

KHASHO

FEB/MAR 2012



**Aggressive
approach
to
Irresponsible
drivers**

**Sexual
Assault
not equal to
Indecent
Assault**

**Patience
Nyathi
our
Sun-Hero**

**Poor
Communities
-
Victims of
Corruption**

ENSURING PROSECUTIONS WITHOUT FEAR, FAVOUR OR PREJUDICE



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LETTER FROM THE MANAGING EDITOR

Inspired by the country's new marketing slogan, "South Africa: Inspiring new ways" the Khasho team is exploring new ways to make Khasho more appealing to its readers right across all age groups. Because we are alive to all realities that are presented by the NPA demographics, we are from time to time required to review the relevance of Khasho. The team has therefore been on a creative escapade that explored different exciting elements to make our newsletter more appealing to its readers. We therefore ask you to sit back, relax and enjoy whilst we introduce you to some exciting elements in the newsletter.



Bulelwa Makeke
Executive Manager: Communications

In this edition, we feature for the first time letters to the editor where readers share their views about Khasho with the editor. We also include a crossword puzzle to challenge your minds a bit.

The NPA has found a working formula with its community outreach programme, which serves to educate communities about the criminal justice system, and prosecutions work in particular. In February 2012 we piloted a schools outreach programme as a natural extension to the community outreach programme – focusing specifically on learners at school that seeks, amongst other things, to educate learners about the role of the NPA, the Sexual Offences Act with an emphasis on underage sex, and the perils of social media brought about by the avalanche of communication technologies. Read more on the launch of this pilot programme as we started in Aliwal North and subsequently visited schools in Port Elizabeth and Cape Town. All these visits turned out to be successful.

As usual, this issue carries an account of key cases prosecuted in our courts – told from the perspective of the prosecutors themselves. We take our hats off for Advocate Susan Galloway of the DPP Western Cape for the successful conviction of Mr Humphreys, the man whose reckless driving led to the death of ten school children he was ferrying to school. In this edition, she shares with us interesting commentary on this exceptional case where the NPA decided to charge Mr Humphreys with murder instead of culpable homicide.

Domestic violence still plagues our country and our prosecutors are determined not to let domestic violence perpetrators off. We share with you an article about the conviction of a man who killed his ex girlfriend's grandmother.

As our valued reader, we present you with exciting interviews where we reveal familiar and unfamiliar people of the NPA telling their professional and personal stories. Follow this edition and learn more about your colleagues.

Bulelwa Makeke is the Executive Manager: Communications

THE NPA HOTLINE

0800 212 580

BUILDING A CULTURE OF REPORTING UNETHICAL AND UNLAWFUL PRACTICES, PROMOTING AND ENABLING WHISTLE-BLOWING.



The 2011/12 financial year has come to the end. I believe it was a very challenging one for the NPA, but also a year of many opportunities. It is now time for all of us in our various business units to reflect on what went well and also to identify areas where we need to significantly improve.

Although the Strategy team is busy compiling an annual performance report which will give us a detailed account of how the NPA performed during the year, it is easy to pick up trends from the 3rd quarter performance report. One of the challenges that we continue to face is resourcing for our prosecutors in the lower courts, which has become a threat to service delivery. Prosecutors in these courts are faced on a daily basis with physical infrastructure constraints, such as inadequate accommodation, poor working conditions and limited resources. These conditions prevent prosecutors from performing at their best which in turn affects other role-players in the criminal justice system and ultimately result in poor service delivery. However, the NPA, together with the DoJ & CD will investigate means to alleviate this problem because this is a critical area which we cannot afford to ignore.

Notwithstanding the above, there are a number of areas in which we did well in the third quarter, and I hope that we'll also achieve similar performance levels once the fourth quarter performance report has been finalised. These areas are:

- The conviction rate in the District Courts was 4.1% above target, and in the Regional Courts it was 0.7% above target. The conviction rate targets for serious crimes such as organized crime and sexual offences were exceeded by 11% and 18.1% respectively.
- A remarkable improvement was also noted in the reduction of backlog cases, which were reduced by 8.5%. The courts should really be commended for their commitment to prioritise and reduce the backlog of cases while striving to speedily finalise all criminal matters.
- The prosecutorial vacancy rate has been reduced from 16.3% in 2009/2010 financial year to 11.5% in the third quarter.
- The AFU's overall success rate was 5% above the target of 90%, and the value of new freezing orders was already at R377.2m at the end of the third quarter.
- The OWP continued to ensure that no witnesses were harmed or threatened whilst in the programme. Throughout this period a total of 28 new witnesses with 27 related persons were included on the programme, bringing the total to 462 persons protected by OWP.



Acting NDPP Adv Nomgcobo Jiba

As we move into the new financial year, we'll continue to focus on improving organisational performance.

In line with government's focus on eradicating corruption, the NPA will also follow a zero tolerance approach to any corrupt or unethical conduct by members of staff. I urge all of you to be above reproach in everything you do, so that we can set an example to the rest of the country.

I hope that this year will become a fruitful year for the NPA. Finally, I want to thank you for your continued support and commitment to transforming the NPA into the ideal prosecuting authority we want it to be!

NPA COLLABORATES WITH INTERNATIONAL LAW ENFORCEMENT AGENCIES

Eric Ntabazalila

Senior NPA officials attended the Controlled Deliveries Training Workshop in Shanghai, China, in December 2011. The primary objective of the workshop was the initiation of the establishment of controlled delivery unit networks trans-nationally to holistically deal with organised wildlife poaching/smuggling syndicates.

This collaboration is already paying dividends as the NPA Organised Crime Component in the Western Cape joined forces with the Hawks, the South African Revenue Services and the Department of Agriculture, Fisheries and Forestry to work with their law enforcement counterparts in Hong Kong to facilitate the return of South African abalone that was confiscated by customs officials there. Last month in February 2012, a Magistrate in Hong Kong authorised the return of the abalone, worth R27m, back to South Africa.

This is a clear indication that the NPA's efforts to turn the tide against wildlife poachers will soon yield better results and may even lead to the arrest of those who act behind the scenes in organising wildlife smuggling.

