

Khasho



News for NPA staff, friends and stakeholders

April 2010





Letter

from the Editor

The barrage of media coverage that the NPA's strategic plan for 2010–2015 has been attracting is quite encouraging. It shows the significant position that this constitutional organisation holds in the South African tapestry and the important role it plays in the public domain. Amid the vibrant debate and publicity, the NPA should not let itself be distracted from working towards the vision that it stands for: justice in our society so that people can live in freedom and security.

Significantly, this new plan signifies some changes to the way the NPA has been accustomed to conducting its business – particularly in terms of the organisational structure and how it intends positioning itself for optimal service delivery in the criminal justice system.

We are all faced with the advent of change. In its definition, change implicitly requires

a change in mindset for everybody affected by it in order to harness the best benefit from it. Importantly, it requires constant communication flow, so that people are empowered with information about what the changes mean and how they impact on officials' work lives. In the upcoming issues of *Khasho*, we will unpack aspects of the plan in an attempt to demystify it.

This year marks 16 years of freedom and democracy in the country, which was commemorated as Freedom Day on 27 April. Once again, *Khasho* shares with you articles that are linked to the theme of celebrating freedom as we recognise April as Freedom Month.

Recently, the National Director of Public Prosecutions (NDPP) and other executive members hosted a Chinese delegation. Among other things, the delegation sought to explore opportunities for intercountry cooperation and knowledge-sharing on prosecutions and working towards an effective criminal justice system. This is indeed verification that the NPA is making an impact not just in South Africa, but globally as well.

The communications team always strives to be the repository of relevant, reliable and credible information in the organisation. To achieve this, the team has developed a Suggestions Corner on the intranet where NPA staff can share their views and post suggestions to enhance communication in the NPA. This is a tool to solicit ideas to improve internal communication. A response handling team is on the site, so please use this tool.

As the World Cup draws nearer, it is heartening to see prosecutors claiming their rightful position in the administration of justice during this global event. This edition of *Khasho* will make you aware of their state of readiness. Don't miss the radio and television interviews that are intermittently scheduled for the NPA project leader in the Administration of Justice Committee, who will pronounce the prosecutors' state of readiness in the administration of justice during the World Cup. The communications team will keep you abreast of these interviews.

"Feel it, the World Cup is here."

Bulelwa Makeke
Executive Manager: Communications

Cover photograph: NPA stand at the Rand Easter Show.

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NDPP in the media and public domain

Tebogo Seate

In the past month, the voice of the National Director of Public Prosecutions (NDPP), Adv Menzi Simelane, was once again heard in the media and in the public domain, commenting on various issues related to the work of the NPA.

Child Justice Act

A story that dominated the media at the beginning of April was the murder of Afrikaner Weerstandsbeweging (AWB) leader Eugene Terre'Blanche. One of the two suspects accused of the murder is a 15-year old boy who also had to appear in court. The NDPP attended his first court appearance and used the opportunity to tell the media about the new Act that came into force on 1 April 2010 – the Child Justice Act. This is what he told the media:

“On 1 April this year, the Child Justice Act was implemented. It has different procedures for children and we want to ensure that everyone understands what has to be done.”

Clarity was sought by journalists on how the trial will proceed under the new Act in view of the minor being charged with an adult person. It was explained that, after the magistrate had referred the minor accused to the Child Justice Court, the two would stand trial simultaneously, but would be tried under different legislations in the same court. The minor accused would be tried in terms of the Child Justice Act and the adult accused would be tried in terms of the Criminal Procedure Act. This, therefore, means that the question of the separation of trials does not arise.

Access to media

The proceedings will be held in camera because of the involvement of the minor. Therefore, the media and the public will not be allowed. However, some media houses have indicated that they intend to apply for access to the proceedings in a subsequent trial, which the NPA will oppose.

Before the Parliamentary Portfolio Committee

On 13 April 2010, the NPA delegation appeared before the Parliamentary Portfolio Committee on Justice and Constitutional Development to present its strategic plan. During that session, a number of important questions were raised, including the NDPP's right to intervene in certain cases and the so-called demotion of prosecutors. Below is his response:

“It is important to understand that there will be a lot of intervention in many cases. All that intervention is informed by the law and it is lawful. It is not proper to say that the role of the NDPP is not to get involved in the detail of cases. It would be an irresponsible role if the NDPP is not involved in cases. Secondly, I can assure you, without fear of contradiction, that I am not going to be an NDPP that is not involved in the detail of



Advocate Menzi Simelane
National Director of Public Prosecutions

the cases, because that is not only my job, but it is an important thing to do to ensure that things go according to plan.”

“I think it (the so-called demotion of prosecutors) has been grossly misunderstood. Nobody has been demoted. Nobody has filed a complaint to say that they have been demoted, so I think there is some misunderstanding there. It is wrong to say that somebody has been demoted just because he or she has been moved to another division. Over and above their current responsibilities, senior prosecutors are required to do court work. If we say go and prosecute out of Khayelitsha, it is not going to be a demotion, because people are going to do what they are employed to do, which is to prosecute cases.

