment of the Khayelitsha Commission that was led by Judge O'Regan and Advocate Vusi Pikoli.

The NPA welcomed the sentence as it boosted the community's confidence in the criminal justice system in our country. The message was clear, no person should take the law unto himself or be seen to be above the law and untouchable.

### Commentary by Senior State Advocate Thabo Ntela

This was a mob justice at work in Harare, Khayelitsha. The accused were charged with three counts of kidnapping and three counts of murder. The state's case was based on circumstantial evidence i.e. no direct evidence to suggest that the victims were last seen alive at the back of the bakkie belonging to Mzwabantu Madiba Mncwengi. The accused's versions were that the community members around the area were the ones who beat up the victims, who then managed to run away from the mob.

The first four accused, Mzwabantu Madiba Mncwengi, Mzimasi Madiba Mncwengi, Buyelwa Nokwandisa Mncwengi, Lumko Bambalaza, were arrested a day after the victims were found dumped in an isolated sand mine area. The other accused, Xolani Mkhaphela and Mawande Siboma, were arrested about six months later with Siboma having fled to the Eastern Cape. Accused seven was made a 204 witness and all six accused had legal representatives for the duration of the case. The trial took 15 months to complete.

The main eyewitnesses who testified were family members and two crucial witnesses decided against testifying after numerous lengthy consultations and without any reasons. One other crucial witness decided to develop amnesia whilst on the box, which was very embarrassing to the state. During the trial, there was an inspection in loco as well as trials within the trial.

It was very courageous of the family members who testified and had to relive their traumatic experiences. The families were pleased and satisfied with the outcome of the trial and especially with the convictions that vindicated them. They appreciated the work done by the police and the state which brought them closer. A special word of gratitude is to be extended to the Investigating Officer, Detective Sergeant Gojo for the excellent work done under trying conditions.

One of the accused admitted to the correctional supervision officer that he, together with the other accused committed the acts even though he did not say so under oath. The stolen flat screen for which the victims died was never recovered nor was there evidence that it was stolen by them.



Senior State Advocate Thabo Ntela



# Sentence of rape accused restores hope in the criminal justice system for the victim of crime and the community of Port Elizabeth

Tsepo Ndwalaza

The Port Elizabeth Regional Court 10 was abuzz with activity recently when three men who were accused of gang raping a 39 year old woman in Zwide in 2008 were sentenced. Nkosiyeth Ndiza, Nimrod Mavela, and Thando Faku, accused 1, 2, and 3 respectively were all charged with robbery with aggravating circumstances, gang rape and kidnapping. Accused number 3 was further charged with another count of rape.

It is alleged that on 21 September 2008, the complainant was robbed by accused 2 and 3 in Zwide in Port Elizabeth. They were armed with knives and kidnapped her to an abandoned shack next to the house of accused 1. They raped her taking turns. Accused 3 took her to his shack and raped her again. When he fell asleep, she managed to escape and laid a complaint with the police. She gave the nick names used by the accused and the sequence of events during the rape ordeal. She pointed out the face cloth that the accused used to wipe themselves to the Investigating Officer, Warrant Officer Penny. The clothes of the complainant were recovered from accused 3's place, where the complainant alleged that he raped her for the second time. The (DNA) results from the face cloth positively linked accused 1 and 2. The complainant testified about the tattoos and the number "26" on the shoulders of accused 3, which he denied, but his ex-girlfriend who testified for the defence later confirmed that the accused had the number 26 tattooed on his shoulders.

The accused testified in their own defence and denied any involvement. The court gave a lengthy judgment, convicted and sentenced them as follows:

Accused 1 – Rape and kidnapping: he was sentenced to life imprisonment for rape and five years imprisonment for kidnapping. Accused 2 - Robbery with aggravating circumstances: he was sentenced to life imprisonment for rape; 15 years imprisonment for robbery and five years for kidnapping. Accused 3 – Robbery with aggravating circumstances: Rape x 2 and kidnapping. He was sentenced to double life imprisonment for rape; 15 years imprisonment for robbery and five years for kidnapping. In passing sentence, the Regional Court Magistrate had this to say:

"You took advantage of the complainant because she was vulnerable and could not defend herself. This is the clear work of cowards."