Mr Livingstone Sakata, Deputy Director of Public Prosecutions in the Western Cape and Senior State Advocate from the NPA Head Office in Pretoria, Adv Joanie

Spies, attended the Controlled Deliveries Training Workshop. Mr Sakata made a presentation on "Transnational Abalone Poaching Challenges in South Africa" and Adv Spies made a presentation on "Rhino Related Crimes in South Africa". The two presentations were well received by the more than 50 representatives from more than 18 countries in Africa and Asia. The representatives were from the customs, police, specialised wildlife and forest enforcement agencies and public prosecutions from Cameroon, China, Hong Kong Special Administrative Region of China, Ethiopia, India, Indonesia, Kenya, Lao People's Democratic Republic, Malaysia, Mozambique, Nepal, Nigeria, the Philippines, South Africa, Thailand, Uganda, the United Arab Emirates, the United Republic of Tanzania and Vietnam.

Last year 448 rhinos were killed in South Africa. Recently the NPA made its intentions of obtaining harsh prison

sentences for poachers very clear when it argued for long term prison terms for three poachers who were caught in possession of freshly chopped rhino horns, an assault rifle, a hunting rifle and an axe. Aselmo Baloyi, Jawaki Nkuna and Ismael Baloyi from Mozambique were sentenced to 25 years by a Phalaborwa Magistrates Court after being found guilty of poaching in the Kruger National Park in July 2010. Before this sentence poachers received a few years in jail or were fined.

Mr Scanlon, Secretary General of the Convention on International Trade on Endangered Species of Wild Fauna and Flora summed up the intentions of the workshop: "The use of this enforcement technique will yield results in bringing to justice those individuals who organise the smuggling of wildlife. And this workshop clearly demonstrates the added value of working together through the International Consortium on Combating Wildlife Crime in taking up the fight against wildlife crime."



Mr Livingston Sakata, Adv Joanie Spies and Colleagues

SNEAKING IN AFU'S CENTRAL REGION

Nomilo Mpondo

The Asset Forfeiture Unit (AFU) was established in May 1999 in the office of the NDPP to focus on the implementation of Chapter 5 and 6 of the Prevention of Organised Crime Act, 1998 (POCA). 14 years in existence, there are still members of the NPA who do not understand the functioning of this powerful unit well. The restructuring process that took place within AFU in 2010 compounded this problem. Khasho caught up with Adv Chris Ndzengu, the Acting Regional Head of the Central Region to share his insight into AFU's Central Region which resulted from the restructuring.

Some members of the NPA and the public at large are unaware that the AFU has a Central Region. What led to this situation?

In the past, the satellite offices of the AFU in the North West, Northern Cape and Free State Provinces fell under and reported to the Pretoria AFU Region. Subsequent to restructuring and with effect from April 2010, the three offices constitute what is now known as the Central Region, led by the Acting Regional Head (ARH) situated in Bloemfontein.

What is the current staff compliment of the region, including SAPS seconded members?

There are two Senior State Advocates (SSA) in the DPP North West office, who are both operating from Klerskorp, with five SAPS Task Team members and an SAPS Administration Assistant. In the DPP Northern Cape office there is a Senior Special Investigator (SSI), two SAPS Task Team members, two SAPS Administration Assistants and the ARH. The ARH drafts and obtains court orders, in the absence of a SSA. In Bloemfontein we have three SSA's, one SSI, one Junior Special Investigator (JSI) and three



Adv Chris Ndzengu, AFU Acting Regional Head: Central Region

SAPS Task Team members.

What are the challenges with regards to human resources?

You take the little that you have and make it work. We appreciate the valuable input made by the SAPS Administration support in Mafikeng and Kimberley. In Bloemfontein there is no such support and all the staff there have to share and add the administration work to their core functions. Since there is no SSA in Kimberley the SSI there has to man the office, do some of the SSA's work

like pagination and indexing, do his core function and also liaise with our stakeholders like the State Attorney and the Sheriffs. This is hemorrhaging. The process of filling up the crucial posts has disappointed all of us due to its slow snail like pace.

In the 2011/12 financial year the region was given the following target: 41 seizures worth over R31 million, 38 forfeiture/confiscation orders worth over R14 million and more than R7 million expected to be deposited into



A cheque of R544 000 was handed over to victim of underlying crime by members of Law Enforcement Agencies

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MEET ADV BARRY MADOLO: DPP MTHATHA

Luxolo Tyali

Advocate Madolo was recently appointed Director of Public Prosecutions for Mthatha Region. Below he tells Khasho about his legal professional background, which spans almost three decades, and shares his immediate goals for the region.

Take us through your professional journey:

I joined the Department of Justice in 1983 in Mthatha Magistrate's Court as a clerk and worked as clerk of the civil and criminal courts. I also worked in the deposit account section, maintenance and as a prosecutor (what was then known as a legal assistant). I spent another 10 years in private practise in Mthatha. I rejoined the NPA by joining the DSO in 2001 in Cape Town. I moved to Durban in 2008 as Deputy Director where I headed organised crime for a few months and now I am back home, where it all started. It feels like *deja vu*.

What is your assessment of the morale and attitude of prosecutors since you took up office?

I have been here now for a few months. I must say there is a lot of work to be done. But I must add that I was pleasantly surprised to notice that the majority of the prosecutors are able, committed and willing to work and dedicated to what they are doing in the face of challenging and frustrating circumstances. I am pleased by the moral has changed and is now high.

What are your key priorities?

By the end of March 2012 we will have zero backlog of decision dockets. We will reduce our backlog cases. We have identified certain risks that affect our finalisation rate. The plan is to improve relations with our partners. We need more personnel and as such all the vacancies have to be filled before the end of March. We have motivated for more posts and there is a need to motivate for even more. Our Organised Crime Unit has to be a unit, not just one person, the same goes for SCCU. There is a need for AFU and for a start we plan to have one person seconded to our region for a year. However I wish to add that there is a need for a full time unit.



Adv Barry Madolo, DPP: Mthatha

Lower courts have always been a bone of contention, what is your plan for lower court prosecutors?

Perhaps the time has come for prosecutors in the lower courts to have decent offices like all other professionals. The irony is if the DPP office cannot provide this for its own staff, how are we going to achieve this? "Xa kunje emthini omanzi kobekelaphi na kowomileyo", as wise Xhosa people would say. However with the support we are getting from our head office, I believe we can and God willing we will. We need to level the playing field and to create an

enabling environment for all prosecutors to operate. There is a need to ensure that there are two prosecutors per court.

