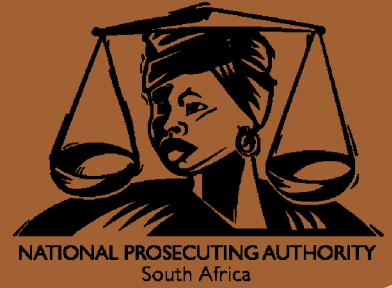


September / October 2013

KHASHO



ENSURING PROSECUTIONS WITHOUT FEAR, FAVOUR OR PREJUDICE



**Uncle sentenced
to 100 years for
raping his niece**

**Know your
NPA strategic
objectives**

**Racketeering
sentencing**

**Profiling
of the NPA
Internal Audit**



Letter from the Managing Editor

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Welcome to this very first edition of our new and improved Khasho. Guided by the resolutions of the Management Summit that was held in April last year, we re-evaluated our Khasho distribution and are proud to announce that we have increased our circulation figures to now also cater for a wider distribution that covers members of the public. This will now be an important public outreach tool that will serve to educate and create awareness about the work of the NPA.

You will notice that we have effected a minor facelift to the newsletter design and layout style to give it a fresh and appealing style in line with global trends. Our tested formula of editorial content however has not changed. Khasho will continue to position itself as your ultimate repository of news and information about the happenings in the NPA and we will continue to profile the sterling and often challenging work of the prosecutors as well as to inform staff about important developments within the organisation.

In this edition we share with you racketeering and money laundering cases. Both these cases highlight the importance of teamwork and co-operation by relevant authorities. Also learn about the functions of Organisational Development in the HRM&D and understand the significance of their work in the organisation.

Watch out for the "Operation Clean Audit" campaign that is meant to keep up with the clean audit momentum. We also bring you an article that focuses on a very important aspect in the leave management policy called



the "8-Week Rule." Leave management is one of the critical areas identified in the audit action plan that requires raising awareness amongst employees so that we can all be vigilant and keep away from any leave management pitfalls. To bolster this campaign we have also profiled the NPA Internal Audit Unit. Take time to familiarise yourself with the important work of this unit and also get to know the people behind this huge governance task.

For the first time, Khasho is featuring an article about the NPA Strategic Objectives. This is an endeavour to bring everyone on board and to inform you about the direction that the organisation is taking to address areas of under-performance.

And finally, we take this opportunity to introduce our new NDPP, Mr Mxolisi Nxasana. I am sure you are dying to know what stern stuff he is made of. Well, Khasho brings you an exclusive interview with him and you will be thrilled to learn more about his life, his beliefs and his values.

As always, we invite you to forward us your suggestions and contributions to the following e-mail address: khasho@npa.gov.za. Your constructive feedback is always appreciated.

Thank you

Meet the new NDPP

Mr Nxasana, there is interest out there to know you - Who is Mxolisi Nxasana?

I was born in Durban, 45 years ago in Umlazi Township and am from a family of six children. My father was a labour activist and my mum rose through the teaching profession ranks and became a school Principal. I am married with seven beautiful children. One of the things that I wish for my children is quality education. With it, I know they will become employable after they graduate. Most of all, I wish them a good life.

Did you also get the quality education that you wish for your children?

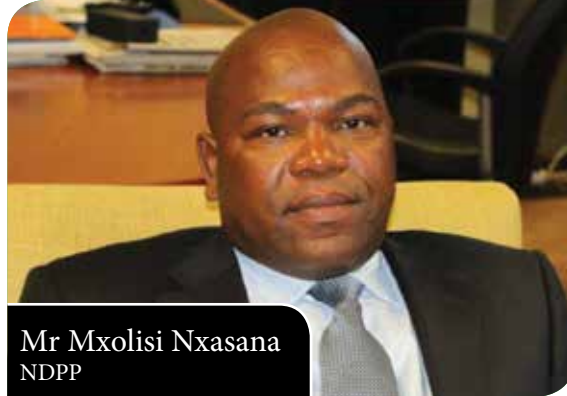
Let me just say, all my formative schooling was done in township schools. I went to Nyanisweni Primary School, proceeded to Mafumbuka Higher Primary, then to Zwelibanzi and Hambangendlela High School where my mother was the School Principal, and passed my matric in 1988. I registered for my B.Proc in 1989 at the University of Zululand and graduated in 1992. I then registered for my LLB in 1993 but most of my classes took place at the evenings rendering me idle during the day. In 1994 I registered for my clerkship with Ngubane and Partners in Durban, which I did concurrently with my LLB. During the day I would take a taxi to the law firm and go to classes in the evenings. I passed my LLB in 1995 and was admitted in 1997.

What was it like to be raised by an activist?

It definitely had its bad days because my father would be detained or banned and we would spend years without him, but my mother came through for us in a big way. She single-handedly raised all six of us. When the going got tough for her during my father's ban or detention, the well-known activists Victoria and Griffiths Mxenge who were my dad's close friends would gather resources to help us out. I remember as a young boy, when Griffiths Mxenge visited my home, he would ask what we all wanted to be when we grow old and I would vehemently say "a lawyer", something he marvelled at. It is so ironic that I find myself leading this very institution whose headquarters are named after them.

What kind of values did your parents instil in you and how did these values carry you through life?

My mother was a staunch Methodist; she therefore instilled Christian values espoused in the Methodist teachings. These values taught me to be the principled man that I am; God fearing; ability to choose the right people to surround myself with; and most of all love for the people. Those are the values that I still hold dearly. The one thing that is not in keeping



Mr Mxolisi Nxasana
NDPP

with my values though, is the fact that I did not meet and greet staff when I arrived here on 01 October, as I was hoping to. This is regrettable and I sincerely tender my apology to the NPA staff. I look forward to meeting the staff soon.

The environment you grew up in presented yourself with role models. Can you mention one?

It would be my mother. She was incredible. She is definitely behind my success. She carried a lot of passion. She went the extra mile to look after and care for others. She changed so many people's lives. She knew education was the only tool to a better life and that is what she aspired for us to have. No adversity would make her change her belief and passion. It is regrettable that she did not live to see her fruits. I know she would have been the happiest person to hear about my appointment as the NDPP. She passed on last year and my dad passed on in 2011.

What is the one thing that you liked about the NPA from the onset and also your general view?

The mood and attitude of the people across all levels is quite overwhelming. I feel part of the NPA and am amazed by my smooth transition - singing the same tune with prosecutors in the fight against crime.

