

Khasho



News for NPA staff, friends and stakeholders

August/September 2010



Professionalism, Integrity, Service Excellence, Accountability and Credibility

Letter from the Editor



In South Africa the month of August is recognised as women's month. To keep up with this South African tradition of celebrating women in August, this issue of Khasho shares with you articles that are linked to the theme of celebrating and recognising women's day in our country. We have also profiled cases that were handled by female prosecutors and also cases where the law favoured female victims of crime. It is also in our interest to inform you about how the NPA is doing in the women empowerment front.

Take a sneak view of the interview that Khasho had with the NPA's Executive Manager of HRM&D whose responsibility, amongst others, is to ensure that NPA women employees have equal opportunities in the workplace.

The NPA presented its first quarter performance report before the Justice Portfolio Committee last month. The presentation is available on both the intranet and NPA website for your interest. The NDPP interacted with the media, the public and specifically with key stakeholders to articulate on the report. He presented at a public lecture hosted by the National Library of SA and at the Institute for Security Studies (ISS) and the vibrant discussions that ensued after the presentation are an indication that the public is committed to contributing to dialogues that seek to strengthen the efficiency and effectiveness of the NPA and the entire criminal justice system. This issue of Khasho reports on key points of the NDPP's presentation.

In the month of June, the Minister of Justice and Constitutional Development, Mr Jeff Radebe and Mr Willie Hofmeyr, Deputy NDPP and head of Asset Forfeiture Unit (AFU) participated in a Global Forum on Stolen Asset Recovery.

At this meeting which was hosted by the World Bank and the UNODC in Paris, the Minister noted the efforts of the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA) within the Southern African region and supported the need to increase the capacity of prosecutors and investigators to pursue the 'proceeds of crime'. On 26 July, the Minister officially opened ARINSA's first annual general meeting in Pretoria, and Mr Willie Hofmeyr shared South Africa's valuable experiences and insights from the past 10 years of the AFU's existence. Participation in such prestigious events is indeed a sign that the NPA and the South African justice system are making a significant impact in the global justice landscape. The NPA once again participated in the T Show, previously known as the 'Pretoria Show' from 27 August to 5 September 2010. Our exhibition stand was awarded a silver medal for professional display and the relevance of the information material made available at the stand.

*Bulelwa Makeke
Executive Manager: Communications*

Cover Photograph: NPA display at the T- Show

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Message from the National Director of Public Prosecutions

Let me welcome you to yet another edition of Khasho, one of the tools we use to keep you updated about developments within the organisation.

The month of August was another exciting month. On Wednesday, 11 August 2010, we had the opportunity to share with the Justice Portfolio Committee the NPA's performance overview for the first quarter of the financial year, where we highlighted our achievements as well as the challenges we are encountering. I must say that our presentation was generally well accepted, and we had a very fruitful engagement.

The above is a positive indication that the work of the NPA is taken very seriously by all our stakeholders. We must therefore never undermine the role that we play in society. Every step that we take is closely monitored and thoroughly scrutinised, the achievements that we realise are celebrated by a host of people, and our shortcomings become a matter of concern to many. This is so because justice and security play a crucial role in the stability and development of any country. Our role as the NPA, together with other members of the JCPS cluster, is very key to deepening that developmental role.

We take sessions like the one we had with the Justice Portfolio Committee very seriously, because it is an opportunity to account to the public representatives and communicate with our broader stakeholders about the work of the NPA. We must take this accountability very seriously and make use of every opportunity to educate society about their rights in the constitution. We must therefore never allow any negative influences, whether internal or external, to derail us from focusing on the duty at hand.

The JCPS Delivery Agreement is expected to be finalised soon. The focus therein on eliminating corruption places a responsibility on everyone to fully play their part.

Government has committed itself to defeating the scourge of corruption and those who participate in corrupt activities will be dealt with by all the law enforcement agencies. As the NPA, we are expected to continue to play an important part in this area.

The NPA, like any other institution, is not without its own challenges. One of our key challenges currently is building capacity and filling of key vacancies. Without sufficient and properly skilled human resources, there is very little that we can achieve. In the months ahead we will attempt to accelerate the filling of key vacancies that we have identified. This will assist us a lot in addressing the issue of case backlogs at both regional and district court level, as well as improved finalisation of cases in general.

Finally, let me take this opportunity to welcome on board all new employees who have recently been appointed. I am sure your stay at the NPA will be fruitful and enjoyable. I sincerely believe that you have made the right choice by joining this institution. The NPA is a public institution to be

reckoned with, held in high esteem for our knowledge and skills as well as the difference we have made so far in the lives of many South Africans.

Whilst the NPA will provide you with continuous guidance and support to enable you to do your job properly, you are also encouraged to take initiative and be in control of your destiny. Great organisations are made by great people, and you wouldn't be here if we didn't detect that greatness in you.

To all the NPA staff, have a wonderful and energetic spring season!



*Advocate Menzi Simelane
National Director of Public Prosecutions*

NPA - reflecting on gender equality

Nomilo Mpondo

It is the agenda of the government to ensure that women have equal opportunities in the workplace and in our society. Consistent with this agenda, President Jacob Zuma established a ministry focussing on women, youth, children and people with disability to prove that the emphasis on gender imbalance is still necessary. The South African Parliament also stands as a good example that amplifies the seriousness of the Government in gender equality. To date, 43.75% in the National Assembly are women.

In keeping with the national agenda of gender equality in the workplace, both private and public sectors should ensure equal opportunities for women. Khasho spoke to the custodian of gender equality in the NPA, Ms Matshidiso Modise: Executive Manager, HRM&D and this is what she had to say:

1. Leadership positions are traditionally/historically reserved for men. How does it feel for you being a woman heading such a strategic function for a relatively large organisation like the NPA?



