

KHASHO

MARCH 2011



Reflecting on Human Rights

Highlights
from the
NPA Annual
Plan

Brutal
murderers
& rapists
getting life
sentences

Legal
Affairs
Division
Profiled



ENSURING PROSECUTIONS WITHOUT FEAR, FAVOUR OR PREJUDICE



MESSAGE FROM THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

The 2010/11 financial year has finally come to an end. Looking back, I believe that we have achieved a lot, but we also need to acknowledge that some of the challenges we experienced during this period will be carried over into the new financial year. Our Annual Report for 2010/11 will clearly outline our achievements and highlight the areas which need further improvement.

The NPA's Strategic Plan for the new financial year is already in place and we recently shared it with the Parliamentary Portfolio Committee on Justice and Constitutional Development. We had a fruitful engagement with members of the Committee and they gave us a renewed commitment to support our efforts to deliver a prosecutions service within a sound governance environment. We must now remember that the Committee will be keeping a close eye on us, but we also need to remember that it is our full responsibility to continuously monitor and take full control of our performance.

We have recently seen the prosecutions environment becoming very ugly and sometimes even dangerous for some of our prosecutors. For example, some prosecutors are making it to the hit lists of criminals, are being threatened with death, or harassed and intimidated. The NPA is concerned about this trend and we take the safety and security of our prosecutors very seriously. We will provide them with the necessary support and protection.

I therefore urge and encourage all prosecutors, whether they are faced with such threats or not, to never allow intimidation to distract them from their noble cause. It is our duty to ensure that criminals are prosecuted and if found guilty, punished in accordance with the laws of this country. As guided by our mission statement, we'll prosecute without fear, favour and prejudice.

One of our focus areas in the next financial year and beyond is on environmental crimes, which have



Advocate Menzi Simelane,
National Director of Public Prosecutions

shown a noticeable increase over the past few years. What has been lacking until recently is capacity to prosecute these forms of crime. However, the honeymoon is coming to an end for those involved in committing these kinds of serious offences. The NPA has teamed up with various stakeholders, particularly the Department of Environmental Affairs (DEA) to thoroughly equip our prosecutors to prosecute these cases successfully. I therefore urge prosecutors to avail themselves for training opportunities whenever they arise. Future generations will never forgive us if we leave our natural resources at the mercy of organised criminals.

I am confident that the new financial year will become yet another rewarding year for the NPA. I believe that we are all talented in various ways and can achieve extraordinary things. As we prepare for the new year, I want all of us to approach it with three things in common – performance, responsibility and accountability. By making these our work ethic pillars, we will be in full control of what we need to deliver.

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THE NPA HOTLINE **0800 212 580**

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

LETTER FROM THE EDITOR

The Khasho team appreciates all the positive comments that you readers forwarded in response to Khasho's face lift. It is exhilarating to notice that our readers are alive to changes that we make from time to time to ensure that our newsletter stays relevant and focussed at all times. Indeed Khasho belongs to all of you and it is our duty to serve you.

This year marks the 51st anniversary of the Sharpsville and Langa massacres as critical events in the history of our country. This year's commemoration was observed under the theme, "working together to protect human dignity for all". This is a call on all citizens to work with government to create an environment where everyone is and feels safe. In Phokeng, Rustenburg the commemoration focused on the protection of children's rights. Speaking on the commemoration, the Public Protector called on communities to report to her office any suspected disregard for children's rights by organs of state. This call reinforces the NPA commitment to the protection of children's rights. In this issue, Khasho shares with you an article that serves to remind us in the NPA of our role in the protection of human rights as enshrined in our Constitution.



Bulelwa Makeke
Executive Manager: Communications

In keeping with the State of the Nation Address by President Jacob Zuma and as part of the Human Rights month celebration, five Thuthuzela Care Centres were launched on the 29th March. To date, 37 TCC's have been established throughout the country. We applaud the Sexual Offences and Community Affairs Unit for the sterling work they are doing in an attempt to deliver gender justice in the country. Last month, two SOCA representatives formed part of the delegation that represented the country on the Commission on the Status of Women (CSW) in New York where the TCC model was showcased. This edition of Khasho gives you a glimpse of what the CSW is all about.

The NPA together with other departments in the Justice, Crime Prevention and Security (JCPS) Cluster participated in the seventh provincial community outreach roadshow on the 19 March 2011. The Eastern Cape leg of the roadshow was in Lusikisiki at KwaCele village. The NPA took an opportunity to engage the KwaCele community members in Lusikisiki against the old tradition of 'ukuthwala' - arranged marriages where young girls are abducted for marriage to older men. This issue of Khasho brings you closer to the community of KwaCele's views about the tradition.

The NPA led by the NDPP presented its Annual Performance Plan for 2011/2012 to the Portfolio Committee on Justice and Constitutional Development on 30 March. In this issue we present the key highlights of the Annual Plan.

Bulelwa Makeke
Executive Manager: Communications

REFLECTING ON HUMAN RIGHTS

Human Rights Day, 21 March 2011

By Tebogo Seate

The 21st of March every year is celebrated as Human Rights Day in South Africa. It is indeed a significant day in the national calendar of the history of our country. It is a day on which all of us must be reminded on a continuous basis, of the selfless sacrifices made by heroes and heroines of our country in pursuit of human dignity for all.

This year's commemoration event took place in Cape Town, at Athlone Stadium, and was attended by the President, the Minister of Justice and Constitutional Development and representatives from other branches of State and delegates from all political parties that have representation in Parliament.

In his key note address, President Jacob Zuma urged all people to celebrate South Africa's Constitution, and use it as an instrument of freedom, as a tool that enables us to enjoy the freedoms and human rights that so many heroes and heroines sacrificed for.



NPA exhibition stall - Human Rights Day 2011

He said, "We must celebrate the Bill of Rights in this Constitution, which outlines all the freedoms and rights that we are entitled to equally as citizens, which nobody can take away from us. We must also celebrate that we have built a strong Constitutional Democracy with the necessary checks and balances".

Constitution of the Republic

South Africa's Constitution is admired and respected around the world for its pioneering approach to human rights and is a symbol of a remarkable negotiated transition – one that turned a country ravaged by apartheid and oppression into one that celebrates democracy and freedom.

Human rights occupy a special place in the Constitution. Chapter 2 contains South Africa's Bill of Rights. It is this part of the Constitution that has attracted the greatest interest – and has had the greatest impact on South Africans – in the past few years.

Among the rights enshrined in the Bill of Rights are the right to life, equality, human dignity, freedom of expression, freedom of religion, freedom of association, political rights and the right to peaceful assembly and demonstration. These are the usual "first generation" rights that are guaranteed in most democratic countries.

Our Constitution therefore does not compromise when it comes to human rights, but we also need to be cognizant of the fact that rights come with responsibilities. We should therefore appreciate the fact that South Africa is a constitutional democracy where we can enjoy a number of rights as its citizens, but enjoy them responsibly.

The role of prosecutions in protecting human rights

We at the NPA have a crucial role to play in protecting and defending human rights. We should never see ourselves as passive bystanders but as active players.

In fact, in the Constitution of the Republic, an entire section (Chapter 8) has been dedicated to Courts and Administration of Justice. This chapter of the Constitution affirms what is contained in our strategic documents that we need to exercise our functions "without fear, favour or prejudice".

We therefore have a duty to uphold the rule of law in the country, by ensuring that those who disregard the law of the Republic as well as the rights of others are prosecuted and made to account for their actions. It is through the rule of law that democracies are strengthened and communities can enjoy social stability.

In the spirit of the theme of this year's Human Rights Day, we should all be "working together to protect human dignity for all".

