



# Khasho



News for NPA staff, friends and stakeholders

July 2007



**KEEPING NPA WELL:** The NPA's Wellness Day held in front of the Victoria and Griffiths Mxenge building proved to be great success. As part of NPA's wellness programme, the day aimed to promote healthy and balanced living. Workers traded their suits and ties for tracksuits and takkies to take part in the physical exercises led by trainers.

## **Making a fortune out of crime proceeds**

The Asset Forfeiture Unit aims to take the benefit out of crime. Last year they managed to freeze R1 billion worth of assets.

Page 3

## **Joburg DPP expands to fight organised crime**

Situated in the heart of Johannesburg, the DPP has bought more space and is beefing up to face organised crime head-on.

Pages 6&7

## **Digging into the past to find closure**

Madeleine Fullard is no ordinary investigator. Her work involves digging up graves to find people who disappeared during the apartheid era.

Page 8

# Women deserve honour and support

**T**he beginning of August marks the start of women's month. As we approach this time, I want to take the time firstly to honour the women who took part in the significant 1956 march against the oppressive apartheid system and its pass laws.

I would like to salute all women in the criminal justice system – police, magistrates, judges and all those in the correctional services.

Most importantly, I would like to honour the female prosecutors who carry the mandate of the NPA and are succeeding in playing a meaningful role within the criminal justice system.

As we deal with the many challenges we face in our time, we need to ask ourselves what lessons we need to draw from the brave women of the 1956 march.

We need to look at whether the position of women has improved satisfactorily.

We in the NPA must specifically ask whether we are creating an environment that is conducive for women to unleash their potential as workers and as mothers in our society.

The struggle for the emancipation of women must be supported fully by men. It is, in fact, worrying to imagine that many women are subjected to abuse even as we celebrate women's month. Such is an indication of how much the abuse of women is entrenched in our society.

Men must bow their heads in shame, whether they are abusers or not, because there is more they can do to stop it even if they are not perpetrators themselves.

This means we must take the fight against abuse very seriously.

As we approach this month in the NPA, I wish we could see it more as a family



National Director of Public Prosecutions Adv Vusi Picoli

## **“I would like to salute all women in the criminal justice system”**

month because our families reflect what we are doing as we raise our kids.

We must teach our kids to respect women not only by words but also by how we carry ourselves in our interactions with women.

There is also the disturbing trend of the collusion of women in the abuse of fellow women. This too must be condemned harshly. Winning the fight against abuse will require the efforts of everyone in our society.

To me, Women's Day is not about flowers and chocolates, it is serious business.

I'll be happy if one day when I step down, a capable woman takes over the reigns as National Director of Public Prosecutions.

There are no jobs that are beyond capabilities of women and we will not be doing women any favours by affording them these opportunities.

At the NPA we must consistently make sure that we are cultivating an environment that will expose women to opportunities that will ensure their advancement.

After all, we know their history; they were exploited not only for being black but because they were women and workers as well. My challenge to women is they must take their rightful place in society.

I therefore once again salute all women in the NPA who play a role under difficult circumstances; in some instances in courts to make sure we deliver on our mandate.

## Contents

- 3** The Asset Forfeiture Unit
- 4** The woman who put Dina Rodrigues away
- 5** Ekuseni – Rehabilitating young offenders
- 6 & 7** Focus on the Johannesburg Directorate of Public Prosecutions



- 8** Profile: Madeleine Fullard from the PCLU
- 9** Backlogs from the public service strike
- 10** Last in the series on NPA disciplinary hearings
- 11** Promotions and new appointments
- 12** Eastern Cape Aids Awareness Campaign





# Making sure crime does not pay

## The Asset Forfeiture Unit is successfully claiming back the fruits of crime for society

**L**ast year, for the first time, the Asset Forfeiture Unit (AFU) managed to freeze more than R1 billion worth of assets in one year.

Head of the AFU, Willie Hofmeyr, describes the unit's role:

"For many people asset forfeiture simply means the reclaiming of what has been wrongfully gained by criminals – the State claiming their fruits of crime on behalf of society.

"For the AFU, their job is to ensure that they take the profit out of crime by seizing the proceeds of crime.

"Crooks shouldn't be allowed to profit from their crimes," he says.

Crimes targeted by the AFU include fraud, corruption, cases involving natural resources and precious metals, drugs, violent crimes, housebreaking and possession of stolen property.

They are also involved in cases like that of a Karoo man charged with three serious offences after previous convictions of drunken driving and speeding, who had his car seized by the AFU in 2004.