Contrary to the negative perception created by the media, the NPA is blessed with dedicated prosecutors who just want to work and discharge their duties. I can say the same about Corporate Service staff. It is very pleasing to take over a clean audit I could not have asked for more. It is unfortunate that the excellence of the organisation is overshadowed by the negative reporting on a few cases.

Do you have a final message for NPA staff?

What a pleasure to go to Parliament in the second week of my arrival to present a clean audit. I know this is because of the good work from all employees. I notice that they have done well in terms of performance, despite the budget constraints and other impediments. I wish for everybody to continue in the same momentum. I pledge my support to them to do more to achieve our targets.



September/October 2013

NPA News





Letter from Advocate Jiba

I am delighted beyond measure that I have served as the acting National Director of Public Prosecutions in this magnanimous institution. Serving in the highest echelons of justice has always been one of my childhood dreams. Steering this equally huge ship was not an easy task but with all your support and dedication I forged ahead. I must admit that you all have exhibited great loyalty and diligence towards your respective obligations. Truly, the NPA is proud to have such dedicated employees. Thus, I would like to take this opportunity to say that I appreciate each and every single effort and sacrifices made, with all my heart.

Throughout my acting tenure, the focus has been on improving the performance of the organisation. To this effect, several initiatives and interventions have been introduced and implemented. These include:

- SMS Summit that mainly focussed on collective solutions to address bottlenecks within the organisation. This prompted further analysis of workload and staff utilisation within the organisation. Thus, a special project that looks into the resource allocation has been established. Another important resolution was for the organisation to have an initiative to recognise excellent performance beyond the performance development system hence the planned Service Excellence Awards programme.
- Resuscitation of the NPS and SCCU which led to the establishment of the National Operations Management Meeting (NOMM) comprising of the Directors of Public Prosecutions. The NOMM's objective is to interrogate performance of the courts and share best practices. The performance as reflected in the Annual Report 2012/13 indeed improved.
- Resuscitation of the EXCO to drive the SMS Summit agenda. To date, five projects that



seek to monitor and improve performance were developed. In keeping with the spirit of transparency and openness, a decision to share with the entire organisation important decisions and deliberations from EXCO was taken. Sharing is done through a platform called EXCO Bytes. Enlighten yourself about further developments on these projects by following the EXCO Bytes.

- Stakeholder workshop with the SAPS, Legal Aid South Africa and the DoJ&CD to align strategic plans so that we can focus on crime fighting. As a way forward, four focus areas were developed including the general prosecution processes and protocols.
- Participation in the National Efficiency Enhancement Committee led by the Chief Justice. These meetings seek to bring together the leadership of the judiciary and other stakeholders with the aim to enhance court performance and outcomes in the delivery of quality justice to all. I am happy to advise that the NPA has been asked to lead the developments of the performance indicators that will measure performance of all stakeholders to enhance court performance.

I am pleased to share with you that the introduction and implementation of these initiatives yielded some spin-offs that saw improvement on the NPA's performance. The conviction rate rose to 89.9% throughout our courts whilst case backlogs decreased significantly compared to the previous two years. Be that as it may, the NPA's overall performance against the predetermined targets was not satisfactory because of the stretch targets that the NPA set for itself for the 2012/13 year review. This is eloquently detailed in the Annual Report

2012/13 and I call upon all of you to read this publication and enlighten yourselves about your organisation's performance results.

Let me now talk about the subject that always resonates with me – transformation. The NPA can now be proud of the rapid progress it has made in the transformation of the prosecutions service through the National Panel Recruitment Drive, of which I have been a member. This initiative mainly focussed on the senior management levels of the prosecutions service. To date, the National Panel appointed 40 African females and 16 African males within a very short period. I am today, very pleased to have contributed to a democratic transformation initiative, that sought to create more diversity in the prosecutions

service. This is the legacy that I would want history to judge me by, amongst others.

Allow me to welcome the new NDPP, Mr Nxasana with the warmest gesture and may he during his tenure be able to raise the NPA to even greater heights. It is my fervent hope that we will continue to forge stronger bonds of rapport and radiate our spirit of prosecuting without fear, favour or prejudice. I have confidence that you will continue to support him to ensure delivery on the NPA mandate.

Let me also thank the Exco, the DPPs and all staff for the unwavering support you gave me during my acting tenure. I am truly honoured to have served with you by my side.



September/October 2013

NPA Performance





Letter from the CEO

I wish to extend a warm welcome to the NPA's new National Director of Public Prosecutions, Mr Mxolisi Nxasana. His wealth of experience in criminal law and his apparent integrity, will instil confidence in both the public and the NPA staff alike. With him at the helm of prosecutions, stability and certainty in the leadership has been established and presents us with the opportunity take the organisation to new heights on the sound foundation established. Let us join hands in supporting Mr Nxasana in the execution of his onerous task.

"Healthy body, healthy mind" is an old adage that we in the NPA are trying to embrace. We encourage you to actively participate in the support programmes of the NPA aimed at encouraging each of us to make time to look after our bodies. This investment of the NPA demonstrates our appreciation of each of you as a whole person and as our most valued resource. The EWP flagship annual Sports Day event has been combined with the Service Excellence Awards this year. The NPA has not always taken the time to acknowledge the efforts of staff under difficult circumstances and this award programme is meant to acknowledge this shortcoming and address it. It is meant to say "thank you" to those of you that have excelled in your various areas of service delivery. It must be noted, however, that these awards are not meant to replace the performance reward system but should be seen as a ceremonial recognition programme only. They are intended to recognise staff members whose actions demonstrate a commitment to NPA's values and willingness to go above and beyond the call of duty. I hope you did not miss the circular that was circulated recently explaining the difference between these awards and performance system awards. The sporting events will also bring you opportunity to informally meet the new NDPP and other members of Exco.

It is that time of the year again; where staff takes leave to write exams. Good luck to those that will be writing exams! I hope that managers have



Ms Karen van Rensburg
CEO

planned for this season to ensure that service delivery is not impacted on. If you have the NPA bursary please remember to submit your results when they become available.

The 2013/14 auditing has already begun! We continue to rely on your cooperation in supplying information for auditing and to continuing to ensure high levels of compliance and good governance. The NPA is very proud to have achieved a clean audit and seeks to maintain as this impacts on the reputation of the organisation. In sustaining the clean audit, we are embarking on a campaign called, "Operation Clean Audit". Look out for posters, articles in Khasho and bulletins for all the information that you need to help the NPA sustain its clean audit status.

