

End of Year
Edition 2018



KHASHO



**TCCs
Doing Their Best
to Support 16
Days**

**2018 IAP
Conference
Picture Special**

**Kimberly Rapist
Gets Triple Life
Sentence**

**From
Interpreter to
Regional Court
Prosecutor**

**Five Life Terms
for Cruel
Heartless Killer**

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Letter From The Managing Editor

I write this editorial letter under the euphoria of the news of President Cyril Ramaphosa's announcement of the appointment of the NDPP, Adv Shamila Batohi on 4 December 2018. We look forward to welcoming her warmly when she assumes duty officially on 1 February 2019. No stranger to the NPA, having worked as the KZN Regional Head of the Scorpions and later served as the DPP: KZN in 2002 – 2009, her return to the organisation bodes well for the future of the NPA.

The 23rd Annual Conference and General Meeting of the International Association of Prosecutors (IAP) for 2018, held in Johannesburg from 09 – 13 September 2018 was a highlight of this year. The conference is hosted annually, giving different countries an opportunity to host this auspicious event that brings together in one venue for a week, all member prosecutors from all over the world. The theme for the conference was "Prosecutorial Independence – the Cornerstone of Justice to Society". In this issue we share with you a little bit about the conference, which was a massive success, by all standards.

The 16 Days of Activism for No Violence against Women and Children campaign took place from 25 November to 10 December 2018, under the theme: #HearMeToo: End Violence against Women and Children! This year's campaign was preceded by the hosting of the National GBV Summit in Centurion in October, to which the President had committed to after a request by a collective of women from all walks of life in South Africa who came together under the banner of the #TheTotalShutdown, with an activism approach to address gender based violence more impactfully, jointly between government and civil society.

The following thematic areas were constituted to give structure to the summit discussions.

1. Prevention of violence against women;
2. Reflect on existing laws and policies;
3. The current response and support;
4. Accountability;
5. Resourcing on the fight to stop gender based violence;
6. Communication that raises awareness programmes;

I attended the summit, along with many colleagues from the NPA, and I chaired the Communication Commission, which comprised of representation from government



Ms Bulelwa Makeke
Chief Director: Communications

communication, advertising and marketing industry, Television content producers and mainstream media. The 'all hands on deck' approach that emerged as outcomes of the summit, culminating with a jointly signed Declaration, promises to address the scourge of gender based violence more purposefully over a sustained 365-day-a-year basis.

Thuthuzela Care Centres (TCCs) continue to bring hope of protection from secondary victimisation of victims of gender based-violence, reduce the cycle period from reporting to the finalization of the case, and improve the conviction rate of these cases. The key outcome of these centres is to turn victims into survivors. TCCs are one stop facilities typically based at public hospitals close to communities where the incidence of rape is particularly high. They are also linked to sexual offences courts staffed by skilled case managers appointed to oversee prosecutor-guided investigations and ensure cases are court ready. In this issue, we profile some of our TCCs.

As usual, we take pride in sharing the work of our prosecutors in our courts around the country. This is *Khasho's* way to show our appreciation of their efforts and passion that is often demonstrated in our courts on a daily basis. Please read more about our successful cases in this issue.

Please continue to link up with us on the Facebook page (The National Prosecuting Authority of South Africa), and please note that we have recently started a Twitter handle @NPA_Prosecutes (albeit it being a slow start in the sometimes tumultuous environment that Twitter has proved itself to be). To those who are social media savvy, please check it out and know that your comments and feedback are always treasured. I also remind you of the dedicated e-mail address available for contributions to Khasho - khasho@npa.gov.za.

On behalf of the Khasho team, I would like to extend our best wishes for a joyous holiday and a new year full of happiness.

All the best for 2019. Enjoy!



Letter from the Acting NDPP

It has been a great honour for me to be entrusted with the responsibilities of leading this institution, which is the cornerstone of justice in our country. To be at the helm once again albeit in an acting capacity is certainly a great honour. As you may know, the process to fill the NDPP position has come to finality and the President of the country has appointed Adv Shamila Batohi who will begin her role as NDPP in February 2019. We are confident that the new NDPP will take this institution to soaring heights. Whilst we wait for her to assume her position in February, it is my responsibility and duty to lead our quest to deliver justice to the people of the republic without fear, favour or prejudice.

It is public knowledge that I took over an institution with staff morale and public confidence at their lowest. It has been in my best interest to make things right by applying the law the best way I know, so that the organisation can go back to its glory days.



Acting NDPP, Dr Silas Ramaite

I depended on your support to carry through the goals and objectives for this organisation and I think it is proper for me to acknowledge all of you for the unwavering support I have been receiving from you. I will always be indebted to you.

It will be disingenuous of me to think the new NDPP will restore what the organisation has lost all by herself. At this instance I want to implore you to do what you have been doing to me and other NDPPs and give her your full support when she joins us in February. Whilst I am on this point, let me commend all prosecutors for their commitment and selfless service to the people of South Africa. I know that you work under unpleasant conditions, brought about by the cost cutting measures that we operate in as the organisation. Your efforts and dedication do not go unnoticed. I appeal to you to never give up on the fight to keep the country safe.

In our efforts to interact at a global level with other prosecutors of the world, the NPA recently hosted the 23rd Annual Conference and General Meeting of the International Association of Prosecutors. It was the first time that the conference of this magnitude was hosted by the NPA. The theme of the conference was, "Prosecutorial Independence – the cornerstone of justice to society". We shared expertise with the prosecutors of the world and a lot was learnt over that period. Overall, the conference was a success and I congratulate the Local Organising Committee, led by Mrs Bulelwa Makeke, and all volunteers that assisted daily in the conference. Without your contribution the conference would not have been successful.

The NPA has recently held its strategic planning session, which is in the normal course of government's Medium Term Strategic Framework where draft plans for the following financial year are submitted to National Treasury by 30 November of every year.

It was a very refreshing session where we all reflected truthfully on the current situation of the NPA. Issues were addressed with vigour and honesty and we hope that going forward this is the trajectory that will prevail in order for us to deal with all the underlying issues that have led to the NPA's negative criticism. The strategic plan submitted is the first draft and I think it is quite appropriate that by the time that the final strategic plan is due for submission in March 2019, the NDPP will already be on board and would have had an opportunity to add her inputs and strategic direction.

It is always sad to say our final good byes to the veterans of the organisation who formed part of the NPA leadership. As the organisation we continue to lose top notch prosecutors who have dedicated years of service and commitment to the organisation. To

mention a few that we lost this year alone; DPP Free State Adv Xolisile Khanyile, Special Director: SOCA Adv Thoko Majokweni, DPP Grahamstown Advocate Lungisile Mahlati, SC and Special Director: Office for Witness Protection, Mr Dawood Adams. Some have retired, others went to lead in other powerful state institutions, including taking up the honour to represent South Africa abroad as an Ambassador.

As much as their departure made the organisation poorer, it also created opportunities to other career prosecutors who have been appointed to fill up those positions, albeit in acting positions. I salute all of them for their remarkable contribution to the organisation. Most of them were young when they joined the NPA and they stayed committed to the organisation throughout its tumultuous seasons. Their immense contribution to the organisation is unparalleled and we shall forever be grateful for their different roles in addressing crime in the country. We wish them well in all their current and future endeavours.

Let me also take this time to wish all of you happy holidays over this festive period. This is the season when we all need to recharge and spend time with our loved ones. To those that will be on the roads to various holiday destinations, please drive safely. Take time to reflect and come back rejuvenated to tackle the work of the NPA in the New Year. Important work lies ahead.

Happy holidays, and Merry Christmas!

Heavy Sentence For The Murder Of A 12 Year Old Innocent Girl

Tsepo Ndwalaza

On 26 July 2018, the Port Elizabeth High Court was full to capacity with family members, friends, the media and the public during the sentencing of two killers of an innocent young girl from the Northern Areas of Port Elizabeth. The two men who were convicted of the brutal murder of Aaliyah "Angel" Tee were sentenced to 89 years each but effectively they will serve 30 years in prison, as some of the sentences will run concurrently.

The court found that Nealon Redhouse, 18 and Deon "Kwas" Harmse, 24 showed no remorse during the sentencing proceedings. They were both convicted of murder, attempted murder, impersonating a police officer and house robbery with intent to murder Aaliyah and her parents. Redhouse was also convicted of unlawful possession of firearm and ammunition.

The state argued strongly for a harsher sentence because of the manner in which they carried out their brutal attack. Advocate Moegamat Sandan represented the state in this matter and he spoke a lot about the choices that people make regardless of the environment in which they come from. Judge Mandela Makaula, commended the hard work of the SAPS, the NPA, the social worker and the witnesses that were called in to testify, as he believed that without their inputs it would have been difficult to come up with an appropriate sentence.

