

NOTEWORTHY **CASES** 2020/21

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NATIONAL PROSECUTING AUTHORITY
South Africa





REFLECTING ON CASES
IN PRIORITY CRIME AREAS



REFLECTING ON CASES IN PRIORITY CRIME AREAS

The cases highlighted in this document reflect a small selection of the important cases that were finalised in court during the financial year 2020-21. The selection focuses on the priority crimes that are identified in the NPA's strategy, which are:

- (1) Corruption
- (2) Gender Based Violence
- (3) Serious and Violent Crimes
- (4) Organised Crime

Priorities for 6 months: April to September 2021

This trajectory on priority crimes continues in the NPA's strategic planning and implementation process for the current financial year (April 2021 to March 2022). The NPA's senior leadership reflected on the priorities, challenges and opportunities as the organisation moves into the implementation phase of its new strategic plan. This is a critical and action-orientated reflection on the NPA's performance and the difficult choices the organisation faces to ensure demonstrable progress in advancing its mission and delivering on promises to the people of South Africa.

The NPA plays an indispensable role in combating crime and upholding the rule of law. With a few clear and measurable priorities across the organisation, the NPA aims to achieve important success and make concrete impact, fast. This information will be shared with the public on a quarterly basis.

The four short-term priorities agreed on for the short-term period up to September 2021, are as follows:

- Expediting high-profile corruption cases nationally and provincially.
- A stronger focus on serious violent and organised crime, and crimes that disproportionately undermine public safety.
- Capacitating the NPA through recruiting crucial additional skills and expertise, and capabilities, to respond to existing and emerging priorities.
- Enhancing staff morale and well-being.

The last two are the pillars that will support and ensure that the first two are achievable.



CASES ON
ORGANISED CRIME

CASES ON ORGANISED CRIME



ORGANISED CRIME IN NUMBERS



Conviction rate achieved

92.5%



Cases finalised
172 CONVICTIONS



Number of verdicts

186



Value of money laundering related freezing orders

R31,6M



Value of money laundering Related CARA Payments

R33M



Value of Recoveries

R38,6M



Value of Confiscations/Forfeiture related to copper theft

R153K



Value of Copper Related CARA Payments

R49K

Environmental crimes such as rhino poaching, illegal fishing and dealing in abalone, lion bone, illegal dealing and possession of ivory as well as waste and pollution cases, illicit mining, copper theft, damage to essential infrastructure and the disruption of construction sites and/or extortion at building projects; especially of government building sites. Wildlife trafficking is no longer purely a conservation and environmental management problem, but constitutes a form of serious transnational organised crime of high sophistication and a threat to national security.

The NPA in collaboration with other stakeholders in government has been participating in having a holistic strategy that will ensure effective combatting of wildlife trafficking. This strategy is directed specifically at endangered species such as rhino, elephant, pangolin, abalone and cycad.

The cases below are an illustration of the successes achieved in dealing with organised crime in the various categories identified above.

COPPER AND INFRASTRUCTURE THEFT

State v Mettler

Ricardo Mettler, the former bodyguard of the then Premier of the Free State, Ace Magashule, was sentenced to 15 years imprisonment after he was found guilty on four charges relating to the theft of a Pierneef painting from the office of the Premier, worth R8 million. He was also sentenced to another 15 years for money laundering, for offering the painting to a Chinese businessman as a guarantee for a loan. The court added another 15 years for fraud. He pretended that the painting was donated to him by Magashule, and that it legally belonged to him. In addition, the judge sentenced him to 12 months imprisonment for making a false statement to the police, in which he said Magashule gave him the painting.

CABLE THEFT AND ECONOMIC SABOTAGE

State v Mpofu

The accused was caught at the Roodepoort Train Yard in possession of 2 rolls of copper catenary wire with a length of 150m. This wire formed part of the overhead track equipment. Although the value of the cable found with the accused was only R33 750, the resultant damage was estimated at R225 000.

The accused was convicted and sentenced in the Roodepoort Regional Court for contravening section 3(1) (a) of the Criminal Matters Amendment Act 18 of 2015 and theft, and sentenced to 7 years imprisonment.

ESSENTIAL INFRASTRUCTURE

State v Mlilwane and 2 others

The accused were convicted and sentenced for the theft of ferrous or non-ferrous metal forming part of essential infrastructure, in that they stole the PRASA signal cable from the Orlando Station. They were sentenced to 7 years imprisonment in the Orlando Regional Court.



Adv Ronelle Stone

State v David Jenkins

The Cape Town Regional Court sentenced David Jenkins to an effective term of 13 years imprisonment after convicting him of 25 counts of theft. The accused drove around in his vehicle and stole broadband over power lines (BPL) cards and BPK cards from MTN cellular phone towers across Cape Town and some parts of the Boland. He also stole Small Form Pluggable Optical Modules from Cell C which are compact media connectors that provide instant fibre connectivity for networking gear and provide high speed internet to users. The equipment he stole is worth R1,6 million.

He was sentenced to 20 years imprisonment for each of the counts. However, the court suspended seven years of each of the 20 years, which resulted in an effective 13 years imprisonment for each count. The court further ordered that all the sentences run concurrently. The hefty sentence comes as criminal syndicates are increasingly targeting South African mobile operators' base stations, stealing or vandalising critical infrastructure like batteries, copper cables and diesel.