KEY HIGHLIGHTS OF THE 2011/2012 ANNUAL PLAN

On 30 March 2011, the organisation's leadership team presented the NPA 2011/12 Annual Plan to the Portfolio Committee on Justice and Constitutional Development in Parliament. The presentation was very fruitful as it enabled members of the Committee to have a broader understanding of the key activities planned by the NPA for the coming financial year, and the engagement that followed thereafter also highlighted some of the challenges faced by the organisation.

A key element of that presentation focused on the core function of the NPA, which is output number 1 of the JCPS delivery agreement - namely, to reduce the overall levels of crime in the country. With regards to contact and trio crimes such as house robberies, business robberies and vehicle robberies/hijackings, the NPA aims to increase the number of convictions measured against the number of new cases enrolled in the Regional and High Courts to 45% by 2013/14 from 35.7% in 2009/10.

Alongside the above commitment is the reduction of the case backlogs which remain a main concern for the NPA, and the plan is to reduce them from 38 563 in 2009/10 to 37 043 in 2013/14. The conviction rate will be maintained at 88% by striving to increase the number of cases finalised, including Alternative Dispute Resolution Mechanisms, from 469 541 in 09/10 to 524 380 in 2013/14.

Other commitments which were highlighted to the Committee were the following:

- Through asset forfeiture, to increase the value of freezing orders from R491m in 09/10 to R600m in 2013/14.
- To increase the prosecution of JCPS officials charged with corruption (including bribery) to 63 by 2013/14. The basis of this commitment is that people working with law enforcement are the most susceptible and vulnerable to corrupt behaviour, yet they are the ones who are tasked with fighting this growing scourge in our economy. It is therefore important to eradicate such unethical behaviour within the JCPS cluster whenever it is discovered. The cluster continues to focus on establishing preventative measures as well.
- To successfully prosecute and restrain assets of corruption cases with 100 persons convicted where at least R5m assets are restrained cumulatively by 2013/14.
- Increase the number of TCCs from 22 to 40 by the end of this financial year.
- To work closely with JCPS cluster members to increase the fight against cyber crime. To this end, the NPA will expand the capacity at all levels to successfully deal with the challenge of prosecuting these cases, including specialised training.

The Portfolio Committee was concerned that the vacancy rate was still very high at 15.3%. The NPA indicated that the filling of vacancies continues to be a challenge as long as prosecutors within the system end up being appointed to new positions, leaving vacancies in their previous positions. Through Operation Recruitment Drive, 181 posts were filled, enabling the vacancy rate to drop to 15.3% currently from last year's 17%. The Acting CEO reassured the meeting that efforts to recruit more external candidates were expected to bear fruit within the current financial year.

The budget allocations for the year are as follows: Prosecutorial function has been allocated a budget of R1.9 billion for the year, and Support Services were allocated R472 million.

The NPA will also focus on addressing a number of risks that have been identified. The top five risks are:

- Poor financial control and management in the NPA.
- Absence of/and or poor coordination and cooperation across the JCPS.
- Lack of adequate budget to support delivery, specifically in the lower courts.
- Shortage of suitable qualified, skilled and competent personnel across most / all disciplines.
- Unethical and corrupt behaviour within the NPA .

However, plans are in place to mitigate these risks, and the NPA will continually update the committee on progress made at every quarterly meeting.

REMINING OURSELVES OF THE CHILD JUSTICE ACT

By Tebogo Seate

The last time the Child Justice Act was extensively reported in the media was when one of the accused in the Eugene TerreBlanche murder case was a minor who had to be dealt with in terms of the Child Justice Act (CJA). Since then the media has been fairly quiet on this issue, but we at the NPA, particularly prosecutors, need to constantly remind and empower ourselves with information about the Act so that we are not left in the dark.

It is against this background that Khasho spoke to Adv Vuyo Ketelo, the Senior State Advocate from Sexual Offences and Community Affairs (SOCA) Unit responsible for the Child Justice Act about what we need to remind ourselves about this Act.

What is the Child Justice Act and when did it come into effect?

The Child Justice Act came into effect on 1 April 2010. The aim of the Act is to ensure that proper attention is paid to the welfare of children who come into conflict with the law. It therefore deals with children as offenders. The central feature of the CJA is to divert matters, outside the formal criminal justice system in appropriate cases.

Can you explain what diversion is, for the benefit of those who are still new to the prosecutions environment?

In the context of the Act, diversion means diversion of a matter involving a child away from the formal court procedures in a criminal matter. It is aimed at referring a child to a diversion programme that is designed to encourage the child to be responsible, to reduce chances of reoffending, and to promote reintegration and reconciliation.

Diversion is closely linked to the notion of restorative justice. Restorative justice involves offenders accepting responsibility for the crime committed, making amends for what they have done and initiating a healing process for themselves, their families, the victims and the community. The goal of restorative justice is for offenders to rejoin the law-abiding community and to prevent re-offending.

Do all young offenders qualify for diversion?

Only children up to the age of 18 years qualify for diversion. However, where a person is 18 years or older, but under the age of 21 years, when handed a written notice, served with summons or arrested for allegedly having committed an offence when he was under the age of 18 years, a DPP may direct that the matter be conducted as if the person were still a child.

It is also very important to note that diversion will be considered if:

- the child acknowledges responsibility;
- the child has not been unduly influenced to acknowledge responsibility;
- there is a prima facie case against the child;
- the child and, if available, his or her parents, an appropriate adult or a guardian, consent to diversion; and
- the prosecutor indicates that the matter may be diverted.

What diversion programmes exist for minors in conflict with the law?

The Act provides for level one diversion options which apply to Schedule 1 (less serious offences) and level two diversion options which apply to all other offences as referred to in Schedule 2 and 3 (more and most serious offences).

Level one options include inter alia:

- an oral or written apology;
- a formal caution, with or without conditions;
- placement under a supervision and guidance order;
- placement under a reporting order;
- family time order; etc.

Level two options include:

- compulsory attendance at a specified centre and
- placement under the supervision of a probation officer on conditions which may include restriction of the child's movement outside the magisterial district in which the child usually resides without the prior written approval from the probation officer.



Advocate Vuyo Ketelo

Isn't diversion a "soft option"?

No. Diversion has now been legislatively implemented for children in terms of the Act. It is an appropriate intervention for children who have broken the law. It aims to make children understand the impact of their crimes on others and to make sure that they correct their mistakes. This is done by providing specific interventions like guidance programmes for the child concerned, and by helping families and the communities learn how to better guide children in their decisions.

Therefore it should not be seen as a soft option by prosecutors. In fact, the NDPP has issued directives on Child Justice Act to ensure that we all have a common understanding and that we apply the Act uniformly and consistently. There are no exceptions. These directives have been published on both the NPA internet and intranet.

What problems have been experienced since the Act came into effect?

This is an intersectoral piece of legislation which requires the involvement of various stakeholders. Currently, a shortage of diversion programmes in certain areas,

as well as sufficient probation officers remains a challenge, but the matter is constantly reviewed by the Department of Social Development.

In circumstances where diversion programmes do not exist, what should happen then?

We are looking into that as the Department of Social Development (DSD) has signed contracts with service providers that should cover each and every magistrate's court. If a magistrate's district does not have a service provider the DSD must be contacted to find out whether they know about it and what is going on.

Do you think that the Act has been implemented effectively since it came into effect?

It is difficult to say, however all the roleplayers are doing their level best to effectively implement the Act. Of importance is that roleplayers understand the Act; obviously whether or not it is effectively implemented will be gauged

by the number of cases that have been successfully diverted in terms of this Act. Nevertheless, the Department of Justice and Constitutional Development has commissioned a research to establish if the Act is effectively implemented or not. Therefore the research will inform us.