The AFU was established in 1999 by the Office of the National Director of Public Prosecutions and became a full division of the National Prosecuting Authority (NPA) in 2001.

The unit is a major player in fighting organised crime and has over the last eight years seized well over R2 billion in property and forfeited R500 million following litigation.

Hofmeyr says that one of the aims of asset forfeiture is to prevent the escalation of crime.

"If there is a drug house in the community and drugs are sold by foot soldiers and there is no evidence to link the owner of the house with the crime, we close the house down and the crime stops, so asset forfeiture can be preventative," he says.

According to Hofmeyr, the money and assets forfeited are used effectively.

"If there is a direct victim of the crime, the money we recover goes back to them. If there is no victim it goes to the Criminal



**MAKING A DIFFERENCE:** Head of the Asset Forfeiture Unit Willie Hofmeyr.

Assets Recovery Account, where Cabinet decides what to do with it.

"It is used to combat crime or is given to organisations to assist victims of crime.

"Already R120 million has gone in to the account and R73 million paid out," says Hofmeyr.

Although the AFU recorded its first failure at the Constitutional Court, it can boast of an 80% success rate in court in the current year.

A recent case related to the seizure of the assets of an illegal casino operator was lost on appeal in the Constitutional Court.

Hofmeyr says that losing the case made the unit rethink the need to prove a link between crime and organised crime when they are dealing with certain cases.

Of the cases that have gone to the Supreme Court of Appeal and the Constitutional Court, the AFU have won 12

out of 15 in the last two-and-a-half years.

One of the unit's challenges for the future is trying to make an impact on violent crime.

Future prospects for this unit are to continue fighting organised crime and to force criminals to pay their dues.

"Over the last eight years we have shown that forfeiture can be a very effective way of helping to deal with crime and we have laid a very solid foundation for the future," Hofmeyr says

However, he says there is much more to be done before they can be satisfied that they have succeeded in their aim of ensuring that crime does not pay.

"We are making a significant but relatively small dent in the estimated proceeds from crimes," he says.

"As more people become aware of asset forfeiture, the AFU becomes busier and we are under incredible pressure to produce," Hofmeyr says.

# She brought down Dina Rodrigues

**N**icollette Bell, the lead prosecutor in the “Baby Jordan” trial, and her team ensured that Dina Rodrigues and four others received tough sentences.

On June 28 Justice Basheer Waglay sentenced Rodrigues, and her co-accused, Siphon Mfawwe and Mongezi Bobotyane, to life imprisonment.

Zanethemba Gwada and Bonginkosi Sinegu got 15 years because they were juveniles when the crime occurred.

Charges brought against them included murder, robbery with aggravating circumstances and possession of a firearm.

The trial received a lot of publicity and attracted a packed gallery for a period of over 18 months.

State Advocate Bell had the huge task of putting together a strong case to convince the court that the five were guilty and that they deserved tough sentences.

Bell said Rodrigues had been the

mastermind behind the killing and she should be given a life sentence.

She managed this without much fuss or fanfare. According to media reports, after passionate and lengthy arguments by her defence colleagues, Bell would, in her mild manner, cut to the chase and put the hard facts on the table.

In the latter days of the trial, Bell won the hearts of many of those who attended.

She would lower her head when avid trial followers applauded her arrival at court or complemented her on her new braided hairstyle.

Bell brought some humour into the court amid the heated arguments when she did things like mistakenly referring to Rodrigues’s former lover, Neil Wilson, as Neil Witness.

Rodrigues and her co-accused were granted leave to appeal against their sentences but denied leave to appeal their convictions.



**PROSECUTOR:** Nicollette Bell.

## NPA in the news

### On track for 2010

The NPA has already started to make preparations to ensure a smooth-running and safe 2010 World Cup. Speaking to *Business Day*, NPA spokesperson Panyaza Lesufi said that the authority would boost its capacity to match increases in other enforcement agencies. “By 2010 the number of police officers would have increased and there are likely to be more arrests, which will require a corresponding increase in our capacity,” Lesufi said. According to the report, police aim to increase the number of their personnel to 190 000 by 2010. The NPA would work together with the police and the Department of Home Affairs to make sure that case delays were kept at a minimum. Lesufi said in the report the NPA’s 2020 strategy, which is the organisation’s plan to deal with bringing down crime levels, would involve an extensive training programme for prosecutors and a considerable increase in their salaries. The NPA would work closely with the police to decide whether or not there was a case to prosecute.