Adv Aradhana Heeramun

State v F Faro

Faro stole computer hard drives at railway stations which were recovered at Computer World in Kuilsriver. He entered into a plea and sentencing agreement with the state and was subsequently sentenced to 15 years imprisonment for each of the ten counts. The court ordered the sentences to run concurrently and suspended 5 years of each of the 15 years for 5 years, on condition that the accused is not convicted and sentenced for the same crimes during the course of sentence.

He will effectively serve 10 years imprisonment.

The equipment was utilised in determining the types and trends of crime on the various stations. With the removal or theft thereof, no proper planning could be done and crime had escalated at the various stations. Crimes against commuters with reference to robberies and assaults could not be prevented and that led to major claims being instituted against Prasa/Metrorail. The region had various train burnings on different stations. The identity of the perpetrators could not be traced or identified and future trends not be determined. PRASA spent approximately R5m to have the CCTV installed and maintained on the various stations within the region.

ILLEGAL POSSESSION OF SUCCULENT PLANTS

State v Kalman Kaminar

The accused was charged and convicted on two counts of illegal possession of succulent plants declared as protected. The South African Red Plant List declared some of the plants as vulnerable and endangered. He had a five-page price list titled 'Kal Kaminar – Never Enough Cactus. Hunting Fall Plant Sale 2019 Labels' that listed various South African succulent plants. He was sentenced to 2 years direct imprisonment, conditionally suspended for five years. Following a confiscation order overseen by the Asset Forfeiture Unit, the court ordered the accused to pay R500 000 to the state; R250 000 to be paid into the Criminal Assets Recovery Account and R250 000 to be paid to the Western Cape Nature Conservation Board.



Adv Yuri Gangai

State v Wood Glaze (Pty) Ltd

A Durban company Wood Glaze (Pty) Ltd was fined a total of R7.5 million in the Durban Regional Court after pleading guilty to contravention of the National Environmental Management Waste Act, contravention of the National Water Act and two counts of contravention of the National Environmental Management Act.

SCCU: S v Mohamed Baig

A 29-year-old man was sentenced to eight years after he pleaded guilty to a charge of money laundering by the Bloemfontein Regional Court. Magistrate Collin Nekosie sentenced Mohamed Baig for being in possession of four suitcases full of suspected stolen money on February 2017 at the Bram Fischer International Airport in Bloemfontein. Baig and his co-accused, Mohamed Ismael, drove from Durban to Bloemfontein to catch a flight to Cape Town. The police and the airport security officials became suspicious when they noticed the duo with four big travelling bags that were too heavy. They requested to search their bags and found bundles of cash in envelopes hidden inside the bags. They were in possession of \$910 000 and R12 million. The total amount of the money at that time was R21 million. Ismael was later released due to lack of evidence. In court, State Prosecutor, Advocate Francois Pienaar said that the money could be meant for illegal activities because the accused failed to give a satisfactory explanation for being in possession of such huge amounts. Magistrate Nekosie sentenced Baig to eight years or R200 000 of which four years or R100 000 were suspended for a period of five years.



Adv Farhana Patel

State v Huang and Others

A major investigation, code-named “Python”, was conducted by the SAPS Directorate of Priority Crimes Investigation in Middelburg. The investigation targeted the “Huang syndicate” that trafficked and smuggled illegal rhinoceros horns from South Africa to Asia. An undercover agent was deployed to infiltrate the syndicate. During the course of the investigation several authorisations in terms of S252A of the Criminal Procedure Act were obtained, in terms of which the agent engaged in dealings with the syndicate involving rhino horn and other rhino parts. Most notably he dealt with Yuchih Huang (Huang) and Shuihua Chen (Chen), the kingpins of the syndicate. During the entrapment operations money was seized. In certain instances, these dealings were conducted at Emperors Casino in order to disguise the true nature and origins as well as to conceal the exchange of the money. As a result, certain monies were deposited in a casino card and casino chips which were also seized. Two vehicles used by the perpetrators were also seized as instrumentalities. The AFU office in Johannesburg obtained a preservation order in the amount of R3.06m on 22 December 2020. The AFU is proceeding with the forfeiture.



Adv Waldo Smit

State v Liao Wen Chen and others

The SAPS searched 4 premises in the Buh-Rein Estate in Kraaifontein after receiving information about the possession and smuggling of abalone. Abalone was discovered at three of the four premises. Cash to the value of R1.9m and vehicles were seized. The AFU Cape Town obtained a forfeiture order to the value of R2.1m on 4 March 2021. The AFU is proceeding with the recovery.

ILLICIT FINANCIAL FLOWS

Yerdaw Matter

The Johannesburg AFU office obtained a preservation to the value of R7m on 23 March 2021 in Johannesburg. The accused was in possession of USD 482 350 en route to Addis Ababa. He failed to declare the foreign currency in his possession and could not provide an explanation for his possession thereof. He also did not claim ownership of the money.

