

Khasho



News for NPA staff, friends and stakeholders

June 2010





Letter from the Editor

It is a great pleasure to bring you yet another edition of *Khasho*. The *Khasho* team strives to make the newsletter a repository of valuable news and information about the NPA, its people and the service delivery initiatives that it embarks on with its partners.

In this edition, we profile a component in the office of the NDPP with the objective to learn more about the duties discharged in this highest executive office of the NPA. This is more relevant in the context of the realignment process of the NPA to better position it for more effective delivery of its mandate – conducting prosecutions on behalf of the State and any work incidental thereto. This should not be confused with restructuring, which was put on hold for further review once the JCPS Cluster strategy is finalised.

We also report on a positive development that has led to a commitment between the leadership of the NPA (NDPP) and labour to bolster internal engagement and communication between the parties on pertinent matters in the NPA, by holding regular meetings. This emerged at a Bargaining Chamber meeting on 10 June, where the NDPP clarified the realignment process. We also publish a shortened version of the background article that brings context to this realignment process.

The NPA continues to shine in terms of its exhibition and eventing prowess. Our exhibition stand was once again awarded a gold medal at the annual Royal Show in Pietermaritzburg in June this year. The work and efforts of all dedicated prosecutors and other staff members at the DPP KZN office at the exhibition stand did not go unnoticed. I give an extra salute to Adv Ross Stuart for his special contribution to the NPA's participation at this key KZN event that attracts hundreds of thousands of visitors annually.

The NPA also exhibited at the National Arts Festival in Grahamstown, which took place from 20 June to 4 July.

The dedicated 2010 World Cup Courts have been a phenomenal success, and we applaud the dedication of all those involved in ensuring the successful operation and management of these courts. These courts have been a wonderful example of an effective criminal justice system in action – the police, prosecutors, magistrates and other court officials have been amazing. It is clear that the success trend that has been established in the administration of justice will continue as planned until the end of the project on 28 July and has been reported on widely in local and international media.

Let us strive to sustain this positivity to ensure that the wheels of justice are turned swiftly and steadfastly without any fear, favour or prejudice.

On a lighter note, South Africans have a lot to be proud of after three weeks of a generally incident-free 2010 Fifa World Cup. We have witnessed colourful scenes of visitors enjoying our beautiful country and fans having the time of their lives at our landmark stadiums.

Bulehwa Makeke
Executive Manager: Communications

Cover photograph: The NPA's colourful reception area showing national pride and support during the 2010 Fifa World Cup.

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NDPP in the media and public domain

This article was originally published in the *Crime Quarterly Journal* on 10 June 2010.

The NDPP was interviewed by Iole Matthews for the *Crime Quarterly Journal* of the Institute of Security Studies. Below is an edited extract from that interview:

You are the fourth National Director of Public Prosecutions that the National Prosecuting Authority has had in the last 10 years, if we include Acting NDPP Mokotedi Mpshe. Do you think your vision differs from that of your predecessors?

No, I don't think so. I don't think the vision for the NPA should differ from one NDPP to another. We might differ in terms of approaches and areas of emphasis, but, in the context of government work, and especially our cluster, it is quite clear what the National Prosecuting Authority is supposed to do. Its role is very straightforward. We do prosecutions and work incidental to prosecutions, such as investigations related to those prosecutions – so I don't see that work changing unless the criminal law changes. The vision, therefore, puts emphasis on doing as many prosecutions as possible and ensuring success in as many prosecutions as possible. It is very difficult to imagine any other vision for the NPA under the present circumstances.

When asked whether his role as NDPP has inappropriately taken centre stage, this is what he had to say:

Absolutely. The NDPP has become this unbelievable individual. Where does that come from? It is because the media has not properly reported on the institution as a whole, on the framework of the law, and how that works. We have lost an immense opportunity to educate the public on how the prosecution service works and its role in helping government transform society.

Look at the Jub Jub case, for example. I did not even speak to any of those guys prosecuting the case. It's not my business. I only engaged with the acting DPP and while I might say, "this is how I see things," it is the DPP who talks to the prosecutors. Each DPP is independent in his or her decision-making. While they definitely work under my direction in terms of ensuring a common strategy and policy, in terms of decision-making they are independent. The National Prosecuting Authority Act specifies clearly under what circumstances I can overrule the DPP and what procedure has to be followed. I cannot just go in and say I disagree with you, so change your decision.

These things are not really known by the public, largely because most of the time the attention and focus are on the NDPP – the public do not even know that the DPPs are independent.

The instruction for senior prosecutors to be in lower courts has met serious resistance in some quarters. What was the thinking behind this decision?



*Advocate Menzi Simelane,
National Director of Public Prosecutions.*

It seemed unreasonable that a senior prosecutor with up to 20 years or more experience does maybe two or three cases a year, while a junior prosecutor who has just graduated from university does 20 cases a month. Even if those cases are more complex, logic should tell you that the more senior you are, the more experience you have, the quicker you can make decisions and the more value you can add.

Also, prosecutions should never just be about court appearances for trials. Many cases can be dealt with administratively. And running a court case is a skill, like surgery, so we should reserve trials for the more serious cases that deserve trials. In many cases one can get a plea and just deal with the case administratively but still get the appropriate outcome. Now who is in a better position to do this: someone experienced or someone less experienced? The more senior you are, the better you can negotiate and execute that responsibility, and if you are successful, you save court time and reduce backlogs. Senior prosecutors do court work anyway – it is just the frequency that is in question. Many seniors also sell themselves as specialists, for example, in sexual offences. Shouldn't they then spend more time prosecuting in the courts with the highest rates of sexual offence cases and guide junior prosecutors?

In closing, what about Menzi Simelane – the man – that people don't know about?

I'm not as difficult as I look.

