

PRIORITY CRIMES LITIGATION UNIT (PCLU)

1. INTRODUCTION

The Priority Crimes Litigation Unit (PCLU) was created by Presidential proclamation¹ on 23 March 2003 and is located in the office of the National Director of Public Prosecutions. This unit has no investigative capacity and is reliant on SAPS and the DSO in this regard.

Mandate:

To manage and direct investigations and prosecutions relating to the following matters:

- ***Criminal prosecutions arising from the Rome Statute;*** [Implementation of the Rome Statute of the International Criminal Court Act, Act No 27 Of 2002] This relates to the serious crimes of:
 - a. Genocide,
 - b. Crimes against humanity and
 - c. War crimes.

- ***Crimes against the State, including national and international terrorism;*** [Inter alia prosecutions under the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No 33 of 2004 - the POCDATARA Act]

- Contraventions of:
 - ***The Regulation of Foreign Military Assistance Act,*** [Act No 15 of 1998]
 - ***Non-Proliferation of Weapons of Mass Destruction Act*** (nuclear, chemical and biological warfare proliferation); [Act No 87 of 1993]
 - ***The National Conventional Arms Control Act,*** [Act No 41 of 2002]
 - ***The Nuclear Energy Act*** [Act No 46 of 1999]
 - ***The Intelligence Services Act*** [Act No 65 of 2002]

- Matters emanating from the **TRC process:**
 - Prosecutions
 - Missing persons

- Any other priority crimes as determined by the National Director.

¹ Cf attached copy of Presidential Mandate.
http://www.npa.gov.za/UploadedFiles/About_PCLU_signedoff.doc

2. FOCUS AREAS

The unit's focus areas are:

- (i) NUCLEAR NON-PROLIFERATION

- (ii) NON-PROLIFERATION OF CHEMICAL AND BIOLOGICAL WARFARE AGENTS

The PCLU instituted a prosecution for this category of offence. The matter was finalized with a plea of guilty and a fine of R100 000 was imposed on the corporate entity prosecuted. Further dockets relating to controlled chemicals of Crest and Amla were decided by this Unit.

- (iii) FOREIGN MILITARY ASSISTANCE

- In response to the arrest of South African citizens in Zimbabwe and Equatorial Guinea, the PCLU managed and directed an investigation into the involvement of other role players. This led to the arrest of three South African citizens and a UK citizen (Mark Thatcher). All four pleaded guilty in terms of section 105A of the Criminal Procedure Act.

- Following the release of the South African citizens detained in Zimbabwe in connection with the *coup* in Equatorial Guinea, eleven of them were arrested in South Africa and charged with contravention of section 3(b) of the Regulation of Foreign Military Assistance Act, No 15 of 1988. Two of the said accused pleaded guilty and were sentenced. The trial of the remaining nine accused is due to proceed in February 2007. It is anticipated that the outstanding prosecutions relating to the Equatorial Guinea attempted *coup d'etat* will be finalized in 2007.

- A matter of concern to Government was the participation of South African citizens acting as security guards in the conflict in Iraq. A number of enquiries conducted by SAPS were evaluated by the PCLU, but it was found that such conduct did not fall within the ambit of the existing FMA legislation. The PCLU prepared a detailed opinion recommending an amendment of the Act, which was submitted to all relevant role players.

- Government accepted the need to amend the Foreign Military Assistance legislation in order to take effective action in Iraq. A revised Act was placed before the Defence Portfolio Committee. However, the Minister of Defence recognized that the Act still contained several shortcomings.
- It is hoped that the revised legislation will shortly come into effect, since the PCLU would like to address Government's concerns relating to the number of South Africans performing security services in Iraq.

(iv) NATIONAL AND INTERNATIONAL TERRORISM

The PCLU closely interacted with State departments having an interest in such affairs. In several matters, the PCLU furnished opinions to SAPS, NIA and DFA. Although no prosecutions arose from such interventions, the PCLU's involvement meant that the matters were properly attended to.

(v) STATUTE OF ROME

A number of enquiries were carried out at the request of the International Criminal Court and a complaint relating to the seizure of farms in Zimbabwe was investigated. No prosecutions arising from the Statute of Rome were instituted.

(vi) CONVENTIONAL ARMS

- After a lengthy trial in the Regional Court, Germiston, a former employee of an arms manufacturer was acquitted on charges of supplying his company's technology to a foreign state's military structure. The charges related to highly technical contraventions of the Armscor Act, the Protection of Information Act, the Copyright Act and theft. The court found that the instrumentation that was built, did not comply with a specific military standard (as required by the Act) and that the accused did not have the required knowledge of unlawfulness relating to these specialized legislation.
- A number of complex and intricate dockets pertaining to alleged irregularities committed at Armscor and the Directorate of Conventional Arms Control Committee were submitted to the unit for decision. A number of these matters are under investigation.

(vii) MATTERS IMPACTING ON STATE SECURITY

- The PCLU offers opinions and other advice to various State departments on matters impacting on State security and other sensitive matters. The PCLU also addressed a standing committee of the United Nations' Security Council as far as the country's capacity to prosecute international terrorism.