Yu/Ultra Gain Trading

Li Yu is the soul member of Ultra Gain Trading CC. Yu presented falsified documentation and documentation containing false or incorrect information to an authorised dealer (AD) in support of applications to purchase foreign currency and to remit same from South Africa. The values per container were vastly overstated and it transpired that virtually no containers were actually shipped. The AFU obtained a forfeiture order in the previous financial year. The money recovered from the Johannesburg branch of the Bank of China, in the amount of R32.1m was paid over to the CARA on 20 May 2020.



Adv Nandipha Tuntulwana

The Up Money Matter

Up Money was a Ponzi scheme, disguised as a business for members buying groceries. Member rewards were determined by the number of new members recruited, a typical Ponzi scheme modus operandi. The bank accounts drew the attention of the fraud unit of First National Bank and the Financial Intelligence Centre as R42m was received in an FNB account in the span of a mere 2 months. The FIC placed a hold on the money remaining in the account in terms of their legislation allowing for the AFU Office in Johannesburg to launch preservation applications. The AFU obtained three preservation orders with respect to monies held in bank accounts. R18.72m was preserved on 23 July 2020, R300k was preserved on 28 July 2020 and a further R448k was preserved on 15 October 2020. The AFU is proceeding with the forfeiture applications. This case illustrates the value of establishing good working relationships with partners outside the NPA in order to quickly secure funds using a combination of the legislation of both units. It also shows the value in having cases referred to the AFU.

ILLICIT FINANCIAL FLOWS (CONT.)



Adv Farhana Patel

Wegrostek Matter

Ivo Gunther Wegrostek and others were arrested for theft of R53 million from the City of Tshwane Municipality. The money was earmarked for payment to the National Fund for Municipality Workers. The Pretoria office of the AFU obtained a forfeiture order in the amount of R23.3 million on 2 December 2020. The AFU is in the process of the recovery.

CASH-IN-TRANSIT ROBBERY



Adv Johan De Nyschen

State v Mohlomi

A cash-in-transit robber, Ishmael Mohlomi was on 23 September 2020 sentenced to 110 years after he was convicted of two counts of murder, two counts of attempted murder, attempted robbery with aggravating circumstances, two counts of illegal possession of firearm, one count of possession of prohibited firearm and one count of illegal possession of ammunition.

Mohlomi from Vosloorus in Gauteng, together with Vusi Njali and Joseph Kolane attacked a SBV cash van at Central Park in the Bloemfontein CBD on 7 August 2017. The cash van was delivering money destined for Standard Bank ATM when the robbers started shooting at the SBV security officials. The SBV officials returned fire and Njali and Kolane were fatally shot in the incident. Njali died at the scene and Kolane died later in hospital as a result of gunshot wounds. Mohlomi was arrested at the scene shortly after the shooting. Three firearms were recovered. The serial number of one of the firearms was filed off.





CASES ON SERIOUS
AND VIOLENT CRIMES



CASES ON SERIOUS AND VIOLENT CRIMES

SERIOUS & VIOLENT CRIMES IN NUMBERS



Number of trio crimes convictions
809



Trio crimes conviction rate
85.2%



Number of sexual offences convictions
2 539



Sexual offences conviction rate
75.8%



Murder cases finalised
2 123



Murder conviction rate
79.3%



Number of freezing orders relating to murder
1



Value of freezing orders relating to murder
R49K



Value of murder-related CARA payments
R21,8K



Total Value: Recoveries (Murder)
R21,8K

Violent crime covers a variety of offences, ranging from common assault to murder. It also encompasses the use of weapons such as firearms and knives. Criminal charges related to more serious and violent crimes include aggravated assault, arson, assault and battery, domestic violence, hate crimes, gang-related violence, rape and murder. One of the most serious areas of violent crime is homicide - killing a person, whether lawfully or unlawfully.

This type of crime is primarily prevalent in the poorer violence-prone communities that are affected by high levels of interpersonal violence and property crime will have affected hundreds of thousands more South Africans. In essence, these are the type of crimes that leave the feelings of fear and insecurity the most.

According to the SAPS Crime Stats last year (2019/20), murders in South Africa remain high, with a 1.4% increase in 2019/20, to 21,325 reported cases. "This works out to 58 people murdered in the country every day, at a rate of 35.8 people per 100,000 population".

ROBBERY, HOUSEBREAKING AND SERIAL RAPE

State v Mhlongo

The accused operated as a serial rapist, robber and housebreaker for 5 years in 3 different provinces. He was charged with 47 counts emanating from 13 case dockets and the trial was centralised in the Johannesburg High Court.

During the period July 2012 to April 2015 the accused accosted women in the street and raped them. He also robbed three of his victims. The accused entered into a plea and sentence agreement in terms of which he would be sentenced to 35 years imprisonment. The High Court rejected this proposed sentence and sentenced the accused to life imprisonment.

CONTRACT KILLINGS



Adv Ntsika Mpolweni

State v Shongwe

Simangele Edith Shongwe was sentenced to life imprisonment and 28 years for killing her husband, Vusi Mona, who was the principal of Zwelisha Primary School in the District of Mbombela. On that fateful evening, Shongwe and Mona were in their place of residence when three unidentified men entered unannounced, forced Mona into his vehicle and drove to Pienaar. His lifeless body was discovered the following morning with gunshot wounds and his legs and feet tied with shoes laces. The police investigator who was at crime scene noticed that there was no forced entry into the house and that video footage showed how the premises were accessed. Shongwe also seemed unshaken after the crime was committed and all evidence pointed to her being behind the killing in the apparent murder-for-hire case. The three men were never found or identified.