*Ms M Modise
Exec Manager HRM&D*

The NPA is no different from any other organisation in this country. The stereotypes around the role of women have not been completely broken down and women like me in the NPA still have to prove their capability much more than men have to. However, having said that, I am fortunate in that in my particular environment, I am not judged as a woman but as a practitioner and a professional.

2. What is the NPA's agenda towards women empowerment / access to equal opportunities?

A: The NPA follows the government agenda as prescribed by Cabinet. Key to that agenda is that women representation must be 50% in executive and senior management. In 2009 HRM&D hosted an Employment Equity (EE) Indaba to review how the NPA is doing in reaching the EE targets. One of the main outcomes of the indaba was a decision that was endorsed by Exco that until targets are met, appointment in management positions will be geared towards increasing women representation in senior management.

3. Women in general face many social challenges that they inevitably carry to work. Does the NPA have any specific interventions to empower them?

Through our EWP programme we are able to offer support and assistance to women to deal with women specific issues.

However, the NPA like other organizations is affected by the economic pressure which has led to budget cuts. This has imposed limitations on the programmes on offer, but we remain hopeful that the situation will turn around soon and we will resume our full programmes.

4. On a scale of 1 to 10 how would you rate the NPA in terms of advancing the women agenda in the workplace?

In my view there is still more that needs to be done. The 2010 statistics indicate that the government as a whole has only managed 35.3% women representation and unfortunately the NPA contributes significantly to this low figure.

5. What challenges do you personally face as EM: HRM&D?

Inheriting a unit that is not firing on all cylinders and the challenge of turning it around in an environment that is so highly prescriptive is not easy. But I still fully believe nothing is impossible and we will turn things around. The biggest hurdle to overcome is changing people's attitude towards their work and we are working on it.

6. The fact that you have a tiny body structure, does that in anyway prejudice you in this male dominated environment?

It helps that I have a very loud voice therefore I cannot be ignored because if you cannot see me, then you will hear me.

7. What message do you have for our ladies in the NPA in general?

In a lot of areas where we are doing well; check who is at the helm and you will find a woman. I need not make examples but, Ms Makeke, Adv Majokweni and others.

From all the women of South Africa: *Long live Lungi!*

Malherbe Marais

The Director of Public Prosecutions in Grahamstown, Adv Lungi Mahlati SC, was not happy with a sentence of 5 years imprisonment imposed upon a husband who killed his wife. To add insult to injury, the sentence was subject to section 276(1)(i) of the Code, with the result that the accused would only have gone to prison for 10 months, serving the rest of his sentence at home under so-called house-arrest.

The sentence was imposed by a Judge in the High Court of Grahamstown. The Judge gave such a light sentence since the accused suspected his wife of infidelity. A couple of days after seeing her in, what he considered compromising circumstances, the accused and the deceased were walking together. All of a sudden the accused, who apparently was seething with anger, threw a stone at her head, causing her to fall to the ground. He then strangled her with a lace from his shoe until she stopped breathing. He tied her to a tree and left the scene. He later wrote a note and left it with her to create the impression that she had committed suicide.

Adv Mahlati lodged a state appeal to the Supreme Court of Appeal and asked that the sentence be increased.

He succeeded and an effective prison sentence of 10 months imprisonment was increased to 10 years imprisonment (the case has just been reported in the South African Criminal Law Reports as *Director of Public Prosecutions v Mngoma* 2010).

That was not the end of the matter: in its judgment, a Full Bench of the Supreme Court of Appeal (5 Judges) added a warning to husbands who assault and kill their wives:

“I agree with the State’s contention that the sentence imposed on the accused is shocking and startlingly disproportionate to the gravity of the crime that he committed. The sentence imposed is in my view inappropriate and distorted in favour of the accused without giving sufficient weight to the gravity of the offence and the interests of society. For a sentence to be appropriate, it must be fair to both the accused and society.

A failure by our court to impose appropriate sentences, in particular for violent crimes by men against women, will lead to society losing its confidence in the criminal justice system. This is so because domestic violence has become pervasive and endemic”.

Being a female prosecutor

Mona Moerane

Adv ED Mnguni, from the North Gauteng DPP office began her career with the NPA in 1999 at the Mdotjana Main District in Mpumalanga, when it was still called Kwa-Ndebele. She suffered a lot of resistance from her male counter-parts. At times her team members, especially those that came from the South African Police Service (SAPS) questioned whether the father of her own kids maintained them as she was very strong on women and children cases, especially maintenance.

It was not easy to win the confidence of male chauvinists in the workplace initially but through her diligence, resilience and how she presented herself contributed to the respect she later received in her profession.

She confessed to Khasho that above her knowledge and experience as a prosecutor her faith in God has always been her driving force in the prosecution profession. She said the infiltration of fellow female counterparts in the legal fraternity also encouraged her. One of her hopes for the NPA was to see more women in management positions. “The NPA is growing and improving everyday and that to me is a potential for big and great things for women in general in the organization”.

Highlights of her career are endless – this is evident in some of the compliments she receives after delivering justice to victims of crime who feel that she is not just doing her job but does it from the bottom of her heart.



Advocate ED Mnguni

Adv Simelane talks...

Nomilo Mpondo

On 24 August 2010, the National Director of Public Prosecutions, Adv Menzi Simelane took part as a guest speaker in a public lecture that was organised by the National Library of South Africa. The public lecture provided a platform to educate the public about transformation within the NPA and its role in society.

The topic of the day was “Transformation of the judiciary in South Africa from 1994 to 2010”.

Adv Simelane talked on a variety of topics, some of which included the following:

- Representivity in lower and higher courts;
- Transformation of processes to improve and fast track service delivery;
- Transformation of legal institutions such as the SAPS, ICD, PSC, NPA and others;
- Sensitive traditional customs.

On the issue of representivity in courts, Adv Simelane said a lot of work in gender representivity has been done but acknowledged that more must still be done.