“Every prosecutor in the NPA carries out his or her functions under the control and the direction of the NDPP, who has specific legislative authority to intervene when there are grounds for intervening, and also has a responsibility to ensure that the prosecutions policies apply and that legislation is applied. So, whenever the NDPP gets involved in cases it is in that vein.”

THE NPA HOTLINE – 0800 212 580

Building a culture of reporting unethical and unlawful practices, promoting and enabling whistle-blowing.

Freedom Day:

reflections on justice

Tebogo Seate

On 27 April, South Africa celebrates Freedom Day – an annual celebration of the country's first non-racial democratic election in 1994. This day marks the birth of a new nation, one founded on democratic values and respect for human dignity; a nation that cares for all its people: weak and strong, rich and poor, young and old; and a nation whose cultural diversity marks the richness of its heritage.

On this day, we began a journey that took us away from the past of a deeply divided society characterised by strife, conflict, and untold suffering and injustice towards a future of democracy, peaceful co-existence and prosperity.

This day provides us with an opportunity to see how far we have travelled on the road towards nation-building and social reconstruction. An honest appraisal will surely reveal that much progress has been made in healing the wounds, promoting reconciliation, fostering non-racialism and improving the lives of our people.

However, we need to acknowledge that much still needs to be done in order to create a people-centred society of liberty, and the realisation of the goals of freedom from hunger, freedom from deprivation, freedom from ignorance, freedom from suppression and freedom from fear.

It is therefore imperative for South Africans of diverse political and economic backgrounds to work towards a common objective of “one people with one destiny”.

On Freedom Day, we commit ourselves to ensuring the defence of the sacred freedoms that we have won as a result of a long, difficult and costly struggle. We remind ourselves that the guarantee of these freedoms requires permanent vigilance. It is our pledge to devote ourselves to continue to work to wipe out the legacy of racism in our country. We need to ensure that all our people enjoy these freedoms, not merely as theoretical rights, but as part of the daily life experience of all South Africans.

The question that we need to ask ourselves is: Can there be real freedom without solid justice? It is safe to say that there can never be freedom and democracy without justice.

Where there is justice, there is social order, where there is social

order, there is peace and prosperity. Justice is an integral part of any democratic society.

As James Cone, a respected theologian, said, “To demand freedom is to demand justice. When there is no justice in the land, a man's freedom is threatened. Freedom and justice are interdependent. When a man has no protection under the law, it is difficult for him to make others recognise him.”

Justice Learned Hand, a United States judge and judicial philosopher, who was famous in the USA during the 1950s, said this about justice: “If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice.”

**Freedom Day on
27 April
commemorates the
country's first non-
racial democratic
election, that was
held in 1994.**

The above statements are true. Justice is the cornerstone of any democracy and national freedom. As we celebrate Freedom Day on 27 April, we also need to reflect on our contribution towards achieving justice for all in the country. At the NPA, we occupy a special and privileged position to achieve that, because without justice there is no freedom.

The NPA is a programme of the Department of Justice and Constitutional Development estab-

lished specifically to defend justice and ensure that all citizens are treated equally and with dignity before the law. We must do this with diligence and without any fear or prejudice. As the ‘people's lawyer’, people must feel that the NPA has the interests of all the victims at heart. We must also ensure that people have access to justice regardless of gender, race and status in society.

In other words, we must all work towards achieving our vision, which is: justice in our society, so that people can live in freedom and security.

Where there is real justice, there is real freedom!

Prosecutors on the ball for

2010 FIFA Soccer World Cup

Nomilo Mpondo

The Department of Justice and Constitutional Development (DoJ&CD), in conjunction with other stakeholders of the Integrated Justice System, which includes the NPA, Legal Aid South Africa (LASA) and the judiciary, has developed a 2010 FIFA World Cup Administration of Justice Plan. This plan emphasises efficient court administration as important to hosting of a successful World Cup tournament.



The Integrated Justice System Committee subsequently identified 57 courtrooms (37 district courts and 20 regional courts) in the host cities where all cases that emanate from the 2010 FIFA World Cup cases will be heard.

The committee also developed a 2010 FIFA World Cup case definition that must be applied resolutely by all in the administration of justice. According to the case definition, the dedicated courts will prioritise cases involving non-nationals. The absolute aim for this prioritisation is to minimise costs of having to bring them back to the country for testimony.

As the country is evidently sweeping into a frenzy of excitement, the NPA is calling upon prosecutors who have not yet submitted their names for consideration to offer their prosecutorial skills in the dedicated courts to do so not later than 20 May 2010. Prosecutors will work on a two shift basis, with the first shift starting at 07:45 and ending at 16:15. The evening shift will commence at 16:h30 and will continue until

23:00. It is also important to note that the operation period in the dedicated courts will be from 28 May until 25 July: two weeks before the World Cup and two weeks afterwards. This period is meant to accommodate football fans who may arrive prior to the event and those who might stay a little longer. Vetting and accreditation of prosecutors who submit their names will be facilitated to enable them access to security zones.