THE NPA HOTLINE – 0800 212 580

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

Working together to develop the youth through action

Nomilo Mpondo

South Africa commemorated Youth Day on 16 June 2010. This marked the 34th Anniversary of the Soweto Uprising in 1976. This commemoration took place within the context of the first anniversary of the establishment of the National Youth Development Agency. The Youth Month programme was launched on 1 June 2010 to bring government services closer to young people throughout the month and beyond.

Opportunities brought by democracy require the entire society to work together in improving the social conditions of young people who still live in poverty and distress.

- While all South Africans, irrespective of age, enjoy the human rights enshrined in the Constitution and Bill of Rights, young people have a responsibility to promote their rights and defend our democracy.
- Society should strengthen relationships within families to create a safe and caring environment where young people are able to have more positive and healthy lifestyles. Social ills and lack of access to basic social services impact negatively on youth development.
- Youth development in South Africa is everyone's responsibility, including that of young people themselves. It is upon every young person to become an agent of change.

Government is committed to continuously advance youth development

- The National Youth Development Agency assists government in fulfilling its electoral mandate by, among others, the National Youth Service Programme, where 50 000 youth have been targeted to establish cooperatives, as well as professionalism of youth work by ensuring that youth workers are trained by March 2011.
- Since the launch of the agency, 7 593 loans have been disbursed to microfinance enterprises to the value of R23 million, and 4 224 business consultancy services vouchers to the value of R33 467 520 have been provided.
- There are 121 operational offices, 113 of which are in partnerships with municipalities to enable easy access to the products and services of the agency. For 2010/11, the agency plans to establish youth directorates in all municipalities and government departments.

In addition to the above, the NPA wants the youth to avoid being in conflict with the law, and to live meaningful lives and become responsible members of society. This cannot happen if they are involved in criminal activities. The NPA will therefore continue with its efforts to educate young people about the criminal justice system, and encourage them to stay away from crime.

Meet the new

Nomilo Mpondo

Regional Communications Managers

Phaladi Shuping joined the NPA in April 2010. He is allocated to the DPP: Northern Cape, Kimberley office. He holds a Bachelor of Communications degree from OFS University. He worked in the following organisations: Thaba Nchu Youth Club as a public relations and events officer, the University of the Free State and Mangaung Correctional Centre (a private prison in Bloemfontein).



Eric Ntabazalila joined the NPA in June 2010. He is based in the DPP: Western Cape office. He studied Journalism at the former Peninsula Technikon. He then practised as a journalist for the *Cape Times* newspaper in Cape Town and later worked as a media liaison officer for the Western Cape Provincial Government.



The NPA looks forward to your positive contribution. Welcome to the family!

An organisation under transformation

Adv Thembi Burhali

A narrative background to transformation in the NPA

This is a shortened and edited extract from a document prepared by Adv Thembi Burhali. For a full copy of this document, please visit the NPA intranet under “What’s new”.

Envisioned by the Constitution, a single National Prosecuting Authority (NPA) was created on 1 August 1998 under the leadership of the then National Director of Public Prosecutions, Mr Bulelani Ngcuka, to institute criminal proceedings on behalf of the state and to carry out functions incidental to such proceedings.

However, it soon became clear that the organisation was operating as a set of semi-independent individual units, which prompted Mr Ngcuka in 2000 to embark on a strategic planning process to review this state of affairs. Mr Ngcuka was convinced that the NPA needed to undergo transformation if the organisation was to deliver effectively on its mandate. This transformation entailed the review and redesign of the organisational structure.

Following the National Transformation Conference that was held in 2004, followed by further mini-conferences at all NPA regional offices, the transformation process commenced in earnest in 2005 under the umbrella of the Serurubele project. In 2006 a new strategic plan was adopted – the NPA Strategy 2020 – and was formally launched at the NPA Stakeholder Conference in March 2007.

The NPA Strategy 2020 responded to the issues, challenges and service requirements expected of the organisation to improve its service delivery. Following the finalisation of this coordinated strategy, the NPA deemed it necessary to review its structure to give effect to the need to improve service delivery. In addition to this, the organisation needed to ensure that its various units were aligned to eliminate silos and the fragmentation of its services.

In 2007, the next NDPP, Adv Vusi Pikoli, appointed a committee to design the macrostructure of the organisation – an exercise that was followed by his successor, the Acting NDPP, Adv Mokotedi Mpshe, in 2009.

The committee proposed a macrostructure that supports the implementation of the NPA Strategy 2020 and cluster processes. The structure sought to ensure that competencies are grouped together to ensure greater efficiency and encourage growth and learning. A key element of the proposed structure was that prosecuting functions were to be housed in a single component. Specialisation was recognised to ensure that the NPA would be able to address certain crime focus areas that required specific skills due to the complexity, national interest or nature of the crime. Various management structures were proposed to enhance integration in the organisation and reduce the impact of silos.

Current Status

The current NDPP took over the baton of service delivery on 1 December 2009. When he was still the acting head of the National Prosecutions Service (NPS), he conducted visits to the various regional jurisdictions to confirm the challenges highlighted during the transformation process. He also attended to similar challenges at head office.

He embarked on the implementation of the macrostructure as it was proposed by the review committee, and on a further review and realignment process to operationalise the macrostructure in line with the 2010–2013 strategic plan. This realignment process dictated a reassignment of resources in order to position the NPA better so as to achieve its mandate as mentioned above. In terms of the NPA Act, this mandate is binding on all members of the NPA, from the most junior prosecutor to the most senior manager. (To see the current macrostructure, which was shared with organised labour on 18 May 2010, please visit the intranet.)

On 19 March 2010 a directive was given to the DPPs to commence with realignment (not synonymous with redeployment). The realignment does not change the employment status, nor the basic job descriptions or employment benefits of the NPA members.

On 10 June 2010, the NDPP consulted with organised labour on the transformation and realignment process. Labour did not object to the process and expressed appreciation for the consultation and the sharing of information.