It was a career highlight for all of us to appear before the Justice Portfolio Committee in Parliament on 8 October, presenting a clean audit. It has been a goal of the management of the NPA to achieve this first ever achievement. I will forever be indebted to you for your support and am mindful of the critical role played by each person. There is still a lot of work to be done to maintain last years' achievement and to prevent us falling short in any area. Unfortunately the better we get the more complex the auditing process becomes. For this audit period the emphasis will be on the performance information and this will not only include the correctness and validity of data but also the analysis thereof and the actions taken to address the areas where we have not reached targets.

I encourage all of you to remain resolutely committed to the NPA values and ensuring that the people of South Africa are and feel safe. I also wish to implore each of you to remain loyal to the NPA and use the official avenues to view your concerns and areas of dissatisfaction.

I am delighted to serve in an organisation where everybody lives its vision.

Uncle sentenced to 100 years for raping his niece

Eric Ntabazalila



September/October 2013

NPA Performance

Justice was served when a 46 year old man from Hanover Park was sentenced to 100 years in prison, after he was convicted for the rape of his niece. The Cape Flats man who cannot be named to protect the identity of the victim, will now spend the rest of his life in prison.

The successful prosecution was achieved as a result of a combination of factors which strengthened the state's case. These included the eight witnesses who testified for the State and the sterling work done by the Investigating Officer. The accused was found guilty and was convicted on four counts of rape. The magistrate handed down a sentence of four life terms without the possibility of parole. His name has also been included in the national list of sex offenders.

The accused was the victim's uncle and therefore no stranger to the victim and her family. In 2009, the accused stayed with the victim's family, in their home in Newfields, Hanover Park. At the time the victim's parents were separated and the accused assumed a fatherly figure. Immediately after the incident had occurred, the victim's sister saw her running from a room in the house into the bathroom while pulling her pants up. The victim's sister called her to a neighbouring house and the victim confirmed that her uncle had touched her inappropriately but no penetration had taken place. The victim's father immediately had his brother removed from their home.

Two years later, the accused returned to stay at the family home on the request of his brother, who at the time was terminally ill. The victim, now only 13 years old, was once again subjected to inappropriate behaviour and repeatedly raped by her uncle. However, in her statement she was only able to remember four occasions when rape occurred. The first time that she was raped, she did not scream nor tell anyone about it, as the accused had threatened her with an axe. All of this came to light when the victim's mother noticed that she had stopped menstruating. She was taken to a doctor for an examination during which she confirmed that her uncle had been raping her. Four months after the initial examination, it was discovered that the victim was three and a half months pregnant.

An abortion was performed which was not only a painful procedure but also very traumatic for the victim. Justice was finally served when the accused was arrested, charged with four counts of rape, denied bail, convicted and sentenced to a life imprisonment for each count of the rape. This is a bitter-sweet victory for the family as whilst justice has been served, the road ahead for the victims of rape is often riddled with severe emotional and psychological trauma.

The victim is still struggling to cope, experiencing nightmares, has become aggressive, dissociated, despondent and has difficulty trusting males. The impact of the continued rape is so severe that individual counselling has not helped and she will now undergo group counselling.

Commentary by Advocate Renee Uys

This case was disturbing because the complainant was a child who had a loving family and became a victim of a family member's degrading and repulsive behaviour. Even though the complainant was deaf in one ear and a slow learner, she led a happy life until the rape occurred. She grew up in a house where she was taught to respect her elders and hence she did not report the rape immediately. Amongst the challenges that I was confronted with in this case, was the fact that this incident occurred over a period of time and thus had to decide how many charges to put forward, taking into account which rape the victim remembered well enough to present as evidence to the court. The consultation with the complainant was difficult because she could not hear well, had to be spoken to in simple language and she was very traumatised by her experience.

The defence made no admissions in the case. The trial lasted a year and because of an error in writing down seal numbers by a doctor in the medical chain evidence, the DNA evidence was excluded. This was a serious blow to the State's case as the only evidence I had, was the complainant, who was a child of 13 years of age and the J88 Medical Report. It was a challenge leading her evidence but the court decided that she was a good witness and the





defence could not break her down during the cross examination. The defence was shown to be improbable during cross examination.

The sentence proceedings were very strenuous as the magistrate had never previously given anyone a life sentence. I had to present during the trial recent case law and victim impact reports to convince the court to give the accused

four life sentences - one for each count of rape.

This case has taught me that patience, dedication and going the extra mile is the only way prosecutors can secure heavy sentences and ensure that criminals are forced to take responsibility for the immense long term negative impact their actions have, not only on the victims but also on their families.

First SARS Official convicted of racketeering and money laundering

Eric Ntabazalila

The NPA in the Western Cape achieved another first when Edmund Fredericks became the first SARS employee to be convicted and sentenced to 15 years direct imprisonment in the Western Cape High Court, on charges of racketeering and money laundering in South Africa.

The case against the accused emanated from a racketeering enterprise devised and managed by Fredericks and his uncle, Aaron Carelse. Carelse was also sentenced to 15 years direct imprisonment. The two were convicted on contravention of Section 2(1)(f) of Act 121 of 1998: Managing an enterprise through a pattern of racketeering; contravention of Section 2(1)(e) of Act 121 of 1998: Participating in an enterprise through a pattern of racketeering; and contravention of Section 4 of Act 121 of 1998: Money laundering, fraud and forgery.

The court imposed a sentence of 10 years direct imprisonment on the racketeering charges and a further 15 years direct imprisonment on the fraud/forgery charges on each of the accused and ordered the sentences to run concurrently, resulting in an effective 15 years direct imprisonment for both accused.

Fredericks and Carelse utilised two separate strategies to defraud SARS - one involving VAT and the other Income Tax. Fredericks used his intimate knowledge of the systems within SARS to create *inter alia* duplicate profiles of registered taxpayers and changed their banking details.

"The sentences are of a serious nature. Edmund Fredericks was in a position of trust with SARS. The VAT and Income Tax scam was well planned and executed over a period of time. He was trained by SARS and knew SARS systems to an extent that he was relied upon by his team leader to provide training to his colleagues. He however decided to use his knowledge to defraud SARS. When his modus operandi to claim false VAT refunds was detected by SARS, he merely changed his modus operandi to focus on false Income Tax claims. A clear message needs to be sent to the public that the practice of employees defrauding their employers should stop."

Unsuspecting friends were also manipulated into opening legitimate bank accounts whereafter the accused would retain their bank cards and

subsequently withdraw amounts electronically from these accounts.