The judge also commended the Tee family for their resilience under difficult circumstances and wished them well as he believes that despite all challenges they face they will overcome. In his judgment, Justice Makaula revealed that the attack on the Tee family by Harmse and Redhouse was a direct result of Candice and Edmund Tee witnessing the murder of a known gang leader Donovan "Staal" Berry a month earlier outside their home. Aaliyah was shot execution style while she and her mother cowered in the bathroom. Edmund Tee sustained three gunshot wounds which left him paralysed.

The whole courtroom sighed with relief when the sentences were handed down and the family and friends could not hide their joy. They stood together hugging as they expressed their gratitude, believing that justice has been done. Advocate Sandan based at the DDPP PE office and his team are commended for a job well done.

Insights from Advocate Moegamat Sandan

From the very beginning, I knew that this was going to be a very difficult case because it involved gangsters and the family was the target of violence in this matter. To make matters even worse, a young intelligent 12 year-old girl was brutally murdered by these thugs. In this case, some witnesses had to be put under witness protection and consultations had to be done under such conditions. We also had to be under security protection every time we attended this court case. During this case, we became very emotional at times because one of these killers actually knew the family very well as they were once neighbours and this killer was friends with the family's son. The only sin the family committed was witnessing a shooting in which a well-known gang leader was killed by the two criminals.

I was so relieved when the sentence was handed down and the family was happy with our efforts even though things were still difficult, they expressed their gratitude to the NPA, the SAPS and the court.



**Advocate
Moegamat Sandan**

“Bewitched” Kimberley Rapist Gets Triple Life Sentences For Raping Two Young Girls

Phaladi Shuping

A 45 year-old Moses Monnapule from Galeshewe in Kimberley who justified his evil actions of raping two minor children by claiming that he was bewitched was on 14 August 2018 sentenced to three life sentences plus three years in jail. He was found guilty of three counts of rape and two counts of kidnapping.

Monnapule, who has a string of previous convictions, that include theft, rape, robbery, and possession of drugs for which he served jail time, was sentenced for kidnapping and raping two girls aged six and eight years on 27 June 2015 by the Northern Cape High Court acting Judge, Vernon Smith.

The two complainants were playing in a field close to their homes when they suddenly disappeared. The community started searching for them until the early hours of the following morning when one of the community members informed their father that she saw Monnapule talking to them. Members of the community rushed to Monnapule’s house and found the children in the house.

He claimed that he was just keeping the children safe in his house. The father of the children protected him from being assaulted by angry community members who wanted to mete out mob justice. The medical examination confirmed that the children were raped.

In his defence, Monnapule, who was forensically linked to the rapes, said that he was bewitched and he does not know what happened. He blamed his actions on drugs and alcohol.

The State Prosecutor, Advocate Catharina Jansen asked for a life sentence to be imposed on the accused because he showed no remorse for his crimes and therefore did not deserve to be a member of society. Jansen further stated that the accused betrayed the trust the community had in him because they welcomed him in their community when he came back from prison thinking that he was rehabilitated.

“The accused failed to take responsibility for his evil actions. It was either drugs, alcohol or he just did not know what happened. He even went as far as saying it was a vendetta and a made up story between the witnesses and the state. Even his previous convictions could not dissuade him from violating innocent children”, said Jansen.

Insights from Advocate Catharina Jansen

The matter was on the court roll for two years because the accused was sent for formal forensic observation three times, each time on a different basis. He used a lot



Advocate Catharina Jansen

of delaying tactics but in the end the court found out that he pretended to be mentally ill after the testimony of the psychiatrist, Dr Piotrowski. He was found to be fit to stand trial and accountable for his actions at the time he committed the offence.

The community took a huge and active interest in the case, since the accused was staying next to one of the complainants. Their feeling was that one of their own is attacking two innocent children and they felt outraged.

The trial took place during the week of public unrest and turmoil in Kimberley. The community had barricaded roads and at one stage the investigating officer, Warrant Office JJ Du Plessis was pelted with rocks when he went to fetch the witnesses.

The aggravating circumstances in this matter, including the accused’s long list of previous convictions, far outweighed the mitigating circumstances and the court could find no reason to deviate from the prescribed sentence of life imprisonment. Although the accused was particularly difficult, justice prevailed in the end.

Anti-Human Trafficking Dialogue

Abram Mohlatlole

The Department of Social Development in Gauteng hosted its annual conference under the theme, 'Provincial Trafficking in Persons Program' at the Turffontein Racecourse in Johannesburg on Friday, 05 October 2018. The conference featured other government and non-government institutions such as the National Prosecuting Authority (NPA), the Hawks, Salvation Army, International Organisation for Migration (IOM), the University of South Africa (UNISA), National Freedom Network (NFN) and community developing initiatives in the Gauteng region.

The conference was organised with the aim of raising awareness about the fight against transnational crimes such as human trafficking, and also to come up with strategies on protection of trafficking victims and prosecution of traffickers.

Deputy Director of Public Prosecutions in the Gauteng Local Division, Advocate Rasigie Bhika was amongst the speakers and said that government has done a lot to intensify the war against trafficking. Pieces of legislation to curb trafficking in persons like the Prevention and Combatting of Trafficking in Persons Act 7 of 2013 that came into operation on 9 August 2015, form part of such efforts.

"The NPA has its constitutional mandate from Section 179, the office exists to strengthen the country's democracy by enabling justice through prosecution. She went on to share Gauteng successes against human trafficking, referring to cases like *S v Ugochukwu*, *S v Amaku* and another who raped and forced minor children into prostitution after feeding them with drugs and holding them captive. Ugochukwu was sentenced to 20 years whilst Amaku and another were sentenced to life imprisonment.

Major Margaret Strafford from the Salvation Army said, "The Salvation Army strives to restore human dignity breaking the chains of social injustices in our societies. Mostly children from broken and child headed families are the victims of human trafficking as they try to fend for themselves. Society has a role to embrace these children so that they don't become vulnerable".

Marcel van der Watt's, Criminology Lecturer at UNISA, said research findings suggest that there has been an increase in the number of reported missing persons in South Africa between the year 2000 and 2015, and that over 23 800 people were reported missing for a period of 15 years. He then recommended that government needs to develop strategies to address human trafficking and added that an anti-slavery commission must be initiated to investigate the

scourge.

The NFN and IOM also made their presentations wherein they encouraged government to partner with NGOs to alleviate and create more awareness in fighting human trafficking and other related crimes.



**Deputy Director of Public Prosecutions,
Advocate Rasigie Bhika**



Delegates attending the event

Cruel, Heartless Killer Sentenced To Five Life Terms

Phaladi Shuping

“You are a cruel man Mr Tsiane. A heartless man. Your deeds are evil. What you did is horrible and shocking. You had a choice to walk away when you realised that she was not faithful to you but you just wanted to exert your masculinity on the deceased because you thought that buying her a cellular phone means you control her. You have no place in society.”

These are the harsh words the Free State High Court Judge, Martha Mbhele directed towards Lehlohonolo Joshua Tsiane on Thursday, 23 August 2018 when she sentenced him to five life sentences and an additional seven years imprisonment after she had found him guilty on five counts of murder and one count of housebreaking with the intent to commit arson.

Tsiane was punished for the crimes he committed on the night of March 3, 2017 when he burned his girlfriend, Maria Sepagale and four minor children in the house. The quarrel between Tsiane and Sepagela started when he demanded back the cellular phone that he bought her as a token of his commitment to her. He later discovered that Sepagela was seeing other men in spite of him buying her a cellular phone.

On the night of the incident, he went to a Shell Petrol station, bought petrol and went to Sepagela's house. He knew that Sepagela and four minor children were sleeping in the house. They were Dimakatso Sepagela (8), Rethabile Sepagela (7), Rethabile Ralebakeng (7) and Obakeng Ralebakeng (6). Two of the children were Sepagela's children whilst the other two were the children of Sepagela's friend. Sepagela's friend had asked her to stay with her children for that night as she was out of town.

Armed with the rod and petrol, Tsiane forced his way into Sepagela's house, attacked her with the rod and set the house on fire. Despite knowing that Sepagela was with four minor children in the house, he went on and set it alight. Sepagela sustained injuries to her head from being hit with a rod as well as burn wounds from the fire. She managed to get out of the house and called the neighbours for assistance. All the children had burned to death by the time the neighbours managed to put out the fire. Tsiane had already fled the scene.

Sepagela was rushed to hospital but she died a week later from the burn wounds.

Insights from Advocate Johan De Nysschen

The accused's actions were fuelled by rage and jealousy. He killed the deceased just because he believed he owned her. We see women dying cruelly at the hands of men like the accused. Violence towards women and children must stop. Women are not safe, even in their own homes.