Coming closer home, he said the NPA needed to make a continuous assessment of its work and processes whilst implementing the law. He said if the NPA failed to assess its work, such failure would impact negatively on the rights of citizens. “Freedom without rights is not freedom”, he said.



*Advocate Menzi Simelane
National Director of Public Prosecutions*

He reiterated the NPA’s position on plea and sentence agreements. He said he strongly believed that the courts should mostly be utilised for difficult and complex cases. In cases where it was difficult to crack the syndicate for evidence gathering, plea bargains were always a better tool to source evidence. He said when courts were busy dealing with cases that they should not be dealing with, someone was being denied justice.

His speech also focused on the ‘rights of the child’ as enshrined in the Child Justice Act, which was promulgated on 1 April 2010. He said any child in conflict with the law would be dealt with by way of diversion, especially if they were first offenders. That would give a child a second chance to be a better person.

Transformation would not be complete without looking at real life examples. That necessitated Adv Simelane to delve on the ongoing challenges that are encountered in prosecuting crimes related to traditional customs such as ‘ukuthwalwa’ - meaning arranged marriages and ‘ulwaluko’ - the tradition of initiating boys to manhood.

He confined his discussion pertaining to these two subjects to Lusikisiki in the Eastern Cape where these practices are mostly prevalent. Adv Simelane said the custom of ‘ukuthwalwa’ in its original form never involved minors as it happened today. He said even traditional leaders rejected the way the custom was being practiced. The problem was even exacerbated by lack of cooperation from parents and the police, which resulted in some cases falling into cracks.

He said the same applied to the custom of ‘ulwaluko’, which was not applied as it should. He said the role of the NPA where an initiate died as a result of improper application of the custom was to institute a charge of murder or attempted murder and assault with the intent to cause grievous bodily harm.

“Transformation of the NPA is necessary in the context of all these examples,” he said.

Chauvinist gets life for killing his girlfriend and mother of his daughter

Eric Ntabazalila

“You are a coward Mr Mangena. You must learn to accept that a woman, even if married to you, remains an independent person who is and never will be a possession of yours. She is free to make her own decisions on virtually everything. She is free to choose who her friends are. She is also free to tell you that she no longer loves you. Yours is merely to accept her decisions and respect them.”

These were the words of Western Cape High Court Judge Daniel Dlodlo as he sentenced Sydney Mangena to life imprisonment for the murder of his girlfriend, Thobeka Vuso, on the evening of 23 May 2004. Mangena – an ordained Catholic Priest, former VIP Unit officer and former security adviser at JCI – shot Vuso after she indicated that she wanted nothing to do with him and stopped taking his calls. He shot her four times – on the leg, in the heart from the front, in the head from behind and in the back. He then phoned her mother telling her to come and fetch the corpse of her daughter.

Judge Dlodlo further sentenced Mangena to 12 months for assault on Noluthando Mdludlu – a friend of Vuso whom he accused of being ‘a party girl’ and a bad influence, 12 months for the assault on Gerald Bushule – his friend and a best man to his aborted wedding to Vuso and 12 months or R4 000 fine for pointing a firearm at Nomalizo Bulisile. All sentences will run concurrently.

Arguing in aggravation of sentence Advocate Billy Downer assisted by Advocate Manyanye Sebelebele showed Mangena to be a chauvinist who wanted to impose his will on Vuso and Mdludlu. They pointed out that Mangena bought a semi-automatic pistol to carry out his threat of killing Vuso and Mdludlu.

Judge Dlodlo concluded: “Why must you force your will on the deceased who has made it clear that she was done with the relationship that ever existed between the two of you? This is indeed the actions of a man to whom a lady dare not say ‘I no longer love you’.

Love and commitment come from both sides. How on earth does a person resort to violent means to secure his love? That would be no love at all, but a classical example of abuse”.

Commentary by prosecutor – Adv Billy Downer SC

This was indeed a high profile case which received a lot of media publicity. It was postponed several times, almost at the request of the defence, but the trial finally commenced in the High Court on 17 May 2010, almost six years after the murder.



It was indicated to the defence counsel and the presiding judge that the state would tolerate no further postponements at the request of the defence for any reason. As part of the state’s efforts to bring the matter to finality as expeditiously as possible, the prosecution served a new draft plea agreement on the defence prior to the trial. The issues in dispute became identifiable. A section 212B notice of Criminal Procedure Act was also served, obliging the defence to respond in detail to the admissions that the state proposed.

Adv Sebelebele himself conducted the case for the state during the defence case, which included cross-examining the accused and two defence witnesses. The accused was finally found guilty of murder, and on 5 August 2010 he was sentenced to life imprisonment for the murder and concurrent sentences of imprisonment for the other assaults and firearm charge. This case illustrates that it is productive to assign senior prosecutors to attend to log-jammed matters that might not otherwise call for senior attention. The benefits in disposing of this case in this manner are obvious, including the successful mentoring exercise.

Lessons in the early service and settlement of plea agreements, using sec 212B notices to force the defence’s hand, utilizing the pre-trial conference procedure optimally and providing real mentorship in important cases are some of the important lessons we have taken from this case, which we believe can be used successfully in future cases.

Man gets 2 life sentences in Pietermaritzburg High Court

Natasha Ramkisson

Women and children are considered to be the most vulnerable in society. Amidst all the hype that was made during Women's Month, Khasho spoke to a KwaZulu Natal Advocate who has recently concluded a matter that only reiterates the fact that crimes against these vulnerable groups occur on an enormous scale and at a shocking rate. We chatted to Advocate Candy Kander of the DPP Pietermaritzburg Office.

1. Please provide some background into the case.

The 11 year old deceased lived next door to Dennis Zuma (the accused) in Plessislaer in Pietermaritzburg. She went missing and the following day her body was found in a veldt approximately 150 metres from her home. She was naked and had strangulation marks around her neck. There was a single accused and he was charged with murder and rape.