What is your view about the Aspirant Prosecutor Programme?

I call it the unleashing of 'marines'; aspirants are out there to make a difference. Let us give them space to do what they know best. I know they have joined our front line as strikers. If you understand soccer you will catch my drift.

Luxolo Tyali is the Regional Communications Manager for DPP: Mthatha

CONVICTED FOR KILLING GIRLFRIEND'S GRANDMOTHER

Phaladi Shuping

A life sentence was handed down to a 30-year-old man from Kakamas in the Northern Cape after he was found guilty of hammering his former girlfriend's grandmother to death.

Andrew Dawson was convicted of the murder of 50-year-old Lucia Swartz which took place in November 2010.

It was revealed in court that on the night of the murder, the deceased and her granddaughter, Chrizelda Banda, who was previously in a relationship with the accused, were sleeping in the veranda of their house together with two other members of the family. During the night, Chrizelda woke up and saw the accused hitting the deceased. She charged at the accused and struggled with him until she managed to wrestle the hammer and sheep shear from the accused. She screamed for help and the neighbours rushed in to

assist. The accused ran away when he saw the neighbours approaching.

Chrizelda went to check on her grandmother. She found she had been hit on the head and was unconscious. The grandmother was rushed to hospital but died four days later.

During his bail application the accused denied attacking the deceased as he claimed that Chrizelda was the one who was responsible for her grandmother's death. However, during trial proceedings, he admitted to the offence but claimed that he acted in self-defence when he was attacked by the deceased.

Arguing in aggravation of sentence, State Prosecutor Thapelo Motseonageng stated that it was the responsibility of the court to deal with all those who take the law into their hands because they

fail to solve their problems in a humane manner.

"Granted, murder is murder, but this is not your typical murder because a defenseless 50-year-old woman was murdered in her home in her sleep. There is no shred of evidence that the deceased provoked the accused", stated Motseonageng.

On sentencing the accused, Magistrate Malcom Viewe said the courts must not look for lame excuses for not imposing life sentences and the only sentence that he can give to the accused is life imprisonment.

COMMENTARY BY PROSECUTOR THAPELO MOTSEONAGENG

The accused was previously in a relationship with the deceased's granddaughter. The deceased was against this relationship because the accused used to abuse her granddaughter. There was also a protection order issued against the accused. He had a motive to kill the deceased as he did not like her. The accused did not show any remorse during the court proceedings. He did not take the court in his confidence because he wanted to frame his former girlfriend for a crime she did not commit. As a result the magistrate even stated that if one were to look for a candidate for rehabilitation, the accused would definitely not be one.

This is one of the cases that shocked the quiet community of Kakamas. The courtroom was always packed to capacity as community members wanted to see justice being done.

I was relieved when the accused was sentenced to life. It was the first time I prosecuted a case where a life sentence was handed to the accused. I learned from this case that evidence given by the accused during bail application can play a major role in trial proceedings provided the magistrate warned the accused that whatever he says during bail application can be used against him during trial.



PROSECUTOR THAPELO MOTSEONAGENG

Phaladi Shuping is the Regional Communications Manager for DPP: Northern Cape

UNLEASHING MR DENTON SEROBATSE, EXECUTIVE MANAGER: IMSC

Tebogo Seate

After a very lengthy period without a permanent head, an Executive Manager has finally been appointed for the Information Management Service Centre (IMSC), Mr Denton Serobatse. He joins the NPA from the South African Maritime Safety Authority (SAMSA), where he was holding a similar position as an IT Manager. Mr Denton faces a mammoth task indeed, and Khasho managed to catch up with him despite his busy schedule.

What encouraged you to follow a career in Information Technology?

I am an innovative person and I have always been fascinated by computers, and how logic follows out of complexities in an environment.

What are some of the achievements from your previous employers that you are proud of?

In my previous job at SAMSA as an IT Manager, I implemented a variety of IT-related projects, such as designing redundancy network architecture, to ensure that business continued as normal in the event of main digital links failing; upgrading the organisation's entire network infrastructure for faster data transmission, designing and implementing its organizational intranet and website; and drafting of business operations process flows including corporate service for implementation of automated processes.

I was involved in the Finance recovery project, which involved resuscitation of old de-commissioned Finance systems to re-capture financial statements of the year, which enabled the organisation to move from a disclaimer to qualification and thereafter unqualified audit reports.

I have done successful migration of servers, which included procurement of new ones, storage devices, installation of servers and migration of operating software to the latest Microsoft platform without any information being mislaid during the exercise and with minimal downtimes during the transition. I have also been involved in document management, back scanning and e-filing according to organisational file plan.

What are some of the challenges facing the Government's IT systems and infrastructure in general?

The increasing importance of information or knowledge as the fourth factor of production (with land, capital and labour being the first three), has now become a global trend. We live in the information age, where information has become increasingly important in our social and cultural spheres. It is therefore important that knowledge management tools are developed in order to efficiently manage information throughout the Government.

The key challenge is embracing and integrating information communication technologies (ICTs) as tools for communication, organisational development and service delivery. This poses huge opportunities and challenges in the process of transforming and strengthening the role and impact of the Government and as well as that of the NPA.

What do you think should be done to address the above challenges?

There is a continued challenge for employees to contribute their knowledge willingly and to share it with other employees. The intranet and internet are well-suited for use as strategic tools in knowledge sharing. These facilities have the ability to support the distribution, connectivity and publishing of data and information. A mechanism must also be established to enable the Government's IT systems to be interoperable and also promote internet usage to accommodate e-commerce.

The establishment of an environment where ICT innovation can flourish is a challenging and complex task and one that can only be achieved in partnership with all relevant players. A strong, sustainable partnership between the NPA, industry, research and technology institutions and Government is required



Mr Denton Serobatse

to reach this goal.

Change management remains a thorny issue, that is, the state of ensuring that the transition of moving from a manual to an automated system is smooth. One also needs to overcome resistance to change by the users of new technology.

You have only been at the NPA for a few months now. What is your assessment of the organisational culture?

The organisational culture is that of getting down to business to resolve challenges at hand. There is a sense of working together. However, I also feel that the organisation needs to remove a number of blockages which hinder effective and speedy delivery of services. These have become too cumbersome, and we need to find a way of removing them without compromising adherence to governance issues.