How have prosecutors been prepared to deal with the new Act?

Prosecutors have been taken through extensive training on the Act. Phase 3 of the training is currently under way and we request prosecutors to avail themselves whenever they receive an invitation to attend such training.

What should prosecutors do when they encounter problems?

In general, I think prosecutors have a fair understanding of the Act, but I also encourage them to read the Act and NDPP directives and all the implementation tools of the Act.

They can also contact their DPP offices, where there are people who have been nominated to deal specifically with the child justice system, who can also provide assistance and advice.

What should a prosecutor do when they discover that a child has been used by an adult to commit crime?

The prosecutor should immediately report the matter to the police for possible prosecution of that particular adult. Criminals must also be made aware that they will be held accountable if they use children to commit crime, and they must know that they will ultimately face the might of the law! Adults must never be allowed to coerce children to commit crime, with the hope that they'll get away with it. Criminals will still be prosecuted as usual.

NANNY SENTENCED TO LIFE FOR RAPE

By Natasha Ramkisson

A 25 year old woman was recently sentenced to life imprisonment for the rape of a five-year old boy. Khasho spoke to Russell Mngoma, the Regional Court Prosecutor at Nongoma backlog court about this conviction.

What is the background of the case?

The incident took place in January last year, and it involves a 25-year old woman who was accused of raping a five-year old boy. The accused was employed for five days as a nanny to the complainant and on the day of the incident, she bathed the child and thereafter raped him once. He complained to his parents of sores on his private parts. On their inspection they discovered the sores and asked him what had happened. He then explained that the nanny put his private inside her. His parents took him to a doctor who confirmed the rape. The police were contacted and the accused arrested.

How long did the investigation take?

The investigations took two weeks to complete, but the case took a long time to be heard due to the backlog at the Ulundi Regional Court.

How long was the trial?

It took only two days for the case to be finalized.

Was there anything unique in this case?

I found it shocking that the perpetrator was female, something unusual in South Africa.

Was it particularly difficult to prosecute a case involving a young victim? What evidence contributed to your argument?

It was a bit difficult given the age of the child but he stuck to his evidence. He was able to give sufficient evidence on material issues. The evidence of the doctor (in the J88) was also very clear and it contributed to my argument.

What did you learn from this case?

I also have boy children. They too have a nanny. It made me realise that I have to be careful and aware. Being boys doesn't exclude them from abuse.

How did the family of the victim respond to the sentence?

They were very happy and appreciative

of the work of the NPA. After the finalisation, I contacted a Social Worker to assist with counseling the boy. Our job is more than just prosecuting. We must do our best to assist the victims.

I understand that you've just finalised another child rape case. Tell us about this one?

On 9 March 2011, exactly two weeks after this case, a 63-year old man was given a life sentence for raping a 10-year old girl.

How common / frequent are crimes against children in your area?

Crimes against children are so rife in this area. This year alone we have convicted 7 people for child rape and 5 of them got life imprisonment.

What (do you suggest) can government do to protect children?

Ubuntu will help protect children. Government can come up with good policies, etc; but it is up to the community to behave like human beings. It saddens me that we've waged a war against defenseless children. This must stop!

Natasha Ramkisson is the Regional Communications Manager: DPP KZN

LEGAL AFFAIRS DIVISION – THE LEGAL POWERHOUSE OF THE NPA

By Tebogo Seate

Adv Nomvula Mokhatla, who was recently appointed as Deputy National Director of Public Prosecutions, is heading a very dynamic and crucial division within the NPA – the Legal Affairs Division. Consisting of a team of committed and enthusiastic specialists, the Division was born at the beginning of 2010 to bring together all functions that render legal assistance and advice to the National Director under one umbrella.

In brief, the Division is comprised of the following portfolios:

- Mutual Legal Assistance and Extraditions
- Civil Litigation
- Representations; and
- Drafting of legislation, the prosecution policy and policy directives.

Mutual Legal Assistance (MLA) and Extraditions

This component is responsible for facilitating international co-operation in criminal matters. Requests for extraditions and mutual legal assistance are officially channelled through the Department of Justice and Constitutional Development (DOJ & CD) as the Central Authority, but the Division provides an essential service with respect to the execution of requests received from foreign authorities and does so in collaboration with the respective DPP offices. The Division is also a vital role-player in assisting the DPP offices with requests emanating from their regions. The Division must therefore work very closely with all stakeholders within the international co-operation environment, particularly the DOJ & CD's Chief Directorate: International Legal Relations, Interpol and the Department of International Relations and Co-Operation.

Adv Alta Collopy, the Deputy Director of Public Prosecutions responsible for this component, says the Division has seen a noticeable increase in requests for MLAs and extraditions. "Our challenge is to ensure that we improve our turnaround time, and to ensure that our work is of a very high standard", she says.

Adv Collopy says, as crime is becoming increasingly cross-border, a clear message has to be sent to all criminals that no matter where they hide in the world, the long arm of the law will catch up with them. "They can't run away forever", she says.

Civil Litigation

The NPA is constantly being sued by people who believe that they were maliciously or wrongfully prosecuted by the organisation. It is the responsibility of Adv Karin Vorster, the Deputy Director of Public Prosecutions, who heads the Civil Litigation component, to ensure that the claims are investigated and defended. The NDPP and Minister of Justice are usually cited as the defendants.

The NPA does not go to court to defend the matters - advocates from the Bar are appointed by the State Attorney and the DOJ & CD to defend the matters. However, the role of this component is to peruse all the claims, gather information from all relevant sources, research, assess the evidence and prepare a brief, and then instruct the DOJ & CD to defend them or advise it on how to deal with them.

Adv Vorster says the civil suits against the NPA have been increasing year on year. For instance, for the period April to December 2009, 129 new civil matters were received, while 188 new civil matters were received from April

to December 2010. "Our ultimate goal is to enable the DOJ & CD and the State Attorney to effectively defend the matters where it is apt to do so and to provide them with the required support", she says. Adv Vorster is also proud of the fact that these suits are generally defended very successfully.

Representations

Representation is another important component residing in the Legal Affairs Division. Led by Adv Sara Mitchley, a Deputy Director of Public Prosecutions, this component is responsible for dealing with all complaints against our prosecutors. These complaints come to the NPA via the DOJ & CD, the Public Protector, the Human Rights Commission, the Independent Complaints Directorate, DPP offices, the SAPS, attorneys and through the NPA's communication inbox.

These complaints normally come through when people are not happy about prosecutors' decisions to prosecute in certain cases. Prisoners also send their complaints about their appeals, leave to appeal or petitions.

"We also have people phoning us or walking in on a daily basis with numerous complaints, some of which do not even resort under the NPA, but we assist them by channelling their complaints to the right people", says Adv Mitchley. "We are the face of the NDPP when it comes to complaints and we need to assist all complainants".

Where prosecutors are clearly in the wrong and deliberately so, they are then dealt with through the normal NPA disciplinary procedures and the matters are referred to the IMU or the Labour Relations Division.



Legal Affairs Division led by DNDPP Nomvula Mokhatla (Front row, third from the left)

Adv Mitchley urges prosecutors to continually adhere to the Code of Ethics for Prosecutors in order to reduce the number of complaints lodged against them. The good news is that the majority of the complaints are not valid.

On average, this component opens and deals with about 800 cases per annum.

Legislation, Prosecution Policy and Policy Directives

Adv Bradley Smith, the Deputy Director of Public Prosecutions who heads this component, is responsible for overseeing the drafting of proposals on changes to legislation on behalf of the National Director, together with comprehensive motivation, and promotes this through the relevant channels to the Minister of Justice. His component also reviews draft legislation and submits comments on Bills tabled in Parliament, and may also present them to the Parliamentary Portfolio Committees on behalf of the NPA.