2. How long did the investigation take?

The accused was arrested a few days after the incident. The DNA report was only available approximately after 4 months and the trial was completed within a week.

3. How did he plead?

The accused pleaded not guilty and raised the defence of an alibi.

4. What evidence supported the fact that he was guilty?

He was last seen talking to the deceased 20 minutes before she disappeared. The post mortem examination revealed that the deceased had been raped and manually strangled and the DNA evidence revealed that scrapings from under the deceased's fingernails and semen from her vagina contained the accused's DNA.

5. What challenges did you face during this trial?

It was common cause that the deceased was raped and killed. However, the defence raised a technical issue that it was not proved when the rape had occurred i.e. before death or after death. If the court accepted that the accused raped the deceased after she was killed then he could not be convicted of rape, but only for the violation of a corpse. The court eventually made a finding that the deceased was raped before being killed and he was convicted of rape and murder.

6. What did you learn from this case?

It was an extremely sad and draining case. I've learned that evil is tangible. Not only did the accused rape and kill a child, but he had a history of violent crime. He had previous convictions for murder, attempted murder and culpable homicide and was out on parole when he committed this crime.

7. Was there anything unique or particularly different about this case?

Such cases often go undetected. The deceased in this matter literally helped us to apprehend her assailant. Her last moments are unthinkable. It is evident from the DNA evidence that she must have clawed at the accused as she desperately tried to fight for the preservation of her life. The DNA evidence was invaluable in solving the case and securing a conviction.

The Acting Judge, Z Nkosi, reprimanded Zuma saying that he had abused the trust that the little girl had in him in the worst possible manner. "You raped a vulnerable child to satisfy your sexual lust. You violently snuffed out her life, probably to hide your hideous rape of her," said the Acting Judge.



Candy Kander: Senior State Advocate

Women prosecutors fighting against children and women abuse

Medupe Simasiku

Most people would agree that children and women abuse is no longer a phenomenon confined only to families, but a broader societal problem. Unfortunately most people are not aware or do not fully understand the extent of this problem, which has caused so much trauma to many people, mostly children and women. The good news is that women prosecutors are nowadays coming up with strategies and tactics to take the bull by the horn no matter how traumatic the experience can be. One of these unsung heroines is Mrs Lipuo Maria Lekatsa, who is an Advanced Regional Court Prosecutor in Bloemfontein. One of the most traumatic cases she has ever handled is the State versus Thabiso Adam Kamohi, where the accused was convicted of rape and murder of a minor child aged 10 years and was sentenced to two terms of life imprisonment.

Mrs Lekatsa herself represented the state. According to her, the accused was well known to the deceased, as he was the boyfriend of her aunt. It is reported that the accused called the child under the pretext of giving her money (R2 coin) which he had previously promised her. He (the accused) was the last person to be seen with the deceased alive.

The deceased was found hidden in the veld covered with shrubs and leaves the next morning. She was raped and murdered. The gruesome picture was fully unfolded in the post-mortem report, which detailed every injury. She was strangled and her genitals were severely injured. Despite the tricks that the accused presented in his defence, DNA tests proved that he was indeed the perpetrator of that gruesome act. In addition to this case, he was also on parole for raping another minor.

Mrs Lekatsa wants to thank everybody who was involved to ensure successful prosecution: the police, the court as well as the community. “Without their full support we wouldn’t have had a successful and winnable case”, she said. She hopes that the sentencing will send a strong message to potential rapists and other abusers that they will face the full might of the law. “Make no mistake, the law is not sleeping when it comes to abuse and domestic violence, everything is being done to ensure that transgressors are brought to book to account for their actions”, she said.

NPA Making History

Mona Moerane

On 5 August 2010 the office of the Chief Prosecutor: Pretoria Magistrate office issued internship certificates to 10 law Students from the University of Pretoria. Amongst the dignitaries in attendance was the Dean of the Faculty of Law from the university Prof Heins. Senior Public Prosecutor, Kas Sam-Kistnan presented the keynote address on behalf of the NPA. She said through this programme students were afforded a holistic overview of the Criminal Justice System and its related functions. To encourage the students to inculcate the habit of personal leadership and self-determination, she emphasized the need to perpetually feed the spiritual, mental, physical and emotional self.



The Chief Prosecutor: Pretoria Cluster, Adv Matric Lufhondo, recommitted the NPA to the partnership with the University of Pretoria. He said that through this supervised internship initiative the organisation was able to provide an opportunity for aspiring lawyers to see whether they really wanted to be in prosecution. The programme also afforded the organisation an advantage to attract young blood into the prosecution service when they completed their studies. The faculty dean also thanked the NPA about the time, love and care they gave to students during the period of the internship. On behalf of the students, Duane Du Plooy expressed his gratitude to the NPA especially those that they came into contact with during the programme. He said they were honoured to have been afforded such an opportunity to use theoretical knowledge gained at the university and apply it in a practical environment as well as understanding the NPA and the South African court system as a whole.

No more safe havens for stolen assets!

Corrupt officials have been warned. The world will no longer provide a safe hiding place for their loot.

Tebogo Seate

This is a strong message that emanated from the Global Forum on Asset Recovery and Development which was held in Paris in June this year. In attendance was our Minister of Justice and Constitutional Development, Mr Jeff Radebe and Head of Asset Forfeiture Unit, Mr Willie Hofmeyr. The Minister was invited to this forum as a keynote speaker particularly because South Africa is regarded as one of the countries that have dealt effectively with criminal asset recovery. The international community therefore wanted South Africa to share her experience in tackling this problem. As the world is recovering from the global economic crisis of the past three years, there is yet another challenge which keeps on affecting poor people, particularly in the developing countries - corruption in the form of theft of public funds and the laundering of proceeds of corruption through the international financial system. The world, however, is now speaking with one voice that war must be waged against the massive drain of funds away from the people who need them the most, and international cooperation is vital to ensure their return.