### Apartheid minister to be prosecuted

Apartheid-era police minister Adriaan Vlok and ex-police chief Johann van der Merwe will be charged with attempted murder next month. NPA spokesperson Panyaza Lesufi said that papers had been filed with the Pretoria High Court and the matter would be heard on August 17. The charges related to an alleged plot in 1989 to kill Frank Chikane, who is now director-general of the Presidency. Vlok and Van der Merwe were meant to stand trial in 2004, after failing to apply for amnesty at the TRC, but the NPA reversed its decision to prosecute. *Sapa 17/07/07*



### Magistrate vanishes again

A Port Elizabeth magistrate who was absent without leave for more than three months and then re-appeared with 21 sick certificates has vanished

again. Themba Mathyolo’s supervisors at the North End Law Courts say they do not know where he is and he has made no effort to contact them. Mathyolo, described as one of the best magistrates at the court, vanished for the first time in February. Senior magistrate Lamla Makaba said the matter would have to be investigated before action could be taken. *The Herald 13/07/07*

### Remains may be Pebco Three

Human remains believed to be those of the “Pebco Three”, who were murdered by apartheid-era police, have been found on a farm near Cradock. Spokesperson Panyaza Lesufi said NPA investigators followed up several leads and discovered the remains during a dig on a farm known as Post Chalmers, which had belonged to the police. The Pebco Three – Siphon Hashe, Qaqawuli Godolozu and Champion Galela – were kidnapped in 1985 by security police. Forensic investigations were continuing to establish whether the remains were definitely those of the three. *Sapa 17/07/07*

# Hope for convicted youths

**An institution in KwaZulu-Natal gives its inmates the life-skills, education and training they need to become productive members of society**

Thousands of young men have passed through the doors of the Ekuseni Youth Development Centre (EYDC) in Newcastle, KwaZulu-Natal.

This rehabilitation institution for male youths between the ages of 14 and 25 is recognised as having been the brainchild of Nelson Mandela.

It has facilities for 600 convicted youths and aims to provide them with appropriate life-skills, education and training to enable them to participate fully in society when they are released.

Established in 1996, the EYDC has 323 inmates. The majority are from KwaZulu-Natal and Gauteng.

"Due to the structure of our facilities we cater for males only," said Vusi Nkosi, the head of the centre.

Nkosi says most the younger inmates are convicted of economic-related crimes while older ones commit murder and rape.



**SKILLS TRAINING:** An Ekuseni centre inmates in a sewing class.

Centre co-ordinator, Christopher Hlatshwayo says EYDC now has facilities for rehabilitating both juveniles and older convicts because the new laws allowed institutions like theirs to rehabilitate non-juveniles.

As part of the rehabilitation process, the EYDC, in partnership with Majuba

College, offers inmates the opportunity to study towards a National Vocational Certificate (NVC).

"Those who do not qualify to study the NVC will then be put through Abet training, which is formal education" says Hlatshwayo.

Nathi Mkhonza, an ex-juvenile offender, is one of the centre's success stories.

He was arrested four years ago for housebreaking and sentenced to six years imprisonment. He only served three years of his time due to good behaviour.

While at the EYDC he studied electrical engineering through Majuba College.

"I want to one day use the skills that I acquired and work as an engineer," he says.

The 24-year-old Mkhonza works with under-privileged children, getting anti-crime messages across through the Khulisa Crime Prevention Centre.

"I was called in shortly after my completion of the programme to come and assist at the centre.

"They liked and believed in me and that's when I got trained in public speaking and communication.

"This is a great opportunity for me to make a difference," he says.

Hlatshwayo says although they do not have figures for the centre's success rate in rehabilitating youth offenders, he is confident that the majority leave the institution fully rehabilitated.

## Looking after the health of NPA employees

Trauma is one of the most prevalent health problems among employees at the NPA, according to the Employee Wellness Unit.

The unit has beefed up its Trauma Management Service to cater for employees whose work may lead to trauma.

The Sexual Offences and Community Affairs (Soca) Unit is one of the units that are making use of this service because the people who work there are exposed to horrific cases involving abuse and rape.

The Employee Wellness Programme was established in 2003 to develop programmes that would ensure the well-being of employees.

"The NPA puts a lot of value in its employees and the organisation wants to become the employer of choice. Therefore taking care of the workforce is one of the

top priorities," says Phuthi Semenya, the senior manager.

The major objectives of the programme are to ensure that staffers perform to the best of their abilities and reduce absenteeism.

"That can only happen if employees are healthy and well. It is a fact that many people will struggle to perform and be productive if they are not well emotionally or physically, so our role is to put in place systems that will ensure employees are always at the top of their game," Semenya says.