His controlling behaviour saw him killing four minor children who had nothing to do with his relationship and Sepagela. He admitted in court that he was aware that his girlfriend was sleeping with four minor children in the house when he set it on fire. Despite knowing that the children would not survive the fire, he nevertheless set the house on fire. This is clearly indicative of his cruelty and heartlessness.

His actions had adversely affected the deceased's father. He broke down during his testimony and told the court that his daughter and her children were the only family he had as his wife passed away few years ago. He finds it difficult to accept that he lost all three of them in just one night.

The mother of the other two children continues to struggle to accept that her children are no more. She could not look at the pictures and she is still struggling to sleep, more than a year after the incident.

The accused deserved the sentence imposed on him. His actions will have a lasting effect on the deceased's father and her friend who both lost loved ones because of his evil actions.



**Advocate
Johan De Nysschen**

More “Witch” Killers Sentenced To Life

Luxolo Tyali

The NPA's fight against widespread killings of elderly people, especially women, accused of practicing witchcraft in the rural eastern part of the Eastern Cape is bearing the desired fruits with the courts meting out harsh sentences against the killers. Recently, the Mthatha Regional Court sentenced fifteen youths to effective life imprisonment after convicting them for killing an elderly couple, Dudu Gcelu (65) and his wife Nosingile (60), which they accused of practicing witchcraft two years ago.

Magistrate Sizakele Sihlahla convicted and sentenced Silulami Madikane, Jongile Gcelu, Phindile Mabija, Sinekhaya Qoyi, Lwandile Seku, Mandisi Kwaza, Lwazi Gcelu, Sihle Nogemane, Sakhumzi Hafe, Luyanda Mbatha, Khuliso Gcelu, Sizabantu Hafe, Abulele Kwaza, Sisa Madikane and Babini Gudu, all aged between 20 and 24 years, to life imprisonment on one count of murder and eighteen years on a second count of murder. Three of the convicted killers, Madikane, Qoyi and Seku were sentenced to a further two years on a count of assault with intent to cause Grievous Bodily Harm (GBH). In addition, the trio along with Mandisi Kwaza were sentenced to another two years for arson. The court ordered all the sentences to run concurrently with the life sentence for the first count of murder.

According to evidence presented in court, on 02 December 2015 at Msintsini Village in the district of Libode, the group of young men gathered near a bus stop shelter where they resolved to kill Nosingile Gcelu, whom they believed was responsible for the death of their friend and relative who was due to be buried the following day. The deceased young man had died in a freak accident by falling off a cliff a few days earlier, and the group believed he had been bewitched by the elderly woman.

On the evening of the same day, while Nosingile, her husband, their daughter and four grandchildren were preparing to go to bed, the group stormed their hut. Upon entering the hut, which was not locked, they went straight to Nosingile and started assaulting her with sticks and

stabbing her with bush knives. When the husband, Dudu, tried to intervene, he was also assaulted and stabbed. The couple's 30 year-old daughter pleaded with the group to spare the lives of the grandchildren and she managed to escape and take them outside the hut through the window, but not before she was also severely assaulted. The other 15-year-old grandson of the couple hid under the bed and witnessed the whole episode of gruesome attack on his grandparents. The bandits then locked the dying couple inside the grass thatched-hut and set it alight. The grandson managed to escape through the window before the fire engulfed the hut.

A total of eighteen youths were subsequently arrested and charged, but three of them were acquitted during the trial due to lack of evidence. All the fifteen pleaded not guilty and claimed to have alibis. However, the state managed



**Prosecutor
Noluthando Mgqibelo**

to prove their guilt beyond reasonable doubt through the testimonies of the surviving daughter and grandson, as well as another witness, who was present during the mob's meeting earlier on the day. In his evidence, the grandson, who knew all the perpetrators as they are all from the same neighbourhood while some are his relatives, told the court that his grandfather was still alive when the group doused the hut with petrol and set it alight.

This sentence comes less than a year after six residents of Mhlokwana Locality in the district of Mount Frere were sentenced to life imprisonment by the Mthatha High Court for the murder of Nancy Nomapisi Chaza (65). The residents, led by a 45 year-old woman, Xoliswa Gcadinja, killed Chaza in broad daylight by stoning and setting her on fire after they accused her of practising witchcraft. The elderly woman's homestead was also set alight.

In 2011, the same court sentenced three youths, aged between 19 and 29 years, to five life terms for the grisly murder of 80 year-old granny and her four grandchildren. The granny, Masilenge Bambusiba's killers accused her of practising witchcraft. They killed her during the Women's month in 2010. During sentencing in that case, judge Lusindiso Pakade noted; "The killing of elderly people accused of practising witchcraft is very common in the former Transkei and has been continuing for a long time. Now is the time for the courts to send a clear message to communities that it is a serious punishable offence."



Insights from Prosecutor Noluthando Mqibelo

As a district court prosecutor, it gives me a sense of pride and accomplishment to successfully prosecute a complex matter involving so many accused persons at the regional court.. The experience I got in this case is invaluable because it is not easy prosecuting such a high number of people, who all claimed to have been somewhere else during the commission of the offences. Placing all of them as willing participants on the scene of crime was a tall order, especially because I took over the case after the first state witness had already testified.

My main witness, Asakhe Gcelu, the 15 year-old grandson of the deceased couple, needed an extra care in leading as he seemed scared, emotional and did not trust that the accused would not come back and harm him. This can be attributed to the fact that he grew up looking up to most of the accused as older brothers and neighbours. The court had to adjourn a few times to accommodate his state of trauma but at the end of it all his evidence helped seal the case for us.

Credit must also go to the police for taking the warning statements thoroughly. That also made my job much easier even when the defence tried to dispute some of the admissions made by the accused. It is my wish that the police can always do the same in other cases. The investigating team of Warrant Officer Mtimba and Constable Ndamase did a splendid job.

A special thanks goes to the DPP Barry Madolo and Chief Prosecutor Vuyani Genu for exposing me and other district court prosecutors to the regional court even though we are not yet appointed at that level. The exposure is indeed preparing us for greater things. Advocates based at the DPP office, who are always available to guide and provide advice, are also the reason we are able to successfully prosecute cases that would otherwise be viewed as very complex for district court prosecutors.

Traditional Healer Sentenced To 12 Life Terms And 3 Years For Rape

Monica Nyuswa

Johannes Malinga (96) a traditional healer from Welgelegen Farm in Carolina was recently convicted and sentenced by the Carolina Regional Court to 12 life terms for 12 counts of rape and an additional three years each, for three counts of assault with grievous bodily harm.

Malinga's raping spree started in 2004 up to 2006 when each of his victims were staying at his place. Some were brought by their parents, while others came on their own accord. Some were the relatives of the accused and some were brought by the accused's daughter in law. At the time, his victims were between eight and 13 years of age.

Malinga was meant to play a fatherly role to the young girls that were in his care. He held a position of authority over his victims who respected him and addressed him as "iNkosi". According to the evidence presented at the court, his modus operandi was for the girls to go naked to his bedroom to bid him good night. The girls' whose hands he shook as a good night gesture were safe from his crude and unwanted advances. The unfortunate girl whose hand he did not shake, would be the chosen one for the night and he would then have sex with her, without her consent.

In December 2006, while Malinga was in Malawi, one of the children ran away and reported the incident to the police and he was later arrested.

According to him, he did not rape and assault any of the children (victims). He said, the entire incident was fabricated by people who are envious of him. However, the State Regional Court Prosecutor, Getrude Nkosi led testimonies of all the victims and two doctors. The state argued that a minimum prescribed sentence must be imposed and that there was no compelling and substantial evidence to deviate from the prescribed minimum sentence.

Before Malinga was sentenced, the presiding officer told the court that he showed no remorse for his actions whatsoever during the trial by maintaining his innocence. He stated that the accused does not have respect for himself, the community, or for his position as a traditional healer and Inkosi in the area. He then sentenced Malinga to 12 life terms and three years for all the charges. He ordered that the sentences run concurrently, effectively ensuring that Malinga will serve life imprisonment.

Insights from Prosecutor Getrude Nkosi

As the victims' lawyer, my role was to ensure that the witnesses were prepared before the start of the court proceedings even though the accused changed attorneys at the eleventh hour. His first attorney resigned after 14 witnesses had testified, the second came on board after a long wait for transcripts.

However, I am pleased the conviction and sentence. The dedication and hard work by the investigating officers and the role played by the Court Preparation Officer, Joseph Motlokwa, was critical in acquiring this conviction. Team effort ensured the removal of the accused from society and has helped save other helpless children from the same abuse.