Corruption has an adverse effect on development as service delivery to the poor is negatively impacted when resources aimed at uplifting them are diverted elsewhere. Mr Radebe was therefore identifying with crime-fighting efforts by the international community to curb this form of crime. He said the world at large needed to be given assurance that those who commit crime and seek to benefit from it will have nowhere to run to, that they will have nowhere to hide their assets, and that the community of nations will pursue them relentlessly no matter where they may be in the world.

The Minister said it was for this reason that South Africa has pledged its support to an initiative like the StAR (Stolen Assets Recovery) initiative, which is a joint venture between the

World Bank and the United Nations Office on Drugs and Crime (UNODC). Its aim is to assist developing countries to recover assets that have been stolen and to return them to those countries. He said increased international cooperation was needed in this area to ensure that there are no safe havens anywhere in the world for the proceeds of corruption.

Mr Radebe said as the leader of the justice and security cluster in South Africa, he has signed a performance agreement with the President in which he committed himself to ensuring that 100 people are convicted in corruption cases where assets of more than R5 million have been restrained. He said he had to meet this target by 2014. This, said the Minister, was a tangible expression of political will to root out corruption. He said, "South Africa has taken a very strong stance in tackling corruption. As a country we have demonstrated our resolve and commitment to dealing with corruption and asset recovery by putting in place the necessary legal framework to support such endeavours". Mr Radebe said while South Africa may not have been the pioneer on the asset recovery front, the country was able to draw valuable lessons from those countries that led the way. In turn, may other countries have been able to benefit from the South African experience, because we have been able to assist a number of countries where assistance was requested.

One of the challenges of asset recovery is that it is still a relatively new concept in criminal law internationally and many legal issues remain unresolved. It also raises many complex legal issues, and deals with cases that are generally very heavily litigated and resource intensive. It is for this reason that the Minister made a number of recommendations to the forum, which among others, calls for more formal measures of co-operation among participating countries, increased sharing of information and optimal use of information technology. Mr Radebe also called for intensive training of lawyers and investigators, and the building of relevant contacts and networks.



Delegates at the Global Forum on Asset Recovery and Development

Asset Recovery Inter Agency Network of Southern Africa - 1st AGM

Nomilo Mpondo

The Minister of Justice and Constitutional Development, Jeff Radebe made an opening address at an ARINSA AGM in Pretoria last month.

The Minister expressed his gratification in being part of the historic event as it was the very first Asset Recovery Inter-Agency Network of Southern Africa (ARINSA) Annual General Meeting in the Southern African region. ARINSA is modelled on the European Camden Asset Recovery Inter-Agency Network (CARIN) and is affiliated to the CARIN Network.

Representatives from the nine member countries: Botswana, Lesotho, Mauritius, Namibia, South Africa, Swaziland, Zambia and Zimbabwe converged in Pretoria to discuss and share experiences on how to effectively seize the ill-gotten wealth from the unscrupulous criminals to ensure that justice in the economic region prevails. Amongst other things the AGM also aimed at developing lines of communication and operating procedures with the view to facilitate work of investigators and prosecutors in tracing, freezing, confiscating and repatriating the proceeds of corruption and other financial crimes.

In the increasingly globally connected world, the crimes of corruption, money laundering and drug trafficking routinely cross national borders. It is for this reason that collaboration through ARINSA networks where prosecutors and investigators will easily connect with counterparts in member countries is encouraged. Consequently, Minister Jeff Radebe, emphatically voiced his support for the need to increase capacity of prosecutors and investigators to pursue corruption and its proceeds.

The Minister said he was very pleased to witness measures to

combat crime being implemented as that will guarantee investors and all other role players in our regional economy of the legitimacy of the regional development agenda.

He asserted that the route of asset forfeiture is a fitting response to the threats of crime and corruption in the regional economy and social welfare of the region. The Minister concluded by pledging South African Government's support to the initiatives of the ARINSA. "We will endeavour to create

a climate conducive to the realisation of your full potential, consistent with your mandates in your countries".

The head of AFU, Mr Willie Hofmeyr, after Minister Jeff Radebe declared the AGM open, gave a resounding historical background about the formation of asset forfeiture and how it was modelled. He pointed to the challenges and complexities in the effective implementation of asset forfeiture. He

also explained the usage of civil litigation and its effectiveness where evidence is not sufficient to secure a criminal conviction. In such cases, the AFU can often still meet civil litigation standard of proof, i.e. a balance of probabilities, to secure the forfeiture of proceeds of crime.

In the early days of asset recovery across borders, the use of diplomatic channels for mutual legal assistance proved to be very slow and it necessitated the creation of more efficient mechanisms for mutual legal assistance. This led to the international requirement for states to set up central authorities, where requests get to be channelled to relevant domestic agencies quicker and speedily, thereby resulting in efficient asset recovery. In closing he said that asset recovery is an intellectually stimulating work but not easy.



Mr Willie Hofmeyr, Minister Jeff Radebe and the programme director at the ARINSA AGM

Granny killer sentenced to life

Phaladi Shuping

A 22 year-old man who raped and murdered a 72 year-old woman in Kimberley was sentenced to life imprisonment in the Northern Cape High Court. Andries Mohale who is accused of rape and murder of Hettie Uys was found guilty in the Northern Cape High Court and sentenced to life imprisonment. He also received an additional 25 year sentence.

Acting Judge BM Pakati sentenced Mohale from Donkerhoek in Galeshewe to life imprisonment for murder, 10 years for rape and 15 years for robbery with aggravating circumstances. The sentences will run concurrently. Uys was brutally murdered in the West End cemetery in January last year during a regular visit to her husband's grave. She had a standing engagement of placing fresh flowers on her husband's grave every Sunday morning after church.