"We are running Stress Management Workshops, to equip employees with skills that will enable them to explore their inner strength when faced with stressful situations related to work or family," she says.

"We also offer counselling services to those who are already battling with problems."

Semenya says they will refer an

employee to a psychiatrist if they believe a problem is serious enough.

The unit encourages staff members to participate in sporting activities as a way of keeping fit and healthy.

Recently, the unit hosted a wellness day event at the head office.

Semenya says they will roll-out wellness day programmes to regional offices and one office will host an event once a month.

The unit is currently working on an HIV-Aids plan that will align with the newly adopted National Strategic Plan.

Semenya says there are indications that the programmes they have put in place are already working.

A financial fitness programme for all staffers will soon be established. "We are aware that some of the problems staffers face are related to financial pressure," says Semenya.



# DPP expanding to fight crime

**The Johannesburg office is growing to meet the challenges of operating in a large urban area**

**Z**iaas van Zyl, Deputy Director of Public Prosecutions, says that being in such a big metropolitan region has its challenges as they experience more serious crime.

Situated at the Johannesburg High Court in the city centre, the office is constantly working to stay ahead of the serious crimes the region faces on a daily basis.

The office is looking at taking on more staff to deal with this.

"All personnel here deal with highly complex crimes and we are looking to increase the staff number so as to deal with backlogs," he says.

The region recently bought the Innes Chamber, opposite the High Court, to house the organised crime unit.

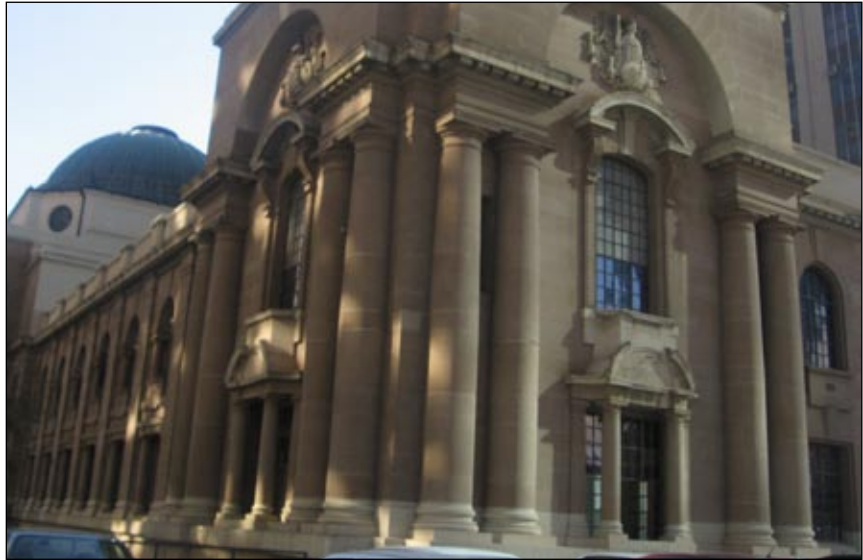
"We are glad finally we will be able to deal specifically with these crimes with the help of experienced prosecutors," adds Van Zyl.

Van Zyl, who has been at the High Court since 1983, says he has seen the inner city degenerate and, recently, regenerate.

Crime had escalated in the inner city due to the rapid rise of urbanisation and unemployment, he says.

"Unfortunately, urbanisation is not always good in the sense that at times infrastructure can't deal with it," says Van Zyl.

"There was a stage where even the High Court precinct was dangerous for its employees and a lot of law chambers which



**GROWING:** The Johannesburg DPP office in the centre of the city

were around the court left for other areas," he says.

Through municipal and police intervention the court precinct has been made safer now.

"We are seeing more and more businesses and restaurants returning and I am proud to say that the court precinct is possibly the safest area in the inner city."

The Johannesburg Development Agency has invested R15 million in the revamping of the precinct. It started in January and is expected to be completed in November.

This region also boasts many high-profile cases including the Lee Matthews murder case and the Jacob Zuma rape case.

"Everyone in this office goes to court

often and this allows us to pass on expertise to the junior advocates," Van Zyl says.

Because of the complexity and range of cases on the roll, Van Zyl says that Johannesburg High Court is the best place to be for advocates.

The office focuses on the bigger picture when dealing with crime by offering programmes for children and adults, and giving awaiting-trial detainees sentencing options. As a result, its regional courts have a 49% case backlog – the lowest in the country.