Having analysed the NPA's IT environment, what is your overall impression of it?

A challenge for us is to ensure that the benefit of ICT experienced elsewhere in the world is spread throughout

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SEXUAL ASSAULT NOT EQUAL TO INDECENT ASSAULT

Luxolo Tyali

The stiff sentence recently handed to a Mthatha man convicted of sexual assault, who had hoped to escape with a lighter sentence with an option of a fine commonly given for indecent assault, has shown that the two offences are not equally punishable.

The 35 year old man, convicted of the sexual assault of his niece, was sentenced to eight years imprisonment by the Mthatha High Court after just escaping being convicted of rape by a hair's breadth.

The man, who cannot be named to protect the identity of his minor niece, had through his attorney tried all the tricks in the book to get away with a lighter sentence of either a fine, a fine with a suspended sentence or a wholly suspended sentence. However, the strong case submitted by State Advocate Koos Joubert, clearly showing that sexual assault has to be more heavily punished than indecent assault ensured that the perpetrator got a deservedly heavy sentence.

The state counsel, Adv Joubert, submitted that "the offence of sexual assault has become a common offence and is increasing at an alarming rate in South Africa". He emphasised that the public expectations of society are that severe sentences should be imposed, with the rampant crime increase in society and that the escalation of crime is the direct result of failure by courts to impose sentences which are severe enough to stem the tide of rampant crimes targeted at women and children.

The convicted man was initially arraigned for trial in the Mthatha High Court on counts of statutory rape and sexual assault in terms of the Criminal Law Amendment Act 32 of 2007.

The man, an uncle truly and genuinely loved, well trusted and much adored by his niece, the victim, a 12 year old girl, was alleged to have raped her when she was seven years old and sexually assaulted her at the age of 12.

On the count of rape, the identity of the accused was disputed in court

because the incident happened in the dark and the state had to rely on voice identification. The court ruled that there was no evidence that corroborated the victim's evidence that the person who raped her was the accused. Hence, he was acquitted on that count.

Concerning the sexual assault charge, it was alleged that the accused committed an act of sexual violation of the victim by touching and rubbing her private parts with his hand. This incident happened during a family gathering in his room, where he was caught red handed when the victim's mother entered his room and witnessed the incident.

In sentencing, the court noted that the accused was not remorseful and had shown no remorse even to his victim, continuing to maintain that he did not commit the crime even though there was overwhelming evidence pointing to the contrary. Thus, he was sentenced to eight years, of which four were suspended on certain conditions.



Advocate Koos Joubert

COMMENTARY BY ADV KOOS JOUBERT

Initially a former colleague, Adv Nel Van Zyl, dealt with the matter and secured a conviction on the count of sexual assault but after he left the Mthatha office I dealt with the sentencing.

In its judgement the court correctly described the accused as an extremely arrogant individual. From the onset of the case it was clear that the accused's only concern was to escape a possible conviction on rape. Had he been convicted on the rape charge, he would have faced a sentence of life imprisonment.

He was quite relieved when he was only convicted on sexual assault, obviously under the impression that he would only be sentenced to an option of a fine, alternatively, a suspended sentence. This attitude was most probably caused by the fact that the Act remains silent as

to a specific or prescribed sentence in the case of sexual assault.

The defence argued that the court should seek assistance in sentencing from previously reported cases on indecent assault. I had to concede that a study of the case law dictates that an option of a fine was an appropriate sentence for indecent assault but not for sexual assault. It was argued that the imposition of a fine is not an apt sentence for sexual assault and the only type of sentence which remains is a term of imprisonment. In this case the accused's act of touching and rubbing the victim's private parts with his hand nearly constituted "sexual penetration". If his hand or finger had entered her, he would have been guilty of rape and then had to face a term of life imprisonment. Hence, an option of a fine was not appropriate.

In committing crime one must be prepared to spend some time in jail.

Luxolo Tyali is the Regional Communications Manager for DPP: Mthatha

POOR COMMUNITIES END UP VICTIMS OF CORRUPTION

Eric Ntabazalila



Advocate Zama Matayi

The Specialised Commercial Crimes Court is proving to be of immense benefit to poor communities who become victims of corruption every day. The victims of the 2005 Langa fire which left thousands of people homeless, are still living on the streets as the houses they were supposed to occupy were sold by a corrupt former City of Cape Town official.

On 27 January 2012 the Specialised Commercial Crimes Court sentenced the official, Nomkhitha Matinise, to five years direct imprisonment after convicting her of eight counts of corruption. Matinise was facing 16 counts of corruption. The City of Cape Town fired her after finding her guilty during an internal disciplinary process.

Matinise was employed by the City of Cape Town as a liaison officer at the Langa Housing Office. She worked as a link between the Langa Housing Office and victims of the fire who were supposed to benefit from a housing project meant to re-house them. Her responsibilities included attending community meetings where she would deliver letters to victims who were allocated houses in Zones 25 and 26 in Langa.

In the end, all the letters were delivered and it was presumed all the beneficiaries were accommodated. Closer inspection showed that not all of the victims signed for their properties. After the housing project was completed in July 2008,

the municipality decided to conduct a physical reconciliation of the houses as their computer system showed that some of the houses were 'unoccupied' but there were no letters that came back to the Langa Housing Office indicating that the beneficiaries could not be found.

The physical inspection of the 'unoccupied' houses found that they were occupied by families who had letters indicating that they were the beneficiaries. Another closer inspection of the beneficiary list showed that they were not on the list of beneficiaries of the housing project. They didn't qualify for the houses.

Three owners of the 'unoccupied' houses confessed to the head of the Langa Housing Office, Juliet Kuhn, that Matinise sold them the properties. Kuhn also testified that Matinise had a fire victims list. She caught her photocopying it. Matinise was also caught twice by Kuhn 'fiddling with the keys of the unoccupied houses'.

The Specialised Commercial Crimes Court found Matinise guilty of corruption and sentenced her to direct imprisonment. Advocate Zama Matayi of the Specialised Commercial Crimes Court successfully argued that Matinise sold the houses of Langa fire victims to people who were not on the Langa fire victims list and the she financially benefitted from that.