Advocate Adele Van Heerden

State Advocate Adele Van Heerden said Uys was severely assaulted and was struck on the head with a stone and some force must have been used which was the intention of her attacker to kill her. Monnapule Windvogel who

was accused number two, turned state witness at the beginning of the trial. The third accused, a 16 year-old minor was acquitted. Acting Judge Pakati described the attack on Uys as "vicious and appalling". She said the accused is a danger to society who does not have respect for anybody's dignity and privacy. "The court also takes into consideration that he did not show any remorse", she said.

The Acting Judge said the accused was a poor witness who gave long-winded explanation to answer the questions of the prosecution. She also stated that the accused had no right to steal the old woman's possessions after he stole her dentures and took money from her wallet. "He severely assaulted the elderly woman and dragged her to her car where she was raped", she said.

"The evidence as a whole is beyond reasonable doubt. A considerable amount of force must have been used to hit the deceased. The bruising on her face also shows that the accused used a significant amount of force. She was 72 and defenseless", the Judge said.

After the accused was given a life sentence, the deceased's eldest daughter, Annamarie Potgieter stood in front of him for a few seconds, staring into his evading eyes. "I just wanted to look into the eyes of the man who murdered my mother. I spoke to him in silence. He knew what I was saying", she said to Khasho.

Commentary by Advocate Adele Van Heerden

We experienced a lot of challenges during the trial. Firstly, there was no eyewitness to testify. There was also no DNA that could be found on the dentures since an abrasive liquid was used to clean them. We could also not find the dentist that could link the specific dentures to the deceased. The investigating officer found the shoe prints next to the body of the deceased but due to the composure of the surface no extractable prints for comparison purposes could be made.

The accused alleged that he was at the cemetery where he found the deceased who had already been attacked. He was under the impression that she was dead, and looked through her vehicle for something to steal. He claimed that he may have stepped on the deceased when he exited the vehicle. This was given in an effort to explain the palm print and the sole print on the face of the deceased.

The highlight of the case was seeing the pieces of evidence coming together. The investigating officer managed to trace the dentures of the deceased to the accused. It was also gratifying to see the family members of the deceased welcoming the sentence.

I have learned from this case that it is invaluable to work closely with the investigating officer from the start. The investigating officer was inexperienced since this was his first big case but by working closely together, we managed to get conviction on the murder with *dolus directus*.

Sexual Offences Indaba 2010

Sibongile Mogale

The third Sexual Offences Indaba was held in Kempton Park, Johannesburg, from 16 to 17 August 2010.

Dr Silas Ramaite, the Deputy National Director of Public Prosecutions welcomed and thanked everybody on behalf of the NDPP, including the Director of USAID and other donors' representatives.

Dr Ramaite said there was a need to continue holding such indabas even though there was a feeling among certain NPA people that much has been done. The reality is, said Dr Ramaite, there was still a lot of work to be done. Women and children are still being raped in their homes, where they are actually supposed to feel safe. "Their rights are being violated, and it is our duty to restore those violated rights to the best of our abilities", he said.

Advocate Thoko Majokweni, head of the SOCA Unit, said: "Success in our country will only be achieved when there is justice in our society so that people can leave in freedom and security - and those people include women and children".

Adv Majokweni explained that the indaba was the third one to be held, and the feedback received from all previous indabas showed that there was indeed a need for such an event.

She explained that the purpose of the first indaba was to bring everyone together to share their experiences; the second one was aimed at exploring how ordinary South African citizens could have access to the various support services offered, and this year's indaba was aimed at consolidating the dreams of the past two years. Expanding further, Adv Majokweni said the third indaba was also aimed at achieving the following:

- To strengthen stakeholder cooperation;
- To mainstream Human Trafficking management in Gender Based Violence programmes;
- To review stakeholder collaboration mechanisms; and

- To develop an integrated capacity development programme for law enforcement agencies, criminal justice agents, health and social welfare professionals.

In closing, Adv Majokweni said: "We are here to plan together, to ensure that we achieve together. We are here to provide leadership in our different areas and colleagues so that those colleagues know why we are here".



Delegates at the Sexual Offences Indaba 2010

Mr Jeff Borns, the Mission Director of USAID promised that his organisation would continue offering its support to South Africa, and praised Adv Majokweni for her passion and drive in ensuring the success of the partnership between South Africa and USAID. "The partnership we are having with South Africa is marvellous and will continue to be like that for a very, very long time," he said.

Speaking on the model of Thuthuzela Care Centres (TCCs), Mrs Mmabatho Ramagoshi, who was also the facilitator for the day, said she was very proud of the support that the Danish government had given in the establishment of TCCs. She said the model was behind the successful establishment of TCCs that South Africa has witnessed. Mrs Ramagoshi urged the Danish government to continue offering its support, including all future initiatives.

In conclusion, she said: "Gender Based Violence (GBV) in South Africa is still a challenge. People choose different ways to look at the problem. Studies are very difficult to provide a full picture of what is really happening in our country and the same applies to Human Trafficking. Although studies have been conducted, we still don't have an accurate picture. So far we rely only on evidence".

Gangster gets life imprisonment for the Kewtown massacre

Eric Ntabazalila

On 30 July 2010, the Western Cape High Court sentenced Kurt Oliver to life imprisonment for the killing of five people in the 2007 gang-related Kewtown Massacre. His co-accused, Ryno Sass was sentenced to 24 years imprisonment effectively while a third accused was acquitted on all counts as witnesses could only identify two attackers.

Oliver and Sass were convicted of five murders, five attempted murders, unlawful possession of a firearm and unlawful possession of ammunition. Passing judgement, Judge Chantal Fortuin described the killings as ‘cold blooded’, ‘reprehensible’ and carefully planned in detail.