**Getrude Nkosi,
Regional Court Prosecutor**

Hammer Rapist Gets Four Life Terms Plus 259 Years Imprisonment

Mashudu Malabi - Ndzhangi

The Limpopo High Court was full to capacity to witness the sentencing of the worst serial rapist, in Polokwane, David Mamvura (27) a Zimbabwean national. Mamvura was sentenced to four life terms plus 259 years following his conviction on 31 counts which included 10 counts of rape, eight for housebreaking with intent to rape, three for attempted murder, nine for robbery with aggravation circumstances and a count of assault with intent to do grievous bodily harm.

The court heard that during the period of October 2012 to August 2014, Mamvura terrorised the community of Polokwane especially in the suburbs of Eduan Park and Bendor. He struck during the night and in the early hours of the morning. He would attack the complainants in their homes by first breaking through the window or door. Upon his entry in their homestead, the accused would strike the complainants with a hammer, threaten them with a knife and screw driver before raping them. He would then demand cash, jewellery, mobile phones, laptops and other valuables items on his way out.

In one of the incidents, he raped a 15 year-old minor girl and a 74 year-old woman. In another incident, the accused even hit the complainant's head with a hammer until his brain protruded from his head when he was trying to protect his wife. The accused's identity was unknown to most of the complainants.

During the trial, he pleaded not guilty and denied all the charges against him. In his defence, the accused claimed that all complainants were falsely implicating him as he has never entered their homestead. However, the state led the evidence of two complainants who positively identified the accused as the culprit. The state further led DNA evidence which linked him to all crimes.

The court accepted the evidence of the state witnesses and convicted him of 31 counts and rejected the accused's version.

In aggravation of sentence, the State Prosecutor, Advocate Samuel Ngobeni, submitted that the accused did not show remorse despite the overwhelming evidence against him, and maintained his innocence throughout the trial. Advocate Ngobeni added that the rape was gruesome and in violation of the complainant's rights to dignity, privacy and life. He further argued that the violent manner in which the offences were committed coupled with interest of the community far much outweighed the personal circumstances of the accused.

Judge Francis Kganyago indicated that the accused should be removed from society as a measure of protecting innocent women. Personal circumstances of the accused taken cumulatively did not amount to substantial and compelling circumstances justifying deviation from imposing the minimum sentence. The court further said,

what the accused did was inhumane. The accused leave's to appeal against conviction and sentence was dismissed.

Insights from Advocate Samuel Ngobeni

I would like to thank the investigating team for their dedication and endless efforts to track down the accused. Almost 14 case dockets were opened and later regarded as undetected due to the fact that the perpetrator was unknown. The mobile phone of one of the victims led the police to someone else who claimed to have bought it from a foreign man, later led to the arrest of the accused. All victims could not identify the suspect except an old female victim of 74 years who managed to identify him in an identification parade.

When the trial was to start the accused dismissed the services of his attorney. The case was postponed several times for the accused to secure counsel. When the accused eventually dismissed his fourth legal representative who was from the Legal Aid South Africa, the court decided to continue with the matter and the accused elected to represent himself.

The accused proffered an alibi in his defence and it was a duty of the state to prove its case.

The task I was faced with was to call all the victims as well as their first reports. Then I cemented the state case with DNA evidence which linked the accused to all the crimes. Dealing with an unrepresented accused is very taxing as one has to prove everything during the trial.

All victims were very happy and satisfied when the accused was convicted and duly sentenced. I am so glad to have prosecuted the accused and restored the dignity of all the complainants.



Advocate Samuel Ngobeni

TCCs Doing Their Best to Support 16 Days of Activism for No Violence Against Women and Children

The 16-days of Activism campaign annually commences on the 25th November until the 10th of December. The campaign focuses on generating an increased awareness of the negative impact that violence and abuse have on women and children, and the social fabric of our society. The NPA and especially the SOCA Unit participate in this activism-campaign, supporting it in all provinces.

One of the government models to attend to the violence is the Thuthuzela Care Centres (TCCs) set up by the National Prosecuting Authority (NPA), in partnership with various departments, civil society and donors as an integrated strategy for prevention, response and support for rape victims. TCC departmental stakeholders include the NPA, the Department of Health, the Department of Social Development, and the South African Police Services (SAPS).

The aim of TCCs is to turn victims of rape into survivors by having a court directed, victim centred and prosecutor guided approach with stakeholder cooperation, to rape management. At present there are 55 TCCs in the country. Here are some inputs from several of our TCCs:



The Karl Bremer TCC, Western Cape

Western Cape Health MEC Dr Nomafrench Mbombo (second from left) and Community Safety MEC Alan Winde (first on the right)

The Karl Bremer Thuthuzela Care Centre (TCC) was visited by the Western Cape Health MEC Dr Nomafrench Mbombo and Community Safety MEC Alan Winde, as part of their 16 Days of Activism for No Violence against Women and Children Programme. The Karl Bremer TCC receives an average of 300 sexual assault cases per month. It receives between 30 and 40 cases of children who are sexually assaulted every month. More than 3000 cases of sexual assault alone are received annually. It also deals with intimate partner violence, provides intoxicated driver and perpetrator assessments, pre-and post-questioning assessments and provides other services.



The Seshego TCC, Limpopo

The areas serviced by the Seshego TCC are mostly rural in nature, such as Moletjie, part of Mashashane and Matlala, Polokwane, Westernburg and Seshego in Limpopo. The TCC is special, because of the nature of services that it offers to most victims of gender based violence, more in particular victims of rape. Before the opening of the TCC many cases were not reported. Those that were reported, were either not taken seriously or seen as not deserving the attention of the police and the courts. Since opening in August 2012, the TCC has become a beacon of hope to most victims. Before, victims feared to report their cases and were afraid of secondary victimization, but now they report without any fear. Victim trust is won back by the assistance given. Because the TCC is a one stop care centre, it has special arrangements for victims. They don't have to be taken from pillar to post, and get all the services under one roof. What makes the TCC extremely special is because the TCC is attached to the court and victims get to be informed of court processes and updates with their cases at any time. This assistance distinguishes the special nature of the TCC, encompassing respect, comfort, restoring dignity, and ensuring justice.



Metsimaholo TCC, Sasolburg, Free State

The Metsimaholo TCC based at Fezi Ngumbentombi Hospital in Sasolburg services areas such as Sasolburg, Zamdela, Orangeville, Denneysville, Viljoensdrift and farms. The centre was established in 2010 and lots of cases have been reported to the centre. The centre is also offering counselling services to the victims of gender-based violence. According to the centre's site co-ordinator, Ms Sannah Thole, staff at the centre feels proud and confident of quality services they are rendering, that impact positively on the survivors of sexual offences.



**Mankweng TCC, Polokwane,
Limpopo**

The Mankweng TCC, Mankweng Hospital, Polokwane, services areas such as: Ga-Mothapo, Ga-Mothiba, Ga-Molepo, Ga-Mamabolo, Ga-Dikgale, Mankweng and Boyne. The TCC was established in 2008 with the aim of streamlining the process of reporting, care-giving, investigating and the prosecuting of rape cases. The centre was designed to change the experiences of women, by providing a multi-stakeholder, one-stop, victim-centred approach. Staff members are professionally trained and skilled to deal with highly sensitive cases. "Turning victims into survivors" is their moto and it gives them a sense of inner peace and strength, as they bear witness to the transformation of victims into survivors.



Phekolong TCC, Free State

The Phekolong TCC found at the Phekolong Hospital in Bethlehem services towns such as Bethlehem, Reitz, Petrus Steyn, Lindley, Fouriesburg, Paul Roux, Clarens, Arlington and farms close to these towns. Victims from the farms have access to TCC services and are assisted in their own languages. Disabled victims are also accommodated as the building is wheelchair friendly. The Victim Assistant Officer at the centre, Ms Princess Maarman, says that they feel good about helping people who come to the centre, as most of them did not know about the centre before. People come to TCC for rape cases, but are also educated on domestic violence, maintenance and protection order matters. Some of the rapes cases emanate from domestic violence issues.



**Tshepong TCC,
Free State**

Tshepong TCC is based at National District Hospital in Bloemfontein. It provides services to towns like Bloemfontein, Bainsvlei, Dealesville, Boshoff, Brandfort, Botshabelo and Thaba Nchu. Botshabelo and Thaba Nchu have forensic nurses at their hospitals but they use the services of the TCC when they have child victims who must be attended to by the forensic doctor. The centre has a victim assistant officer, case manager, 2 forensic doctors, 3 forensic nurses, 2 auxiliary social workers, 1 auxiliary social worker from the Department of Social Development, 2 social workers from Child Welfare and 1 social worker from Department of Social Development. Staff members are eager to serve and make a difference in the lives of their victims. Victims often come back to the centre to thank them for the role they played in their healing process.