"The total amount she gained from her corrupt activities is R16 000. For R16 000 she is going to go to jail for a long time. This is very important because we want to send a clear message to those who might think of targeting our poor communities for their selfish gains, that even if you steal R1 000 from our people, you will go to jail," said Advocate Matayi.

Although this may have seemed like a long wait, the Langa fire victims were happy to see justice done and are waiting for the City of Cape Town to finalise its legal process of evicting the occupiers of their 'unoccupied' houses.

This is another feather in the cap of the Specialised Commercial Crimes Court in its efforts to rid our communities of corruption.

COMMENTARY BY ADVOCATE ZAMA MATAYI

My main witnesses in the matter were being evicted by both the City of Cape Town and members of the community who believed that they occupied the units illegally. For this reason they were reluctant to testify. Most of my witnesses were in fact fire victims but their names were not on the fire victim list as they never stayed at the tents designed for victims. I convened a meeting with the witnesses, Department of Human Settlements and members of the community and explained the importance of their evidence and we agreed to postpone any evictions which could lead to the displacement of key witnesses.

Identity was placed in dispute and no identification parade was held, and the accused was only identified by her name and her work place. The state relied on dock identification and the doctrine of similar fact evidence in proving the identity of the accused. The state proved the following striking similarities in all eight incidents: The crime scene, modus operandi, the middleman by the name of "Madiba", how witnesses were introduced to the accused and the fact that all witnesses were in fact fire victims and an opportunity was therefore created for the accused to enrich herself. The state further proved sufficient nexus between the incidents.

The middleman "Madiba" passed away before a statement could be obtained from him. Some of the witnesses testified that they paid him the money to pay the accused and that "Madiba told them that he handed the money to the accused. The state relied on the Hearsay Act and the other circumstantial evidence to have that evidence admitted into evidence.

Corruption is an evil spirit that can turn us against our own brothers and sisters as in this particular case. People from the same community, with the same backgrounds, living conditions and hopes are now engaged in eviction processes.

Eric Ntabazalila is the Regional Communications Manager for DPP: Western Cape

THERE'S A NEW CHIEF IN TOWN

Natasha Ramkisson

Advocate Nonhlanhla Dlamini was recently appointed Chief Prosecutor of the Durban Cluster in KwaZulu Natal (KZN). Khasho met with her to talk about her appointment.

Tell us about your background

I was born in a village in Bulwer called Mahwaqa and I schooled in Bulwer. When I was in Standard 9 I had to leave school because there wasn't enough money to continue studying. I then came up with an idea of working on the farms during the school holidays to earn money so that I could go to school. My earnings helped pay for my rent, food, uniform and school fees.

In 1987 I was employed by the Department of Justice as a Court Interpreter. I started studying Law at UNISA in 1996 and I did my B. Luris in 1999. In 2000, I was appointed as a Prosecutor; first at Masinga and then Pietermaritzburg where I joined their relief component in 2004. It was at this time that I also graduated with my LLB. I was admitted as an Advocate in 2005 and appointed as a Senior Public Prosecutor (SPP) at the Durban Magistrate's Court in 2008. I worked there till my appointment as Chief Prosecutor.

What projects were you involved in as SPP?

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the NPA and the area of society it services. There is a need to change the NPA's participation in the knowledge-based economy from one of pure consumption to that of a full participant, encompassing both innovation and consumption activities.

The definite value can only be determined when the stored information can actually be used. This involves development of systems like Document Management, Decision Support Systems, other administrative support systems, a dynamic intranet and a Virtual Library system which is independent of distance and time.

Some of the major issues facing the NPA include lack of automated administrative systems. Currently,

I was involved in the Human Trafficking Task team, Child Justice and Sexual Offences courts, where we saw child victims, some even mentally challenged victims. My job was also to oversee the Maintenance and Domestic Violence courts and I was a member of the Local Victim Empowerment Forum.

Now that you are a Chief Prosecutor, how will your participation in these change?

Even though I have a passion for these issues, I cannot participate on the same level as I previously did. I will, however, try to attend meetings if and when time permits me to do so. I have asked the Human Trafficking task team to keep me updated and on their database so that I may be in touch with developments.

How does it feel to be appointed as Chief Prosecutor?

It's exciting yet challenging because Durban is the biggest cluster in KZN. It's also 'big shoes' to fill as my predecessor Mr. Sibeko was the Chief for a long period and he was a highly respected person. I see it as an opportunity to learn more and for me to develop further. The support that I am already getting from the staff as well as the Senior Managers and the Acting DPP reassures me.

Natasha Ramkisson is the Regional Communications Manager for DPP: KZN



Advocate Nonhlanhla Dlamini

Are there any priorities that you want to address?

Yes, I'd like to address change management. There has been a significant change to the cluster. The Umlazi sub-cluster that used to fall under the Pinetown cluster now falls under Durban. Change generally causes people to become anxious and they lose focus, so I'd like to address this anxiety. Furthermore, it is a big change from being a colleague to the staff here to being their manager. I'd also like to improve the performance in the Regional Courts and see if we can make more use of court hours.

What do you hope to achieve for the NPA by the end of the financial year?

The strategic goal of the IMSC Unit is to build an infrastructure that is sufficiently reliable, flexible, cost effective, meets today's and future demands, and to have the ability to implement new technologies in a time frame that maximises the benefit to the NPA and its clients.

Finally, what motivates you as a person?

I enjoy reading and generating knowledge, whether at work or in general.

A 'SUN-HERO' IN OUR MIDST

Nomilo Mpondo

'MUM BUST DUMB THUG' - these were the words used by the Daily Sun newspaper to describe Ms Patience Nyathi's actions when she apprehended a man with a stolen phone in his possession. As fate would have it, she luckily sat next to this thug in a taxi that was en route to Thokoza, Ekurhuleni.

To be called 'SunHero' is a big accolade, how does it feel to be bestowed with such an honour?

It feels great and is such an honour since it is consistent with the NPA's core function of fighting against crime.

It's normal for taxi passengers to keep to themselves inside the taxi, what drew your attention to that particular man seated next to you?

He looked suspicious because he was deleting all the contacts and other information stored on the phone.

When you asked where he got the phone from; were you not encroaching on his privacy?

No, I do not think so, I knew it wasn't his, he got it by force from somebody,

living and working in Joburg. I am always vigilant, and I feel that it is my duty as a South African to protect victims of crime.