The VAT scheme involved the creation of fictitious entities and the submission of false documentation to claim refunds. The racketeering scheme managed by Fredericks and Carelse resulted in actual prejudice to SARS amounting to R1.3 million.

Sentencing the two accused, Judge John Dlodlo said, "The sentences are of a serious nature. Edmund Fredericks was in a position of trust with SARS. The VAT and Income Tax scam was well planned and executed over a period of time. He was trained by SARS and knew SARS systems to an extent that he was relied upon by his team leader to provide training to his colleagues. He however decided to use his knowledge to defraud SARS. When his modus operandi to claim false VAT refunds was detected by SARS, he merely changes his modus operandi to focus on false Income Tax claims. A clear message needs to be sent to the public that the practice of employees defrauding their employers should stop."

The two were arrested after an extensive and successful Prosecutor Guided Investigation,

managed by Advocate Rene Hindley of the **Specialist Tax Component** in the DPP Western Cape. The prosecution team also included Advocate Margot Jacobs who assisted Advocate Hindley and ensured that the trial and sentencing proceedings were finalised on 23 May 2013. Advocate Hindley was appointed to the Magistracy during the course of the defence case resulting in Advocate Jacobs seeing the case through to its final conclusion.

This case is a prime example of excellent project management and co-operation by the prosecuting team and the relevant stakeholders, including the investigators at SARS, the SARS and the administrative staff within the Specialist Tax component. Staff often worked late hours to prepare for the case and to ensure that court time was not unnecessarily lost, due to unreasonable delays. It was a difficult task to plan the consultations with the multitude of witnesses and to ensure that their attendance at court ran smoothly. As a result of proper planning, court hours were utilised to the fullest and the trial was finalised in the Western Cape High Court in a relatively short space of time, considering the magnitude of the case.



September/October 2013

NPA Performance

Commentary by Advocate Margot Jacobs

The successful prosecution was as a result of the excellent teamwork between the prosecution, the police and SARS Criminal investigators. The team was well supported by the administrative staff of the Specialist Tax Component. This joint effort resulted in the smooth running of the trial ensuring that court time was used effectively.

Every entity utilised in the commission of the crime had to be investigated and the links between the different entities and the accused had to be established, in order to show that these were not individual crimes committed, but that it was part of a well-planned and organised fraud scheme. If the offences in relation to each of the entities were treated and tried separately (because of misjoinder issues), the Presiding Officers would not have been able to see the scheme in totality where the charges would have been less serious and the accused would have received a lesser sentence than that metered out to them.

Charging the accused with racketeering charges would not only overcome the misjoinder issues, but would also ensure that the court saw the bigger picture of how the main accused planned and executed this fraudulent scheme, amongst others, by abusing the position of trust with SARS. Authorisation for a prosecution on

racketeering charges was thus requested and obtained.

This is the first time an accused who was working in SARS at the time of the commission of the offences was convicted and sentenced on racketeering and money laundering charges.

This case and the subsequent sentence imposed is very important in sending out a strong clear message to current SARS employees as well as ex-SARS employees, who have knowledge of SARS systems, not to abuse such knowledge in undermining the SARS systems.

We trust that the sentence in this case will serve as a deterrent to any present or ex-SARS official, to refrain from abusing such acquired knowledge of SARS systems and crime in general.



Know your NPA strategic objectives

The five year Strategic Plan for the National Prosecuting Authority (NPA) is informed by the government's priorities and in particular the Refined Justice, the Crime Prevention and Security (Refined JCPS) Delivery Agreement, which sets out the priorities for all JCPS departments. The aim of government is to ensure that these mandates are translated into clear outcomes with the intent to improve service delivery to all South Africans.

The NPA, as Programme 4 of the Department of Justice and Constitutional Development in an effort to improve, modernise and strengthen the work of the Criminal Justice System (CJS). By working with its CJS partners, the NPA strives to address inefficiencies in the system, such as unnecessary delays, and to ensure improved collaboration with the partners.

Strategic Plan and Annual Performance plan

The NPA Strategic Plan 2013-2018 focuses on strategic outcomes oriented goals for the NPA as a whole, and objectives for each of its main service delivery areas, aligned to the refined JCPS Delivery Agreement. The Strategic

Plan therefore, lays the foundation for the development of the Annual Performance Plan (APP) for the organisation.

The NPA APP stipulates what the NPA intends to do in the forthcoming financial year and during the Medium Term Expenditure Framework (MTEF) to implement the Strategic Plan. The focus of the NPA APP is on setting strategic objectives, performance indicators and targets for the NPA. The Business Unit's (BUs) APPs are all aligned to the NPA APP, to ensure that the BUs are working collaboratively to achieve the organisational targets and to facilitate the realisation of the NPA's goals and objectives as set out in the Strategic Plan.

Strategic Objectives

The following are NPA Strategic Objectives:

- Increased successful prosecution of serious and priority crimes.
- Improved collaboration with JCPS partners.
- Reduced corruption.
- Improved the justice services for the victims of crime.



Salome Baloyi, Senior Manager: Strategy and Enterprise Risk Management



Salome Tau, Senior Manager: Enterprise Performance Management

Rapist sentenced to life imprisonment

Tsepo Ndwalaza



September/October 2013

NPA Performance

A 14 year old epileptic, was sexually abused by her mother's boyfriend in Maclear, 2011. The accused, Lungisani Mdliki a 34 year old male, was supposedly in love with the victim's mother and she spent many nights with her boyfriend while the victim together with her brother and sister slept alone in their home.

On the night of 9 September 2011, the accused informed the mother of the victim that his grandfather is a traditional healer and will be able to cure the victim of her epilepsy. He suggested that they go that very same night to her house to fetch the victim so that they could leave early the next morning to visit the sangoma. At about 11:00 pm that evening they fetched the little girl from her home and made her sleep on the bed while the adults slept on the floor as this was a one roomed house. The victim was still asleep when she realised that there was someone else in bed with her. She screamed, trying to wake up her mother but the accused ordered her to be silent. Her mother heard her and tried to rescue the victim, however she was violently stopped by the accused who threatened to stab and kill her with two big knives that he had. He raped the victim and the mother was unable to help her crying child for fear that the accused will resort to violence.

At some point during the night, the victim asked to go and urinate. The accused showed her a bucket to urinate in and when she returned the accused wanted to rape her again. When the mother stood up to rescue her child, the accused wrapped the mother in a blanket and threatened to kill her if she removed the blanket or tried to help her daughter.