Ms Nomava Buso

State v Mphuthumi Toni

The Mthatha Regional Court sentenced 39-year-old ex-traffic officer, Mphuthumi Toni, to life imprisonment after convicting him for the murder of his wife, who was a police constable. Toni shot and killed his wife in the presence of their 2-year-old child, in the bedroom of a house they shared at the police camp in Mthatha. He then turned the gun on himself, but the bullet only grazed his forehead. When police arrived at the scene, he claimed that there had been an intruder who shot him and his wife.

CHILD MURDERS

State v Adolf

The accused was charged with the murder of an 18-month-old boy which occurred in February 2018. The accused took his girlfriend's child to the shop in the middle of the night. When he returned the child looked weak and dazed. He lied and said he had been in a fight with the child's biological father and that the child had fallen in the process. The next afternoon the mother took the child to a day hospital where they discovered that the child had extensive brain trauma and he died days later. The accused later changed his version to say that the child had fallen from his arms onto the shop stoep. The accused was convicted for murder and sentenced to 18 years imprisonment.

GANG-RELATED MURDERS



Adv Ronelle Stone

State v Brandon September and Another

Mujahid Alexander and Brandon September, both members of the Ugly Americans gang were convicted of the murders of Faried Alexander, a Junior Mafias gang member, and Kwanele Singqu. They were involved in a fight over drug territory and dealing, as part of the ongoing fights between the Terrible Josters and Ugly Americans gang.

Mujahid Alexander (Accused 6) was convicted for the murder of Kwanele Singqu, being a member of a gang, illegal possession of a firearm and illegal possession of ammunition. The court sentenced him to an effective 22 years imprisonment.

Brandon September was convicted of murder of Faried Alexander, of being a member of a gang, illegal possession of ammunition and illegal possession of ammunition. He was sentenced to an effective 37 years imprisonment. The court ordered that all the sentences run concurrently.

GANG-RELATED MURDERS (CONT.)



Adv Mervyn Menigo

State v Fabian Cupido

Cupido was convicted of the murder of a prominent Cape Town underworld figure, Brian Wainstein. He entered into a plea and sentence agreement with the state and was convicted on charges of murder, illegal possession of a firearm, money laundering, being a member of a gang, and illegal possession of ammunition. He was sentenced to an effective term of 25 years imprisonment. The matter was a gang related contract killing which was premeditated and committed in the furtherance of a conspiracy and in association with a criminal gang. The circumstances of the murder are particularly heinous as the home of the deceased was invaded and he was shot multiple times at close range while sound asleep next to his girlfriend and young child. Cupido carried out the murder and the next morning he was paid R35 000 for his role in the murder.

CONSPIRACY TO MURDER



Adv Mujaahid Sandan

State v Lunga Mbondo and Nosiselo Kamba

The accused were arraigned on two counts of conspiracy to commit murder, two counts of murder, two counts of defeating the ends of justice and attempted murder.

Kamba, who was a police officer and a jealous lover, conspired with Mbondo to kill her boyfriend (also a police officer). She also attempted to kill her boyfriend's other girlfriend. When the brother of her deceased boyfriend witnessed the assault on the deceased's girlfriend, Mbondo and Kamba conspired to kill him as he was a potential witness. After killing him by hitting him with a blunt object, they transported the body to Grahamstown and was dumped it in a bushy area. Two years later, Kamba's boyfriend was badly assaulted, his body put into the boot of his vehicle and driven by Mbondo to Peddie and then burnt his body in his vehicle. The evidence was based on circumstantial evidence, cellphone and tracker evidence. Both accused were sentenced to life imprisonment.



CONSPIRACY TO MURDER



Adv Juliet Makgwatha



Adv Bakedi Maoki

State v James Aaron Sithole and 4 Others

A married lesbian couple was brutally murdered, raped and their bodies were burnt beyond recognition. Five people were convicted for two counts of murder, rape, robbery with aggravating circumstances, two counts of kidnapping, three counts of theft and defeating the ends of justice. The accused were sentenced to twelve life terms.

Two of the accused were husband and wife and master-minded the murder. They rented a shop which was situated on the plot/farm of the lesbian couple deceased and were interested in buying the plot. They had a sales agreement/contract drawn up, with the nefarious intention of killing the couple after the contract was signed. For this purpose, they approached the other accused for assistance to carry through their murderous intentions.

On 10 December 2017, the lesbian couple went to the farm of the would-be buyers and upon arrival were forced to sign the contract before they were brutally assaulted and eventually killed. Their bodies were raped and set alight so that they could not be identified, and their motor vehicle was also set alight at a remote place next to Randfontein.

One of the accused persons committed suicide during the course of the trial. The state relied mainly on circumstantial evidence and the evidence of Section 204 witnesses. Three of the witnesses were under witness protection for the duration of the trial. The State succeeded in proving that all the accused acted jointly in the furtherance of a prior criminal agreement to commit the offences in question. All the accused were convicted as charged and sentenced to an effective life imprisonment.