Adv Smith is also responsible for the prosecution policy and policy directives, as well as legal opinions and advice. The

conclusion of protocols between the various Government departments also forms part of his deliverables.

Adv Smith says his component is currently involved in the review of the Criminal Justice System (CJS). “The aim of this review is to establish a new, modernised, efficient and transformed CJS”, says Adv Smith. He says through this component, the NPA will continue to participate in the development and adoption of protocols aimed at improving service delivery and projects aimed at addressing the challenges faced by the CJS.

All of the above functions can only be carried out efficiently if the Division has sufficient human resources, matched by appropriate skills. “Empowerment of staff is very important”, says Adv Gerhard Nel, the former Co-ordinator of this Division, “and this will require us to focus on deepening the skills of our staff members, as well as providing them with relevant training and mentoring as part of their growth and development”. Adv Nel says this will ensure that the Division renders services of very high standards.

Adv Mokhatla agrees. “We have a very important mandate within the NPA and we take it very seriously. I am proud to be surrounded by such a formidable team. In the coming financial year we’ll focus on improving efficiency in everything we do”.

She says her Division has recently returned from a strategic planning session, where these issues were thoroughly discussed. “These will be reflected in our plan, and we look forward to a very productive and successful year”, she says.

With effect from 1 April 2011, Adv Gerhard Nel, the former Co-ordinator of the Division, will concentrate on legislative proposals which have a bearing on the work of the NPA, in particular amendments to the NPA Act providing for its own accounting officer and giving effect to the recommendations of the Organisation for Economic Co-operation and Development (OECD) Working Group on Bribery in International Business Transactions emanating from the Working Group’s evaluation Report of the South African legislation.

COMMISSION ON THE STATUS OF WOMEN

By Nomilo Mpondo

Every year, representatives of Member States gather at United Nations Headquarters in New York to evaluate progress on gender equality. This is an annual event known as the Commission on the Status of Women (CSW). Two NPA representatives from the Sexual Offences and Community Affairs Unit (SOCA) were part of the delegation that represented South Africa in the CSW. Khasho caught up with Phumeza Mafani: National Coordinator Thuthuzela Care Centres, to get insight on the CSW.



Phumeza Mafani: National Coordinator TCC's

1. Last month you went to New York to attend the 55th Commission on the Status of Women (CSW). Tell us about the CSW and your participation.

As the functional commission of the United Nation's Economic and Social Council (ECOSOC), dedicated solely to issues of gender equality and advancement of women, the CSW provides a platform for member states to showcase their successes, identify challenges, evaluate their progress, set global standards and formulate concrete policies for the advancement of women worldwide. Our involvement as various government departments that constitute the delegation is to provide information and technical support to the head of the delegation, attend various parallel sessions and give feed back, in particular with regards to the implications that the discussions may have on South Africa. In this years' session in particular, the SOCA Unit was among other things, responsible for the administration of the SA delegation feedback meetings, which took place everyday at 18h30. In line with the sessions' review theme, we also provided technical input in the management of sexual and gender based violence and used the platform to showcase the Thuthuzela Care Centre model as SA's flagship model.

2. What is the theme for this year's CSW?

This year's Priority theme is: "Access and Participation of women and girls in education, training, science and technology, including for the promotion of women's equal access to full employment and decent work", while the Review theme is: "The elimination of all forms of discrimination and violence against the girl child".

3. What are the common challenges faced by UN Member States in the advancement of women?

The world is a global village and member states are bound to experience similar challenges, the only difference would be the extent and strain of the effects thereof. Across the board, member states are struggling to sustain gender equity and equality, especially in decision making positions such as political leadership. Secondly, we are all experiencing some degree of legal, economic, social and cultural barriers that prevent women and girls from having equal access to education and training, health and employment. Lack of security, armed conflict, sexual and physical abuse, feminisation of poverty, bullying and sexual harassment are examples of the obstacles that hinder the advancement of women and girls.

4. What successes did South Africa showcase?

South Africa enjoyed a lot of praise for the progress made in the equitable representation of women in decision making positions. We have 45% women in Parliament, 43% in Cabinet and 43% in local government. With the assistance of the South African mission, we also hosted a successful reception that showcased the Techno Girls Program (TGP) and the Thuthuzela Care Centre model. Through the TGP, girls are exposed to the world of work and offered bursaries in science and technology sectors and as a result, there's been an increase in the number of girls who graduate in these fields. The TCC's on the other hand have turned 34 505 victims of sexual violence into survivors between 2007 and June 2010, as a result of the integrated service delivery approach that is victim centred and court directed.

5. March is Human Rights month in South Africa. Which women's rights issues require immediate attention?

First, a paradigm shift is needed that places women's rights issues within the human rights agenda. This should be evident in the strategies and resources we put in place in preventing, responding to the abuse of women and girls and in supporting the victims. In the Criminal Justice system in particular, I would advocate for an allocation of resources that is proportionate to the volume of the case roll. If 60% of the court roll is sexual violence, then 60% of the court resources should be assigned to manage sexual offences cases. Supply must meet demand so that justice is not delayed, back logs cleared, secondary victimisation reduced and thus victims' dignity restored. Also, a national Sexual Gender Based Violence (SGBV) prevention strategy that involves all sectors is required to rid our society of the sexual and gender based violence cancer. The strategy should, for instance, address gender sensitive portrayal of women and reporting of SGBV cases by the media, harmful traditional practices, such as ukuthwala, how we make trafficking of people a less attractive crime for perpetrators, how we take the "business" benefits away, how we may effectively change behaviour and of course resourcing of such initiatives is imperative for sustainability.

6. What best practices did you learn from this global annual event?

A lot! For an example, in order to help women in their entrepreneurial initiatives, China has implemented a preferential national policy to provide small loans to women with no interests and over 400 000 women have benefited.

Ghana has a Girls' Education Unit (GEU) and Science Education Unit (SEU) that were established to improve girls' access and performance in education in general and in science and mathematics in particular. These units run science, mathematics and technology education clinics, targeting girls from junior high schools in the 10 districts of Ghana. Brazil, holds an annual national conference of policies for women, where progress in addressing gender inequalities and advancement of women is evaluated and new priorities are defined.

All these impressed me and the establishment of the UN women's virtual knowledge centre will enable information sharing among member states to end Violence Against Women and Girls as it acts as a tool that provides essential information and guidance on program planning, implementation and Monitoring and Evaluation (M&E). It

draws knowledge experts and showcases existing programs that work and case studies.

7. What are the new trends and approaches to issues affecting equality between women and men?

On the 1st of March 2011, the commission hosted an interactive expert panel discussion on this issue. The main theme, under which the new trends and approaches were discussed, is "Gender equality and sustainable development". The new trends and approaches were therefore focused on renewed commitments and strategic partnerships on gender responsive sustainable development processes and institutional frameworks, and a governance structure that promotes the voice, participation and decision making by women at all levels.

The new trends were identified as follows:

- Women in decision making and as agents of change
- Women's contribution to innovation, science and technology for sustainable development
- Women's participation in a green economy in the context of sustainable development and poverty eradication.

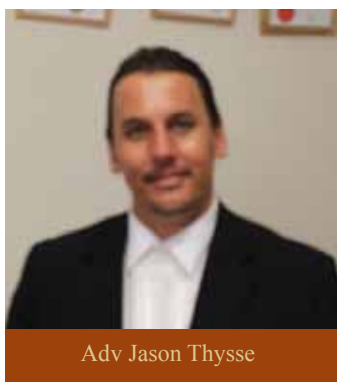
The argument is that, should national institutional frameworks and governance structures be designed in such a way that promotes women to participate in the three identified trends/approaches, economic development would be truly sustained. It is for this reason the priority theme for the 56th commission in 2012 is: "The empowerment of rural women and their role in poverty and hunger eradication, development and current challenges", while the review theme will be, "Financing gender equality and the empowerment of women".