According to the administration of justice project leader, Mr Nathi Mncube, normal court proceedings that involve South African nationals will not be disrupted during the World Cup and, as such, it will be business as usual.

The 2010 FIFA World Cup Administration of Justice motto says: “working together, we will provide a speedy and efficient justice for the 2010 FIFA World Cup”. Consistent with the mandate of the JCPS Cluster, efforts should thus be made to “ensure that all in South Africa will be safe and feel safe”.

Proceeds of unlawful activities forfeited to the state

Adv Chris Ndzengu, DDPP: AFU (Port Elizabeth)

It is a known fact that criminals use complex and sophisticated mechanisms, which enable them to live comfortably from the proceeds of crime. Such peaceful enjoyment of the proceeds of crime by criminals damages public confidence in the rule of law and provides harmful role models in our communities.

Proceeds of unlawful activities are defined widely in the Prevention of Organised Crime Act, 1998 (Act No 121 of 1998) (POCA), as “any property, service, advantage, benefit or reward derived, received or retained, directly or indirectly in connection with or as a result of any unlawful activity carried on by any person”. This would include any property purchased using such a benefit.

Unlawful activity means any conduct that constitutes crime. There is general common cause that an unjust benefit or enrichment to any criminal should be dislodged as it is never due to such an offender. Such benefit must first be properly linked to an offence before criminal or civil forfeiture is invoked against it. The state has employed litigators to prepare court applications in terms of the POCA provisions and to obtain asset forfeiture orders against such proceeds. Once forfeited to the state, such a benefit is deposited into the Criminal Assets Recovery Account and used to bolster law enforcement. It can also be paid to victims of crime. In this way, public confidence in the justice system is restored.

Among the offences referred to in item 22 of Schedule 1 of POCA is any offence referred to in section 13 of the Drugs Act, which covers a wide range of offences that include possession and/or dealing in drugs. Section 5(b) of the Drugs Act prohibits any person from dealing in any ‘undesirable dependence-producing substance’ unless he or she qualifies in terms of section 5(b) (i)–(iv). Methaqualone, the active ingredient in mandrax, is an ‘undesirable dependence-producing substance’ as defined in section 1 of the Drugs Act because it is listed in Part III of Schedule 2.

In a previous case, the Constitutional Court expressed the following concerns about drugs: The social problem caused by drug manufacturing, dealing and usage should not be overlooked. There is an alarming rise in the illicit production of, demand

for and trade in undesirable dependence-producing substances. The illicit production and use of these substances undermine the legitimate economy and threaten the national stability and security of the country. In addition, they pose a serious threat to the health, welfare and safety of human beings, particularly young people and children, and adversely affect the social and economic foundations of our society. The rapid expansion of drug markets in small residential laboratories creates immeasurable social problems. The sexual abuse of young children, domestic problems, violence inside and outside the home, health and instability are attributable in part to the use of drugs and the prevalence of mini-laboratories in residential areas.

In February and March 2010, the Port Elizabeth High Court granted preservation orders against R42 771 and R12 180 in cash, respectively seized by members of the police after being reliably tipped that drug dealing was taking place on residential premises in Motherwell and New Brighton. The orders were granted on the basis that the cash, found stashed in various places, represented the proceeds of drug dealing.

Those who were in possession of the cash were unemployed and not registered as taxpayers. They could not provide any reasonable explanation for the huge sums of cash. In both houses, which they did not own, 901 BOSS mandrax tablets were seized, analysed and confirmed to contain Methaqualone.

The sum of R42 771 has already been forfeited to the state and forfeiture of R12 180 will follow shortly. This good work in making sure that crime does not pay was made possible by the excellent cooperation among law enforcement agencies. This has been done notwithstanding the fact that in one case the criminal charges have not even been brought against the individual who illegally possessed the drugs, and in another case charges are still pending against a so-called drug runner.



Cash seized at New Brighton.



Cash and mandrax tablets seized at Motherwell.

Child Justice Act: in-house training in Mthatha

Luxolo Tyali

The National Task Team, which conducts training on the Child Justice Act, has engaged the highest gear, training 43 prosecutors in the Mthatha division alone in April.



The group of prosecutors that attended the in-house training in Mthatha.

From October 2009 to the end of March 2010, the Child Justice Act National Task Team conducted training on the Child Justice Act in all nine provinces. This included the training of tutors.

When the Child Justice Act came into operation on 1 April 2010, most prosecutors showed eagerness to be given training on this Act, as it became apparent that the number of prosecutors who had received training was less than the desired number, not only in Mthatha, but in the other regions as well.

The training committee in the Mthatha region, therefore, proactively coordinated the training of advocates, senior public prosecutors, control prosecutors and other prosecutors on

13 April 2010 in order to equip them to deal with the challenges of implementing the Child Justice Act.

The one-day in-house training held at the auditorium of the Mthatha offices of the Directorate of Public Prosecutions (DPP) attracted prosecutors from all over the former Transkei region.