The macrostructure and the realignment process will be continuously reviewed until the NPA is satisfied that they respond to the long-term objectives of the NPA Strategy 2020, in line with the NPA Act and the Constitution.



Adv Thembi Burhali: DDPP – NDPP Office: Governance Component: Labour

The NPA was always ready for the World Cup

Tebogo Seate

When it was announced way back on 15 May 2004 that South Africa was going to host the 2010 Fifa Soccer World Cup, we were all overwhelmed by joy and thought it was a dream. But before we knew it, 11 June 2010 was here and the event was already taking place on our soil!

South Africa has made history by being the first African country to host a Fifa Soccer World Cup, and we have shown the world that we can.

Organising an event of such a magnitude requires meticulous planning, and that's what the justice cluster has been doing over the last few years.

Plans were being put in place to ensure that justice would be effectively administered during the Soccer World Cup. We knew very well that as people would be celebrating football and enjoying what our country has to offer, others would see it as an opportunity to commit crime – but we would not allow them to turn the event into a crime festival.

A police force totalling 41 000 were deployed around stadiums, fan parks, hotels and tourist sites to combat all forms of crime and to ensure the safety and security of everyone – locals and visitors alike.

Most importantly, 56 dedicated World Cup Courts were set up across the country, with prosecutors, magistrates, detectives and interpreters to ensure that criminals were caught, tried and sentenced as quickly as possible during the tournament. Impressive results were indeed recorded: of the 20 or so cases that were recorded in the first few days of the World Cup, the turnaround time has been astounding, and earned all high praise. Fans, tourists, players, support teams, volunteers and citizens in general were reported to be feeling more secure.

At the time of going to press, we can report that the following achievements were realised:

- 56 dedicated Soccer World Cup Courts were fully and effectively operating from 7 am to 11 pm.
- 216 cases were dealt with, involving all forms of crime, ranging from theft to robbery.
- 103 cases were successfully prosecuted and offenders were either fined or sent to jail.



NPA members gripped by the soccer fever during the "blow-your-vuvuzela moment" at the VGM on 9 June 2010.

- 65 cases were either withdrawn or not enrolled.
- 25 cases are still on investigation and 13 on trial.
- Eight cases were partly heard and two warrants of arrest.

The NPA and its partners also launched the red card campaign against human trafficking before the World Cup started to educate communities about the existence of this form of crime.

The NPA is proud that we were active participants during this historic event and not mere spectators. We ensured that justice prevailed and offenders were punished.

This achievement has not gone unnoticed, and some people are already calling for these dedicated courts to be used as a template for South Africa's future justice system. Chief Crown Prosecutor from the UK Police Delegation, Nick Hawkins, said the following to the NPA Administration of Justice Coordinator, Mr Nathi Mncube: "I cannot overstate how impressed I am with the World Cup Project that you have led. I want to put on record my thanks for your help, Senior Public Prosecutor Fiona Cloete, DPP: Cape Town, and Senior Public Prosecutor Mzoxolo Qatana, DPP: Port Elizabeth. They all gave their time freely and I was impressed by their professionalism and common-sense approach to the World Cup."

As a country, South Africa made its mark and left a legacy. The NPA is also part of that legacy.

Relief after the sentencing of accused

in the murder case of former legal aid attorney based in PE

Tsepo Ndwalaza

The Bisho High Court was filled to capacity by family, friends, relatives and members of the community who had come to witness the sentencing of the men accused of murdering Xolani Soha, who worked as the legal aid attorney in Port Elizabeth before his death.



Adv Krishna Jairam and Adv Jannie Coltman of the Bisho DPP office.

Thembela Nongongo and his co-accused were both sentenced to life imprisonment for murdering Xolani Soha. They also received three years each for the possession of an unlicensed firearm and one year each for the possession of ammunition.

It is alleged that the two accused approached the victim, who was at Man's Tavern, which is frequented by more affluent members of the Mdantsane community. On the pretext of being too drunk to drive, they asked Mr Soha for a lift and he agreed. On the way, they asked the victim to drive to a secluded and poorly lit area, wanting to "pick up a girlfriend". They robbed the victim and took him to a more secluded area in the veld and killed him. The body was concealed in the bushes and they drove away in his car.

Handing down the judgment, the Presiding Officer, Judge Sandi, said: "Society is sick and tired of criminals who have no regard for human life. I had considered carefully the evidence that was given in court by both the defence and the state and I'm convinced that both the accused are a menace to society and they deserve to be in jail for a very long time."

The judge also commended the hard work displayed by the investigating officer in the case, together with state advocate Krishna Jairam, who also sighed with relief after the sentencing.

Commentary by Adv Krishna Jairam

The above is the kind of judgment that members of the community want to hear. People are tired of violent and brutal crimes like this one and want to see justice done. In this case, justice was indeed done, and this was confirmed by the tears of joy and smiles of relief of family members of the deceased during the handing down of judgment.

The case took a year and a half to be finalised, due to the amount of evidence that had to be led. I also took over the case at short notice, but that did not deter me from wanting to see the case to its logical conclusion.

A number of factors played a critical role in ensuring successful prosecution, notably the MTN call data records of the deceased (a legal aid attorney). The deceased's phone was recovered from a buyer who bought it from the accused. These records also confirmed that the accused made several calls from the phone on the night Mr Soha was killed.

Also, we initially had difficulty in establishing the time of death of the deceased, but these records, along with weather reports, assisted the pathologist conducting the post-mortem to narrow down the time of his death.

The highlight of the case was when accused number 1 contradicted himself consistently throughout cross-examination. His co-accused changed his version entirely, claiming that his initial version was meant to offer an alibi for accused number 1.

From this case I have learnt two valuable lessons. First, no matter how much pressure you are experiencing as a prosecutor, you must always focus on the case you are working on, and give it your utmost attention. Do not allow anything to distract you. Second, no matter how difficult the case might be, always direct your energies towards collecting all the evidence you need to build a winnable case.