LIFE TERMS FOR TWO GANG RAPISTS

By Tsepo Ndwala

09 March 2011 is a date to be remembered by the small community of Booyens Park in the Northern areas of Port Elizabeth. On this day, two notorious gang rapists were each sentenced to a life term and 20 years for kidnap, robbery with aggravating circumstances and rape. Both the victims and the accused came from the same community of Booyens Park.

It is alleged that during the early hours of Sunday 5 April 2009, a lady and her boyfriend Freddie Spogter drove to Booyens Park Community Centre. Whilst sitting at the back of the bakkie, accused number one Adrian Mark Saulse, 20 years old, and his accomplice, 22 year old Chainey Nelson, allegedly approached the couple in the bakkie. One of the accused pointed a firearm at them and took Freddie's gold rings. Freddie was pulled out of the vehicle and managed to run away. One of the accused got into the back of the bakkie with the lady whilst the other drove away to a bushy area where they repeatedly raped her. They also took her cellphone and a gold chain.



Adv Jason Thyse

Accused number one was arrested on 2 June 2009 whilst the other was arrested on 6 July 2009. The charge sheet revealed that at all times the accused acted in concert with common purpose to kidnap, rape, sexually assault and to rob Freddie Spogter. It transpired during the court case that the accused both faced separate charges of murder, kidnapping and gang-rape stemming from a similar attack on another canoodling couple. Saulse also faced charges of armed robbery in connection with an incident in which the Addo Summerville Supply Store was robbed of R300 000.

Handing down the sentence, Judge Irma Schoeman went to great lengths explaining why she was convinced Adrian Saulse and Chainey Nelson

were not victims of mistaken identity as they have maintained. After the sentencing, Khasho caught up with one jubilant member of the public outside the court who said, "it is times like these that we experience the work of the criminal justice system. The victims and their families as well as the community will rest assured knowing that these thugs are in jail for life".

COMMENTARY BY ADV JASON THYSSE

The challenge that we faced was that there was no DNA evidence linking the accused to the crime. Our case was based solely on the viva voce evidence of the victims as well as two identification parades that were done. No – trial- within a trial in respect of the identity parades had to be entered into as both accused claimed that the victims were mistaken as to their identity. Under cross-examination both the accused could not explain how the victims were able to identify them if they never saw or met them before. The accused did not place the prosecution's case (evidence) in dispute which meant that what happened to the victims actually did happen.

"Securing a conviction gave me great pleasure. In my own small way I take aim in contributing to the restoration of confidence in the criminal justice system and to enhancing the image of the NPA."

Tsepo Ndwala is the Regional Communication Manager for DPP Port Elizabeth

BRANDVLEI FARM KILLER SENTENCED TO LIFE IMPRISONMENT

By Phaladi Shuping

A 23 year old man from Brandvlei was sentenced to life imprisonment in the Northern Cape High Court for the gruesome murder of an elderly woman. The crime was committed in a farm more than three years ago. Acting Judge MV Phatsoane sentenced Gladwell Given Beukes to life imprisonment for murder, 25 years for robbery and two counts of robbery with aggravating circumstances, 15 years for illegal possession of a firearm, 15 years for illegal possession of ammunition, 10 years for attempted murder, 10 years for two counts of kidnapping, five years for theft and three years for assault with intent to do grievous bodily harm. Judge Phatsoane ordered that the sentences have to run concurrently.

It was stated during the court proceedings that on 17 March 2007, Beukes and the other two robbers went into the farm owned by Willow van Black Cilliers (62), and Asperine van Black (61), with the intention to rob them. They found the domestic worker, Sarah Smit, in the house. The domestic worker was busy cleaning the house when she was overpowered by the three robbers who stole jewellery and firearms.

The couple arrived from town to find the robbers in their house. One of the robbers shot Asperine in the head at close range. Cilliers was assaulted and tied up. He was thrown in the boot of a Toyota Corolla. The domestic worker was also forced into the car. Piet Smit lost control of the car and it overturned. The robber went back to the farm to take the bakkie. Cilliers and the domestic worker were kidnapped by the robbers when they fled with his bakkie. The bakkie also overturned close to the spot where the first accident took place. Cilliers was lying in the back of the bakkie and was killed when it overturned. In this second accident the other two robbers were critically injured. One robber died a few days later and the second one died a month later as result of injuries sustained in the accident. Phatsoane said that due to the isolated



Advocate Catharina Jansen

nature of the location of the farm, the two deceased and the domestic worker became easy targets. "The tragic events of the day of the farm attack troubled the minds of the families and the community. The accused entered the residence of the deceased and was on a mission and sober minded. He showed no contrition. The killing was gruesome by any stretch of imagination," she said.

COMMENTARY BY ADVOCATE CATHARINA JANSEN

There were some challenges that we experienced during this case. To start with, the remoteness of the area where the incident took place was problematic for us. The investigating officer had to travel hours before getting to the scene of the crime. The witnesses and the court personnel also had to travel vast distances to attend the court proceedings.

Two of the robbers died of injuries sustained in the accident by the getaway vehicle. This made it much easier for the remaining accused to place all the

blame on them. We then had to prove to the court that the remaining accused also participated willingly in these criminal activities.

Some community members suspected that the domestic worker might have corroborated with the accused but the court found no evidence to that effect.

The highlight of the case was the positive attitude of most members of the Brandvlei community. Their assistance to the police during the investigation was phenomenal. The commitment and the quick response of the police must also be commended.

From this case I have learnt that good communication between the prosecutor, the police and witnesses is very important. Witnesses must never feel that their time is being wasted when they have to go to court. Finally, I have also learnt that prosecution is not only about ensuring that the perpetrators are locked behind bars for a long time - it is also about ensuring that the families of the victims get satisfaction from the work that you have done.

Phaladi Shuping is the Regional Communication Manager for DPP Northern Cape.

JUSTICE OFFICIAL SENT TO JAIL FOR 10 YEARS

By Frank Lesenyego

On 11 March 2011, the North West High Court Judge President Monica Leeuw sentenced Andries Joe Masoanganye to 10 years imprisonment for defrauding the state of more than R1.7 million.

Mr Masoanganye, who was employed by the Department of Justice and Constitutional Development (DoJ&CD) as the Master of the High Court in Mafikeng appeared in the North West High Court alongside five other people. Four of these people were also employed by the DoJ&CD in the North West Province, and one person, Mr Abdul Kader Ahmed was a practicing Attorney.

The other DoJ&CD officials were Tlaleng Alina Mhlekwana, employed as Assistant Master and Grace Keatlatse Mooketsi, employed as Chief Controller in the Master of the High Court. The fifth accused person, Theophilus Mogapi, was acquitted because the court could not prove his guilt beyond reasonable doubt.

All the accused were arraigned in the Mafikeng High Court and they all pleaded not guilty during their first appearance in November 2005. The verdict was handed down during July 2010. The duration of time between the date of the accused pleading and the date of the verdict is owed to a number of reasons, inter alia, the availability of the defence counsel; the number of applications made on behalf of the accused as well as the availability of state witnesses.

The four convicted accused persons unlawfully and intentionally stole the abovementioned monies that were held on behalf of rightful beneficiaries and or creditors of unclaimed dividends in the guardians fund account under the control of Master of the High Court. The modus operandi was to use beneficiaries of the guardian fund to process inflated claims for their own greed.