(viii) TRC PROSECUTIONS

- The PCLU conducted an audit of around 300 cases which had been submitted by the DSO, DPP's and SAPS in 1999 in terms of a direction by the then NDPP. 167 of these cases were finalized on the basis that no prosecutions could be instituted.
- As a result of various representations received, the PCLU has identified five cases, which potentially can be prosecuted, as well as approximately 10 other cases warranting investigation. The following steps must be taken:
 - (i) The representatives of the State departments which are required to assist the PCLU in the execution of its duties must be identified and involve themselves in the process;
 - (ii) The issue of the investigations must be resolved with SAPS and the DSO and thereafter the necessary investigations completed;
 - (iii) The close involvement of the process by Justice is necessary in cases where prosecutions are instituted where amnesty was refused, since the applicants may take the validity of the refusal to grant amnesty on review to the High Court;

3. MISSING PERSONS

Due to the fact that the President had in 2003 directed the NDPP to give attention to the cases of some 500 persons who had been reported missing by the TRC, a small Task Team was established to evaluate the TRC report and to identify cases for investigation. Approximately 150 cases were identified for immediate investigation.

➤ Investigations and Exhumations

Investigations commenced into 150 missing persons that were identified as priority cases in an audit, with the aim of obtaining (a) information as to the fate of the missing person and (b) locating, exhuming and identifying human remains where possible.

Thus far the burial sites of thirty-two persons were located and these human remains were exhumed. Forensic analysis was conducted and identities confirmed in twelve cases. The remaining twenty are still undergoing DNA testing.

➤ Handover of remains and reburials

Five identified remains were handed to the affected families at a special national ceremony in July 2005 at Freedom Park. Reburials have taken place in all of these cases, with these families receiving assistance from the Department of Justice and Constitutional Development towards reburial costs. Further handovers will take place during 2006.

➤ Memorialisation

A key component of the work on Missing Persons is ensuring the necessary connection with existing structures engaged in memorialisation processes. Liaison with structures such as the South African Heritage Resource Agency (SAHRA), Freedom Park, and the SANDF was established to address matters such as tombstones for those exhumed and reburied. The outcome of Missing Persons investigations will be closely coordinated with other related bodies working on memorialisation, monuments and tombstones.

➤ International expertise

A partnership was built with the Argentine Forensic Anthropology Team (EAAF), the world leaders in this work, in order to ensure that missing persons' work in South Africa is in line with best international practices as developed by *inter alia* the UN and International Committee of the Red Cross (ICRC) in such human rights cases.

➤ Local capacity building

Local South African experts and several post-graduate students in the fields of archaeology, anthropology and anatomy were also drawn into the work on a collaborative basis with the Argentine team, building local capacity.

➤ DNA analysis

A partnership was established with the Human Identification Laboratory (HID) at the University of the Western Cape (UWC) for DNA analysis work. This lab is developing specialization in “ancient DNA” work, which works with difficult cases of old and damaged bone material, as is the norm in missing persons’ exhumations. The development of the capacity to conduct mitochondrial DNA tests (as opposed to only nuclear DNA tests) will be an important contribution to capacity building in Africa.

➤ Partnerships with civil society

The Missing Persons Task Team developed excellent working relationships with civil society groups and NGO’s working in the field of missing persons and disappearances, including the Center for the Study of Violence and Reconciliation (CSV) and Khulumani Support Group (KSG).

➤ Namibia

After the November 2005 discoveries of mass graves in Namibia, the Namibian President requested the assistance of South African expertise. The Missing Persons Task Team sent a delegation to review the situation and make recommendations accordingly. The Namibian authorities warmly received the delegation’s report and recommendations. The report included the offer of assistance to Namibia in the form of establishing a national co-ordination structure, as well as research, investigation and DNA analysis support. As a key role player in the past Namibian conflict, South Africa has a particular historical responsibility in this regard.

Assistance to the Namibian authorities will form a key component of the work of the Missing Persons Task Team in future. This will take the form of research, investigation and co-ordination assistance, pending the approval of the relevant South African government structures.

➤ Cases outside the South African borders

While thus far investigations and exhumations have focused on cases inside South Africa’s borders, groundwork will be laid for the examining of cases of South African persons missing outside the countries borders.

➤ Integration with the new TRC Unit established in the Department of Justice and Constitutional Development

As these missing persons investigations are the result of the TRC's recommendations, the Missing Persons' Task Team serves on the Steering committee of this new TRC Unit.

➤ Co-operation with other Government Departments

Missing Persons investigations require the co-operation of other Departments such as Home Affairs, Foreign Affairs and Health. Protocols with these Departments will be required via the Minister of Justice and Constitutional Development. In particular, the initial collaboration with certain SAPS investigations will be strengthened and formalized.

The PCLU strives to maintain a high standard of efficiency in dealing with complex matters emanating from its mandate and which impact on the Rome Statute and State security.