State v Elton Abrahams

Telton Abrahams was sentenced to 30 years imprisonment for the murder and robbery with aggravating circumstances of Zelda van Niekerk, biker and founder of charity organisation, "Bikers with a Cause". He received 20 years for murder and 10 years for robbery with aggravating circumstances. The sentences were ordered to run concurrently.

Abrahams, 24, stood guard while the murder and robbery took place but the State charged him with common purpose. He told the court that on 28 September 2018, he and his co-accused smoked a pipe of dagga and mandrax. After they ran out of drugs, they decided to hunt for robbery victims in Summer Greens, Cape Town.

This excursion did not yield any positive results and on their way back to Facreton, they came across Van Niekerk sitting next to her bike under the bridge on the N1 highway. She was waiting for her friend on their way to escort a learner to his matric ball. They decided to rob the 45-year-old biker. Pietersen went for her backpack which had R3 000, proceeds from printed t-shirts. She resisted and in the wrestle for the backpack Ackerman took out the firearm and shot her in the stomach. They took her backpack and ran away. They shared the money and Abrahams went home.

CASES WITH ASSET FORFEITURE ELEMENT

Whilst these matters rarely involve large amounts in proceeds, instrumentalities or benefit, the AFU nonetheless has a role to play in applicable cases (as below).

State v Seloana and Others

The AFU in the Free State obtained a preservation order in this matter on 3 December 2020 in the amount of R4,91m. The matter involved 8 accused who kidnapped the wife of a plant manager at the Harmony Gold Mine in Welkom. The kidnappers demanded a gold bar as ransom. The gold bar was then cut into smaller pieces, some of which was sold on the black market for R1,4m. The SAPS arrested the perpetrators. During the arrest gold, cash and vehicles to the value of R4,91m were seized. The AFU is proceeding with the forfeiture.

State v Mopaya Edward Raatji and one other

Raatji and his accomplice Mahlake were travelling from Mokopane to Polokwane when their vehicle was stopped by the police, who made a gruesome discovery of a young woman's head. They were linked to the killing of a 17-year-old woman, Nthabiseng Mosomane. The AFU Polokwane obtained a forfeiture order against the vehicle the accused were travelling in and it was forfeited as an instrumentality in committing the murder. An amount of R14 670 was deposited into the Criminal Assets Recovery Account (CARA) on 8 July 2020 after the vehicle was sold on auction.

Falaz General Trading

Falaz General Trading was awarded a tender by the Lepelle Northern Water Board based on fraudulent documents. The contract was set aside by the High Court in Polokwane, which meant that Falaz Trading was not entitled to payment of invoices submitted to Lepelle. The accused then kidnapped and extorted money from the acting CEO of Lepelle. The AFU office in Polokwane obtained a preservation order to the value of R1,1 million on 4 December 2020.

CASES WITH ASSET FORFEITURE ELEMENT

State v JP Wolfaard and others

The accused were involved in an armed robbery of cash from a G4S depot in Kimberley. The AFU office obtained a preservation order in the amount of R800 000 on 28 February 2020 and a forfeiture on 14 August 2020. To date an amount of R324 672 has been recovered and paid into the CARA.

MUTI KILLINGS



State v Dzambukeri, Mhlongo, Mahumani and Chuma

Adv Absah Madzhuta

The trio were convicted and sentenced by the Thohoyandou High Court to life imprisonment for the murder of Hlayisani Hlungwani. The state alleged that the trio unlawfully and intentionally killed Hlungwani by stabbing her with a knife and cut off her lips, breasts and vagina for ritual purposes at Hlomela village outside Giyani.

MURDER / POLICE KILLING



State v Masiu

Adv Dansi Mpemvane

A Lesotho national, Simon Masiu was on 19 November 2020 sentenced to 25 years imprisonment for murder of Captain Jonas Tshabalala who was attached to the Directorate of Priority Crime Investigation – commonly known as “The Hawks”.

Masiu, together with Sprinkaan Maema ambushed Tshabalala while he was visiting an acquaintance of him in Tau Street, Phelindaba Bloemfontein on 24 May 2018. The accused entered the house and shot at Tshabalala and drove away with his Toyota Double Cab bakkie.

Maema was sentenced to 20 years for murder and 13 years for robbery in 2019. Masiu escaped to Lesotho and was arrested a year after the commission of the crime.

MURDER



State v Dakile & Another

Adv Nqwenelwa Mazwi

Themba Dakile (29) and Sipho Nhlapo (27) were each sentenced to life imprisonment after they were convicted of murder of a local farmer, Johannes Mazibuko and robbing him of his cattle in July 2019.

The accused were seen by herdsmen driving 89 brahman cattle belonging to Mazibuko. The herdsmen confronted them but they ran in different directions. Mazibuko's lifeless body was discovered not far from the farm with his throat slit.

State v Hasane and Others (Adv Johannes Cloete)

The five accused in the murder of Johannes Baatjies and his friend Jeffry Nouse, were sentenced by the Kimberly High Court on 21 August 2020. Their sentences range from 18 years to life imprisonment for the heinous crimes committed against the victims.