Handing over the judgement, Judge President of the North West High Court put the blame entirely on Andries Joe Masoanganye labelling him as the “chief

master”. She said his signature made it possible for the success of payments and defrauding of the guardian fund. She further said the Master of the High Court was entrusted with the mandate to safeguard monies of rightful beneficiaries and Andries Joe Masoanganye abused that power.

She sentenced Masoangane to an effective 10 years imprisonment. Ahmed was sentenced to eight years imprisonment; Mhlekwana received four years and Mooketsi was fined R3 000 or three years imprisonment wholly suspended for three years. All of them were granted leave to appeal.



Advocate MacDonald Ndimande

COMMENTARY BY THE PROSECUTOR - ADV MACDONALD NDIMANDE, SENIOR STATE ADVOCATE

I feel relieved and happy because this case has been dragging for sometime, and every time it was on the roll I had to prepare.

It was difficult sometimes, especially during preparations. Sometimes I was not sure whether the case would proceed or the defence would ask for a postponement for one reason or the other. I can recall an instance where I met up with Adv Patamedi Mogale and worked over the weekend until late on Sunday. The following day I was ready to proceed only to have the second accused, Mr AK Ahmed requesting a postponement.

We also had to deal with a particular state witness who refused to testify and she had to be compelled under the threat of utilising the provision of section 189 of the CPA 51 of 1977, i.e. the powers that the court has when dealing with a

recalcitrant witness including to sentence such a witness to imprisonment to a certain period. In fact, two separate warrants of arrest were issued against this particular witness. The defence counsels were at times impossible to a point of being rude, up until we decided to communicate only in court when a judge was available.

With this case I learnt that even though we are expected to carry out our duties without fear, favour or prejudice, we should always try to give our witnesses support and the desired assistance to get them relaxed as they sometimes get to be difficult.

It is also disappointing that three of the accused are our colleagues in the JCPS cluster – who should be an example to others by striving to abide by the rules of this country. The message we want to send to all South Africans is: it doesn't matter who you are, as long as you commit crime, the law enforcement agencies will deal with you. You will be prosecuted and if found guilty, sent to jail.

Frank Lesenyego is the Regional Communication Manager for DPP North West

PROSECUTORS GEARING UP TO DEAL WITH ENVIRONMENTAL CRIMES

By Tebogo Seate

Environmental crimes are emerging as a serious problem all over the world, including South Africa and in most cases prosecutors are not sufficiently skilled and knowledgeable enough to deal with them successfully. However, this state of affairs is going to change very soon as the NPA is putting on the full armour to launch war against this form of crime by ensuring that prosecutors are thoroughly trained and equipped with the right knowledge and skills on environmental issues.

The NPA has therefore partnered with the Department of Environmental Affairs (DEA) to develop relevant training interventions on environmental crimes. Other stakeholders involved are the Department of Minerals and Energy (DME), the South African Police Service (SAPS) and experts in this field.

A number of prosecutors have already attended an advanced course in environmental crimes, which was co-ordinated by the DEA. Khasho spoke to Mark Jardine, the Director of Compliance and Enforcement Support Services within the Environmental Quality and Protection Branch at the DEA about the value of this training in broadening prosecutors' understanding of environmental crimes and how it is expected to capacitate them.

What triggered the need for this training?

The DEA has been collaborating with the Department of Justice and Constitutional Development's Justice College since 2005 in raising awareness amongst magistrates and prosecutors about the nature, scope and impact of environmental crimes. In late 2010, the DEA was notified that the NPA's Human Resources Development section was planning its own environmental law course, and contacted the relevant Skills Development Facilitator to enquire whether any assistance was required in the planning, delivery and evaluation of the course. Due to the positive response, the two institutions collaborated to present a week-long training in advanced environmental prosecutions course at St Lucia, in Kwa-Zulu Natal, from 14-18 February 2011.

What does the training entail?

DEA's current awareness-raising programme with magistrates and prosecutors entails the presentation of 6 to 8 week-long workshops per year, at which they are exposed to the complex and unique aspects of environmental crime. The programme not only deals with the legislative framework of environmental law in South Africa, but also tackles the practical enforcement

challenges currently experienced by environmental enforcement officials on the ground. Presenters are sourced from a wide range of stakeholders, including national, provincial and local environmental authorities, academics, prosecutors, the SAPS, as well as other government departments, such as the Department of Forestry and Fisheries. To date, the programme has reached approximately 300 magistrates and 500 prosecutors across the country. In addition, the Department has developed a Prosecutors' Manual and a Magistrates' Benchbook to serve as information resources to accompany the training and awareness-raising sessions.

What are you hoping to achieve from conducting such training?

The St Lucia course followed on a similar pilot "advanced" course that took place in the Western Cape in February 2010. The programme for these advanced courses was adapted from the normal basic content to cater for the needs of prosecutors who deal with environmental cases on a regular basis. Through these interventions the Department seeks to build on the solid foundation that has been laid over the past five years by focusing on the skilling of prosecutors who regularly prosecute environmental crimes, while maintaining the broad-based awareness raising efforts through the Justice College partnership.



Some of the prosecutors who have already attended the advanced course in environmental crimes.

Continued from page 14

How prevalent are environmental crimes in SA and how are they being dealt with?

The Department is only in its third year of attempting to gather national statistics on the prevalence of environmental crimes in the country. The number of reported incidents rose from 4661 in 2008/9 to 5739 in 2009/10. Of the 5739 reported cases of suspected non-compliance in the previous financial year, there were 2877 criminal dockets registered and/or J534 admission of guilt fines issued. The Department is working together with the NPA to try and improve the accuracy and verifiability of these statistics. It is also important to note that environmental contraventions are also tackled through other methods, such as the application of administrative and civil mechanisms.

Do you have any other comment regarding the training or environmental crimes in general?

After attending these sessions, most prosecutors remark that they had never thought very deeply about the nature and impact of environmental crimes – but the course had helped them to now consider crimes against the environment to be as important as other types of crimes. It is this type of awareness that the Department strives to achieve - an objective that would not have been possible without the collaborative efforts of Justice College and the NPA.

Khasho also spoke to two of our colleagues who attended the course, and this is the feedback they have for us:

Advocate Nicole Peters, State Advocate from the Specialised Prosecutions Division, DPP South Gauteng: "I have gained extensive information and can now prosecute with more confidence because of the knowledge gained. Furthermore, I am now able to argue convincingly about these offences. The increase in environmental crimes is alarming and has become syndicated. Horns are currently valued higher than gold and the insight gained at the course has been invaluable as to how we will proceed with prosecutions in environmental cases".

Advocate Marthinus Le Roux, from DPP Grahamstown: "The course went a long way in assisting me to understand environmental crimes. It is about time we expand the 'Green Scorpions' and get the environmental courts up and running. We are looking after our earth for our children".

PROSECUTOR IS BACK HOME AFTER A SUCCESSFUL YEAR OF STUDY

By Frank Lesenyego

One of our world-aspiring prosecutors who obtained a scholarship to study at the University of Zurich, Switzerland, is back home after 12 months of intensive study.

Baitse Lekoma, our proudly South African prosecutor who hails from Mafikeng, in a village called Tlhabologo in the North West Province, is a very down-to-earth woman, who is very passionate and energetic about what life has to offer. She holds an LLB from the North West University.

Baitse, who works as an Advance District Court Prosecutor in the Lichtenburg Magistrate Court was offered a scholarship to study at the University of Zurich in September 2009. She says the scholarship provided her with the biggest life time opportunity to broaden her horizon in the field of law. She successfully completed a Masters degree in Advanced Studies in International Organisations, specialising in International Human Rights Law.

After settling in for a few days after being away from home for a year, she was happy to speak to Khasho about her experience in Zurich.

This is what she had to say:

How was your study at the University of Zurich?