## Commentary by Prosecutor Velile Makasana



When I first read the docket in August 2014, I felt that justice was already delayed for the complainant. The delay was as a result of the failure on the part of the accused to attend the trial after they were released on bail. They had to be kept in custody in order to proceed with the trial. When I phoned the complainant to establish whether she was still available for trial, she told me that she had lost hope that the case would ever be tried. During the first consultation with her, I found that she still had a good recollection of the terrible events. What inspired me the most was her determination to stand in court and face her sexual tormentors.

Even though it was a protracted trial, the cooperation I had with the investigating officer, Warrant Officer Penny, yielded good results. In the end justice prevailed. I am of the view that the sentence passed herein is both retributive and deterrent and will restore fidelity in the rule of law. It guarantees protection to the most vulnerable members of our society, that is, women and children.

### Lessons learnt

Victims of crime still look up to the machinery of the courts to ensure that justice prevails. Justice accomplished brings back a sigh of relief to those who are negatively affected by crime.

# NPA invited by The Department of Justice and Constitutional Development

Tsepo Ndwalaza

On 27 February 2015 the NPA was invited by the Department of Justice and Constitutional Development to participate in an outreach programme which they held in Elliot at Phola Park Township. The members of the criminal justice cluster from the SAPS, NPA, Judiciary, Correctional Services, Legal Aid Board and many community based organisations were represented in this event. The event started at 10h00.a.m and all the speakers from the various members of the criminal justice cluster made their presentations. The NPA was represented by the prosecutors and the communications unit at the event.

We had stalls and we were able to distribute information about the NPA, from domestic violence, maintenance, understanding criminal justice system and a lot of information about Thuthuzela Care Centres. There was a question and answer session which was utilised to the maximum by community members to find out more about

the different departments that were there. Our representatives from the Elliot Magistrates Court spoke well on the role of the prosecutor, the mandate of the NPA and where fit in the criminal justice system. The event was well attended by well over 750 people and learners from both a local high school and junior secondary school attended the event and they entertained us with drum majorettes.

We were also entertained by the learners of the local high school with their acting skills when they dramatized court situations to the surprise and the delight of the community. It was really a very educational event and I believe that the community members gained a lot from the various departments. As the NPA we continue to partner with the members of the criminal justice cluster to bridge the gap between us and the community in which we serve.

## Elliot Outreach programme in pictures



NPA News April / May 2015



# NPA service delivery road show in Southern KZN

Natasha Ramkisson- Kara

The southern KwaZulu-Natal (KZN) township of Jolivet is where the KZN National Prosecuting Authority (NPA) Service Delivery Roadshow was held in March. The aim of these road shows is to partner with government and non-government entities and take services to communities in impoverished and outlying areas with high crime rates. Jolivet was chosen because of the prevalence of drug related crimes that occur there.

For this event, the NPA partnered with the South African Police Services (SAPS), the Department of Health, Ubuhlebezwe Local Municipality, the Department of Justice and Constitutional Development, Legal Aid South Africa and the Office of the Public Protector.

There was a short programme where each stakeholder was afforded the opportunity to give the community a brief explanation of the services they offered.

The Prosecutors from the Ixopo Court assisted with the programme: Ms. Ruth Mthelelo was the Programme Director and Ms. Sindisiwe Nkomonde represented the Chief Prosecutor of the cluster. Mr. Bruce Magoso informed the community members about the work of the NPA and he discussed how the NPA works together with the other stakeholders in the justice cluster. Colleagues from the Edendale Thuthuzela Care Centre were also in attendance.

Once the formalities were over, community members visited the stakeholder exhibits and engaged with them on an individual basis. The event was a great success with approximately 700 people attending. The Ward Councillor as well as members from the local municipality commended the NPA on an excellent initiative in pursuing our mandate of increased service delivery.



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