An altercation ensued in the taxi, other passengers blaming you of intruding, were you not scared?

No, I was not scared as the majority of the passengers were in fact supporting me.

When you phoned your boys to come, were you not putting their lives in danger? Did that cross your mind at the time?

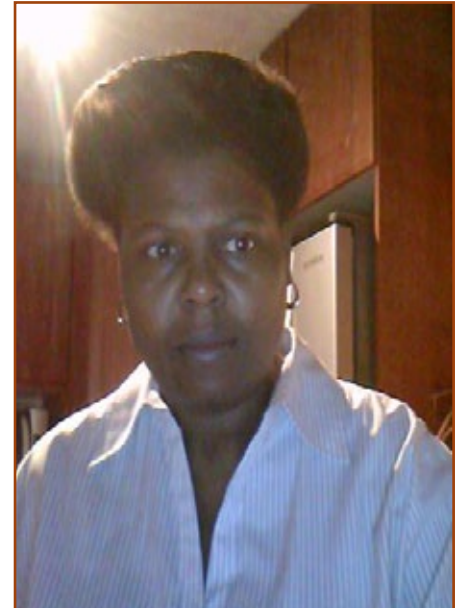
No I never thought of it, as I reacted instinctively.

When you look back, do you feel your actions were justified?

Yes. The fact that the man was arrested and charged and also despite the fact that I am a woman and not a police officer and I made a citizen arrest is more than justified.

Would you do it again?

Yes, if opportunity presented itself I would.



Patience Nyathi, Legal Secretary:
Johannesburg

What drives you?

The legal environment that I work in, and the hope that one day we will all live in a peaceful country.

MUM BUST DUMB THUG!

Brave Patience hands thief to the cops

By ZAMA KHUMALO

PATIENCE Nyathi (43) arrested a suspect and is our SunHero for that.

She took a last taxi on Sunday night to her home in Thokoza, east of Joburg, where she bust a cell-phone thug.

When Patience, an employee at a law firm in central Joburg, got into the taxi she took the second seat from the back and sat between two men. One of the men next to her took out a handsome phone and started deleting contacts and pictures from the swanky phone.

She said: "I asked him where he got the phone from and he said it was his. Then I asked him why he was deleting all the contacts and pictures from it."

Patience said the man didn't answer, but insisted the phone was his. "I told him that if it was indeed his phone, then I would accompany him to the police station to confirm that with the po-

lice."

While the taxi was moving, other passengers blamed Patience for wanting to arrest a stranger over a phone that didn't belong to her. The taxi driver also refused to drive to a police station.

"I phoned the cops and called my two boys to bring my car to the traffic lights at Phola Park and Eden Park.

"When my boys got there, I got out of the taxi and we chased it."

Patience said while they were chasing the taxi they spotted the suspect who had also got out.

Patience, her 18-year-old son and another teenager managed to catch the man, forced him into the car and drove to the police station.

It was found that the phone was taken from a Lesotho woman in central Joburg at knife point. A charge of possession of a stolen phone was opened and the suspect was denied bail when he appeared in court on Tuesday.



Patience Nyathi

Photo by Robert Tlapu

AGGRESSIVE APPROACH TO IRRESPONSIBLE DRIVERS

Eric Ntabazalila

On Tuesday, 28 February 2012, Western Cape High Court Judge Robert Henney sentenced Jacob Humphreys to 20 years direct imprisonment after convicting him of ten counts of murder and four counts of attempted murder. This successful prosecution and long term prison sentence was widely welcomed across the country with Transport Minister Sbu Ndebele and Advocate John Jonck of Arrive Alive joining the chorus of praises.

Advocate Susan Galloway of the DPP Western Cape successfully argued that Humphreys did see his action would lead to the death of the ten children and attempted murder of the four other children but he recklessly continued to cross the Butskop level crossing in Blackheath, Cape Town.

“With his experience he should have seen

that his actions would lead to the death of the children. We dismiss his insistence that he can’t remember anything. He doesn’t want to take responsibility, he hasn’t shown any remorse and has failed to apologise to the families even though he was given an opportunity to do so during his testimony”, Advocate Galloway added.

Judge Henney agreed: “These offences which were committed arose out of a callous and blatant disregard for the rules of the road and traffic laws. This sentence must serve as a deterrent for those members of the public who make themselves guilty of this type of behaviour. It is because of this very attitude that there is a high prevalence of accidents and fatalities.” What came as a surprise during the case is that Humphreys maintained that he can’t

remember anything about the accident. His legal representative, Advocate Johann Engelbrecht had to plead on his behalf during mitigation of sentence that ‘hy het ‘n dom ding gedoen’. The 56 year old father of five who used to work for Transnet as a Shunter never uttered those words to show his remorse.

Arguing in aggravation of sentence, the Deputy Director of Road Safety Management in the Western Cape, David Frost, informed the court that minibuses constitute only 3% of the registered vehicles in the Province but are involved in 6% of all traffic crashes and represent 10% of all traffic casualties.

He said a strong message needed to be sent out in terms of adherence to road rules and severe punishment should be handed to those who break the law.



Adv Susan Galloway

COMMENTARY BY ADV SUSAN GALLOWAY

What was important to me from the onset is that, although it was not technically the most difficult matter I have had to deal with [i.e. there was no trials-within-a-trial relating to the admissibility of confessions, pointing-outs, cell phone records, etc] it was still a difficult matter to deal with specifically as it was regarded as “something new”. This is because it was the first time that we were trying someone on charges of murder and attempted murder resulting from a motor vehicle collision in the High Court.

We charged the accused with murder based on the principle of *dolus eventualis*,

Eric Ntabazalila is the Regional Communications Manager for DPP: Western Cape



BRAIN TEASER





LETTERS TO THE EDITOR

EUNICE PHAGO, SENIOR ADMIN ASSISTANT – HUMAN RESOURCE DEVELOPMENT

Khasho is an important tool to inform our employees about what is happening in the organisation. It covers a range of topics but what I find particularly interesting is how our prosecutors from different parts of the country are contributing towards the eradication of crime by ensuring that criminals get a just reward for their actions. It has helped me to learn a lot about the NPA, for example, about the role of Court Preparation Officers and Thuthuzela Care Centres.