Wow! What a wonderful experience! I really learned a lot especially about International Human Rights Law, International Labour Law, International Criminal Law, Sports Law and Economics.

When you were not busy with your studies, what did you do during your spare time?

Apart from my busy schedule, I enjoyed my trip to Paris. The Eiffel Tower was breathtaking. Paris is a beautiful city of love. I also enjoyed mountain climbing at the Swiss Alps with my friends and watching the FIFA Soccer World Cup in Zurich last year was unbelievable. The Swiss people went crazy after their team defeated Spain with a solitary goal. It was chaos, ecstasy and drama as they celebrated what many Swiss newspapers called "the famous win".

How did your studies benefit you?

I gained in-depth knowledge of International Criminal Law and Procedures followed by the International



Criminal Court for the Successful Prosecutions of International Crimes. I also learnt a lot about different cultures as I interacted with classmates from various parts of the world. I also learnt a lot about the justice systems of different countries from my colleagues.

Are you still going to be stationed at the Lichtenburg Magistrate's Court and how does it feel to be back in South Africa?

Yes I will be going back to Lichtenburg and I am happy to be back. I would also like to thank my leader Ms Rachel Nengovhela who played a vital role in my departure to Zurich. Finally, I must say I am very proud of South Africa for having successfully hosted the 2010 FIFA Soccer World Cup. It's an achievement which the Swiss people are also talking about. Let us keep up the good work!

Frank Lesenyego is Regional Communication Manager for DPP North West

SENT TO JAIL FOR ELECTRICITY THEFT

By Charlene Labuschagne



Adv. JG Wassermann and Adv. J. Serepo

Andile Mnjati and Martin Ndebele were convicted of racketeering and theft of electricity worth R8.9 million in the South Gauteng High Court during March 2011. The indictment consisted of two counts of racketeering and 78 285 of theft. They were sentenced to 66 and 48 years imprisonment respectively, serving an effective term of 18 and 15 years each. This conviction is the first of its kind in the South Gauteng High Court on counts of racketeering where evidence was led. Traditionally, courts viewed electricity as an incorporeal item which could not be stolen, making this conviction regarding the theft of electricity therefore the first nationwide.

The court found that Mngadi and Ndebele belonged to a syndicate that stole credit dispensing units from Eskom or lawful vendors. These credit dispensing units are used to sell pre-paid electricity by vendors on behalf of Eskom. Once these credit dispensing units were stolen they were used to generate electricity vouchers

that were sold to consumers, who uploaded the electricity onto the meters in their homes. None of the income generated by Mngadi and Ndebele was ever paid to Eskom.

The Gauteng Asset Forfeiture Unit proceeded to seize the property of the accused by attaching their valuables. This was a joint operation between Eskom and the Organized Crime Units of the South African Police Service and the Director of Public Prosecutions, South Gauteng. The preparation and investigations took more than two and a half years to complete.

The matter was presented in court by Adv JG Wassermann, assisted by Adv J Serepo, both attached to the Organized Crime Unit of the Office of the Director of Public Prosecutions, South Gauteng, Johannesburg.

COMMENTARY BY THE PROSECUTORS:

We had to prove the theft of electricity. In terms of the Electricity Regulation Act, No 4 of 2006, no person may be involved in the trading of electricity. No offence and no penalty clauses are contained in the Act. The accused could therefore not be charged for any contravention of this Act.

In terms of the Roman-Dutch law only corporeal items are capable of being stolen. Our courts have expanded the concept of theft, in respect of money other than the physical notes and coins. Case law indicated that theft of incorporeal matters are competent in

law, if a diminution of a credit balance in a bank account or the appropriation of cheques take place.

All of the cases the accused were charged with had been withdrawn at an earlier stage due to the fact that it was perceived that electricity could not be stolen. We had to persuade the court to convict the accused of the theft of electricity by leading evidence and arguing the following:

An expert witness testified that electricity is made up of electrons. Although one cannot see the electrons, it does not follow that it does not exist or cannot be stolen. This witness explained to the court how electricity is formed, that it can be measured, quantified, that one can hear, smell and even touch electricity and that you may be killed by electricity. The State asked the court to develop the common law so that the theft of electricity could be included. The State also asked the court to apply the same principles that were applied in theft cases of other incorporeal items in this case.

Although the State could not prove that the electricity vouchers were printed by the various CDU machines, it could prove that the electricity credits were uploaded to the consumers' electricity meters. To deal with this problem, the electricity meters of the accused were read and it was ascertained that seven vouchers printed on the stolen CDU machines were uploaded to the electricity meters of the various accused. The court was asked to make the inference that if these 7 vouchers were uploaded, the rest of the 70 000 odd vouchers were uploaded to the person who bought the vouchers' electricity meters. The court was referred to the provisions of Prevention of the Organised Crime Act (POCA) and thereafter found that all the printed vouchers were indeed uploaded. The court used the provisions of POCA (similar fact evidence) to come to this conclusion.

Charlene Labuschagne is the Regional Communication Manager for DPP South Gauteng

DPP WESTERN CAPE SPECIALIST TAX UNIT MAKING A DENT IN ILLICIT CIGARETTE SMUGGLING

By Eric Ntabazalila

The Western Cape Specialist Tax Unit is making a dent in illicit cigarette smuggling in the Province. Over the past three years the Unit has achieved 40 convictions in illicit cigarette matters with fines imposed on the three largest cases totalling R2.1 million.

Recently after a lengthy trial, the unit secured the conviction and sentencing of Pedro Paul dos Santos, found in possession of the highest amount of illicit cigarettes ever found in possession of a single person in South Africa. Mr Dos Santos was also found guilty of being in possession of large amounts of illicit liquor. He was given a fine of R1.4 million or four years imprisonment, of which half was suspended, for the illicit cigarettes. In addition, the sentence also included 36 months correctional supervision in terms of Sec 276(1)(h). It included house arrest for the full duration of the correctional supervision as well as community service of 480 hours. For the illicit liquor, Mr Dos Santos was given a fine of R100 000 or two years imprisonment suspended for five years.

The unit struck another blow last month when two men, Szubera Sattar Kazi and Mohamed Soyeb Kazi, were also found guilty of the contravention of Section 80 (1)(a) of the Customs and Excise Act, Act 91 of 1964.

The accused had been kept under surveillance when the truck which transported the goods from Johannesburg arrived at RSA Storage in Somerset West, Cape Town on 12 August 2010.

Police arrested the two men with three others while they were busy offloading the truck. Szubera Sattar Kazi and Mohamed Soyeb Kazi admitted their guilt and claimed the other three men were asked to assist but were not aware that they were handling illicit cigarettes. The accused were found in possession of 110 000 packets of Pacific Blue cigarettes, 29 000 packets of Seville cigarettes and 23 500 packets of Mega Blue cigarettes.

The state accepted a lesser sentence in this matter due to the fact that the

accused were only 'runners' and were only delivering the cigarettes. They would not have made a large profit but would only receive a salary for the work they were doing. Each of the accused was therefore fined R530 000 or two years imprisonment plus a further three years imprisonment, all of which was suspended on conditions that they must each pay the amount of R350 000 into the Criminal Assets Recovery Account, and that they must also serve 36 months correctional supervision which includes house arrest for the whole period.

It has become standard practice in the Western Cape to couple any sentence to a period of correctional supervision should the value of the cigarettes be found to be excessive. This is to ensure that the traders and transporters of illicit cigarettes do not simply trade away any fine that they might receive. Furthermore, all the sentences contain a period of imprisonment suspended on the provision that the accused is not convicted again.