The deceased and other victims who survived were sitting at the entrance of the notorious Block 28 Flats in Kewtown, Athlone, drinking, when the accused pounced upon them and shot them. Among the group that was sitting was a fifteen year old girl who was visiting her aunt for the school holidays and the other was a paralysed person sitting and talking with the group.



Advocate Pedro van Wyk

Faces of the attackers were covered with scarves during the attack but the fifteen year old victim managed to pull the scarf from the shooter's face just before she fell to a hail of bullets. This led to one of the eye witnesses to recognise and identify the shooter as Oliver. Sass was identified by one of the victims that survived the attack.

He was well known to this witness and the scarf had fallen from his face whilst he was chasing this witness.

Both the accused were well known to the surviving victims, and the victims could identify them through their way of walking and their voices. Two witnesses also saw their faces.

Three of the deceased in this matter and four of the ones that were wounded were part of a Cape Flats gang. The attack on them was revenge by Oliver and Sass's gang for the killing of four of their gang members by the gang of the deceased.

Commentary by prosecutor - Advocate Pedro van Wyk

One of the challenges experienced during the trial was to lead the evidence on identification of the accused in such a manner that it could clearly illustrate that not only was the evidence of the witnesses above reproach (credible) but that their identification of the accused was reliable.

Another challenge was when one witness went missing and the other one had an emotional breakdown. However, I managed to trace the one that had gone missing with the help of the investigating officer. I also managed to get hold of the one who had a breakdown after going through intensive counselling.

Despite this, I still managed to successfully lead both their evidence, which had a positive impact on the rest of the evidence. Another challenge lied in the fact that it was a gang related matter, and we had to constantly take precautions in order to avoid intimidation of our witnesses, which we managed to do successfully with the help of the SAPS.

I also had a heart-breaking moment, when one of the witnesses, who was an elderly person, said to me: "Sir, every day at 6 o'clock in the evening, we have to ensure that everyone is inside the house and lock the doors, because that is when they start shooting".

On the whole, I am pleased that justice was done, and at least the communities of Athlone can see that the law enforcement agencies are not sleeping. An outcome like this will go a long way in restoring the people's confidence in the criminal justice system of this country. It will also send a strong message to gangsters that crime does not pay.

Professional Journey of Adv Dora Ngobeni

As a way to celebrate women and keeping with the theme of this issue of *Khasho*, we spoke to Adv Dora Ngobeni to hear from her how she progressed professionally in the NPA since 1999.

Mona Moerane

When did you join the NPA?

I worked in the justice system all my life but joined the NPA in 1999. I started as an interpreter in 1992 at the Department of Justice and Constitutional Development. Through part-time studying, I qualified with a BJuris in 1998 and then LLB in 2004.

I acquired prosecutorial experience in various levels, as a district, regional, control prosecutor and sexual offences prosecutor. Today I am a prosecutor in the North Gauteng DPP office.

What challenges do you face as a female prosecutor?

I will say dealing with criminal cases such as murder, rape and other contact crime cases. One needs frequent debriefing sessions because violence is mostly used in such cases, therefore it becomes an element in our everyday work. You can imagine what that can do to you as an individual.

Any highlights of your career?

The highlight of my career was prosecuting on the rape and murder case of a 12 year old in Nelspruit. The young girl was gang raped and murdered. One of the accused was her own neighbour. The neighbour was sentenced to life imprisonment. That really fulfilled me as a prosecutor in the case. I believe that a strong message was sent that violence against children will not go unpunished.

What did you learn from this case?

The nature of the case taught me that you need to do thorough preparation as a prosecutor in order to be a step ahead of your opponents, which makes you a very vigilant crime fighter in court.

Lastly, I want to emphasize that I love my job. I'm a born prosecutor who's serving a meaningful purpose in life, through prosecution.



Advocate Dora Ngobeni

NPA gives birth to a novelist

Natasha Ramkisson

A newly-published novelist is present within the ranks of the NPA. Senior State Advocate Wendy Greeff from the Organised Crime Component at the DPP's office in KwaZulu Natal has written a novel, which was officially launched at the Cape Town Book Fair on 31 July 2010.

The novel, entitled *Becoming*, is set in modern day South Africa, and is about how we can become whole despite our circumstances or our past. It is a novel about sexuality, and it also deals with the difficult subject of female genital mutilation. *Becoming* was inspired by an article which appeared in the SOCA Unit newsletter some years back, which dealt with the subject of so-called female circumcision. The article focused on the practice in the African context, including the practice of infibulation which exists in Northern Africa, and mentioning a version which exists in certain rural areas in Limpopo.

Wendy recalled having seen a facts-of-life book entitled *On Becoming a Woman*, written in the 1950s and aimed at white middle-class girls, that advocated the practice, and she wrote a letter to the SOCA newsletter mentioning this fact. She was then challenged to write an article about it, but was unable to find out whether or not any white South African women had in fact undergone the procedure. And then one day at the beginning of January 2006, while driving to work, she realised that although a factual article might be almost impossible to write, a work of fiction wasn't. The result was "*Becoming*".

Becoming is published under Wendy's maiden name by David Philip Publishers, an imprint of New Africa Books (Pty) Ltd, and is expected to be in bookshops shortly.



Adv Wendy Greeff

NIA Winter Games

Billy Mabena

The NPA was once again invited to participate in this year's winter games, hosted by the National Intelligence Agency (NIA). The games are held annually and participation is by invitation only, which is reserved for intelligence departments in similar clusters.

The games have been held for over 21 years and it seems they are getting stronger every year and the participation grows with every event. This year the invitation to participate in the games was extended to SAPS, SANDF, NPA, office of the State Attorney, FIC, IDC and DIRCO.

The 2010 games were held on 30 July 2010 at NIA's sports-grounds and at various locations around the Pretoria area.