The Port Shepstone TCC, Kzn

The Port Shepstone TCC based at the Port Shepstone Regional Hospital services all areas under the Ugu District, namely: Umthwalume, Harding, Bizana and Ixopo. The TCC renders quality services to victims of sexual offenses and Gender Based Violence. The TCC is fully staffed, open 24 hours and no victim is turned away without being helped. The TCC has doctors that conduct examinations during the week and after hours. The TCC has 1 designated Doctor, the Head of Clinical Forensics who trains interns and qualified doctors for medico-legal examinations. There is also a Forensic Nurse (Operational Manager) that does examinations, goes to court, and trains 3rd year student Nurses on Management of Sexual offenses cases. This TCC was nominated as the best performing TCC in 2012/2013. TCC staff members feel proud, special and motivated, by holistically assisting victims by working together with other stakeholders for the overall well-being of the victim. This gives them strength and confidence to do the work that they are doing.

Umlazi TCC, KZN

The Umlazi TCC is based at the Prince Mshiyeni hospital in Umlazi in KZN. The TCC services areas such as: Umlazi, Folweni, Umbumbulu, Umgababa, Isipingo, Kwamakhutha, and Amanzimtoti. This particular TCC is special because many clinics use it as a central point. They are also open 24 hours and are based inside the hospital. Staff members help the public on a daily basis. They are motivated to work even harder for the survivors of crime. They feel that they make a difference. They maintain communication with the survivors. The feedback they get from successful cases makes them feel that what they are doing is meaningful. They make it their duty to turn victims into survivors, restoring their hope and dignity.



Ermelo TCC, MPUMALANGA

The Ermelo TCC situated in the Gert Sibande District Municipality of Mpumalanga services areas like Ermelo, Breyten, Lothair, Chrissiesmeer, Warburton, and Davel. The comfort and care that the TCC provides makes it special, as a lot of victims come back for effective and efficient services. Customers are treated with dignity and respect and complete service satisfaction surveys. Clients provide positive feedback on services and treatment. TCC staff members are always ready to assist victims of Gender Based Violence and are often debriefed, to be able to deal with the high level of trauma they are faced with when dealing with such cases. The TCC team is making a huge difference in people's lives.



Thelle Mogoerane TCC, Gauteng

The Thelle Mogoerane TCC situated in Ekurhuleni Municipality within the premises of Thelle Mogoerane Hospital in Vosloorus services Sonkesiswe, Katlehong, Palmridge Katlehong and Edenpark. The centre has 22 staff members and receives over a 100 cases of sexual offences per month. The centre has 2 doctors, 5 forensic nurses, 2 auxiliary nurses and 3 staff nurses that collect evidence and testify in court. Victims are counselled about the services and procedures that will unfold during their stay at the TCC. After examinations and evidence collection, victims are allowed to shower so that they can be ready to give their statement to the police, who then open a docket that will be handed over to a case manager. The case manager is a prosecutor that screens the docket to ascertain that there is a case to answer in court. The Victim Assistance Officers (VAOs) provide support and assistance throughout sexual offence cases.



MAMELODI TCC, GAUTENG

Mamelodi TCC celebrates its 10th year anniversary. It is a globally recognised anti-sexual violence care centre based inside the new Mamelodi Hospital in Mamelodi, North East of Pretoria. It often hosts international guests who want to learn more about the TCC concept, with countries like, America, Switzerland, Netherlands,

Sweden, Mexico, Ethiopia, Iraq, Scotland, Kenya, and the Caribbean learning more about the concept. The TCC is a 24 hour operating centre which caters for the entire township. It receives almost 64 cases per month and always tries its level best to give the victims top-notch services. The centre also takes walk-in patients. All the victims of sexual abuse from beyond the boundaries of Mamelodi are welcome to the TCC to report their cases.



Laudium TCC, Gauteng

The TCC launched in 2010, is situated \pm 20 km from Pretoria. The centre has a staff compliment of 20 employees ranging from doctors, nurses, police, a case manager who is also a prosecutor, social workers, case officers, Non-Governmental Organisation (NGOs) and administrative personnel. The TCC is a one-stop centre providing services to victims of sexual offences and handles between 30-35

cases on a monthly basis from areas located on the Pretoria West Cluster like Olievenhoutbosch and Atteridgeville.

Public education/awareness programmes as delivered by TCC officials nationally in the communities, play a vital role in assisting the public regarding knowledge about the law, the TCC-model and court processes. This also serves to provide confidence in the Criminal Justice System, by equipping the community with valuable information on relevant court processes.

This resulted in many cases being reported at the TCCs, to the extent that in the 2017/18 financial year 33973 matters were reported at the 55 sites regarding sexual offences, domestic violence, child abuse, child neglect, and also trafficking in person matters.

The NPA with its stakeholders has a committed focus towards the effective and efficient management of sexual offense matters, to collectively and effectively improve the response offering of the Criminal Justice System in dealing with these cases. This has already resulted in a major increase of long-term sentences (including life imprisonment) towards offenders of more horrific offenses over the past two years, regarding TCC reported work.

“The TCCs” will continue to be a flagship of a South African attempt in fighting gender injustices that continues to threaten human security that seeks to prevent women and children to enjoy their rights with tranquility as entrenched in the Constitution of the RSA.



**DON'T
LOOK
AWAY**

ACT TO END GENDER-BASED VIOLENCE

Strand Man Sentenced For Murder Of A Young Woman At A Tavern On New Years Day

Eric Ntabazalila

On 11 October 2018, the Strand Regional Court sentenced Bongile Joni to 12 years direct imprisonment for the murder of 24 year-old Noxolo Klaas. The court suspended four years of the sentence for a period of five years, effectively sentencing the accused to eight years direct imprisonment.

Some community members were unhappy as they felt that the sentence imposed was not aligned with the hate crime committed against the deceased who was a lesbian and also that the family was not consulted. The Triangle Project, the Klaas family and the community of Strand approached the media and informed them that they “were disappointed in the outcome of the case.” The organisation and the family claimed that they are aware that there are always factors that are weighed before sentencing. Some of these were that he is a first offender, he has an income, he showed remorse, he pleaded guilty and the family of the victim was compensated. However, regardless of all these factors, they felt strongly that a life was taken and considered “the light sentence completely ludicrous, unjust and inappropriate for a young life lost.”

The prosecutor in the matter, John Damon responded: “Please note that the facts as reflected in the accused plea were discussed with the witness and girlfriend of the accused. The suggested sentence was fully discussed with the girlfriend and whether it was acceptable or not, as well as all the circumstances of the matter pertaining to sentence. The girlfriend not only confirmed that the sentence was acceptable but further confirmed that the incident was not motivated by the sexual orientation of the accused.

The girlfriend indicated to the prosecution that she was satisfied with the sentence and that the accused was seriously assaulted by the deceased prior, to the murder. The prosecution only consulted with the girlfriend because no other entity approached our office, whether it be the Triangle Project, Strand community or the family. She was the only person who consulted with the prosecution. In light of all the mitigating factors, the state was of the opinion and the presiding officer agreed that the effective sentence was a balanced sentence.”

In his plea explanation submitted in court, the accused said he was drinking alcohol with his brother in the early hours on 01 January 2018, when his brother got into an argument with the deceased. He intervened to stop the fight but other women who were in the tavern were not happy with his interference. His brother then left the tavern and went home. He stayed. He claims that the group of unhappy young women attacked him and he ran out of the tavern. They chased him. He fell. He alleges that the deceased stabbed him with a bottle top in the throat as he was attempting to get up.

He alleges the group of women left him there while he was

bleeding. He went home where he found his brother. His brother tied a t-shirt around his wound to slow down the bleeding.

He decided to go back to the tavern to collect his flip flops and took a knife with, as he feared the young women might attack him again. He found one flip flop outside the tavern, and as he entered to look for the second one, he saw the deceased standing next to a wall. He confronted her on why she stabbed him. “She just looked at me and did not say anything. I then became very angry as she did not seem to be sorry for what she did and I took the knife out of my pocket and stabbed her twice on her upper body.” This is according to Joni’s plea statement.

Later on the deceased and the accused were taken in the same private vehicle to the Helderberg Hospital where the accused wheeled the deceased in a wheelchair into the hospital. He says he later learnt that she had passed away.

Insights from Prosecutor John Damon

It has been a privilege to serve in the capacity as a public prosecutor for the past nine years. During this time, I have had the opportunity to deal with matters related to the interests of women, sexually related cases, maintenance and domestic violence.

In the forum of the regional court of Strand, femicide is not a matter which is a daily occurrence, such as robberies, possession of firearms, motor vehicle thefts, etc. It has been my experience that where femicide is involved and the victim is personally known to the perpetrator, it is either a domestic violence history or a planned economical gain, e.g. house robberies.