Adv Jaco Hough

COMMENTARY BY ADV JACO HOUGH

The public sometimes think it is OK to cheat the taxman. Sometimes they believe there is no victim if they cheat with their taxes. This is not true. The truth is that tax offences are not victimless or faceless crimes. The face of tax offences is to be seen in the budgetary shortfalls in hospitals and clinics which prevent these institutions from providing better health care services to communities; the lack of more teachers to enable smaller classes at school; the lack of more policemen in our communities to fight crime; the potholes

in the streets; the lack of sufficient money to build more houses for the homeless or to provide running water to all of our citizens.

If everyone pays their taxes that are due, entire communities benefit. Government will be able to provide for lower personal taxes, higher pensions for the elderly and better services.

Some criminals think that white collar tax related crimes are not so serious. However, our message today is: "Beware, you'll be caught. We have a highly effective NPA-SARS team that will catch you, and when they do, you will pay dearly for your crimes. They are not a team of debt collectors – if they catch you, you will go to prison."

If you know someone who is committing tax offences, please inform us. You can do so anonymously if you wish. These criminals are indirectly stealing from you as a taxpayer and a law-abiding citizen of this country. If we all pay our taxes the burden is spread evenly and fairly.

Finally, if your tax affairs are not in order – go to SARS before someone knocks on your door!

Eric Ntabazalila is the Regional Communication Manager for DPP Western Cape

NPA EVENTS

Where was the NPA in March?

We at the NPA spend a considerable amount of time interacting with our various stakeholders, particularly the communities, to educate them about our role as well as how the criminal justice system works. In March, the NPA entourage put on the full armour of information and landed at the following places:

University of Limpopo – Faculty of Law Open day

On 17 March 2010 the NPA team was at the University of Limpopo's Faculty of Law Open Day, aimed at imparting legal knowledge to the University's "aspirant lawyers" who are currently studying law at the institution. The event was organised by the Black Lawyers student chapter of the University. The NPA was represented by Adv Solly Ngobeni, Acting Chief Prosecutor for Polokwane who took time to explain to the students the constitutional mandate of the NPA and also spoke at length about the NPA's Aspirant Prosecutor Programme, which provides law graduates with in-service training to gain practical prosecutorial experience. Adv Ngobeni encouraged the students to respect the rule of law throughout their studies because it will later affect their applications to be admitted into the programme. The Director of the School of Law, Prof. Letsoalo encouraged the students to use the day as productively as possible by networking with potential mentors and employers in a professional manner and to learn as much as possible from their experiences.



Adv Solly Ngobeni delivering words of encouragement to the law students



Ms Zimkhitha Bula from Dora Nginza TCC doing her Presentation

The NPA in Port Elizabeth

On 10 March 2011, the NPA and other government departments in the Justice, Crime, Prevention and Security (JCPS) cluster in the Port Elizabeth area converged at the Lillian Ngoyi Community Hall in Seyisi in an attempt to raise awareness about providing access to government services to communities. We had exhibition stalls and distributed NPA information material that will educate community members about the work of the NPA. Much to the delight of the community, a detailed presentation about Thuthuzela Care Centres (TCC's) was also made. Ms Zimkhitha Bula was on hand to help with all the queries relating to the processes that are followed when referred to the TCC. A question and answer session was also created where a panel from these various departments facilitated answers. The NPA is delighted to be involved in these community outreach programmes that are intended to increase communication flow between government and the citizens of South Africa.

University of Pretoria – doing it the Tuks way

The NPA was once again requested to exhibit at the University of Pretoria's Law Career Day which took place on 12 March 2011. This year was different and exciting, because the NPA was represented by a very senior person, Advocate Daphney Rangaka, the Chief Prosecutor who is responsible for training and development of prosecutors. More than 300 students attended the event, all wanting to know about the Aspirant Prosecutor Programme, and all wanting special attention. The day was so busy and exhausting. Adv. Rangaka was so overwhelmed by the enthusiasm and the interest shown by the students in the work of the NPA and the Aspirant Prosecutor Programme. At the end of the day, this is what she said: "I can't believe that this is what people who manage exhibition stands have to go through. My jaws are so tired from talking!"



Enthusiastic students listening attentively to the NPA presentation

Lusikisiki roadshow – a promise to end “ukuthwala”

On 19 March 2011, the NPA, together with other stakeholders, held a service delivery fair at KwaCele village, which is about 100km from Lusikisiki in the Eastern Cape. This village is the epicentre of an illegal practice called “ukuthwala” - where young girls, some as young as 14 years, are abducted and forcefully married to older men.

There has been a huge outcry about the practice of “ukuthwala” from different quarters of society, including the highest office in the land, but community members of KwaCele, through different platforms including national television, have been adamant that “ukuthwala” was their custom and that they would continue practicing it. However, after being addressed by the Acting Director of Public Prosecutions in Mthatha, Advocate Silumko Ngqwala and Advocate Maggie Tserere, Deputy Director from the SOCA Unit, the community changed its tune. In his address Adv. Ngqwala gave an extensive explanation in isiXhosa about what makes “ukuthwala” illegal and the prescribed sentences that may be given to those found guilty of it.

After listening attentively to his address, the community of KwaCele village, through their local ward counsellor Fikile Magaya, said, “We are glad that the NPA has decided to come and enlighten us, and now we know that what we have been doing is wrong and illegal....and we promise to bring an end to it”.

The NPA is delighted that its educational campaigns are not falling on deaf ears – and the change of attitude by the community of KwaCele near Lusikisiki towards this illegal practice is a witness to that!

Contributions by Mona Moerane, Regional Communication Manager for DPP North Gauteng; Sibongile Mogale, Assistant Director, Communication; Tsepo Ndwalaza, Regional Communication Manager for DPP Port Elizabeth and Luxolo Tyali, Regional Communication Manager for DPP Mthatha.



CONGRATULATING RAJEN PILLAY – IN RECOGNITION OF A JOB WELL DONE

By Eric Ntabazalila

Our Prosecutors continue to go beyond the call of duty in ensuring that victims of crime and their families get the justice they deserve.

Such a commitment was displayed by Mr Rajen Pillay, an Advance Regional Court Prosecutor from Wynberg, Cape Town, who secured a conviction and a life imprisonment against a man who robbed and killed a father for a cellphone.

The accused, Xolisa Peter, was charged with murder and robbery with aggravating circumstances. He was sentenced to life imprisonment for the murder and 15 years for the robbery with aggravating circumstances. Throughout the case Mr Pillay kept the family of the deceased informed on how he was pursuing the case against the accused.

The family was very grateful for the work done by Mr Pillay, and wrote him the following letter of appreciation. The Khasho team decided to share this letter with all our readers to show that the work done by our prosecutors is not done in vain – there are numerous people out there who are sincerely touched by the work that the NPA does.



Rajen Pillay

Letter from the family of the deceased:

On behalf of the family I wanted to write to thank you for your hard work in, and dedication to, the prosecution of my father's murderer. We are very grateful for your thorough work that resulted in the successful conviction and appropriate sentencing of Xolisa Peter.

As you are well aware, it's been a long, emotional and often frustrating process for the family.

I know Carol and I particularly have been very demanding and wanted to keep a close eye on the trial which I'm sure must have been frustrating for you at times. Despite this you continued to show patience, support and respect.

You continually kept the family informed during the trial and educated us on what to expect. We are very appreciative of that.

It has been a very traumatic experience for the family to have to go through the murder of a much loved family member followed by an investigation and trial.

Your consideration, support and commitment over the past months has really helped make the journey more bearable.

We are really very encouraged that prosecutors of your calibre continue to serve the Justice Department despite what must be an often very frustrating and demoralising environment.

Once again thank you for all your efforts and we wish you every success in your future prosecutions and career.

Regards

Sean Cowburn

On behalf of the family

Dated 15 February 2011

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