"We hope by the end of the year, we will have reduced this to 20%," Van Zyl says.

"We believe in good governance and empowerment," concludes Van Zyl.

## Keeping the city's traffic flowing

**J**ohannesburg is synonymous with traffic but if Tom Dicker, the Deputy Director of Public Prosecutions at the Johannesburg office, can help it drivers won't be getting away with anything.

Dicker deals with traffic policies and regulations.

"The guidelines we send out are procedures to be followed when dealing with cases associated with traffic crimes," he says.

The guidelines are made available to NGOs, prosecutors and traffic officers.

He is also the national chairperson of the Technical Committee of Standard

Procedures which is responsible for traffic control and traffic-control equipment.

"The committee sets out guidelines for traffic prosecutions which include speed-measuring equipment, fixed-camera timing equipment and breath-testing machines," says Dicker.

All directors of public prosecutions are involved in the committee together with



**DDPP:** Tom Dicker

the Council for Scientific and Industrial Research, the South African Bureau of Standards, the Automobile Association, the traffic fraternity and various manufacturers of special speed gadgets.

Dicker is also involved in drafting standards for speed-measuring equipment.

He believes that if there are more rules and people enforcing them, traffic congestion can be a thing of the past.

"One of the challenges we face though, is the issue of updating standards because the automobile field evolves almost monthly."



**CRIME FIGHTER:** Herman Broodryk

## Hands-on man at the helm

**H**erman Broodryk, Johannesburg's Deputy Director for Public Prosecutions, has been at the Johannesburg office as a prosecutor for 19 years and has a non-acquittal record of 12 years.

He now heads the Organised Crime Unit and says he is looking forward to dealing with organised crime hands-on.

Such crimes are prevalent in the Johannesburg region because of the area's high economic activity and density.

The unit, which has a team of three senior and one junior advocate, will soon be increased to 15 seniors and five juniors.

"We will be dealing with organised crimes like cash-in-transit heists, bank robberies and fraud syndicates which are prevalent in this area," says Broodryk.

The organised crime unit works closely with the Specialist Tax Unit and the Asset Forfeiture Unit (AFU).

"Organised crime is crime carried out systematically by formal criminal organisations which, unlike in other crime areas, is extensively planned," says Broodryk.

And the unit is not afraid to crack down on corruption.

"We will continue being hard on colleagues who embarrass and compromise the high ideals of the NPS," Broodryk says.

Passing on the tricks of the trade is what Broodryk enjoys most and with every trial he tries to teach the younger advocates.

Some of the highlights of his career include working on the Zuma rape, the Delmas treason, and Bruma Lake serial killer trials and two appearances in the Constitutional Court.

# Determined to hold on to great record

## Charin de Beer heads one of the busiest offices in the country

**S**ituated amid the hustle and bustle of Johannesburg, the regional office of the Directorate of Public Prosecutions is always buzzing.

The Johannesburg DPP is headed by Charin de Beer SC, as Director of Public Prosecutions. *Khasho* spoke to her about being at the heart of it all.

### What challenges does the geographical location of your office present?

We are the most densely populated area in the country and crime in this area is on par with that density.

We see many violent and organised crimes but the staff in this division takes this challenge head-on.

Due to the high crime levels, we've established special courts in areas of concern like the Krugersdorp and Protea Hijacking Courts which have a particularly high conviction rate. We are very proud of that.

Being at the heart of South Africa's economy, we find that there's a high level of organised crime, which we hope to deal with through the Organised Crime Unit.

### What are your main areas of focus?

We deal mainly with specialised and organised crimes, drug trafficking, and sexual offences.

We are also big on community



**GOOD RECORD:** Charin de Beer

prosecutions. We saw the rate of arrests slow in some areas so we undertook to help the community and police work together.

Lastly, we also focus on prosecutor-guided investigations to speed up and get the most out of investigations.

### What are your office's key projects?

We have several serious rape trials and serial rapist/murder cases which we prosecute together with the assistance of the court preparation officers.

We also have had a successful project with awaiting trial detainees from Diepkloof prison (Soweto) in which we finalised 6 918 cases last year.

The division set up a community prosecution pilot project in Windsor East.

In Melville, Brixton and Newlands we have identified various community irritants and are dealing with them with the assistance of the SAPS and the AFU.

### What has the office achieved in the past year that makes it stand out?

We've been the best performing division since 2003 and would like to keep it that way.

I believe we also have the most experienced and hard-working prosecutors in the country.

Prosecutors in the Witwatersrand Local Division do it with conviction!