I have noticed that even external people read the newsletter, and let us remember that not everyone understands English. Perhaps it would be a worthwhile exercise to consider using other South African languages. I would also like to see more graphics in Khasho to make it more interesting and exciting to read.

MACDONALD LUCAS, SECURITY AND RISK MANAGER, DPP NORTHERN CAPE

Khasho is a great communication tool as it keeps us abreast of what is happening in the NPA. However, I think we should try to balance issues because currently Khasho covers more of prosecutorial issues than corporate issues which creates an imbalance. Additionally, we should also focus on smaller regions as they are part of the NPA and we need to know what is happening in those regions rather than have stories from VGM dominating every edition of Khasho.

PROJECT MANAGEMENT AT THE NPA

Nomilo Mpondo

Project Management is the application of knowledge, skills and techniques to execute projects effectively and efficiently. A project is of a temporary nature in that it has a defined beginning and end. There are also a defined scope and resources, therefore a project is unique in that it is not a routine operation, but a specific set of operations designed to accomplish a singular goal. So a project team often includes people who do not usually work together.

The purpose of a Project Management Office (PMO) in any organisation is to set project standards across all projects. All strategic projects are delivered on time within set parameters.

Organisations that make use of the skills available within the PMO are more likely to succeed as work is approached in teams with multi-skilled perspectives. This not only promotes team work but also creates an environment for engagement. For these reasons the NPA PMO has developed a standard framework of Project Management for the organisation. The evidenced value addition of the PMO, globally, illustrates the need to utilise this resource

optimally within the NPA. The strategic goals of the NPA will be attained with the kind of impact that will remain far longer than many of us will.

All units are therefore encouraged to make use of the PMO. It is a winning recipe for success.



Masixole Bangeni, Senior Manager: Project Management Office

TRIAL ADVOCACY TRAINING FOR PROSECUTORS

Basetsana Motlhamme

Prosecutors must be able to present their cases in court using the art and technique of persuasion, and in a very skilled manner. This technique is called trial advocacy. To do so effectively, they need proper training in this technique.

It is against this background that the Legal Services Division (LAD), under the leadership of DNDPP Advocate Nomvula Mokhatla, organised an advanced Trial Advocacy Training for prosecutors in the division as well as prosecutors from the regions.

The LAD is a component within the Office of the NDPP that deals with civil cases instituted against the NPA, applications for mutual legal assistance, extraditions, legal opinions, representations, legislation and policy review.

The training took place from 13 to 17 February 2012 in Pretoria at the VGM. It was a week-long training which comprised of, amongst others, case analysis, court etiquettes and ethics, discussions on expert witnesses, cross examination, tendering of exhibits and impeachment exercises. The training ended with a mock court to enable attendants to put into practice what they had learned.

It is hoped that the training will also empower prosecutors with civil litigation techniques and advocacy skills, to ultimately enable the NPA to use its prosecutors to represent the organisation in civil matters rather than outsourcing all civil cases to the State Attorney via the Department of Justice.

Prosecutors who attended were very

impressed with what they learned and the wealth of information and knowledge that they had gathered during the week-long training.

Sharing the sentiments of many prosecutors, Senior State Advocate Moipone Khacane said it was very informative, enlightening and challenging for someone like her whose focus has mainly been on criminal cases. She said, "I now feel that I am in a better position to handle civil matters".

At the end of the training, Adv Mokhatla thanked all the prosecutors who attended, as well as the facilitators who took some time off from their busy schedules to conduct the training. She said it was very encouraging that there were people in the NPA who were very eager to learn.



Adv Nomvula Mokhatla, DNDPP: LAD with trainees

ASPIRANT PROSECUTORS – CLASS OF 2012

Sibongile Mogale

On 17 February 2012, the NPA produced yet another team of 136 graduates from its Aspirant Prosecutors Programme, at a remarkable ceremony held at the VGM and attended by the top leadership of the organisation.

Dressed in black suits and white shirts, they all looked very beautiful, and ready to perform the duty for which they were trained, namely, to prosecute without fear, favour or prejudice.

Addressing the newly graduated prosecutors, the national coordinator of the Aspirant Prosecutor Programme, Adv Daphney Rangaka, praised them for their performance and encouraged them to enjoy being challenged.

She said, “As from today, you are leaders and you are expected to think differently like leaders, like people who are at the top, like CEOs and Directors of companies. You are also expected to be proactive and to focus on bringing solutions instead of problems”.

Adv Rangaka also paid tribute to their tutors, senior prosecutors, the NPA management and other role players who played a critical role during their training. She said, “Your guidance has

been hugely instrumental in moulding the prosecutors sitting here today - our pride of the present, and our hope for the future”.

In her closing remarks, Adv Rangaka urged the graduates, who will from now on act as the gatekeepers of the Criminal Justice System, to go out and serve people impartially, in good faith and without fear, favour and prejudice.

Speaking on behalf of the Acting NDPP, Dr Ramaite, the Head of the National Specialist Services Division (NSSD), took some time to explain the qualities that make up a good prosecutor, namely:

- a blameless and upright character;
- firmness and honesty;
- experience in legal proceedings;
- capacity as a pleader and some little experience as a speaker; and
- some training in the practice and principles of the law.

Dr Ramaite reminded the graduates that when a prosecutor appears before a judge and announces - ‘I appear for the State, your worship’ – he / she is publicly and unambiguously announcing to the court, to everyone in the gallery and to the absent general public that he /she is the

people’s representative seeking justice in the matter.

Dr Ramaite further added, “The rewards and challenges of being a prosecutor are many. It is however, the challenges and difficulties which make the effort worthwhile. Carrying the duties of a prosecutor is difficult. It requires solid professional judgement and legal competence, a large dose of practical life experience and the capacity to work in an atmosphere of great stress”.

In closure, Dr Ramaite quoted former President Nelson Mandela’s plea to the modern prosecutor, during his speech to the International Association of Prosecutors in Cape Town in 2000, in which he said: ‘It is your duty to prosecute fairly and effectively according to the rule of law; and to act in a principled way without fear, favour and prejudice’.

Speaking on behalf of all the graduates, Kevin Padayachee acknowledged that the previous year was full of challenges. He said as aspirant prosecutors they went through trials and tribulations but came out stronger and better people. He also thanked all the tutors and chief prosecutors who stood by them throughout their internship.