Advocates Silumko Ngqwala of the DPP office in Mthatha and Mkhuseli

Jokani of the Sexual Offences and Community Affairs (SOCA) Unit in Grahamstown, who form part of the National Task Team on the Child Justice Act, facilitated the training.

According to Adv Ngqwala, the main aim of targeting senior public prosecutors and control prosecutors, in particular, was to equip them to conduct internal training for other prosecutors that are in their respective clusters.

“At the end of the training, delegates are able to deal with issues related to criminal capacity, preliminary inquiry, diversion, trial, legal representation and the sentencing of children that are in conflict with the law in their respective courts,” said Adv Ngqwala.

Protecting the rights of road accident victims

Nomilo Mpondo

The previous *Khasho* promised to keep a close watch on the proceedings of the court when the Law Society of South Africa (LSSA), the South African Association of Personal Injury Lawyers (SAAPIL) and others challenged the new Road Accident Fund Legislation in the high court last month.

This legislation was alleged to be unconstitutional and unlawful by the aforementioned organisations. Acting Judge Hans Fabricius of the North Gauteng High Court in Pretoria

dismissed those allegations. Giving out his judgment, he said: “Even seriously injured victims will be deprived of any compensation... If you break both arms and both legs in terms of the amendment act, you are not seriously injured.”

This judgment was described by many as ‘unfortunate’. At this point, *Khasho* is not privy to any knowledge regarding whether the LSSA and its backers will appeal the judgment or not. The last time *Khasho* checked, Mr Ronald Bobroff, SAPPIL President, was still studying the 200-page judgment.

The NPA Library and Information Services

Thulisa Kondlo

The Research and Policy Information Service Centre, a service centre within Corporate Services, comprises two directorates: the Library and Information Unit and the Research and Policy Unit.

The role and function of the NPA Library is to manage open source information through the delivery of library and information services to the employees of the NPA. This is done by the various components in the libraries, for example, information, technical and administrative services.

Information Services

The services rendered by this component is run by Nozuko Mdingi, Librarian: Information Services.

Information requests are directed to this component, which then searches, collates and delivers the information to users. In-house and external sources are utilised in tracing the needed information. A number of online databases on the intranet and Internet are subscribed to, including Jutastat, LexisNexis, Westlaw, HeinOnline, and the various Sabinet Online databases, including the online Government Gazette and full-text South African journal articles. Library staff provide training on the usage of the various databases.

Current awareness services are delivered to inform NPA staff of newly published information. An information needs analysis is done and information profiles are set up to identify and select relevant information.

The NPA library offers interlibrary loans to provide information that is not available in the libraries. Information from any library, national or international, can be supplied through this service.

Technical services

This component is run by the Acting Librarian: Technical Services, Buwa Chawuke. This component is responsible for the purchasing of new library material needed by the NPA. The collection is representative of all work-related information needed, as required for the execution of the core function and support services.

The classification and cataloguing of library material, together with the maintenance of the online catalogue, are the responsibility of this component. The library catalogue is available for searching via the NPA Intranet. Users can search the catalogue from their offices and perform functions

such as searching for books, renewing issued books, profile maintenance, as well as the placing of holds on issued material and the posting of information requests.

Administrative services

This service is run by Malindi Botha, Deputy Manager: Library.

The services cover general administrative duties to ensure the smooth running of the library, the distribution of publications to regional libraries and prosecutors, as well as asset management. The management of the updating of the loose-leaf material issued to all the prosecutors and advocates falls within the ambit of this division.

Regional libraries

All DPP offices have a regional library. These regional libraries are supported by the head office library in all activities relating to the delivery of information services and the procurement of new books. Regional librarians are appointed in most of the libraries and a close working relationship exists between these libraries and the head office library. The management of the libraries falls on the shoulders of Krista Verster and Thulisa Kondlo.





A conversation with Nozuko Mdingi

Information Specialist: Library Services

Nomilo Mpondo

You joined the NPA in 2004, but left in 2006 and then came back to the NPA in 2008. What is the reason for this?

I needed private sector experience and when I thought I had enough experience, this position was advertised, so I applied. Fortunately I was the preferred candidate.

You now work at head office. Are there any advantages that you are experiencing that you did not experience when you worked in the region?

Yes, when I was working in the regional office (DPP office in Cape Town) I was only serving the DPP office in Cape Town, whereas now all the regional offices are my clients. Back then, there was no library system in place and everything was done manually. Now we have a library management system.

Briefly, what did you study?

I completed a degree in Library and Information Science at the University of the Western Cape. I also did an honours degree majoring in Management of Training.

As an information specialist, what are your daily duties?

- Provide in-depth subject-related information requests by using electronic databases (Jutastat, LexisNexis, Sabinet, Westlaw and HeinOnline).
- Facilitate and conduct training on all our databases for all NPA employees and conduct training updates on loose-leaf material.
- Distribute the current awareness alert service on the latest legislation, as requested by our users.
- Evaluate and monitor all our subscribed databases.
- Oversee the interlibrary loan system, which connects us to other libraries for information-sharing.