The NPA participated in the following sporting codes: fun run, aerobics, soccer, netball, golf, combat shooting; pool, volley ball and breakfast motorbike run. The NPA's participation in

this year's tournament was well supported by staff who enrolled in large numbers for the different sporting codes.

The overall performance of the different teams was excellent, but the combat shooting team made us even prouder by achieving the highest overall score. The team, which was led by Mr George Hardaker won the trophy in their category. We would like to congratulate them for representing the NPA very well in the tournament.

A special mention also goes out to the soccer team which reached the semi-finals of the soccer tournament. They were knocked out on penalties by the SAPS who went on to win the tournament in the finals.

The NPA would not have been able to honour the invitation to participate if it wasn't for the efforts of the EWP section. They embraced the event and provided the resources required for participating in the event.



Update on Operation Recruitment Drive

Nomilo Mpondo

August month marked a year since the launch of the Operation Recruitment Drive Project by the NPA. HRM&D went on full steam ahead to recruit legally qualified personnel with the view to fill vacancies nationally. Khasho spoke to Mr Mncedisi Sineke, Programme Coordinator for the project to update us on how the project has progressed thus far.

1. Can you briefly tell us when was the project started and how far it is now?

The project started on 12 August 2009. Currently it is at the stage where offers of appointment are extended to recommended candidates and this will continue until the end of November when the approval to extend offers expires.

2. What were the compelling reasons for this massive recruitment drive?

The organisation had a 22% vacancy rate. A decision was made to establish the project in order to ensure a more focused approach to filling prosecutors' positions. A project team was appointed and positions for prosecutors at all levels were advertised in the national newspapers, both the Sunday Times and the City Press. One of the challenges identified was that the organisation continued to advertise and fill positions but this did not help to reduce the high vacancy rate as officials were merely recycled internally from one post and region to another and this happened all over the country in the prosecutorial positions. The organisation was simply not attracting external candidates to the organisation.

3. Has the problem of legally qualified staff shortage now been put to rest?



Mncedisi Sineke: Project Coordinator

Not at all, because we did not attract as many candidates from outside the NPA to sufficiently address the problem. Only 74 external candidates were appointed.

4. Does the NPA have enough resources to accommodate these new recruits?

During the scoping of the project all stakeholders were involved in planning for the accommodation and resourcing of appointees. Unfortunately, due to other more pressing needs and the fact that the government in general is under financial stress, this remains a problem.

5. Have you achieved all your project objectives?

I can say NO we did not because we experienced many hiccups during the project. First of all, not all the project team members were able to fulfill their various roles and responsibilities. Other unanticipated problems emerged when memoranda were to be finalized, causing delays and confusion in some instances. As an organisation, we need to review our recruitment strategies and processes to ensure that we are able to attract sufficient external candidates to make a dent on the vacancy rate without overlooking internal candidates who have been loyal to the NPA to date. It is hoped that the OSD (Occupation Specific Dispensation) will be approved soon and it will assist the organisation in dealing with this and finding a balance.

What lessons did you learn during the project?

- Proper scoping is needed to ensure all realities are taken into account.
- Proper change management initiatives must be in place coupled with integrated planning – any stakeholders interested or impacted by the project must be part of the planning phase.
- Accurate schedules must be drawn up to avoid working outside project schedule whilst generating project change requests.
- Avoid unrealistic deadlines – realistic schedules should be drawn up.
- There must be complete ownership of the project and executive leadership must also be provided.

Turning Victims into Survivors

Natasha Ramkisson

The NPA recently joined hands with the Jessica Foord Foundation (JFF) to host a Women's Day project in the Port Shepstone Cluster in KwaZulu Natal.

The Foundation was established by rape survivor, Jessica Foord to assist others that are in a similar situation. The idea of the project, termed the 'handbag project,' started off as an e-mail that Foord sent out to a friend. This e-mail was forwarded numerous times until it reached the Regional Court prosecutor at Scottburgh, Christelle Rossouw.

Rossouw then approached her Chief Prosecutor, Mr Sansom, with the idea. "We saw that the project had immense value for the community and decided to go ahead," said Rossouw.

According to Mr Sansom this joint venture is just the beginning. "We will partner with the JFF to roll out this project in other clusters such as Pinetown, Empangeni and Ladysmith."

In essence, the handbag project involves a person donating a handbag. These handbags should be filled with toiletries such as sanitary towels, underwear, deodorant, soap, face cloth, etc. The bags are collected and given to the JFF.

The JFF then distributes these bags to authentic places of safety and crisis centres to be given out to victims of abuse and/or rape. On this specific project, prosecutors from the Port

Shepstone Cluster, consisting of Ixopo, Kokstad and Port Shepstone offices joined forces together and managed to collect 348 handbags from the community and other stakeholders, which were handed over to JFF. Prosecutors also contributed funds and purchased bags and toiletries.

A speaker at the event, Regional Head from the Department of Justice, Mrs Bridgette Shabalala, commended the JFF for the project. She said, "This project fits in perfectly with this year's theme for Women's month, which is working together for equal opportunities and progress for all women, and as women we need to support each other".

The keynote speaker of the day, Ms Jessica Foord was overwhelmed by the support she received and the number of bags donated. Foord explained that the handbag and its contents were meant to make the recipient feel better. "It gives hope to a person who has just been traumatized, because it lets them know that there is someone out there who cares".

The 23 year old spoke with such hope and determination that she exuded the fact that she was indeed a survivor and not a victim. She said, "I'm often asked if I have ever considered emigrating from South Africa given my experience. My response is that I'm not going anywhere. I love this country and I am going to stay and continue fighting".



Jessica Foord, Elaine Khuzwayo, Christelle Rossouw, Nosipo Kente, Kogi Naick, Smangela Mdungana and Sharmilla Chinnasamy



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