While the accused was raping the victim, the mother tried to assist her daughter but to no avail. He continued raping the victim until the next morning. The following day he released the victim and her mother however the incident was not reported to the police.

Three days after the incident occurred another sister of the victim arrived and noticed that the trousers that the victim was wearing were blood stained. When she enquired as to how this had happened the victim narrated the entire story to her. She confronted her mother on why the incident was not reported to the police, and her mother who was under the influence of alcohol said that it was none of her business. That same night the accused returned to the home of the victim seeking out the sister and wanting to rape her too.

He was unable to enter but broke a window and threatened everyone in the house. He refused to leave unless the sister gave him a kiss and

even when she obliged he refused again until the mother left with him.

It was only after the two of them left that the victim and her sister went to the police station to report the case. The accused was then arrested in his house. The victim was seen by a doctor and blood samples were taken for DNA testing. The blood samples of the accused were also sent to the laboratory. The results came back not linking the accused to the victim due to the fact that not enough male semen was found in the crime kit of the victim to compare with the blood sample of the accused. The doctor testified that the sperms could have been washed away as the victim was brought to him days after the incident took place.

Never the less, the accused was sentenced to life imprisonment as the court found that he had no respect for the rights of the victim, rights which are entrenched in Section 28 of the Constitution.

Commentary by Advocate Siphiso Mkhize

I was relieved that the accused was convicted and sentenced in this manner. He behaved like he owned the family of the victim and did as he pleased with them. He did not see the wrongfulness in his actions, namely raping a young child in the presence of her mother. It appeared to me that the rape was premeditated. The next day there was no talk of him taking the child to a traditional healer. There was definitely a sense of relief on the part of the victim who always asked in court when she was subjected to cross examination why did the accused do this to her. I believe that it was during the trial that she realised how serious this act was on her as a human being. Her dignity has been restored by this sentence although the incident will live with her for the rest of her life.



Racketeering sentencing

Tsepo Ndwalaza

The Port Elizabeth High Court sentenced Peter Roberts and four others in a case of racketeering on 01 March 2013. It is alleged that in 2009, a truck which was travelling to Mozambique was swooped on by members of the law enforcement agencies of South Africa near the Lebombo border post. Two of the accused were arrested having admitted that they were carrying a load of abalone, hidden in a false compartment in the rear roof of the truck.

It was later established that Peter Roberts and his wife, Caroline Roberts were the masterminds behind this operation and worked closely with Jonathan Nel and Johan Nel. They participated in the racketeering enterprise over a period of seven years. It is alleged that Peter Roberts was responsible for possession, dealing and exporting of abalone from the Eastern Cape to Mozambique during this period.

It is also alleged that all the accused in this matter resided in the Port Elizabeth area and were well acquainted with its surrounding coast line, one of the few natural habitats of abalone. It was also stated that the investigations conducted by the law enforcement agencies under the code name Project May resulted in the arrest and conviction of this highly sophisticated enterprise.

This enterprise is also alleged to have smuggled tons of abalone between 2005 to 2009. All the law enforcement agencies involved in this operation were relieved when the sentence was imposed on 01 March 2013 in the Port

Elizabeth High Court. Accused 1, Peter Roberts was sentenced to an effective 18 years and his wife was sentenced to 3 years suspended for 5 years. Accused 4 was convicted on Count 9 and was sentenced to 18 months imprisonment. The NPA would like to commend the team of prosecutors for their excellent work in this matter as well as the other law enforcement agencies for their hard work in making sure that justice was served. Advocate Martin Le Roux and Advocate Zelda Swanepoel represented the State in this matter and Judge Dayalin Chetty handed down the sentences.

Commentary by Advocate Zelda Swanepoel

This was the first prosecution of a racketeering case that I was involved in, so it was a learning curve for me. Thanks to the team effort between myself and Martin le Roux. Difficulties in this case included the fact that the investigation had been done from Gauteng and we were only approached at the prosecution stage, after an application for centralisation and the racketeering authorisation were obtained in Gauteng. We had to apply for an amendment to the original authorisation to lead the evidence relating to monitoring and interception of phone calls and dealt with the practical implications of dealing with this evidence in court. We dealt with the evidence of several Section 204 witnesses and also had issues regarding privilege. It was an exciting and challenging experience!



Advocate Martin Le Roux and
Advocate Zelda Swanepoel from
Organised Crime in Port Elizabeth

Brutal murder of a four month old baby & her mother's rape

Frank Lesenyego



September/October 2013

NPA Performance

The Makhanda brothers have been slapped with two life terms and 18 years each after they were convicted of kidnapping, murder, rape and attempted murder in the Mogwase Circuit Court on the **3rd September 2013** by Judge Samkelo Gura. Mandisi Makhanda received life sentence for murder, 12 years for attempted murder and six years for kidnap while Simphiwe Sira Makhanda received life sentence for murder, life sentence for rape, 12 years for attempted murder and six years for kidnap respectively.

On **22 September 2012**, the father of the deceased went to the tavern to buy some drinks and leaving the child and his girlfriend at home. He found Mandisi Makhanda and Simphiwe Sira Makhanda and the third suspect who is still on the run by the name of Fire at the tavern.

Mandisi Makhanda and Simphiwe Sira Makhanda are brothers and the father of the deceased is a close friend of Simphiwe Sira Makhanda. He realised upon buying drinks and leaving the tavern that Mandisi Makhanda was following him and he picked up a fight with him but was beaten.

The father of deceased went to Mfidikwe area where he received a call from his girlfriend informing him that she has been kidnapped by Mandisi Makhanda, Simphiwe Sira Makhanda and Fire with the child and they are looking for him. He went back to the house looking for his girlfriend and the child, even to the open field but could not find them. He then slept and the following day he discovered the gruesome slaying of his child with his girlfriend still alive but unconscious in an open field.

The court found that the three killed the baby by bashing her head against the rock in a full view of its mother after raping her, stabbing her more than 10 times, slitting her throat and trying to gouge her eyes out. They left the woman to die in an open field but she survived.

When Judge Samkelo Gura sentenced the accused person he made mention of the fact that the murder was savage and the attempted murder was brutal.

He further mentioned that it was his first time in his entire judicial experience that he presided over such a brutal murder of a 4 months old baby. He hoped that this will be the last time.

He referred to the post mortem report that indicated that the child's skull had multiple

fractures which corroborated the mother when she testified that the child was grabbed by the legs and his head was hit against the rock, he said.