Richard Hasane, Frank Baxane, Zonizelo Magawu, Charles Mphondomisa and Matthews Legodu were accused of conspiring to kill Baatjies, who at the time of his death was to be sworn in as a councillor of a political party. The motive for the killing was to ensure that he is stopped from being sworn in as a councillor.

On the day of the assassination, Baatjies and Nouse were lured to a bogus business meeting for a transaction of about R800 000. Instead of striking a deal, the victims were shot on the road between Danielskuil and Postmasburg. Baatjies who was shot numerous times, died on the scene due to the seriousness of his wounds and Nouse later died in hospital.

Richard Hasane received 18 years for each of the two counts, to run concurrently, because he became part of the plot later and his role was to provide transport to the killers. All the other accused were each effectively sentenced to life imprisonment.





CASES ON FRAUD AND CORRUPTION



CASES ON FRAUD AND CORRUPTION

CORRUPTION IN NUMBERS: NPS & SCCU



Priority corruption cases identified **93**



Government officials convicted **93**



Priority cases enrolled **44**



Private sector individuals convicted **147**

CORRUPTION IN NUMBERS: AFU



Value of forfeitures and confiscations **R135,8M**



Number of freezing orders **308**



Value of freezing orders **R611M**



Recoveries: POCA **R111,3M**



Corruption Recoveries **R3,3M**



Value of corruption related to government officials **R127K**



Restraints obtained through ID **R278,8M**



Value of corruption related CARA payments **R723K**



Value of corruption-related victim payments **R2,6M**



Total Value:
Confiscations / Forfeitures: **R11,4M**

The examples of cases below reflect successful prosecutions, as well as action through the AFU's criminal and civil forfeitures, to ensure that the proceeds of crime are claimed back by the state dealing with corruption through



Adv Bishum Somaru



Mr Oddie Mradla



Adv Thato Ntimutse

Asbestos Matter

The AFU office in Bloemfontein obtained a preservation in the so-called Asbestos matter on 30 September 2020 in the amount of R300m. A number of high-ranking officials including inter alia the former Premier of the Free State, the former Mayor of Mangaung and former Head of the Free State Department of Human Settlements, were involved. The accused manipulated procurement processes and committed tender fraud in the Free State Department of Human Settlements and as a result a company was paid R230m for a project relating to the audit of homes fitted with asbestos roofs in the Free State province. A number of officials received undue and corrupt payments. The matter is ongoing.

State v Eric Phukwana

Eric Zwelakhe Phukwana, former Municipal Manager of Naledi Municipality, was sentenced by the North West Regional Court in Vryburg on 12 February 2021. He accepted a bribe of R350 000 from a private contractor in order to facilitate the unlawful payment of public funds earmarked for housing, to the said contractor. He was sentenced to an effective sentence of 10 years suspended for 5 years imprisonment for corruption, fraud, and the contravention of the Municipal Finance Management Act, as all sentences were ordered to run concurrently.

He also consented to a forfeiture in terms of section 19(1) of the POCA of the amount of R350 000 that was paid by Khasu into his bank account. The total amount of the confiscation order is R454 732. He applied for leave to appeal his convictions and sentence, but the Magistrate only granted his leave to appeal the sentence.

Albatime Matter

The Investigating Directorate obtained a restraint order to the value of R232m on 21 June 2020, in the matter involving a company, Albatime and its director, K Moodley. The matter relates to fraud and corruption perpetrated in the awarding of tenders and contracts by Transnet, in the acquisition of locomotives and the provision of rail maintenance. The criminal prosecution is ongoing.

L Gumede (Covid-19) Matter

The Respondent submitted false claims to the Unemployment Insurance Fund in terms of the TERS Covid-19 funds made available for the purpose. The AFU office in Johannesburg obtained a preservation for the proceeds of the fraudulent claims on 19 March 2021 in the amount of R4m. This is one of the cases that was fast-tracked through the Fusion Centre and illustrates the value of adopting a multi-disciplinary approach in quickly securing and recovering the stolen money.

State v Dr Felix Mkhize/Eric Zondi Matter

Felix Mkhize was the Head of the KwaZulu-Natal Department of Agriculture and Rural Development. A service provider to the department, Ikhwezi Protection Services, purchased a motor vehicle to the value of R541 800 for Mkhize. The AFU Durban obtained a preservation order for an estimated R457 000 on 16 September 2020 and a forfeiture in the amount of R457 500 on 15 February 2021. The recovery process is ongoing.

State v Tumisang Molefe

The accused was the sole director of Leano Asset Disposal CC. His close corporation provided asset disposal services. He was not a qualified auctioneer but he was appointed by the Lekwa Teemane Municipality in Bloemhof and Botshelo Water in Mahikeng to dispose of their redundant assets. These assets included vehicles, vehicle accessories, water tanks and office furniture. He organised and held auctions for both organisations and sold their redundant assets as directed. He however failed to pay over the proceeds of the auctions to the two organisations and unlawfully appropriated the said proceeds for his own benefit.