### Fast Facts

#### Working Languages:

English and Afrikaans

**Address:** C/o Pritchard and Kruis streets, Johannesburg

#### Director of Public Prosecutions:

Charin de Beer

#### Deputy Directors of Public Prosecutions:

Herman Broodryk, Zaais van Zyl, Kevin Attwell, Rasigie Bhika, Xoli Khanyile, Dan Dakana, Mutuwa Nengovhela, Gerrit Roberts, Tom Dicker and Mona Naidoo (STU)

**Corporate Manager:** Judith Mackay

**Senior State Advocates:** 12

**Junior State Advocates:** 12

**Total staff (including admin)**

**(JHB):** 130

**Total staff (clusters):** 529



# Digging into the past for closure

**Madeleine Fullard is at the forefront of a unit which finds people who went missing at the height of apartheid**

Solving a missing-person case is like finding treasure for Madeleine Fullard.

She works for the Priority Crimes and Litigation Unit which, among other things, finds people who went missing during the apartheid years and brings to book those who didn't apply for amnesty.

Fullard describes herself as being the same as any other investigator at the National Prosecuting Authority (NPA) but her work is very different.

For one thing, her investigations normally take her six feet underground.

When it was established in 2005, President Thabo Mbeki gave the unit the task of dealing with unsolved matters relating to the Truth and Reconciliation Commission (TRC).

"I am in charge of accounting for each and every person who went missing during apartheid times and bringing those who didn't apply for amnesty to justice," says Fullard.

She is a historian by profession and says that there is little difference between a historian and an investigator because they both require detective work.

Fullard started out as a researcher for the TRC.

"After the commission, hundreds of families came to us about their missing relatives, so we continued what the TRC had started.

"I lead a special task team with a specific mandate to trace people who disappeared between 1964 and 1994," she says.

While at the TRC, Fullard co-wrote *The Road to Democracy Project*, a five-volume study on the liberation struggle.

The PCLU always approaches the family of the missing person when they start an investigation.

Fullard works closely with the families.

She says this is pleasing because she helps families find closure.

"It helps the healing process when the family is actively involved in the investigation," says Fullard.



**CLOSURE** Madeleine Fullard with the mothers of the Mamelodi 10.

She adds that it is easier for families to deal with a negative result if they have been involved.

"It is touching when some family members want to help us dig or ask what they can do to help," continues Fullard.

In partnership with the Argentine Forensic Anthropology, Fullard's team is developing a best practices document for South Africa, which is relatively new to the field.

Argentina documented around 10 000 disappearances after the gross human rights violations by previous regimes during the period from 1976 to 1978.

Part of Fullard's work includes training young historians.

"We involve students who have just finished anthropology, archaeology or palaeontology at various universities."

Fullard explains that the length of the investigations is dependant on records.

In some cases, Fullard says, they dig up to 10 graves looking for one body because records are missing or incorrect.

Fullard recalls a case in Mmabatho where they ended up opening 29 graves looking for nine Mkhonto weSizwe cadres.

She says that they increasingly rely on

DNA for identifications.

"Because of the nature of our exhumations, most of the bodies are beyond recognition and are highly decayed," she says.

Dealing with bones is another challenge for the unit. Fullard recalls the 2005 case of the Mamelodi 10, a group of teenagers who were killed in an ambush before they could join the ANC in Botswana.

"Their bones were so badly burnt that we couldn't positively identify all of them."

Fullard says they try to give each case the attention it deserves.

"Many of those who disappeared paid the ultimate price.

"By following these disappearances, the state is acknowledging the loss and the price paid for liberation," she says.

The investigator says she is driven by the families' need to know what happened to their relatives.

"We are able to give these families closure, and whether we give them bad or good news, they are happy because they know.

"Granting the families peace is more precious than digging and finding gold," says Fullard.





**WAGE PROTEST:** One of the scenes that characterised the strike by public servants in June.

## Mopping up after strike action

**T**he month-long public service strike which paralysed the functioning of many government departments – notably schools and hospitals – also affected some courts causing backlogs.

“Prosecutors were not on strike but we were experiencing problems with the prosecutors being threatened with violence on their way to work,” says National Prosecuting Service Head, Advocate Mokotedi Mpshe.

The provinces most affected by the strike were KwaZulu-Natal and Gauteng.

Mpshe says that in Ezakheni, KZN, strikers stormed into a court and forced prosecutors out because they did not participate in the strike.

In another case in KZN, Mpshe says, they arranged for cases to be postponed or to take place at a police station because being in court posed a risk for prosecutors.