Adv Paul Louw addressing the

2010 IT Web Security Summit

Nomilo Mpondo

Held during 11–13 May, Senior Deputy Director of Public Prosecutions, Adv Paul Louw, attended the 2010 IT Web Security Summit at the Sandton Convention Centre. The summit brought together leading international and local security experts and industry innovators, as well as a blue-chip audience of IT and security professionals. In a bid to unleash untapped talent in the NPA, *Khasho* speaks to this cybercrime expert.



Adv Paul Louw (centre) with Adv Mamabolo and Colonel Mabusela.

You are a prosecutor and a cybercrime specialist. How did this come about?

The term “cybercrime specialist” is misleading. I am in agreement with Michel Quille, Director of Europol, who argues that there is no so-called ‘expert in cybercrime’. Cybercrime expertise gets outdated in a very short time unless a regular update is guaranteed.

My own involvement dates back to 2002, when we realised that transnational organised crime groups assumed the corporate identities of South African government departments and corporations in order to defraud victims. Back then, “website impersonation” was a real problem. Perpetrators created websites as a vehicle for criminal activities that appeared to be legitimate. Unsuspecting victims were referred to these websites and they believed that they were dealing with the real McCoy.

Since 2004, the cybercrime onslaught against the South African banking industry gained momentum both in sophistication and incidence. I was approached by Mr Pat Pather of Standard Bank to assist. We formed a strong partnership and we have always endeavoured to protect the corporate identity of our banking industry, including the South African Reserve Bank.

How big is the scourge of cybercrime in the country and which segment of the population is most at risk?

Criminal organisations are more flexible thanks to the internet. They have several links at international level and they exploit the internet as a networking tool.

The present crime threat in South Africa can be described as a serious economic offence. The amounts lost by individuals, businesses and banks during 2009 and 2010 are staggering. On the one hand, perpetrators target government departments, metro councils and/or the so-called “business-on-line clients”, but on the other hand, the threat of phishing (password harvesting fishing) proves to be a huge problem. The problem with cybercrime is that it is a faceless problem. Cybercrooks use technology to stay anonymous and they cover their tracks fairly easily.

The cybercrime threat in South Africa may become even gloomier than the realm of serious economic offences. South Africa has, for example, not yet experienced a serious “denial-of-service” attack, as was the case in a country such as Estonia. In my view, South African law enforcement should be proactive and anticipate the possibility of an organised “denial-of-service attack” (this is where a legitimate user is denied access to IT infrastructure by the hackers) on the infrastructure of South Africa. Law enforcement should be proactively organised and in a position to immediately deal with such a crime threat. We simply must protect South Africa’s digital assets.

Can you take us through the success rate of cybercrime prosecutions?

I believe that prevention is the best cure. Despite shortcomings, South African law enforcement agencies have enjoyed some success. In just four investigations, law enforcement has prevented losses of some R140 million. In two of these cases, R43 million had already been transferred from victims’ accounts to bank accounts controlled by the fraudsters. The perpetrators had unlawfully accessed the bank accounts of a government department and a company. In both cases corrupt bank officials assisted the perpetrators.

In the two other matters, investigators discovered that criminals had already been in possession of sensitive personal information

of two other business accounts, with an exposure of almost R100 million. The relevant banks were warned in time. The banks were then in a position to safeguard their clients' funds. According to the US Attorney Robert Strang, law enforcement is increasingly turning to proactive investigations where undercover agents seek out the individuals who are already engaging in computer crimes – attempting to record computer criminals while they are involved in the criminal act. The proactive approach bypasses some of the investigatory hurdles of anonymity, lack of records and under-reporting inherent in computer cases. It also has the added benefit of potentially stopping the criminal before the damage is done.

South Africa's law enforcement agencies have also succeeded in some cases to identify the cybercrook. In one textbook case,

the cybercrook was arrested in the act behind the computer. In other cases, the computer was found in the possession of the suspects. It is often not a problem to link the computer to the crime, but to link the suspect to the computer. In these cases, suspects rely on the so-called "multiple user" defence and the state's case is based on circumstantial evidence.

During the summit, you emphasised training for law enforcement officers in this field. What gains will training bring about in the fight against cybercrime?

In cyberspace, ignorance is not bliss. The reality is that digital evidence will in future form part of most crime scenes. However, this kind of evidence is often highly volatile and easily compromised by poor handling. The law enforcement official

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Focusing on matters of public interest

Sibongile Mogale

A new component has been established in the NDPP's office, called the Public Interest Division. Khasho went to speak to Adv Mpho Doubada, head of the division, to find out more about this new formation.



Public Interest Division: From left: Adv Chuma Mtengwane, Maria Mutshivhana (Personal Assistant) and Adv Dania Bruwer. Standing from left: Adv Mpho Doubada (DDPP/Coordinator) and Adv Nduvheni Mulangaphuma.

When and why was this division formed?

The division was formed in December 2009 in order to enable the NPA to put emphasis on issues that are of interest to the public. As the name suggests, our stakeholders are members of the public.

How many members form this division?

We are a division of six members, consisting of me as head/coordinator, Adv Nkomu Mabaso, Adv Terrence Mulangaphuma, Adv Chuma Mtengwane, Adv Dania Bruwer and Ms Maria Mutshivhana.

By establishing such a component, what does the NPA aim to achieve?

In establishing this division, the NDPP's concern was that the NPA has not been giving special attention to matters of public interest. Some of the matters of public interest identified by the division include the hijacking of buildings, illegal mining, environmental matters (such as dumping), occupational health and safety matters, labour-related matters and road and transportation matters. Since our establishment, we have already dealt with a number of problems such as the hijacking of buildings, especially in Johannesburg.

Typically, what do you do on a daily basis?