The amounts involved were R255 000 in respect of the Lekwa Teemane Municipality and just over R1 million in respect of Botshelo Water. Subsequently, the municipality and the water board laid criminal charges against him. He was arrested and appeared before court. The two dockets were centralised to the Mmabatho Regional Court. On 13 March 2020 he pleaded guilty to two counts of theft and was sentenced to 3 years imprisonment wholly suspended for 5 years in respect of Lekwa Teemane Municipality and 5 years direct imprisonment in respect of Botshelo Water.



Adv Derrik Vogel

State v Phoshoko and Mdingi

The first accused was a prosecutor and was charged together with his co-accused for defeating the ends of justice and corruption.

He was convicted of both counts after a marathon trial and sentenced to an effective period of 5 years imprisonment for both counts. His co-accused, a private person was sentenced to 5 imprisonment years which was suspended on conditions.



Adv Louis van Niekerk

The State v Wilmien Bernardo

The accused Wilmien Bernardo was an Agricultural Development Officer at the George Regional Office of Casidra. Casidra (Pty) Ltd is a developmental organisation, with the aim to empower local and informal contractors with funds received from the Western Cape Provincial Department of Agriculture. The accused was responsible for the implementation of the Comprehensive Agricultural Support Program projects in the Eden District Municipality. The accused obtained quotations for items needed as well as quotations from contractors for the work that was to be done.

Marius Bernardo, her then husband, worked as a salaried employee for a wood-based manufacturer in George. The accused submitted the details of her husband's bank accounts as being the bank accounts of contractors used by Casidra. She then caused cash to be transferred to four bank accounts of what appeared to be that of four contractors, over a period of more than 2 years. In reality these accounts were all savings accounts opened in her husband's name. The accused got quotations from the contractors, falsified a new quotation in their names without their knowledge and added an amount to the original quotation. After completion of the work she supplied a falsified invoice in the name of the contractors and the fraudulent amount was then paid into her husband's bank account. Bernardo would then pay a lesser amount over to the contractor and pocket the rest. She therefore made an illegal profit.

Marius Bernardo entered into a section 105A Act 51 of 1977 agreement, and as a divorcee testified for the State.

The accused was charged with 79 counts of fraud, alternatively 79 counts of theft, to a total value of R142 098. These offences falls within Part 2 of Schedule 2 of Act 105 of 1997. The total amount transferred from Casidra's bank account to 4 savings accounts of Marius Bernardo was R1,2 million.

Section 100 North West Intervention

There are 51 cases under investigation, which relate to the Section 100 Intervention in the North West province. Out of these 51 cases, 13 matters are in court, 13 matters must still be decided by the NPA, and nine matters are under investigation. A total of 16 matters have been finalised in court, with five convictions, and one acquittal. The total value of the investigations currently being investigated amounts to R2.3bn.



CASES ON GENDER-
BASED VIOLENCE
AND FEMICIDE



CASES ON GENDER-BASED VIOLENCE AND FEMICIDE

GBVF IN NUMBERS



Number of Thuthuzela Care Centres (TCC) **55**



Victims assisted at TCC sites **29 593**



Sexual offences victims at TCC sites **26 281**



% of sexual offences victims assisted at TCCs **88.8%**



Number of life imprisonment sentences imposed on cases reported to TCCs: **141**



Number of sentences 20 – 25 years imprisonment **85**



Femicide convictions **231**



Conviction rate on femicide cases **94.3%**



Intimate partner femicide cases **190**



Conviction rate on partner femicide **93.1%**

Gender based violence and femicide (GBVF) has become a scourge and has resulted in the President declaring a national crisis which resulted in the first Presidential Summit on GBVF in November 2018. This was followed in September 2019 by the development of the Emergency Response Action Plan (ERAP) to address GBVF and the National Gender based Violence and Femicide Strategic Plan (NSP) in 2020.

The impact of these offences on victims, their families and their communities cannot be underestimated. While there has been long term progress in how the criminal justice system responds to these offences, more needs to be done to encourage victims to report cases with the confidence that they will be addressed as effectively as possible and that the victims will ultimately receive justice.

The SOCA unit has addressed gender-based violence in various ways. These include the introduction of the Thuthuzela Care Centres, regarded as an international best practice model in dealing with sexual offence matters. These centres are aimed at minimising secondary victimisation of the victims as they enter the system, with an approach that puts the needs of the victim first and foremost. The core objective of the services provided at the TCCs is to expedite finalisation of the investigation and prosecution and to

improve the conviction rate. This court preparation model has ensured a victim-centric approach and has also resulted in an increase in life sentences and long-term sentences in respect of matters emanating from the TCCs.

Challenges of prosecuting rape

Among the key challenges in prosecuting rape, is that in many instances rape occurs among people who are acquainted or are in a domestic relationship; where one party says it was consensual and the other party doesn't. The prosecution is required to make a decision of whether or not to pursue prosecution on the basis of available evidence that will stand criminal scrutiny in court and therefore in many such dubious cases, the prosecution does not proceed leading to an outcry by the victim and the community. Largely, the availability of rape kits at police stations or Thuthuzela Care Centres improves the chances of successful prosecution, but it is not always the case that these are available. In many cases, there are clear vulnerabilities that work against complainants, e.g. cases that involve alcohol or in cases where the complainant has mental health problems. There are also many challenges in dealing with other forms of gender-based violence, such as domestic violence and maintenance problems that affect the position of vulnerable women and children. For this reason, the NPA has adopted a victim-centric approach to deal with such matters.