“The strikers got wind of the arrangement and camped in front of the police station, intimidating people getting in and out of the police station and as a result, police had to intervene,” Mpshe says.

In another case where prosecutors were allegedly intimidated, prosecutors in the Durban High Court met with leaders of the National Education Health and Allied Workers Union (Nehawu), to discuss the way forward during the strike.

“Initially they agreed that prosecutors

### **Staff were intimidated and backlogs exacerbated during the strike by public service employees**

would report for duty and leave at 10 but Nehawu members stormed into several court sittings, going back on their word,” says Mpshe.

The intimidation in the KZN area escalated to the point where several cars in one court’s yard were spray-painted. Gates were locked, making it difficult for non-striking staff to exit court yards.

In Gauteng, the strike also affected court proceedings.

The Pretoria court could not operate due to threats from strikers, who stormed into the building, chasing the staff out.

Police were called to intervene.

The Johannesburg High Court also had strikers storming in, threatening and intimidating non-striking workers.

Mpshe could not give the exact number of courts which were shut down during the strike.

“We informed all Directors of Public Prosecutions in the regions to monitor the situations on the spot and to react in the best interest of the non striking staff,” continued Mpshe.

It was mainly interpreters and transcribers, who fall under the Department of Justice (DOJ), who took part in the strike.

“It is in the DOJ’s hands to discipline its staff, but unlike prosecutors and police, they are not listed as rendering essential services so the department has no capacity to fire them,” added Mpshe.

Mpshe says the strike had a negative effect on the NPA’s attempts to deal with the large case backlog.

Spokesperson of the Department of Justice, Heinrich Augustyn, told the *Mercury* that at the end of March there were 850 cases outstanding on the High Court rolls, 160 of which had been there for longer than a year.

He continued that the backlogs were more serious in the District and Regional Courts with close to 200 000 cases outstanding.

Augustyn said that there were various projects in place which had already had a positive impact on the backlogs.

These included the creation of additional magistrates’ posts and increasing of court personnel.

“All cases had to be put on hold until the trade unions and government solved the matter.

Mpshe said that now that this strike had ended they were faced with the challenge of dealing with the backlog it had caused.

# The ins and outs of attending a disciplinary hearing

**In the final of the three-part series on the Public Services Disciplinary Code of Conduct, Thabo Lebakeng, Senior Consultant Employee Relations, explains the disciplinary hearing process**

If the employer has taken a decision to charge the transgressing employee with misconduct, a disciplinary hearing must be held to probe the allegations.

An employer representative must issue the accused employee with a written notice to attend the disciplinary hearing.

The employee must sign receipt of the notice. If the employee refuses to sign receipt of the notice, it must be given to the employee in the presence of a fellow-employee who will sign in confirmation that the notice was

**“The employer must appoint a chairperson to chair the disciplinary proceedings. This must be an employee on a higher rank than the representative of the employer.”**

conveyed to the employee.

The employer must appoint a chairperson to chair the disciplinary proceedings.

This must be an employee of a higher rank than the representative of the employer.

The employee may agree to the disciplinary hearing being chaired by an arbitrator from the relevant sectoral bargaining council.

In such circumstances the decision of the arbitrator will be final and binding and can only be reviewed by the Labour Court.

During the disciplinary hearing, the employee, if he wishes, may be represented by a fellow-employee or a representative of a recognised trade union.

Neither the employer nor the employee may be represented by a legal practitioner, unless the employee is a legal practitioner or the representative of the employer is also a legal practitioner and the direct supervisor of the employee charged with misconduct.

If the disciplinary hearing is chaired by an arbitrator from the sectoral council, parties may be represented by legal practitioners.

Chairpersons are advised to treat requests for legal representation by employees with utmost caution and are urged to thoroughly consider such requests prior to making a ruling.

The employee must ensure that he attends the disciplinary hearing on the date indicated on the notice of the enquiry.

If he fails to attend the hearing and the chairperson concludes that the employee did not have valid reasons not to attend, the hearing may continue in the employee's absence.

The representative of the employer has a duty to start leading evidence on the conduct which gave rise to the hearing.

The employee or his representative may question any witnesses introduced by the employer's representative.

The employee should also be given an opportunity to lead evidence and give his version of the story.

The employer's representative may in turn question the employee and his witnesses. The chairperson may ask witnesses questions for purposes of clarity.

If the chairperson finds that the employee is guilty of misconduct, he must give the employee an opportunity to advance mitigating circumstances.

After considering points in mitigation,

the chairperson must pronounce the appropriate sanction.