I read newspapers to check for cases that are of public interest, and then allocate them to relevant team members. I also have to continuously liaise with my team to check their daily progress and distribute work to them. In addition, I have to liaise with different stakeholders on a continuous basis.

What are the challenges facing this new component?

We are still a new division, and we need to reach out to as many members of the public as possible. Because we are new, we are still trying to find our feet. Another critical challenge is to get the full cooperation of our various stakeholders, because we definitely need their assistance.

Khasho wishes the team all the best in their endeavours, and very soon we'll be reporting on their achievements.

Meet Adv CS Mlotshwa

Natasha Ramkisson

- Acting DPP for KwaZulu-Natal

Advocate CS Mlotshwa was appointed as Acting DPP for KwaZulu-Natal on 21 May 2010. *Khasho* took a few minutes to find out how he is finding his new challenges.



Acting Director of Public Prosecutions: Adv CS Mlotshwa

What has been your experience so far as an Acting DPP?

In brief, it has really been challenging and demanding.

What challenges do you typically face as an Acting DPP?

As a deputy, I was only managing six advocates, but now I am managing approximately 551 employees in the region.

I am a very hands-on manager and I believe in going the extra mile in whatever I do. Immediately after my appointment as an ADPP, I had meetings with control, senior public and chief prosecutors in all six clusters in the regions as well as members of senior management and the judiciary in the lower courts and high courts. As an Acting DPP, I have to attend numerous meetings with stakeholders. It is a big challenge, as I have to develop a skill of managing a huge amount of information.

The vacancy rate also presents itself as a challenge. Experienced prosecutors from the high court are working in the lower courts, where experience is a serious challenge. My other challenge is to move people out of their comfort zones, especially those who are resistant to change.

Do you find your job fulfilling?

Yes indeed. I find my job interesting and stimulating, as I now have to deal with people from all walks of life.

Do you have any message of encouragement for the rest of the organisation?

Every member of the organisation ought to be acutely aware that the NPA does not exist in a vacuum – it operates in an environment that is constantly changing politically, economically, socially, technologically and legally, and therefore we must be flexible enough to adapt to change quickly. In that manner, the NPA will be able to keep its head above water even during times of volatility. In a nutshell, there should not be a situation where people still demonstrate resistance towards transformation. It is disturbing and not ideal for the organisation that we still have members who are averse to change and transformation sixteen years after the advent of the new dispensation.

New Acting DPP supports training on sexual offences legislation

Charlene Labuschagne

On 17 December 2007, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 32 of 2007) became effective.

This Act repealed two common law offences, namely rape and indecent assault. Both offences of rape and sexual assault, as created in terms of the new Act, is gender-unspecific. The Act broadened the definition of penetration and violation to also include all forms of sexual penetration and violation without consent. It further created new statutory offences relating to certain compelled acts of penetration or violation. It criminalises the compelled witnessing of sexual conduct and/or the exposure of certain parts of the human anatomy and/or the watching of child pornography by an adult or child.

Section 66 of the Act requires the issuing of national instructions and directives to be followed by law enforcement agencies, the National Prosecuting Authority, and health care practitioners.

Advocate Xolisile Khanyile, Acting Director of Public Prosecutions: South Gauteng, organised a training session on chapter 2 of the Act for all the district and regional court prosecutors of the Johannesburg Magistrate's Court, who regularly prosecute sexual offence cases. The training will ensure that the requirements of section 66 of the Act, read with the directives published by the Department of Justice, are adhered to when prosecuting sexual offences and all related matters.

Approximately 12 district court prosecutors and 15 regional court prosecutors were trained by the Senior Prosecutor, Ms Carina Coetzee, in May 2010. Specific emphasis was placed on the definitions, mind maps and directives. The prosecutors were also supplied with case law relating to new offences that had been created by the new Act.

Field trip for Zululand prosecutors

Natasha Ramkisson

In early May, Adv Ross Stuart and Adv Dalene Barnard from the Director of Public Prosecutions (DPP) office in Pietermaritzburg accompanied a group of Zululand prosecutors on an on-site environmental training session at the iSimangaliso World Heritage Site in KwaZulu-Natal.



Zululand prosecutors accompanied by members of the DPP office in Pietermaritzburg.

Due to its diverse beauty, this 332 000 hectare park was listed as South Africa's first World Heritage Site in 1999.

The prosecutors visited the uMkhuze Game Reserve in particular, where they saw wild dogs and cheetahs at close quarters, as well as the 'usual' sightings of antelope, giraffe, warthogs etc. According to Adv Stuart, "The knowledge levels of those who attended varied from one who did not recognise an impala, to others with a keen interest and fair knowledge

of wildlife. We were accompanied by KZN Wildlife officials who taught us of the enormous problems caused by poaching and the terrible damage caused by the setting of snares."

Through their interaction with KZN Wildlife officials, the prosecutors will now lead evidence in aggravation of sentence in appropriate cases, as the records show that suspended sentences have been the norm and have served no deterrent purpose.

The impression that was gained from all the participants was that the exercise was well worth the effort. KZN Wildlife officials suggested that the exercise be repeated regularly, so that all prosecutors in the area could benefit from the experience.

Said Advocate Stuart: "All participants were provided with an Enviro Prosecutor's Toolkit, consisting of a CD containing charge sheets, and the relevant legislation and other material that we had put together for them. Copies of the CD are now being made for distribution to all concerned with dealing with wildlife crime in the area."

"iSimangaliso must be the only place on the globe where the oldest land mammal (the rhinoceros) and the world's biggest terrestrial mammal (the elephant) share an ecosystem with the world's oldest fish (the coelacanth) and the world's biggest marine mammal (the whale)." – Nelson Mandela.

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who arrives first on the crime scene has a huge responsibility, and the conduct of this official will be placed under scrutiny at a later stage. The chances of success in litigation or successful criminal prosecution by law enforcement agencies depend heavily on the availability of strong evidence.