Khasho spoke to Adv Ditaba Rantsane and this is what he had to say about the case:

How do you feel that this case is now finalised?

There is a huge public outcry in South Africa regarding the violence against women and children. I therefore felt that I am duty-bound to restore the confidence of the public to our criminal justice system. I am happy that the perpetrators were brought to book. The fight against crime is continuing.

What was your position during the trial?

Dealing with this case was like a walk in the park. There was overwhelming evidence against the accused, ranging from eyewitnesses to scientific evidence. There was a delay in finalising DNA evidence and I exerted a lot of pressure on the Forensic laboratory which eventually yielded positive results.

Any lessons learnt as you move forward to deal with other cases?

You may have overwhelming evidence, but you still require skill to present it before the court. Skillful presentation of evidence enables the court to trust the evidence and convict without questioning any piece of evidence. The evidence was presented in such a way that the court called it a spider web - the way it was fitting well to each other.



Good samaritan killed by a hitchhiker

Mashudu Malabi

Budiki Semho from Kuruman who worked at Black Mountain Mine in Aggeneys was sentenced to 22 years in prison for killing Matswe Lokailwe and a further 12 years for robbing him of his vehicle.

Budiki confirmed that he knew Lokailwe well and that he usually asked for a lift from him. He further admitted that as Lokailwe was removing his bags from the car at the spot where he was to be dropped off, he hit him with a wheel spanner on the head and wrapped a T-shirt over his head to ensure that he did not regain consciousness. What started as a helping hand for a 'homeboy' ended in a nightmare for the Lokailwe family.

Matswe Lokailwe's wife raised the alarm after she was unable to contact her husband for almost two weeks since his return to the mine after the Easter holidays. Eventually the family received a message from his supervisor at the mine that Lokailwe and his car were missing. Fortunately, the uncle of Lokailwe remembered that he saw a similar vehicle transporting people in Kuruman. The vehicle was tracked, however the number plate was missing. The licence disk was confirmed and Budiki was arrested, and later confessed to that he had killed Lokailwe and dumped the body in the bush near Pofadder.

On 12 May 2011, Budiki Semho accompanied senior police officials to the area where he dumped the body. After a police search of the area, the badly decomposed body of Matswe Lokailwe was found.

Commentary by Advocate Jacques Rosenberg

The only evidence against the accused was the possession of the vehicle and a statement made to the victim's brother and the accused pointing out the area in which the body was found. The accused had also made a statement to the Investigating Officer in which he said that he was threatened by another person to participate in the crime.

During discussions with his lawyer when the matter was on the roll for trial, it was indicated that the accused will stick to his story. This was a big challenge because it was one's word against the other. He also denied making a statement to the brother.

The biggest challenge was commencing with the proceedings, as the accused did his best to delay the process. First, he fired his advocate that was appointed by Legal Aid, on the day of the trial because he wanted to appoint his own lawyer. On the next date of the trial, he had no lawyer. The case was once again postponed and Legal Aid was requested to have a lawyer available for the next appointed court date.

On 13 May 2011, the accused only decided to make use of the Legal Aid lawyer when the trial was about to start. Just before the Judge entered the court, the accused informed his lawyer that he would rather plead guilty. The case then stood down for the preparation of the plea. The state was not satisfied with the initial factual basis of the plea. The defence initially refused to change the facts and said that it will read the statement into the record and the state must prove that it had a case. This was a problem due to the unavailability of some witnesses. Eventually amendments were made, following the engagements between the defence and the state.

The accused was finally convicted and a just and fair sentence was eventually imposed. The state asked for life imprisonment by arguing amongst others, that the accused robbed and killed someone who was well known to him, who shared a friendship of more than 20 years with his father, and who was doing him a favour.

The younger brother of the deceased was also called at the trial to inform the court about the role of the deceased in the life of his siblings, after their parents had passed away in the early 80's. The deceased not only supported his extended



family financially, but was also the parent figure in the family. His brother testified that the crime had robbed their family of its head. The widow of the deceased, who was too emotional to testify, said that the finalisation of the matter will bring some closure to the family and allow them to move on.

This case reminds us of the value and importance of life and family, and about leadership and responsible behaviour in our families and the greater community. The deceased was also well respected in Aggeneys, not just as an employee

at the mine but also in the community. This is evidenced by the fact that people often stopped the Investigating Officer on the street and even phoned him at night just to ask about the case.

The negative side is that the crime always has an adverse impact on our families and communities. As prosecutors, we must at all times be aware of the importance of the work we do, because it is more than just finalising cases and increasing conviction rates. It is also about trying to mete out justice, and mending broken families and communities.



September/October 2013

NPA News

“Operation Clean Audit”

Did you know the NPA applies the 8-week rule on Sick Leave?

In terms of the current sick leave provisioning for the Public Service as contained in the Directive on Leave of Absence for the Public Service, employees are entitled to 36 working days normal sick leave with full pay over a three year cycle. If an employee applies for three or more sick leave days, she/he must submit a medical certificate, citing the duration of the absence, from a registered and recognised practitioner. However, in instances where a pattern in the utilisation of normal sick leave is established, a certificate may be required for absence of less than three working days. The NPA policy also requires that an employee must produce a medical certificate if absent before or after a public holiday or weekend.

Since the implementation of the above-mentioned directive, it has become evident that managers and supervisors are struggling to manage the intermittent use of normal sick leave. It also became evident that the obligation placed on an employee to submit a sick certificate only when absent for three days or more is not sufficient to prevent abuse.

A tool is now available to assist managers and supervisors in the management of sick leave utilisation, which is referred to as the 8-week rule as contained in Chapter 3, Section 23 (1) of the Basic Conditions of Employment Act, 1997 (BCEA).

This provision stipulates that (a) an employer is not required to pay an employee if the employee has been absent from work on more than two consecutive days, or (b) on more than two occasions during an eight-week period, and upon request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the

employee's absence on account of sickness or injury.

With due consideration to the above, the Minister for Public Service and Administration therefore, determined in terms of Section 3 (3) (c) of the Public Service Act, 1994, as amended, in the leave determination, that:

An employee in his/her first 36 days normal sick leave period, who has been absent from work on more than two occasions during an eight week period, must, regardless of the duration of the sickness or injury, submit a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury, failing which, such leave will be covered by normal vacation leave (with the employee's consent) or alternatively unpaid leave.