Are there challenges that you face as you perform your duties?

Yes, of course! Dealing with different people on a daily basis can be challenging. All I can say is that you need to understand your users, and classify and prioritise your queries.

Is the NPA Library adequately resourced?

No library can be adequately resourced, given the changing world and the rate at which new information becomes available. Our library tries by all means to make sure that all our users' requests are met, hence the interlibrary loan system that connects us to the outside world.

The bulk of your clients are prosecutors. What value do you add to prosecutions?

- We provide them with pertinent information on local and international court cases.
- We provide them with updated information on Acts and unreported cases.
- We provide them with the most recent judgments.
- We provide them with the case law on different topics.

Do your clients often stick to due dates for book returns?

Not at all, they need to be reminded; but at least we have a system where users can phone and renew the material if they still need it.

Are there systems in place to track and recover borrowed books?

Yes, of course! Our system automatically sends three overdue notices to users after the due date. There is also an option to renew the books online.

How would you rate the NPA library services?

The Information Services section will always be the best support system for NPA staff members, as it provides the latest information on legislation, thereby helping users in their daily activities. I would also like to mention that our library is not a specialised library. It covers different subject areas. I'd say our library is mainly a legal library, supporting the core function of the NPA, that is, prosecutions. In addition, we collect material to support all the NPA's information needs, such as management, finance, broader criminal justice and criminology. I could say the service is in high demand judging from the analysis of usage statistics.

Conference provides feedback on human trafficking

Charlene Labuschagne

A Human Trafficking Research Report Conference was held in March 2010 to provide stakeholders with feedback regarding the research findings of current research done in this regard. This conference was a shining example of a successful joint venture by the members of the Tsireledzani Programme, the European Union (EU) and the Human Sciences Research Council.



Exhibition stand at the Human Trafficking Conference.

The NPA has received financial assistance from the EU for research and public awareness of human trafficking.

The participants in the Human Trafficking Research Report Conference reflected on the research methodologies used by the Human Trafficking Research Advisory Reference Group. The panel also considered the necessity of intercountry cooperation and coordination in implementing preventative and combative measures against human trafficking.

It was generally held that while the prosecution of perpetrators may succeed by invoking various existing laws, the problem lies with a lack of measures to prevent and combat trafficking. Fortunately, a Bill was promulgated in Parliament in March 2010, which would in future target human trafficking activities.

The Bill contains measures to prevent trafficking and protect and assist trafficking victims. The Department of Justice and Constitutional Development would be responsible for

convening an event for the cluster of departments that is affected by the legislation to reflect on and develop operational plans for the successful prosecution of perpetrators of human trafficking.

There is a general view that human trafficking will increase, especially for sexual purposes ahead of the 2010 FIFA World Cup. This anticipated rise has highlighted the need for South Africa to be able to deal with trafficking.

The very first human trafficking conviction, for the purposes of sexual exploitation, was made in South Africa. The state used racketeering laws related to sexual exploitation to convict a couple in the Durban Regional Court.

A local Durban couple had recruited sex workers from Thailand. Although the Thai sex workers knew, at the outset, that they had been recruited for prostitution, they fled from the brothel and sought assistance from the Embassy of Thailand. The brothel premises were identified as the central operational point for the unauthorised and unlawful activities. This fact provided the scene for an organised human trafficking structure, where females were being sexually exploited for a profit.

The couple were convicted on 19 counts, including racketeering, contravention of the Sexual Offences Act and the Immigration Act, and money laundering. The couple are due to be sentenced on 10 May. They face a maximum sentence of life imprisonment or a fine of R100 million.

The various papers presented by the members of the panel are available on the NPA website.

Human trafficking conviction

Natasha Ramkisson

Adv Val Lotan of the Organised Crime Component (OCC) in the office of the Directorate of Public Prosecutions (DPP) in KwaZulu-Natal has secured the first conviction in South Africa for a human trafficking case based on racketeering, sexual offences and immigration legislation.



Adv Val Lotan

We caught up with Adv Lotan and asked her a few questions about this landmark conviction.

How did it all start?

The Durban Metro Police received information about a suspected brothel at a house in Durban in April 2007. They sent in an agent to confirm whether prostitution was taking place on the property. Following a bust, nine Thai female nationals and a South African male were arrested. At this point there were no state witnesses and they were released on bail on condition that they did not repeat the offence. However, they did not adhere to their bail conditions and resumed their illegal activities, showing a blatant disregard of the law. A fight broke out with three of the Thai women and the 'madam'. The three women fled to the Thai Embassy, who then contacted me. I asked them if they were willing to testify; they agreed and then entered the Witness Protection Programme.

What is unusual about this conviction?

Cases like these are usually dealt with under prostitution and immigration laws and the real perpetrators are not caught. I looked at ways that the offence could be dealt with to address the main perpetrators, who are generally not directly involved. Racketeering and money laundering provided the solution, as

the accused had conducted transactions with the proceeds of the crime.