The employee may appeal the chairperson's finding to the executing authority.

The employer shall not implement the chairperson's sanction during the appeal by the employee.

In as much as the employer must ensure that the Disciplinary Code is adhered to at all times when applying discipline, the courts when dealing with similar cases have found that the critical issue to address on a case-to-case basis, is whether or not the employee has suffered prejudice as a result of the employer's non compliance with the procedures as laid down by the Resolution. (See *Mafube Municipality 2003 12 CCMA at 8.18.1*)

**“This does not mean that the employer should have callous disregard of the Disciplinary Code and flagrantly flout its provisions to fulfil employer's whims and fancies.”**

This does not mean that the employer should have callous disregard of the Disciplinary Code and flagrantly flout its provisions to fulfil employer's whims and fancies.

In the same breath, employees and their representatives should also not clutch at every straw arguing unfairness and prejudice and non-compliance with the Disciplinary Code for every minor and insignificant procedural omission by the employer.



## New Appointments

**The Johannesburg DPP office has added 11 people to its ranks who will serve in various capacities**



Juliet Makgwatha – Junior State Advocate



Kenneth Sijam – Senior Administrative Assistant



Mahlubi Thandikhaya Ntlakaza – Senior State Advocate



Mita Manini Tau – Court Preparation Officer



Ronald Ndebele – Senior Administrative Assistant



Ben Motswane – Senior Administrative Assistant



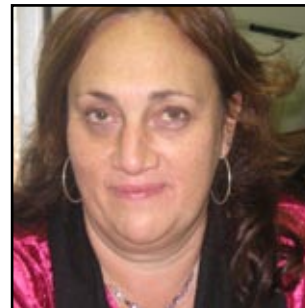
Leonia Makoko – Junior State Advocate



Ronel Dookun – Junior State Advocate



Sureka Pooreu – Senior Administrative Assistant



Annemarie Smith – Senior State Advocate



Amori Graf – Junior State Advocate

## Promoted



Maggie Tserere has been promoted to Deputy Director of Public Prosecutions in the SOCA unit in the Eastern Cape Region.



Bronwyn Pithey has been promoted to Deputy Director of Public Prosecutions in the SOCA unit in the Western Cape.



**IN THE ARTS:** A fire-eater performs at the arts festival in Grahamstown. The NPA held an exhibition at this year's festival to send a positive message about the fight against crime to visitors. It was also aimed at lobbying communities to play an active role in fighting crime



About 80 lawyers from the Asset Forfeiture Unit attended the Annual Legal Indaba at the Regent Hotel in East London from July 17 to 20.

Judge President of the Transvaal Provincial Division, Bernard Ngoepe and Judge Dennis Davis of the Cape Provincial Division were two of the key speakers at the gathering. Ashton Schippers SC and Alfred Cockerel also addressed the indaba.

Mcaps Motemele led the delegation from the Black Lawyer's Association.

# Prejudice gets prosecuted

**A**n HIV-Aids awareness campaign started by prosecutors in the Eastern Cape is gaining recognition.

Started a year ago, the campaign called "Prosecute the Prejudice and Sentence Stigma", was recently highlighted on SAfm when project leader Advocate Carl Fisher was a guest on a talk show.

The initiative aims to educate and inform the public as well as prosecutors about HIV-Aids and underline the importance of getting tested and being aware of your status.

Fisher said the campaign was aimed at helping poorer communities in the Eastern Cape to get a better understanding of the disease and remove the stigma around it.

"As relatively privileged South Africans in terms of education, financial remuneration and status, we as prosecutors in the Eastern Cape could not, in good conscience, stand by without trying to

## A bold campaign by prosecutors in the Eastern Cape is making a difference in the fight against Aids



**CARING:** Carl Fisher with children from the local community

make a difference," Fisher said.

He commended the prosecutors for testing for HIV-Aids to show commitment to the campaign.

Fisher said the HIV-Aids pandemic would define South Africa in this century.

"As apartheid and the struggle for liberation defined South Africa's history in the twentieth century, so the HIV-Aids struggle will define South Africa in this century," he said.

Director of Public Prosecutions, Advocate Lungi Mahlali SC, said, "The purpose of the project is to show ordinary people Aids testing is free, easy and available.

"Prosecutors hope that their example will encourage others to take the important step of knowing their status," said Mahlali.

Members of the legal fraternity in the Eastern Cape have heeded the call by the prosecutors to have themselves tested.



**Send your news – serious and funny – as well as letters to the editor to Khasho at**  
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