It is of utmost importance that every law enforcement officer knows how to gather and seize electronic evidence in such a way that the integrity of this evidence is protected. Mistakes made at a very early stage of the investigation may compromise a prosecution. I often refer law enforcement officers to best practices employed in other countries, such as the Good Practice Guide of the United Kingdom's Association of Chief Police Officers (ACPO) or the recommendation of the International Organisation on Computer Evidence. We need a South African version of these best practices and every police official (including the metro police) should receive training. There is also a need for more trained experts to analyse and to testify about seized digital evidence.

What sort of evidence does the court require to prove that cybercrime has been committed and how difficult is it to obtain it?

I have already referred to the nature of electronic evidence and the problems associated with it. But there is no replacement for good, old-fashioned detective work.

What advice do you have for fellow NPA employees?

We are all in the process of learning and we should help each other. It reminds me a lot of the period 1994–1996, when the impact of the Bill of Rights had a huge impact on the daily activities of the prosecution service. There were not many precedents we could rely on. We collected case law from all over the country, researched the topics and assisted each other with arguments in court. The same should happen here. The Global Prosecutors E-crime Network (GPEN) initiative should be supported. Feel free to contact me. I will probably not have the answer immediately, but will assist you with the help of GPEN.

Congolese citizen forfeits luxury vehicle to the state

Adv Charl Geel

Senior Advocate Charl Geel of the Johannesburg office of the Asset Forfeiture Unit succeeded in bringing an application for the forfeiture of a 2006 Audi cabriolet worth approximately R300 000 in June 2010. The Audi belonged to Ludovic Kayembe Mutombo, a Congolese citizen. It is believed that Mutombo is part of a syndicate that steals money from unsuspecting people by providing banks with fraudulent documentation to access funds illegally.

On 13 December 2007, members of the South African Police Service searched the residence of Mutombo. At the time of the search, he was residing in a townhouse complex in Bryanston, Johannesburg. The police found numerous documents and items at his place of residence. These included money grams, bank cards, personal documents, fraudulent passports, various other documents such as bank statements and personal tax returns, as well as application forms for identity documents. The search also resulted in the discovery of a number of written requests for the unlawful transfer of funds from bank accounts belonging to unsuspecting persons to other target bank accounts. The target bank accounts seemed to have been opened on a fraudulent basis in, inter alia, Cambodia, Vietnam, China, Thailand, Spain, Indonesia, Hong Kong and South Africa.

Mr Mutombo is accused of intercepting post from people holding foreign bank accounts with the purpose of obtaining personal particulars of potential victims. The syndicate seemed to have created false identity documentation in the name of these victims. The syndicate proceeded to write, fax or phone the victim's bank and pretended to be the victim. They requested the bank to transfer money from the victim's account to another account opened by them at another bank in another country. The money would either be withdrawn or transferred via money grams to other South African bank accounts.

Mr Mutombo is facing charges relating to theft, fraud and forgery in the Specialised Commercial Crime Court, Johannesburg. *Khasho* will keep track of the developments of this case.

Amidst the hype of the FIFA World Cup, annual happenings went on as usual

Natasha Ramkisson

One in point was the Royal Show in Pietermaritzburg. Locals and tourists alike descended upon KwaZulu-Natal's (KZN) capital city to visit the show, which took place before the start of the World Cup and during the Comrades Marathon.

The National Prosecuting Authority (NPA) was once again a participant in this prestigious event, and we exhibited together with other government departments such as the South African Police Service (SAPS), and the departments of Correctional Services (DCS), Justice and Constitutional Development (DoJCD), Trade and Industry (DTI), and Social Development (DSD).

Various activities were planned to entertain and inform visitors and learners from various schools that visited the show. On 29 May, a demonstration was held by volunteers of the KZN Human Trafficking, Child Pornography, Prostitution and Brothels (HPPB) Task Team to create awareness around human trafficking. This exhibition drew many spectators who showed a keen interest in learning more about human trafficking and the NPA's efforts to curb this scourge.

Edutainment in the form of stage plays were put on during the weekdays for the learners. This was a joint initiative between the NPA, DCS and DSD.

On 2 June, a play showing how a person gets trafficked was put on by other members of the HPPB (including NPA personnel). It taught learners how not to fall prey to traffickers, and provided a helpline number. On 3 June court preparation officers from the different courts in KZN put on a play entitled *Busi goes to court*. This showcased the role of the court preparation officers in ensuring the wellbeing of victims.

The NPA exhibition stall was lauded and presented with a gold medal for the appearance of the stand. According to the Royal Show Society, this year's show was deemed as a great success, and 121 000 visitors attended.

Two life sentences for Monakato Boys

Frank Lesenyego

Speaking to *Khasho*, Inspector Kgekoane, the SAPS investigating officer, praised the enthusiasm and determination of the witnesses. The witnesses were determined despite numerous postponements. He said they played a crucial role in the conviction of Boitumelo Caleb Moloto (23) and Kgomotso Naphtally Phutsoane (24). He further said the cooperation between Investigations (South African Police Service) and Prosecutions was key to the accused pleading guilty during their confession at the beginning of the trial.

During the trial, it was revealed that on 19 July 2009 at about 8:00 in the evening, the deceased, Shimane Isaac Mafoko, was driving around Monakato Location in his vehicle, looking for his nephew. The deceased met the accused, who boarded his vehicle and showed him where his nephew resided. They went to look for the nephew and on their way they bought two bottles of alcohol, which were consumed by the accused.

They then drove with the accused to Ceramic Tavern at Mogwase. After a while, they left the tavern, and that is when they decided to rob the deceased. The deceased was kept in the boot of the car. At Pretoria Road they let him out of the boot. They then used a huge rock and hit him on his forehead, after which they put him in the boot again.

As they approached the road to Boitekong, they abandoned

the car. They stopped a SAPS vehicle, alleging that they were hijacked by an unknown man. The police took them home to allow the accused to open a case of hijacking.