What was the outcome?

The accused were charged with 19 counts brought in terms of the Prevention of Organised Crime Act, 1998 (Act No 121 of 1998) (POCA), the Sexual Offences Act, 1957 (Act No 23 of 1957), and the Immigration Act, 2002 (Act No 13 of 2002). Sentencing is scheduled for 10 May 2010.

How long did this matter take you?

The accused were arrested in 2007 and we started trial in late 2009. It went fairly quickly from the start of the trial until judgment.

What does this conviction mean for South Africa?

It means that prosecutors can use other legislation to prosecute cases of human trafficking in the absence of human trafficking legislation. The fact that there isn't any human trafficking legislation doesn't mean it's a dead end.

Adv Sheriza Ramouthar, Acting Director of Public Prosecutions in KwaZulu-Natal, had the following to say: "We are very pleased with the conviction. It is precedent-setting, given that the prosecution team was able to utilise existing POCA legislation to successfully prosecute the accused in the absence of human trafficking laws. I am especially pleased with the timing, as the eyes of the world are now on us in the run-up to the FIFA Soccer World Cup."

Silver award for the NPA

Charlene Labuschagne

It is now an NPA tradition to participate in the Rand Easter Show. Directorate of Public Prosecutions (DDP) staff from Johannesburg and prosecutors from the Western cluster came in their numbers to support the NPA.

It was heartening to see even senior state advocates offering to man the exhibition stand. The public had an opportunity to engage prosecutors in discussions concerning procedural aspects of prosecution. Members of the public were very excited to be presented with an opportunity to access information concerning the law and about the workings of the justice system. The kind of knowledge presented to them was the kind that would empower them to exercise their rights as complainants. The professional image of the NPA exhibition stand did not go unnoticed. The NPA fetched a Silver Award in recognition of display excellence at the Easter Rand Show 2010.



JCPS Cluster embarks on a human rights awareness campaign

Tsepo Ndwalaza

During March 2010, the Justice, Crime Prevention and Security (JCPS) Cluster in Port Elizabeth embarked on a campaign to make the community aware of their rights during Human Rights Month. The Department of Justice and Constitutional Development, together with the NPA, the Department of Correctional Services, the South African Police Service, the Department of Social Development and the Department of Home Affairs, was involved in a series of sessions where they visited communities and schools in the Nelson Mandela Bay Region.

The theme of these sessions was “Know your rights” and the participating departments delivered information relating to domestic violence, court interdicts, understanding the criminal justice system, and information on Thuthuzela care centres. The NPA also delivered a presentation on human trafficking, which was well received, especially in schools where pupils wanted to know more so that they could spread the word to others about this type of crime.

The audience at Sanctor High School was enthusiastic and engaged officials on the issues that were discussed. Everybody was grateful for sessions such as these, as they

all said that the information provided by the departments was very important for their survival in the community.

The participants also informed the public that with the World Cup around the corner, there will be an increase in incidents of human trafficking and that pupils should be aware of this situation. The Department of Correctional Services provided entertainment in the form of its inmates’ choir, which gave a good rendition of items that was enjoyed by all. The principal of the school was very excited about the programme and what it hoped to achieve for the benefit of the community.



Pupils of Sanctor High School in Port Elizabeth listened attentively to the presentations.

Sexual offences on the rise in KwaZulu-Natal

Natasha Ramkisson

The NPA and the Department of Justice and Constitutional Development in KwaZulu-Natal recently embarked on outreach events specifically aimed at creating awareness around sexual offences.

At the recent Provincial Integrated Justice Forum (PIJF), the Acting Director of Public Prosecutors in KwaZulu-Natal, Adv Sheriza Ramouthar, spoke about the Under 12 Project, mentioning that since January 2008, the NPA had received over 2 200 cases where children under the age of 12 were victims of sexual assault and rape. Of these, just over 100 had been finalised.

The Justice, Crime Prevention and Security (JCPS) Cluster then decided to hold awareness projects in Umlazi and KwaMashu (Durban) and in Plessislaer (Pietermaritzburg). These three areas in KwaZulu-Natal are hot spots, with the highest incidences of sexual offences.

Representatives from schools in the respective areas attended the talks given by the various role-players, and drama students

put on sketches to highlight the themes of the day. Role-players included prosecutors from courts in the respective areas, SAPS members, and speakers from the Department of Social Development, the Department of Justice and Constitutional Development and the Department of Health.

Adv Ramouthar, who attended the event in Umlazi, was encouraged by the learners' enthusiasm to learn about their rights, as well as the interesting questions they posed to the panel members from the various departments. "These children were reminded of their rights, of what is acceptable behaviour and of the devastating consequences such violence has for victims, perpetrators and for their families. I thought it was a successful programme, but it certainly cannot end there. This type of outreach must be consistent and continuous to make a difference," said Adv Ramouthar.