The 8-week shall be a calendar period and shall commence on the first day of an employee's absence due to sickness or injury. Any subsequent day/s of absence due to sickness or injury after the above-mentioned period must then be regarded as the first day of the next 8-week period.

Example: If an employee is off sick on 25 March 2013, this is then the start of the 8-week period. If the employee is again off sick on the 2 April 2013, this is the second time off sick in an 8-week period. If the employee is again off sick on the 17 May 2013, this is then the 3rd time in an 8-week period, which means it is more than twice in an 8-week period and the employee must submit a medical certificate for this absence, irrespective of the number of days. If a medical certificate is not submitted then this day of absence should be covered by vacation leave or unpaid leave.



Profiling of the NPA Internal Audit

Basetsana Mothlamme

September/October 2013
NPA News

The NPA Internal Audit is an independent assurance function established in terms of the Public Finance Management Act (PFMA) to provide the management and the Audit Committee with assurance and advice on the adequacy and effectiveness of governance, performance, risk management and internal control processes within the organisation. The Internal Audit function is guided by a charter approved by the Internal Audit Committee and performs its functions as provided for in the PFMA framework and internal standards for the Professional Practice of Internal Auditing.

Every year the internal audit, in consultation with the management prepares a three-year risk – based strategic rolling plan and an annual operational plan which are approved by the Internal Audit Committee and serves to direct the focus and efforts of the internal audit function.



Malindi Godfrey Nthakheni, Senior Manager: Internal Audit

The Head of Internal Audit reports functionally to the Audit Committee and administratively to the Accounting Officer/Chief Executive Officer. The internal audit of the Department of Justice and Constitutional Development is also responsible for the National Prosecution Authority.

The internal audit function of the DoJ&CD and the NPA currently comprises of 154 staff members. A dedicated team of 16 staff members led by Mr Malindi Godfrey Nthakheni was assigned specifically for auditing the NPA's national office and regions, excluding courts.

The objectives of the internal audit are as follows:

- South Africa is a constitutional democracy in which values of good governance, transparency and accountability are to be promoted.
- To enhance a positive image of the NPA with regard to performance and financial management practices.

- To assist management in inspiring confidence within the NPA regarding the state of governance and management practices.

The function of the internal audit differs from the external audit or the Auditor-General with regards to the following:

- The Auditor-General reports to Parliament whereas the internal audit reports to the NPA management and Internal Audit Committee.
- The internal audit serves as an overseer to the NPA, in that the unit is the eyes and ears of management and serves as a dashboard through which management appraises the adequacy and effectiveness of controls and measures to mitigate risks.
- The internal audit partnered and collaborated with management during the past few years in addressing challenges that pertained to the audit qualifications. It was a long journey which involved a lot of hard work leading to an improved audit environment that requires all of us to continue to strengthen our collaboration and partnership to ensure that there is no regression.
- Internal audit will continue to provide support to the management to ensure that the broader objective of a safer South Africa is realised.

Recently, Khaso conducted an interview with the Chairperson of the Internal Audit Committee as detailed below:

What does your job entail?

As a Senior Audit Manager, I am responsible for the NPA audits under the guidance and mentorship of the Chief Audit Executive, Mr Max Budeli. My main duties can be summarised as follows: managing audit teams to deliver end to end audits, including the scoping, execution and reporting of each audit and an ongoing interaction with the business, in relation to action plans to address any control issues raised; developing and mentoring the audit team, coaching and providing feedback, setting tasks and challenges to ensure that the audits add value and personal improvements are made; providing independent opinions on risk and control environments in specific business unit or processes; and engaging proactively with the external auditors to ensure proper coverage and to minimise duplication of work.

What challenges do you face in executing your job?

We have highly motivated and dedicated team members that always go the extra mile in trying to deal with the various challenges that confront us. Budget constraints and human resources are major challenges that negatively affect the execution of the internal audit plan. In the field of the internal audit, especially in the public sector, when officials acquire a certain level of skill, they move to other environments and as a result, it is rare to have a full staff complement for a three month period. The issue of the budget continues to remain a challenge, particularly in light of the current economic challenges faced by our country.

What did the NPA do to ensure a clean audit?

There are so many contributing factors that I can think of, from changing the tone at the top and also the change of time. However, the following stand as major contributing factors in my opinion:

- Change of attitude by management towards both Internal Audit and External Audit in addressing issues timeously, more especially root causes.
- The partnership between Internal Audit and management has also matured, and management now sees Internal Audit as a business partner instead of been seen as the police.
- Management has also realised that it is in their interest to run a well governed organisation.
- The continuous review for the implementation of the audit action plan and the consistent monitoring by management and our team.
- The level of compliance with relevant

prescripts was previously not up to the required standard however the emphasis by management on dealing with issues ensured that the NPA obtained a clean audit opinion.

What measures are in place to ensure that a "clean audit" is maintained?

The suggested measures will be for the process owners to ensure that:

- The compliance with the PFMA, Treasury Regulations and its practice notes is the responsibility of all employees and not only the officials assigned to Finance and Procurement.
- Refrain from processing transactions that you lack knowledge of, even if it is just to complete an S&T, rather seek advice first. Also seek advice when encountering difficulties on the interpretation of circulars, policies, prescripts, etc.
- When shortcomings are identified by the assurance providers in their respective areas, they should ensure that the suggested management action plans are implemented in addressing the root causes so that there is no recurrence. Challenges identified in the management forums and monthly/or quarterly reports by the relevant stakeholders, that would negatively affect an audit report, should be timely addressed before the audits;
- Reporting on performance information is adequate and should be useful, reliable and compliant with the reporting requirements and that evidence is verifiable.

Management should always stay focused and continue to make use of the services of all assurance providers, including, internal audit. If we partner and collaborate together, we can do more.



Internal audit team



About the Directorate: Organisational Development

The Directorate Organisational Development is a key component within the Chief Directorate: Human Resource Management and Development and is headed by Ms. Marcia Malope. This directorate is responsible for the following functions within the NPA:

- Design and maintain the organisational structure.
- Maintain the post establishment.
- Manage the process of Job Evaluation.
- Manage process design improvements.

Design and maintain organisational structure: The directorate is responsible for developing, implementing and maintaining the organisational structure that is aligned to the organisation's strategy. This is done through conducting work study investigations and providing advice to management on the best organisational compositions of business units in order to enhance efficiency and effectiveness. Work study entails, amongst others, determining and define organisational/component functions; design optimal organisational structures; conduct work measurement exercise in order to determine the post establishment and developing job descriptions.