The next morning, the police approached one of the accused and informed him that they recovered a car with a dead person in the boot of the car. The accused confessed to the murder and also implicated his friend. They were arrested on 21 July 2009 and appeared before a magistrate and made a confession voluntarily. Both men were given life sentences and 15 years for robbery after they were found guilty for the murder of Mafoko in the Rustenburg Circuit Court before Judge Gura. Advocate Utlwang Mokone indicated that the trial went as swiftly as possible. It took less than a year for the accused to be convicted and sentenced. They were arrested in July 2009 and sentenced in February 2010.

Mamelodi TCC goes all out to support Child Protection Week

Lida van Schalkwyk

Towards the end of May 2010, and prior to the kick-off of the Fifa Soccer World Cup in June, the Mamelodi Thuthuzela Care Centre (TCC) ran a number of campaigns for schoolchildren in Mamelodi to raise awareness about child abuse and child trafficking.

These campaigns were a combined effort of the Mamelodi TCC personnel, who made sure they visited various schools throughout Mamelodi to educate learners about child safety and abuse, as well as to encourage them to report all cases of child abuse and neglect to their parents, teachers or social workers. Learners were also warned about the dangers of child trafficking and to be extremely cautious when strangers approach them with all kinds of promises.

On 26 May, the group visited Tshimollo Primary School, where Ms Nomsa Dombo, the site coordinator for Mamelodi TCC, spoke about the services rendered at the centre, which caters for all victims of gender-based violence.

Ms Lida van Schalkwyk, the case manager for the Mamelodi

TCC, utilised the opportunity to educate everybody about court procedures and the protection offered to children attending court. After all the formalities, the learners were entertained by the Tshwane SAPS Band, and the learners from the school gave drama and music performances on the effects of abuse.



Children from Mamelodi attending Child Protection Week activities.

Comrades marathon 2010

Nomilo Mpondo

Does it ever occur to you that behind those court robes there are ordinary men and women that do what ordinary folks do? *Khasho* unveils the mask donned by these court fanatics. Yes, they can breathe, eat and laugh – and they can run too. The Comrades Marathon on 30 May in Pietermaritzburg was an event where some NPA men and women showed their mettle outside the court room. The following is what they had to say about the race:



DDPP: South Gauteng Office, Adv Sello Maema



Adv Anthea van der Beyl



Advanced Manager: SRM, Mr Tshinyadzo Mudau

Adv Sello Maema, DDPP: South Gauteng Office: I started my preparation in November by taking part in the prestigious Soweto Marathon. I run every weekend, and I train throughout the year. I participate in at least four ultramarathons (50 km) before the Comrades Marathon. This year's Comrades was my fifth and I did it in 8:50, my personal best time. The sport is very expensive – I go through a number of running shoes during training. Other expenses include travelling to the races, entrance fees for the races, and dietary supplements. A lot of discipline is required, as you have to wake up early in the mornings for training and for the races. However, the benefits of physical fitness and health are enormous.

Adv Allen Simpson, DPP KZN Office: I ran and finished my 13th Comrades this year and completed it in 9:15:41. In short, the Comrades is a life-changing event. Although the time to practice seems to be less nowadays, it is still a great event to look forward to every year. Running the Comrades has blessed me in so many ways. Everyone should run the Comrades at least once in their lives. Take small steps; start with 10 minutes of walking every second day. As they say, the rest will be history.

Adv Anthea van der Beyl, NDPP Office: Organised Crime Division: I ran my very first 5 km on 5 September 2009. Two

weeks later I ran my first 10 km! I pursued my first marathon in Port Elizabeth under heavy west-southwest winds. My finishing time of 4:14 qualified me for the Two Oceans and Comrades ultramarathons. All the early risings for training and races eventually made sense when I lined up with about 20 000 runners for the Comrades on 30 May 2010. I crossed the finishing line in 11:14 with one tekkie, blisters like bubbles and a missing toe-nail! The feeling of achievement is definitely worth the pain. Running is a joy and once that bug bites, you will never get rid of the fever.

Advanced Manager: Security Risk Management (SRM), Tshinyadzo Mudau: I started running marathons in October 2009, and since then I have never looked back because I am a person who is driven by my own goals. This year I participated in the Comrades Marathon and got a bronze medal, with a running time of 10 hours and 52 minutes. In all this, I thank God, my family, Moses Letlhaku, who is my trainer, and my sponsor ESKOM. This medal is for SRM and all NPA officials, but I will keep it for security's sake!

By the time *Khasho* went to press, Acting DPP KZN, Adv Mlotshwa, was still recuperating from the marathon. Congratulations to all other NPA members who took part in the Comrades Marathon.

Life sentences for the cemetery killers

Three of the four ABC Cemetery killers were sentenced to life imprisonment for the brutal murder of a 25-year-old woman. The minor accused was given 15 years in jail.

Phaladi Shuping



Adv Tania Birch, DPP Kimberley

The four men who attacked and killed 25-year-old Ngugu Letty Wapad at the ABC Cemetery in Galeshewe, Kimberley, were sentenced to lengthy sentences by the Northern Cape High Court on 25 May 2010. Wapad was gang-raped and murdered in what was described as one of the most gruesome murders in the Northern Cape's history.

The Northern Cape High Court Acting Judge, GNZ Mjali, sentenced the

brothers Archibald Itumeleng Chweu, 26, and Moleko Chweu, 21, as well as Thabiso Majama, 20, to three life sentences each and another 10 years imprisonment for the violation of the corpse. The life sentences for rape, murder, indecent assault and the 10-year sentence for violation of the corpse will run concurrently.

The minor received a 15-year sentence for rape, murder and indecent assault, and another eight years for violation of the corpse. The sentences will also run concurrently.