The matter of S v Bonile Joni was therefore an exceptional matter in the sense that the victim’s death was caused by the accused with neither of these circumstances being present. The victim and the accused were known to each other and were amicable towards each other. The issue of the victim’s sexual orientation was not a motivation for the murder.

It has been my experience in dealing with this matter that notwithstanding the gender and sexual orientation of the victim, the murder occurred as a result of alcohol and the accused being angry about being assaulted by the victim earlier, at a tavern. These circumstances of murder are circumstances which occur on a daily basis in the regional division, served by the regional court of Strand. The only difference being the gender of the victim.

Initially this matter attracted a lot of attention from the media and female lobbyist group because it was

assumed that the victim was murdered because of her sexual orientation and gender. Facts that were not known to the group, the media and these lobbyists groups were that the accused had tried to stop a fight between the victim and the accused brother on the night of the offense. The accused was assaulted by the deceased, sustaining injuries to his throat which required medical attention. The accused did not make any remarks that were homophobic nor attack the deceased because of her sexual orientation, but rather because he was assaulted by her previously. Both the victim and the accused were taken together to the hospital where the accused took the deceased into the hospital in a wheelchair. The accused contributed R8 000 towards her funeral costs.

The accused pleaded guilty to the charge of murder and accepted the fact that he was responsible for the death of the victim. The question of sentence was therefore highly important as to whether the court would deviate from the minimum sentence of 15 years and impose a lighter sentence. In light of the circumstances of the murder, the accused personal circumstances as a first offender, a 27 year-old father of three dependants, who clearly showed remorse, it would have been a very difficult task for the prosecution to argue that substantial and compelling circumstances as described in case law was not present.

This was more especially so, with the sentence suggested by the accused representative and the accused version of events, which was confirmed by the deceased's girlfriend and sentence accepted as well.

This accused was sentenced to 12 years imprisonment, with four years suspended for a period of five years. Since the sentence, media reports have suggested that the sentence is too light and the accused should have received the minimum sentence of 15 years. I submit however that these thoughts are still based on the initial assumption that the murder was gender and sexually orientated based. The sentence must be balanced in light of the accused personal circumstances and the mitigating factors as well. The presiding officer found that this sentence was appropriate and it is a sentence I submit, under the circumstances, as balanced and reasonable.

This matter has taught me that as a prosecutor, the community need not always agree with our submissions on an adequate sentence, but that ultimately the decision of the best interests of the community is that of the judiciary. The decision of the court as to the best sentence does not always reflect the popularity of public opinion, but preferably, the wisdom of the best sense of justice.



Prosecutor John Damon

From Court Interpreter To Regional Court Prosecutor: Inspiring Story

Natasha Kara

Richard Sbonelo Mkhize is a Regional Court Prosecutor at the Pietermaritzburg Magistrate's Court who recently graduated with his LL.M degree. His journey to his current juncture is one of hard work, sacrifice and determination.

When did you join the National Prosecuting Authority (NPA) or the Department of Justice and Constitutional Development (DoJ & CD)?

I started work as a court interpreter on a casual basis at Pietermaritzburg Magistrate's Court in January 1998. A few months later, I received a permanent appointment. Initially this was only in the District Courts and by the middle of 1999; I was interpreting in the Regional Courts as well. During this time, I found that my work as an interpreter depended largely on the type of prosecutor I worked with. I always enjoyed working with prosecutors who were dynamic and showed a passion for their job.

What motivated you to become a Prosecutor?

I eventually decided I did not want to be an interpreter for the rest of my life; I wanted to play a more active role in the criminal justice system. I wanted to be one of those prosecutors who made a difference to the lives of the indigent and the victims of crime. I then applied for a bursary from the DoJ & CD and began studying at the University of Natal towards a LL.B degree on a part-time basis.

Describe the journey

It was extremely tough. There were times when I thought I had bitten off more than I could chew in terms of registering for more modules per semester. I was frequently absent from work due to the heavy workload at University. I thought that I would not manage, believing that a University education was only for intelligent people and not for me. However, due to the desire of wanting to make a difference for the victims of crime, I told myself that many people who were educated had gone through the same test, so why shouldn't I.

Was it a challenge studying part-time?

It was. Most nights I would arrive at my residence at about 11 pm and have to be up by 5am the next morning to prepare to go to work. I told myself that if getting a degree meant that I only had to retire for three hours, I would do exactly that and I vowed that no circumstances of whatever kind or nature would come in between me and obtaining a degree. It was also financially challenging. During that time, I lost many family members who died within a short space of time. Since I was the only one permanently employed, it was my responsibility to pay for their funerals. I had to negotiate with the undertakers

to provide their services on condition that I would pay installments. I could not even afford taxi fare and would walk from my residence to work and then from work to University; walking back home late at night. I viewed everything as luxury and saved every cent.

When did you qualify with your LL.B?

I qualified in December 2004 and then seized the opportunity for the NPA Aspirant Prosecutor Programme, which commenced in January 2006. It felt as if a huge weight was lifted off my shoulders.

How does it feel to have achieved your goal?

I am proud of myself and can attest that hard work does pay off. There is a huge improvement in my life. I studied the LL.M degree because I now enjoy studying. It has taught me some discipline. I wish that people, especially the youth, spent more time studying and broadening their knowledge.

Tell us about your LL.M. What did you specialize in or what was your dissertation based on?

The topic of my dissertation for Criminal Justice was

THE HOUSEBREAKING CRIME TO REMAIN A COMMON-LAW CRIME IN SOUTH AFRICA

The topic of my dissertation for Business Law was

THE NOTION OF 'A REASONABLE PROSPECT' FOR RESCUING A COMPANY: HAS THIS BEEN SETTLED IN SOUTH AFRICAN LAW?

Where do you see yourself going forward?

My short-term goal is to prosecute in the High Court. Long term, I would love to compete for the post of head of the National Prosecuting Authority, as I believe that the NPA plays a crucial role in society, a good prosecutor is objective and not deterred by any political sway and lastly prosecutorial work should be a calling, not just a job.



**Richard Sbonelo
Mkhize,
Regional Court
Prosecutor,
Pietermaritzburg
Magistrate's
Court**

2018 IAP Conference Special

Prelude to the IAP Conference: 4th IAP Global Forum for Association of Prosecutors

Adv Elivera Du Plooy

48 representatives of Prosecutor's Associations from 15 countries participated in the forum.

The following are the programme topics that were discussed at the forum:

- The Importance of Independent Prosecutors Associations for Prosecutors and Prosecutorial Independence;
- How to Achieve Independence as a Prosecutor's Association and Build Strong Relations with the employer;
- Establishing International Guidelines and Guidebook for Prosecutors Association
- Compilation of Work Plan for The Global Forum

The conference was held at the Lesedi Cultural Villages located in the heart of the African bushveld amidst the rocky hills within the Cradle of Humankind, a World Heritage Site. Participants discovered the fascinating cultures and traditions of the people of Africa, visited five traditional homesteads inhabited by Zulu, Xhosa, Pedi, Basotho and Ndebele tribes who live according to trial folklore and traditions of their ancestors. "Our culture is the light of our nation - whoever walks here amongst our cultures at aha

Lesedi can also see the light." The guests experienced true South African hospitality and participated in the lively cultural events and dancing! They were further spoiled with a mini African Safari at the Lion and Safari Park, Lanseria.

The new website of the Forum for Associations of Prosecutors (FAP), was also launched. FAP was established as a collective platform for associations of prosecutors working under the IAP umbrella and it now runs a web-based forum to facilitate the exchange of ideas about evolving best practices and to establish a library of basic documents and other materials. FAP aims to provide a readily accessible means through which member associations can assist each other in their work. We are further committed to assisting prosecutors who are interested in establishing their own associations.

We concluded this fruitful session by discussing the next steps we can take towards the IAP-meeting in 2019. Luis Cevalco from Argentina, agreed to host the next (5th) Global Forum for Associations of Prosecutors in Buenos Aires, Argentina.

A networking evening that included the SSAPSA members who arrived for SSAPSA's annual general meeting was the highlight. Fruitful future networks were established next to the campfire whilst enjoying a traditional South African braai.





Global Forum in Full Swing



Adv A Chauke, DPP Gauteng Local Division and Guest of Honor with DPP Mauritius, Satyajit Boolell at the Global Forum



Adv Elivera Du Plooy, Senior State Advocate and Chairperson of SSAPSA



Members of the Global Forum



SSAPSA Members Successfully Hosted this year's Global Forum for Association of Prosecutors



South African and Canadian Participants



Registration desk manned by Adv Patricia Makroto and Rolene Bester



SSAPSA EXCO Members, Rodger Marueme Armando Damarah Cali Mathabatha and Azwi Mulaudzi (002)



Traditional Blessing at Opening

The NPA hosted the IAP Conference in Sandton, Johannesburg

The 23rd IAP Annual Conference was attended by 351 international delegates, 76 from African countries and 24 from the NPA – a total of 451. Attendees came from 105 countries and they included IAP Executive Committee (ExCom) members, Heads of Prosecution and other senior members of prosecutions.