Maintain the post establishment

The directorate further ensures that the post establishment (number of posts) is updated and aligned to the organisational structure. During work study investigations, work measurement techniques are utilised to determine the number of posts required in relation to the nature, extent and volume of work for the different components. It is therefore crucial that the post establishment is always correct and is a true reflexion of the component's work load as this has an effect on the organisation's personnel budget.

Manage the process of Job Evaluation

Job evaluation (JE) is an objective process to determine the relative size or weight of jobs within an organisation. It focuses on the **job content** and its demands, and not the **performance of a job holder**. The regulatory frameworks for job evaluation are the Public Service Regulation, 2001 (as amended), NPA Job Evaluation Policy, and the DPSA guidelines and directives. For instance, triggers of conducting job evaluations are processed through newly defined posts, posts that are on levels 9 and above and for redesigned posts. This directorate is also required to implement directives and resolutions regarding job evaluation, in relation

to the implementation of generic job grading for posts that are similar in nature and are cross cutting within the public service.

One of the major requirements when conducting JE is job descriptions and the directorate is therefore responsible for facilitating the development and maintenance of job descriptions for all positions within the NPA.

Manage process design improvement

The directorate is also responsible for managing and conducting process design and mapping to optimise work procedures within the NPA by identifying and eliminating bottlenecks on methods and procedures in executing work. Business process maps assist the organisation in becoming more efficient.



Marcia Malope, Senior Manager: Organisational Development



Shirley Matsapola, Ponny Mathebula and Rika Bosch (left to right)



Doreen Mabaso, Nomthandazo Zuke and Relebogile Mashishi (left to right)

New Ntuzuma Magistrates Court

Natasha Ramkisson



On 28 May 2013, the Minister of Justice and Constitutional Development, the Honourable Jeff Radebe, officially opened the Ntuzuma Magistrates Court in KwaZulu-Natal (KZN). The event was attended by several dignitaries, including the Minister of Public Works, TT Nxesi, previous Deputy Minister of Justice, Mr Andries Nel, MEC for Transport Community Safety and Liaison, Mr W Mchunu and Judge President of KZN, Justice CN Patel. The new Ntuzuma Court, which was established in 1971, is now located in the new building in Bridge City Boulevard, which is more accessible to the public.

This court is one of the 93 branch courts in South Africa and was only re-designated as a full services court in 2012. Prior to this, the community from the surrounding area (Inanda, Ntuzuma and KwaMashu) had to go to the Verulam and the Phoenix Magistrates Courts. This was both costly and inconvenient for the already impoverished communities.

This state of the art court has four regional courts (two of which are fitted with CCTV for hearing sexual offence cases), seven district criminal courts, four additional courts suitable for hearing family disputes, two civil courts and two small claims courts. It also has two maintenance courts and a domestic violence court. There is an operational children's court with waiting rooms and evidence rooms.

In his address, Minister Jeff Radebe said, "This branch court is among the first of 24 branch courts in the country to be designated as a proper full service court. The remaining 69 will be upgraded gradually. The wide range of justice services offered here means that our

communities can find recourse on an array of issues that affect their lives. This in turn will be a foundation to help create safer communities in which all people enjoy their constitutional rights."

Taking NPA services to the communities

Natasha Ramkisson

The NPA in KZN hosted a service delivery roadshow at Wadley Stadium in Edendale, Pietermaritzburg. These roadshows form part of the NPA's community outreach plan and involves taking the services (both government and NGO's) to outlying and/or impoverished areas with high crime rates. Edendale was selected due to the high number of sexual offence cases that the Thuthuzela Care Centre deals with on an ongoing basis, especially the rape of the elderly.

This initiative was attended and supported by various stakeholders including the Department of Health, South Africa Police Services, South African Social Services Agency and the Department of Social Development. NGOs such as Childline, Lifeline, Challenge for Women and the Gay and Lesbian Network were also in attendance. The Department of Health also provided free blood-sugar, pressure and cholesterol testing to the community, whilst SASSA assisted with queries regarding social grants and old age pensions. Other stakeholders provided relevant information material and engaged with the community on an individual basis.

The NPA table was manned by staff from the Edendale TCC, as well as the Court Preparation Officers from the Pietermaritzburg Magistrates



Unveiling the plaque is Minister Jeff Radebe, MEC Mr W Mchunu and KZN Judge President, Justice CN Patel



Ntuzuma Court





Court who provided information to the community on the TCC, the court preparation process, domestic violence and maintenance.

Speakers for the day addressed issues of crime in the area, especially the rape of women and children and human rights. The keynote speaker was Adv Nonhlanhla Dlamini, the newly appointed chief prosecutor of the Pietermaritzburg cluster. The event provided a platform to introduce her to the community and in her speech, she assured the community of the NPA's commitment in the fight against crime.

This outreach programme was held during the school holidays and as a result was attended by many children thus creating the ideal opportunity for Childline to inform young people about abuse; namely verbal, emotional, sexual and physical abuse. The Gay and Lesbian Network presented a drama on hate crimes which focused on diversity in terms of sexual orientation and how the community needs to embrace this.

The event was hailed a success by the community who expressed their gratitude for being able to access government services so close to their homes.

National Crime Victim Rights Week – build-up

Basetsana Mothlamme

On 10 September 2013, the National Inter-Departmental Committee held their first Crime Victims' Rights Dialogue at Xariep, in the Free State in the build-up to the National Crime Victims' Rights Week (CVRW), that took place on 15-20 September 2013. The theme for this year's event was "Promote, Empower and Support Crime Victim's Rights through Government-Community Partners"

The event was well attended by the Xariep Community to gain more information about their rights as victims of crime. Karen Tewson, the National Coordinator of the Ke Bona Lesedi Court Preparation, co-facilitated the dialogue under the theme "Change Can", aiming at encouraging victims to tell their stories, which is in itself therapeutic and allows for a process

of personal healing, as the JCPS cluster cannot guarantee the outcome of all the court cases.

After the session, an elderly lady broke down, speaking out for the first about the abuse her son inflicts upon her. She had been subjected to continuous assault and every month he robbed her off her pension. She had never spoken of this before, as her son threatened her life, if she would tell anyone about the incident, especially the police.

She was provided with the necessary support and agreed to seek counselling from the social worker. This was the highlight of the session and even though only one victim was helped, it encouraged others who are victims to break the silence on abuse and speak out, so proper help can be provided.



Xariep Community members participating in the dialogue

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