KZN Missing Persons Task Team had its first exhumation

Monica Nyuswa

The Missing Persons Task Team in KwaZulu-Natal exhumed the remains of freedom fighter Zinto Cele on Saturday, 27 March 2010, at Ntuzuma Cemetery in Durban. Prior to the exhumation, the Cele family paid their respects at the site of his death at the Grosvenor Girls' High School in Zinto Cele Road, Bluff, Durban.

The Missing Persons Task team started its work in 2005, investigating the disappearance of people active in the fight for the liberation of South Africa. Recently it set up a unit in KwaZulu-Natal that, together with the SAPS, is attempting to locate over 250 local missing persons identified by the Truth Commission.

Zinto Cele was 22 years old when he died. He was a member of the uMkhonto we Sizwe (MK) Butterfly Unit, which operated in KwaZulu-Natal in the mid-1980s. Zinto and fellow MK combatant Mandlenkosi Ndimande died during the midnight hours of 24 October 1985 when a bomb they were placing at the Grosvenor Girls'



Family members of the deceased and community members attending the exhumation service.

Life sentences for Transkei Trio

for the murder of a businessman

Luxolo Tyali

The stiff sentencing of three men to an effective 53 years in jail has restored confidence in the South African criminal justice system to a family of the victim, Andrew Meldal-Johnsen.



State Advocate Wiseman Nzama

Meldal-Johnsen, a businessman who ran a shop and a pension pay-point in a remote rural village in Centane in the Transkei, was murdered in cold blood in front of his elderly and disabled customers in May 2007.

He was robbed of his vehicle, firearm and about R11 000 in cash.

This month, Siyabonga Baba, Malibongwe Yedwa and Sipho Zilindlovu were all sentenced to life imprisonment for murder, as well as 18 years for robbery with aggravating circumstances and 10 years for the illegal possession of a firearm and ammunition.

Yedwa is the one who pulled the trigger when he saw Meldal-Johnsen reaching for his pocket apparently because the murderer thought he was reaching for his pistol. During the sentencing, the presiding Judge Lusindiso Pakade noted that

Prosecutor commentary about the case

There were many delays before the case was heard in court due to tactics by the accused persons.

The accused persons misused their right to legal representation as a delaying tactic until the case had to be moved from Centane Circuit Court to Mthatha High Court after their legal representation had been confirmed.

The accused and defence tried by all means to dispute the evidence presented in court, which warranted that the prosecutor and the investigating officer work day and night interviewing witnesses and discussing possible shortcomings in the evidence.

“I spent sleepless nights trying to track down some of the witnesses with the investigating officer. The case has taught me that when one is given any kind of case, one must grab it with both hands no matter how junior one is, because the more complicated the case, the more you learn as a prosecutor and grow professionally, and that prepares you to tackle even more advanced cases,” Adv Nzama said.

due to the fact that the trio did not plead guilty, the state had the obstinate task of proving its case against them.

The sister of Meldal-Johnsen, Allison Rowan, who testified during arguments for aggravation of sentence and currently lives in the United Kingdom, said the work that was done by the NPA and SAPS in solving the case has restored her confidence in the criminal justice system of South Africa.

Below is an unedited version of the letter written by the sister of the deceased victim, Allison Rowan:

To all concerned,

As sister of the deceased late Andrew Richard Meldal-Johnsen and on behalf of the Meldal-Johnsen family we would like to thank you for your diligent effort you made in seeing that justice prevailed in the case of late Andrew Richard Meldal-Johnsen. We sincerely appreciate all the time, effort and hard work that all parties must have put in to ensure the arrest, investigation and prosecution of the perpetrators it was a very successful team effort. In a society that is marred by

violent crime it is reassuring to know that there are still such individuals who undertake to provide law and order in our country. I personally want to thank Captain Dulusa and Advocate WL Nzama for their commitment and dedication towards this case. May the Lord bless you and keep you as you continue to serve your country.

Yours sincerely,
Allison Rowan

Commentary on the recent labour court judgment in the Barnard matter

Sonwabile Nkayitshana

The Employment Equity Act, 1998 (Act No 55 of 1998), which was promulgated to address the disparities that characterised the employment landscape of South Africa before 1994, is probably the most controversial employment-related piece of legislation after the Labour Relations Act.

With the passing of the recent Labour Court judgment in the matter between Solidarity (acting on behalf of Mrs RM Barnard) and the South African Police Service (SAPS), the scene has been set for more controversy around these matters.

Mrs Barnard had, on two occasions, tried unsuccessfully to secure the rank of superintendent at salary level 9 in the SAPS. Solidarity sought an order compelling the SAPS to appoint Mrs Barnard (a white female captain) to the rank of superintendent following the failure to appoint her after she had been rated the best candidate for the post in two successive interviews. Although on both occasions there were slight differences in the reasons advanced for Captain Barnard's non-appointment to that rank, the main reason was that her appointment was not going to enhance or address representivity in the SAPS.

Section 2 of the Employment Equity (EE) Act sets out the purpose of the Act, which is to achieve equity in the workplace by promoting equal opportunity and fair treatment through the elimination of unfair discrimination, as well as implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups. While section 6 of the Act provides that no person may unfairly discriminate against an employee on one or more grounds, including race, this section also provides that it is not unfair discrimination to take affirmative action measures consistent with the purpose of this Act.