The conference theme was “Prosecutorial Independence – the cornerstone of justice to society”. The theme resonated with all prosecuting authorities globally, and it explored the practical relations and realities between the prosecution and the Executive (political authority). It created a platform where prosecutors shared valuable experiences and lessons from different jurisdictions about exercising their mandates without fear, favour or prejudice.

The key sub-themes for the conference were:

- The ideal of independence and its practical consequences
- Managing Prosecution Services – between accountability and individual autonomy
- Protecting the individual prosecutor, and
- Independent Prosecution and confidence in the eyes of the public

The Minister of Justice & Correctional Services, Mr Michael Masutha (MP) delivered the opening address and reiterated his commitment, as the Executive Authority, to the prosecutorial independence of the NPA. “I would like to reiterate the commitment of the Government of the Republic of South Africa to the concept and practice of judicial and prosecutorial independence. It has been one of our guiding fundamental principles from the period when we

prosecuted the struggle against apartheid and an important pillar throughout the years of democracy. As prosecutors, you are familiar with the multiple sources of undue influence on your work and can comment much more ably than I can on the environment necessary for you to conduct your work without fear or favour. Your profession as with the rest of the world will benefit from the practical experiences that you will share amongst each other and the recommendations that will emerge out of this conference,” he said.

The professional programme was over four days, from Monday 10 to Thursday 13 September. Discussions at the plenary sessions were:

1. Politics and independent prosecution; a variety of established models and constitutional arrangements were explored, with a view to a comparative discussion of the pros and cons of how to avoid undue political influence in prosecution.
2. Managing Prosecution Services – between Accountability and Individual Autonomy; the discussion was about the internal organisation of prosecution services and how to arrange them to ensure accountable prosecution. Structures of hierarchy, internal rules, codes of conduct, disciplinary rules, career management, appraisal mechanisms and professional training and development.
3. Protecting the Individual Prosecutor; where it was recognised that individual prosecutors are subjected to serious pressures from the public, media, lawyers, colleagues, other state agencies and sometimes politicians. Sometimes prosecutors are also subjected to threats against their physical safety and that of their

families. All these pressures and threats are important impediments to independent prosecution and the question is how they can be managed and minimised. The plenary session was to raise awareness of these pressures and threats and to discuss what good practices are available to counter them.

4. Independent Prosecution and confidence in the eye of the public; the relationship between the prosecution and the public is essential. When it comes to ensuring independent prosecution, it is a well-known challenge in countries in every region of the world to ensure that independence is not only a practised reality, but also a perceived reality in the eyes of the public. The perception of undue influence deteriorates public confidence in public prosecution. This was the focus of this plenary session.

There were parallel sessions throughout the conference, including the MLA Lab. Special Interest Group Sessions included the **Heads of Prosecution Services**, which discussed accountability and its impact on independence.

The most important aspect of the conference is the Bilateral Meeting sessions between countries, and many such bilaterals were held during this conference.

Social Programme

A key component of the IAP conference is the Social Programme, which is meant for the hosting country to provide entertainment while showcasing key attractions of their country. After the ExCom Annual General Meeting on Saturday 8 September, members were taken on a tour of the Constitution Hill, which includes a showcase of the

Constitutional Court. The President's Welcome Reception, hosted by the IAP President Mr Gerhard Jarosch, was held at the Sandton Convention Centre on Sunday 9 September. The Conference Dinner was held at the **Emperors Palace** on Monday and the following evening delegates were entertained at The Turbine Hall, an integral part of Johannesburg's interesting architectural history in the city's art and cultural precinct. The farewell dinner was at Moyo's Zoo Lake. The delegates had lots of fun throughout and proved that prosecutors work very hard and they can party even harder.

Accompanying Persons Programme

The conference provides an opportunity for delegates to attend with their partners and family members. The Accompanying Persons programme is meant to keep the partners busy and entertained while the delegates attend the conference. The programme entailed a tour to the Elephant and Monkey Sanctuary in Hartbeespoort, Sterkfontein Caves at the Cradle of Humankind World Heritage Site and Lesedi Cultural Village.



The Acting DPP Grahamstown on her Role as Programme Director at the IAP Conference

IAP Summary

When I heard about the IAP Conference and that DPP's would be attending, I was most excited about the opportunity to network with prosecutors from around the world.

On 7 September 2018, all DPP's were requested to attend a meeting with the Local Organisation Committee (LOC) at the Sandton Convention Centre. At this meeting, I was asked if I would be the Master of Ceremony for the entire Conference. I accepted the opportunity, which was filled with emotions of being thrilled at being considered for this huge task but also nervous as this was a new experience, having never performed this task before.

Being Master of Ceremony was a huge responsibility as it entailed me communicating with the different speakers as well as working closely with the EXCO of the IAP and the LOC. There were approximately 380 delegates, comprising Directors of Public Prosecutions and Attorney Generals from around the globe and the bar was suddenly raised to ensure that I meet international standards.

I quickly realised that I was the face of the NPA and South Africa, and that I was in the enviable position of showcasing our beautiful country and the NPA.

There is a consensus that music is both universal and communicative and so I decided to use this to my advantage. On the second morning of the Conference, I got the sound crew to play the WAKA WAKA song by Shakira, loudly. I then informed the participants that when they heard this song it would be their cue to settle down so that we could start the sessions. The participants remembered it from the 2010 Soccer World cup and it was a hit and had the desired effect!

I learnt that thinking on my feet and ensuring that the delegates were kept abreast and informed of the developments and changes throughout the programme was key to appeasing the audience. A recap of the day before as well as bringing the day delegates up to speed was pivotal to ensuring that there was a link between each day and a progression to the upcoming topics. It took me some time to reflect on the days' proceedings and find the correct language and candour to keep the audience interested in the programme that lay ahead.

I also learnt that duties as Master of Ceremony did not just end at the close of the conference each day but continued into the evening events as the International delegates interacted with me, interested in finding out as much information about South Africa as possible.

The theme of the conference "Prosecutorial Independence – the Cornerstone of Justice to society" could not have come at a better time when as the NPA we are faced with perceptions regarding our prosecutorial independence. Under the Chatham House Rules, we had some very

frank and serious discussions on how the threats by the executive and local government as well as the influence by the media serves to undermine prosecutorial independence. Taking in the various discussions proved to be a revelation, as delegates from the NPA realised that many prosecutorial jurisdictions around the world grapple with the same issues we do in terms of safeguarding our prosecutorial independence. We also had speakers discuss the fine balance between accountability and individual autonomy and we eventually looked at how the threats to our independence translates into personal threats against the prosecutors in the forms of loss of life and limb. The essence of the conference was to connect and build close relationships. The high level of participation saw us going far beyond the times allocated for the plenary sessions and was a reflection of the enthusiasm in the room.

We opened our doors to the absolute greatest global store of legal wisdom and I thoroughly enjoyed the experience of networking with prosecutors from the various countries. Through this opportunity, I managed to build valuable contacts for future international co-operations.

As Master of Ceremony, I received the most positive feedback from the international delegates who could not thank us enough for the excellent organisation and South African experience that they had. Our brothers and sisters from all parts of Africa conveyed their heartiest congratulations on putting together a conference that is of world class calibre.

I was elated at the congratulations I received on a task well performed. Only few in the audience knew that 10 days before I had buried my dear mother. I knew that she was smiling down on me from heaven. I want to thank the NPA for putting together an excellent event and for entrusting me with the honour and huge responsibility of being Master of Ceremony.



**Adv Indra Goberdan,
Acting DPP, PE & Grahamstown**

2018 IAP Conference Picture Special

































OUTCOMES OF THE IAP CONFERENCE

Governing Principles of Prosecutorial Independence

Ms Manon Lapointe, Acting General Counsel (IAP)

There is consensus that a prosecution service must provide neutral, non-political, non-arbitrary decision-making regarding the prosecution of cases.

Prosecutors should not be political actors, which does not mean that they don't play a role in the democratic process as they uphold the rule of law.

Whether institutional independence lies with the prosecution service or the prosecutors, there is consensus that they must not act for their own personal benefit, for the government of the day, or any other actor or intervener, but for the greater public good.

Prosecutorial functions are not exercised in a silo. In the performance of their duties, prosecutors manage several relationships which may have an impact on their independence. Four relationships were discussed.