The four men gang-raped and brutally murdered Wapad during the night of 28 March last year. Her mutilated body was found hours later in the ABC Cemetery under a pepper tree. She was stabbed 16 times before her attackers shoved a stone into her genitals. She was cut open from the chest to the lower abdomen, and some of her internal organs were removed, strung out and hung over a tombstone.

State Advocate Tania Birch called forensic pathologist Dr Denise Lourens

to testify. She testified that the rape and murder of Wapad was the most gruesome case in her career of more than 10 000 autopsies. She stated that the deceased suffered multiple stab wounds of which four were in the chest area.

She stated during the cross-examination she had never seen a case involving so much violence and trauma. "The extent of the deceased's injuries falls into the worst category I have ever experienced in my career of 16 years."

Acting Judge Mjali described Wapad's death as "one of the most revolting ways of killing a human being."

She said: "Serious violent crimes are rife in Kimberley and should not only be deplored, but also severely punished. The sentence must send a deterrent message to stem the escalating tide of violence."

The mother of the deceased, Sanna Wapad, said she was happy with the sentences. "I will never see my child again but I have peace. I look forward to a good night's sleep," she said.

Commentary by Advocate Tania Birch

We managed to prove our case beyond reasonable doubt because it was a team effort. The quick response of the police was a breakthrough to a certain degree. They found bloody pants of accused number three, who claimed that he had consensual sex with the deceased and the blood on his pants was as a result of her menstruation. However, the autopsy confirmed that the deceased was not menstruating at the time of her death.

The other challenge we had was having accused number two's mother as a witness. It can never be easy to testify against your own son. I called her to my office and she

confessed that during one of her visits to the prison her son confessed that he also raped and stabbed the deceased. I then requested for a second statement to be taken from her.

The other difficulty we encountered with accused number four was getting his friends to testify, as he told them about the rape and murder before he was arrested. They were not willing to testify, but we eventually convinced them to testify. It was not easy for them to testify against their childhood friend. However, it was not about friendship but about ensuring that justice is served. And indeed it was served.

Adv Kholeka Gcaleka: Chairperson of the Society of State Advocates of South Africa

Tribute to the late Senior State Advocate

Mpho Mophatlane

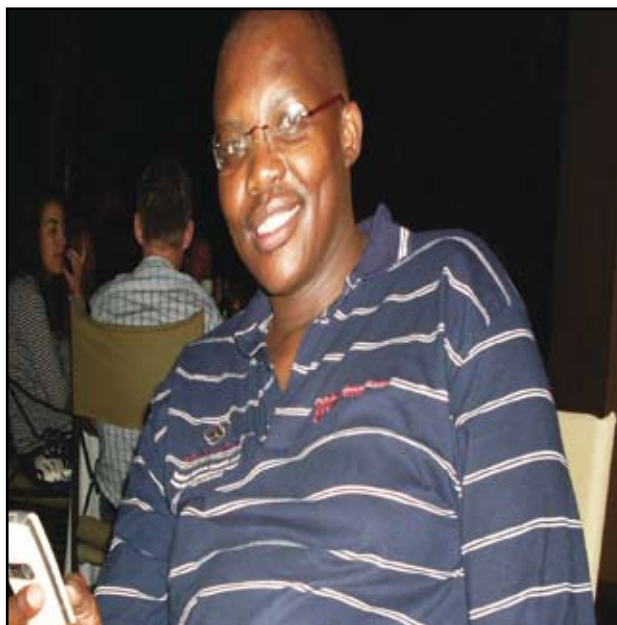
Below is a shortened and edited version of a tribute paid by Adv Kholeka Gcaleka to late Senior State Advocate Mpho Mophatlane, who was laid to rest on 27 June 2010.

I would like to honour and pay tribute to one of our own. I say one of our own, because Mpho was our colleague and part of the NPA and Society of State Advocates. He was part of the successes and challenges of these organisations. Mpho was prepared to travel the difficult and long journey to build a truly representative and professional prosecutorial service and justice system for our country. This journey is part of the broader goal to build a non-racial, non-sexist, united, democratic and just South Africa. He was prepared to practice and defend the values and principles espoused in our Constitution. These values are the bedrock of our justice system.

It will not be an exaggeration to say the icy and cruel hand of death has robbed us and the broader South African justice system of Mpho's legal mind and contribution to the noble course of justice and the rule of law. Through his profession, Mpho was daily serving and defending the people of South Africa, particularly victims of crime. In his own way, he was following in the footsteps of great South Africans like Justice Mohamed, Advocate Bram Fischer and human rights lawyers Mr Griffiths and Mrs Victoria Mxenge. I mention these few South Africans because they came from typical separated South African communities, but were united by their love of their country and abhorrence of all forms of discrimination and injustice.

Our country comes from a painful history and legacy of legal and administrative discrimination. As 'people's lawyers', we have a responsibility to be part of the movement to reverse this legacy. The passing on of Mpho affords us an opportunity to stand back and reflect whether we are practising the principles and policies of the NPA and our noble profession. In memory of Mpho, we have to be counted in the frontline of defenders of our Constitution, which is the supreme law of the Republic. We have to do so because we are enjoined by the Constitution.

Let me close by quoting the wise words of Pierre Magnan in the *Messengers of Death*, where he says: "When a house has just



The late Senior State Advocate Mpho Mophatlane, DPP: South Gauteng.

lost its soul, a stricken silence falls over the sudden emptiness that no one will fill again. And all the noises that may be made later in that house will be like a scandalous din, ugly echoes from one room to another, from one corridor to another, sharp and discordant as if the walls are no longer able to absorb any music once the source of harmony has been taken away. But this strange detail about the power of death can only be picked up by ears that are very attentive to the smallest murmurs of life. Rational people go through these empty spaces with the serenity of a lawyer, and their indulgent smiles categorise you if you decide to point out in their presence that there is something lacking in the atmosphere."

We say farewell to our dear friend and colleague.
Lala Ngoxolo. Robala Hantle, Mphoza.



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