In its judgment, the court set out the principles that informed its decision, including the fact that the extent to which the implementation of employment equity plans may discriminate or adversely

affect individuals was limited by law. In that regard, the court pointed out the following relevant considerations:

- The terms of the EE Act require the application of its provisions to be done in a manner that is rational and fair.
- Due recognition must be given to the affected individual's rights to equality.
- In the implementation of an EE Plan, due recognition must be given to the affected person's dignity.

In addition, the judge held that where a post cannot be filled by an applicant from an under-represented category because a suitable candidate from that category cannot be found, promotion to that post should not ordinarily and in the absence of a clear and satisfactory explanation be denied to a suitable candidate from another group. In deciding not to appoint Captain Barnard to the post in question, the National Commissioner had reasoned that her appointment to the post would not address representivity and that the post was not critical and would not affect service delivery.

The judge found this reasoning and justification to be doubtful. Although the judge concurred with the argument advanced by the respondent that Captain Barnard's appointment to level 9 would have aggravated the overrepresentivity of white males and females to that level, he held that it would have been relevant to consider that her appointment would have improved representivity at level 8, where black males and females were also underrepresented. The judge was also of the opinion that it was unfair not to appoint Captain Barnard in view of the fact that an alternate candidate



Mr Sonwabile Nkayitshana, Deputy Manager: Employee Relations

from an underrepresented group was not recommended for appointment.

Upon considering the facts of the matter and the principles he had outlined, the judge ruled that the failure to appoint Captain Barnard was unfair and not in compliance with the provisions of the EE Act. He accordingly ordered the respondent to appoint her to the post of superintendent retrospectively, with effect from 27 July 2006.

Recently, the respondent filed a notice of appeal to the Labour Appeal Court, which the court subsequently granted. The trade union Solidarity described the decision as 'disappointing'. One of the problems that this judgment might cause if it is not challenged is the limitations that it imposes on designated employers such as state departments in implementing their EE plans, where a post cannot be filled by an applicant from an under-represented category due to a suitable candidate from that category not being found. This limitation will, as a result, prolong the time it will take to address the disparities that continue to characterise employment occupation in South Africa.

Justice for nine-year-old rape survivor

Tsepo Ndwalaza

Justice was served in the Port Elizabeth High Court when a Uitenhage man who raped his girlfriend's nine-year-old daughter was given a life sentence behind bars. Phumzile Mnguni (27) of Kwa-Nobuhle pleaded guilty to raping the girl at her home on 30 November 2008, while her mother was out.

The public and community organisations fighting against women abuse were very pleased with the sentence handed down to the perpetrator by the judge, insisting that this will send a strong message to criminals out there that crime does not pay.

It is alleged that Phumzile had gone to look for his girlfriend and had helped the girl with her homework while he waited. He later took her to the bedroom where he raped her. Judge Daylan Chetty presided in this matter and, when passing sentence, said the girl had been severely traumatised and had been left emotionally and psychologically scarred.

According to Judge Chetty, Mnguni's personal circumstances and the fact

that he had pleaded guilty did not help him, nor did it compel the court to impose a lesser sentence than the mandatory life term.

He went on to argue that the little girl had trusted Mnguni, since he was in a relationship with her mother, and had been at ease around him.

Under the Minimum Sentencing Act, life imprisonment means that Mnguni can only be considered for parole after serving 25 years of his sentence. Berenice Jacobs-Malgas, Director of the Port Elizabeth Rape Crisis Centre, said that this counselling and support organisation welcomed the sentence.

"The state had a very strong case against the accused and that is why I was confident that we would win the

case, and to me it came as no surprise that he pleaded guilty," said the prosecutor in this case, Adv Mbulelo Nyendwana.



Adv Mbulelo Nyendwana

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High School in the Bluff, Durban, detonated prematurely. The explosion was part of the armed propaganda campaign to protest the forthcoming "whites-only" by-election in area. MK operative Sibusiso Mazibuko was seriously injured in the explosion, but survived and managed to escape.

Zinto Cele was buried as an unknown pauper by the state in a site unknown to the family. With the help of the eThekweni Parks and Cemeteries Department, the unit traced his grave in a disused cemetery in Ntuzuma. His exhumed remains will undergo forensic examination by the Missing Persons

Task Team before being returned to his family for a dignified reburial.

Hundreds of people attended the ceremony, which was addressed by the Member of the Executive Committee (MEC) for Health, Dr Sibongiseni Dhlomo, and other members of the Butterfly Unit, including Mawethu Mosery, Head of the Electoral Commission (IEC) in KwaZulu-Natal, Vusi Mahlobo, Head of the Special Pensions Unit, Derek Naidoo, eThekweni Deputy Manager, and survivor Sibusiso Mazibuko. The NPA received many accolades and high praise from the speakers, including provincial and local government representatives, the family of the deceased and MK veterans.



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