Aspirant Prosecutor Graduates and their tutor

NPA SCHOOL AWARENESS PROGRAMME KICKS OFF IN THE EASTERN CAPE

Tsepo Ndwalaza

The NPA recognises that school learners are also customers and beneficiaries of the criminal justice system (CJS), just like other members of the community. One of our strategic objectives is to educate communities about the role of the NPA in the CJS, and how all members of the community can play a significant role in the fight against crime.

That is why the NPA decided to design an awareness programme that is tailor-made to address the issues that directly impact on school learners. This programme kicked-off in February 2012 in the Eastern Cape, where a dedicated team from the NPA visited various schools in the Port Elizabeth and Aliwal North areas to educate them about issues concerning the law, the role of the NPA, the use of social media platforms and Sexual Offences Act amongst others.

The programme was launched on 7 February 2012 at Aliwal North High School and Aliwal North FET College. Also in attendance were members of the South African Police Service (SAPS) who partnered with the NPA during the

campaign.

The theme of the event was “an Informed Community an Empowered Community”. The programme started very early in the morning where the principal of the school welcomed the team and gave it the opportunity to talk to the learners. Adv Rhona Scheun, head prosecutor in Aliwal North, explained all the steps that are taken from the moment the docket is received from the SAPS until a suspect appears in court. She explained at length what prosecutors do once they receive dockets.

The NPA spokesperson, Adv Mthunzi Mhaga, also engaged the learners on crimes related to social media platforms such as twitter, BBM, facebook, What’s Up, and so on, citing the advantages and dangers of these platforms.

The enthusiasm with which the learners



received Adv Mhaga’s speech was exhilarating. Making examples that were familiar to the learners, he informed them that it was illegal for a person below the age of 16 to engage in sexual activities. Using the Jules High School case as an example, he advised learners to avoid the urge to repeat what happened there.

Following the Aliwal North visit, the NPA team took the campaign to Cowan High



School on 23 February 2012, followed by Newell High School the following day. Both schools are in the Port Elizabeth township of New Brighton. In attendance were Ms Bulelwa Makeke, the Executive Manager for Communications and Advocate Mthunzi Mhaga, the NPA spokesperson. Important issues related to “mob injustice” were highlighted.

The presentations were well received by both teachers and learners. The Newell High School learners were the

bravest of them all by engaging with the speakers and asking very relevant questions, which left a huge impression on their teachers as well. At each of these institutions the NPA team left brochures such as Understanding the Criminal Justice System to further empower them with knowledge.

The presence of the NPA did not go unnoticed. The community media in the area came in numbers to cover the event, such as Zithethele Community News,

The Herald, Nkqubela FM, Eye FM, Bay TV and Bay FM.

The NPA believes that this campaign will benefit and empower many school learners in the country, and will also assist in reducing the cases of young people getting into conflict with the law. Although the campaign kicked off in the Eastern Cape, it will also be taken to other parts of the country to reach out to as many school learners as possible.



Tsepo Ndwalaza is the Regional Communications Manager for DPP: Grahamstown

Continued from page 5

CARA or paid to victims. How is the region doing in this regard?

The geographical distance compels us to rely heavily on information technology and any hiccups in that regard hamper production. The region is landlocked and generates less value orders than elsewhere. But there is always potential and room to improve. We have obtained 50 seizure orders worth over R12 million, 40 forfeiture/confiscation orders worth close to R6 million and R3.8 million is already in the hands of victims of underlying crimes boosting restorative justice or CARA which will be used shortly to assist law enforcement agencies in combating crime.

The staff has been urged to put more effort, notwithstanding our unrelenting challenges, and exceed the targets.

Lastly what are your future plans for the region?

They are three fold:

- To do my best and constantly motivate staff that we are doing our work for the citizens out there and in particular because we love what we do (and not for the salary);
- To overcome the detractions which come with the job; and
- To grow the three offices to be fully fledged regions with self supporting staff components for all and sundry to be aware that the AFU is in the area.



Eric Ntabazalila is the Regional Communications Manager for DPP: Western Cape

FARE THEE WELL INDEED

Medupe Simasiku

On Friday 24 February 2012, DPP North Gauteng office bid fare well to one of its Senior State Advocates, Adv Esther Mnguni. She was part of the DPP's office for almost thirteen years. Fortunately she is not completely moving out of the Gauteng North region but getting somehow more close and personal with what she has ardently done for years; that is getting much closer to the communities she has served for her entire working life and continues to ensure justice to all. She is moving to head the Klerksdorp cluster as a Chief Public Prosecutor from March 2012.

Being a dynamic preacher in her own life, a prayer woman, very sociable, soft-spoken, articulate and well-educated, one would not think that she would be in

this very demanding career. She was actually regarded as an in-house spiritual leader. "She is one of the members who is able to exhibit her resilience as and when she is called to duty, no matter how complex it may be", expressed Advocate Baloyi. She has handled cases that were way too complex and many would think that she would have cracked, yet she sailed on and brought in well deserved results. She packs a punch in as far as her career is concerned as she was also involved in the management of the Pretoria Cluster from 2002 -2005 and she did that work exceptionally. She has handled several high profile matters (e.g. Professor Papo matter) and served under various prominent Judges like Judge Kgampepe who is currently in the Constitutional Court.

"I have waited for this day for a very long time. I started this career on 17 December 1991 in Siyabuswa and was the first black female prosecutor in KwaNdebele during that time" she pointed out. Advocate Mnguni moved to DPP North Gauteng on 1 April 1999, which means she has been here for almost 13 years. "I am humbled

to have been part of this office and I am humbled to have worked with each and every one of you" she articulated. She is one of the women prosecutors who does not take kindly to crime against women and children, leading her to deal with such cases very diligently. It has almost been a decade from her appointment as a Senior State Advocate to her appointment as the Chief Public Prosecutor. "That took perseverance, and that means it does pay to have that patience and to work hard to achieve more goals" she said.

She related well with everybody during her stay at the DPP's office. Everyone could attest to her friendliness and the will she had in playing a constructive role in everyone's life.



Advocate Esther Mnguni receiving a present from Advocate Meintjies on behalf of all members of the DPP's office



Advocate Esther Mnguni

Medupe Simasiku is the Regional Communications Manager for DPP: North Gauteng

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