Relationship with the Executive

The following principles were highlighted:

- Contacts with representatives from executive branch (and the legislative branch) should be made by the heads of prosecution, not by a front-line prosecutor; this is to avoid any conflict of interest or appearance of conflict of interest.
- The executive should not intervene in a case, unless this is done in a public and transparent way, through written directives for example.
- A prosecution service needs to be sufficiently resourced to operate efficiently. For most prosecution services, this entails discussions with the political powers, because the prosecution services operate under the umbrella of an organization for financial purposes. Those discussions can sometimes be robust. But that does not necessarily involve a breach of prosecutorial independence.

Relationship with the Police

This is a particularly delicate relationship to manage as prosecutors and police officers are in constant contact with one another. The measures adopted to ensure independence will vary according to the legal system. In that regard, legal systems vary significantly. In some instances, police work is directed by the prosecution service while in others, the police and prosecution functions are totally independent from one another. However, in both instances, the decision to prosecute is made by the prosecutor.

Measures are required to ensure police officers do not exert

pressure towards a particular outcome. Prosecutors must be supported in their decisions.

Relationship with judges

Prosecutors appear before judges on a regular basis. They are officers of the court and, as such, must remain professional and ethical. But they also have to remain independent and not react to judicial or system pressures to manage more efficiently increasing caseloads, particularly when there are significant pressures to complete cases with limited resources and time.

Relationship with the public in general and victims in particular

Prosecutors need to exercise independent professional judgment rather than seeing themselves as agents of the public. Nevertheless, the prosecutors need to take into account public interest. And this, in and of itself, raises an interesting point: public interest is not the same as the interest of the public. It should be remembered that public opinion regarding criminal justice is subject to changes and cannot be determinative of a prosecutor's decision.

Victims have a particular role to play in the justice system, but prosecutors do not represent them. In civil systems, prosecutors do not have the monopoly of prosecution since victims can instigate the criminal process. In the common law system, the victim has traditionally been treated like a witness. But this is changing. It is now recognised that witness' interests need to be taken into account. However, in both instances, the prosecutors must not act in reaction to pressures exerted by the victims.

The following are institutional measures of independence which maintain or encourage prosecutorial independence which are worth repeating:

- Rules pertaining to inamovability;
- Rules pertaining to the appointment and destitution process which should be politically neutral and transparent;
- Rules regarding the exclusivity of the office and the professionalisation of the function;
- Rules which provide adequate working conditions including fair compensation.

Prosecution services should supplement institutional measures with best managerial practices. Here are a few examples:

- Encourage a culture of independence within the

prosecution service, through policies and example. The culture of independence is as important, if not more important, than legal framework. In other words, the statutory framework is as good as what you make of it. Some jurisdictions have not constitutional guarantees. It does not mean that there is no prosecutorial independence.

- Training to promote independence – this does not only refer to training on the principle of independence and its implication in all dimensions of prosecutorial work, but also training on legal knowledge and skills so that prosecutors feel confident about their decision. Training is also instrumental in identifying personal, internal conscious or unconscious biases, a form of subtle influence which may have a negative impact on the decision-making process.
- Ensure protection of the prosecutors. Prosecutors cannot make courageous decision if they feel threatened. They need to feel safe and be empowered. Concretely, this means assigning cases after a risk assessment has been made, including in prosecution service's budget cost for security measures and regular training.
- Encourage team work. Except for the most minor cases, prosecutors should not work in isolation. A team approach ensures diversity of opinion, ideas and strategies, which in turn reduces tunnel vision and provides support against external interventions.
- Provide support to prosecutors who are facing challenges, be it the complexity of a case, civil law suits or other. Prosecutors should feel supported in their decisions.
- Adopt a robust system for detection of conflicts.
- Ensure diversity in the hiring process.

There is no single model for a prosecution service. Whatever model is adopted, the expectation is that the prosecution services will act neutrally and apply means of monitoring and ensuring neutrality which entails accountability to others. This is when the accountability comes in play.

Accountability

The work of prosecutors is less known than that of other criminal justice actors like police officers or judges. Unlike judges, prosecutors rarely announce the grounds for their decisions or even the fact that they have made a decision. This may be one reason why prosecutors may be more susceptible to be exposed to external pressure. The consequences of exerting pressure on police or judge are greater than exercising influence on prosecutors.

It is recognised by all that prosecutors have wide powers. Concerns about prosecutorial discretion are concerns

about the ability of individual prosecutors to exercise their power without internal limits or external checks by other actors of the criminal justice system or other officials. Prosecution services should take measures to explain their work to the public and provide information to ensure that it be accountable.

- Tools to ensure accountability of the prosecution services:
- Public policies on the exercise of discretion. Prosecution services need a robust system documented in publicly available format.
- Code of conduct for prosecutors and internal disciplinary measures.
- Judicial review of abusive process although it should be said that courts, in the common law tradition, are generally reluctant to interfere in the exercise of prosecutorial discretion.
- Civil litigation, which in some countries, is perceived to be one of the most efficient accountability tools. Prosecutors must take courageous decisions and must be protected when they are the object of civil suits. What remains important is not the outcome, but the decision-making process. Prosecutors make decision based on facts and law. There may still be mistakes, but they can be defended on a principled basis.

Information about prosecution services activities such as annual reports.

In addition to internal accountability measure, there exists, in all systems, external checks. The quality of the prosecution work benefits from the critical gaze of the bar, the judiciary and the media. Bodies such as commissions of complaints and commissions of inquiry into the activities of prosecution service are examples of this kind of external check. This second hard look at the work of prosecutors does not encroach the principle of independence and contributes to the maintenance of high standards.

Independence and Accountability

Is independence and accountability always in opposition? Not necessarily. Some spoke of tensions or oppositions, others mentioned balance.

It was acknowledged by all that the role of the prosecutor is evolving and, as a result, adaptations are required. A prime example of the constant evolution of the prosecutors' role is the issuance by prosecutors of penal orders in the Netherlands which do not require any interventions from the judiciary.

A look at the role of a prosecutor as a mediator who navigates between the two poles should be taken closely. In order to do that, prosecution services need to be more attuned to certain realities.

A need to better understand what transparency means is important. It is particularly true with regards to the decision to prosecute, the decision not to prosecute and the outcome of plea bargaining, in jurisdictions where this procedure exists.

Second, decision need to be well founded, articulated and based on the law. Failure to formulate and communicate decisions correctly will harm the prosecution service and may have longer term effect on the confidence of the public. Every single opportunity to explain to the media enhances accountability. Prosecution services need to engage the media in a professional fashion. This requires, among other things, a policy on media and staff properly trained to respond to the media. Media and the public will respect decisions they understand even if they don't agree.

Third, prosecution services need to manage expectations. As professor Sklansky, who has written on prosecutorial power, mentioned, the population has more conflicting expectations about prosecutors than any other actors in the criminal justice system: they expect zealous advocates and impartial arbitrators, crime fighters and instrument of mercy, law enforcement leaders and officers of the courts, loyal public servants and independent professionals, champions of community values and defenders of the rule of law. There is also the expectation that, as the speed of every activity is increasing, court cases should be dealt with in unreasonably short times, a football match as one speaker suggested. All of those expectations need to be managed.

Two examples of situations which prosecutor needs to act as mediator between independence and accountability.

First example: The Prosecuting of sensitive case or cases against powerful individuals. The guidance of the rule of

law is important at any time, but particularly in time of crisis. Should a different standard be applied? Some have opined that the threshold may be applied differently whereas others have maintained it should always be the same. Obviously, these are cases where the standards need to be applied carefully. Ultimately, the prosecutorial decision should be based on the evidence in the case.

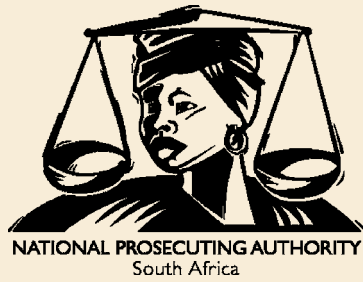
Second example: the phenomenon of Justice by the media.

Information is circulating more and more quickly. Information provided by traditional media is now competing with facts broadcasted on private accounts which have not been verified.

Some investigations and prosecutions may give rise to violent press campaigns and very strong personal accusations. These campaigns may have disruptive effect on the investigation and we have heard examples of this during the conference. Prosecutor should not respond to campaign in the media. They are bound by ethical rules prohibiting them to discuss cases in the media and taking action which may prejudice the hearing. Prosecutors also have the duty to protect witnesses and the integrity of their case.

It should be remembered that justice by the media can be a dangerous game to play. The more a case is discussed in the media, the more pressure there will be on the prosecutor to prosecute.





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