The following cases reflect the great efforts by our prosecutors in the courts to strive for minimum sentences in the various crimes of gender-based violence. An increasing trend in minimum sentences handed down, mostly life imprisonment, is a reflection of the prosecutors arguing for these hefty sentences and the judiciary's commitment for handing down such sentences in appropriate cases.



SERIAL RAPE



Adv Michelle Bayat

State v Mhlongo and another.

The accused were charged with 41 counts relating to their reign of terror in the Tshepisoong area in Mogale City. The charges included 16 counts of rape, 4 counts of robbery with aggravating circumstances and murder.

The accused were sentenced to life imprisonment, with the provision that the sentences will be reconsidered after 25 years. Both accused were declared dangerous criminals in terms of section 286B91)9a) of Act 51 of 1977.



Adv Cornelia Harmzen

State v Amos Mphikeleli Ngubeni

Ngubeni, a 28-year-old serial rapist from Benoni, was convicted of thirteen counts of rape, as well as kidnapping, theft, robbery, four counts of housebreaking with the intention to commit an offence unknown to the state, seven counts of robbery with aggravating circumstances and for pointing of anything, which is likely to lead a person to believe it is a firearm. The man was sentenced to 10 life terms and further 159 years imprisonment for offences he committed against fourteen women.

Ngubeni's crime spree started in August 2011 until March 2012, mainly in Tsakane and Duduza. He prowled the streets under the cover of darkness and accosted his unsuspecting victims either alone or with other co-perpetrators. In four of the cases the accused broke into the homes of the victims and attacked them there. The accused and his co-perpetrators would then rob their victims of their belongings and take turns to rape the women. One of his co-perpetrators Anthony Sithole was convicted and sentenced to several life imprisonments in December 2019.

FEMICIDE



State v Mkhwanazi

Adv Faghre Mohamed

Mkhwanazi was convicted of the murder of Palesa Modiba, a UJ student whose remains were found at a friend's home in Soweto. The accused is the uncle of the deceased's friend and was the last person to be seen with her. He killed her and dug a grave at their home's backrooms where he buried her. He was found guilty of murder, defeating the ends of justice, unlawful possession of firearm and ammunition. He was sentenced to 31 years imprisonment on 26 February 2021.

State v Thobane

Accused doused his girlfriend with petrol at her flat in the Johannesburg CBD. She later succumbed to burn wounds. The accused was convicted of murder and sentenced to 20 years imprisonment on 25 February in the Regional Court in Johannesburg.



State v Ndumiso Giyani

Adv Ronewa Makhaga

The Kimberly High Court sentenced a serial rapist, Ndumiso Giyani, to an effective 441 years behind bars on 05 June 2020.

Giyani's reign of terror started in 2014 and it lasted for four years until 2018, where the perpetrator of these grisly acts of violence against women, continued to rape and assault women within the areas of Kimberley, Galeshewe, and Kagisho. It all ended when he was arrested on 24 January 2019 and charged for his crimes. He was found guilty on 14 counts of rape, 12 counts of robbery with aggravated circumstances, two counts of attempted robbery with aggravated circumstances, and six counts of kidnapping.

SEXUAL OFFENCES AGAINST CHILDREN (CONT.)

State v Dyonase

This accused fulfilled the requirements to be called a serial rapist; he raped and/or sexually assaulted seven women. He was an organised rapist who used his taxi to lure young women. He promised to take them to their destinations but robbed them of their cell phones and other valuables. He would then either rape them or sexually assault them. The court convicted Dyonase on six counts of rape, a count of sexual assault, eight counts of kidnapping and eight counts of robbery with aggravating circumstances. He was sentenced to life imprisonment and 210 years, which run concurrently with the life sentence.

State v L Kama

The Bellville Regional Court sentenced Luzuko Kama to 15 years imprisonment after convicting him for the rape of an eight-year-old child. Kama, 24, was the grandmother's neighbour's son.

On 26 May 2018, the victim was alone at her grandmother's house and when she returned home, she noticed a key in the door and knocked, thinking it was her eldest son who has returned home.

After knocking several times, Kama opened the door. She asked him how he entered the house. He said he had his own key and suddenly left the house. The grandmother noticed her granddaughter was still awake and enquired why she was still awake at that time. The child cried and told her that Kama had raped her. The grandmother took the child to Kama's home and confronted him. He denied everything but offered transport money to take the child to a doctor and to the police station. He was later arrested but he put up a version which was later rejected by the court.

State v Herman Harker

This matter involves a serial rapist, who was charged with 15 counts of rape; 2 counts of sexual assault and 4 counts of kidnapping. The rapes occurred over a period of about four years, from 2015 to 2018, in the Cape, as well as Tulbagh, Wolseley and Ladysmith. The victims in this matter were young girls whose ages were 9, 13, 16, 17, 18 and 23. The victims were all very traumatised by these incidents, as well as during their evidence in court.

The accused was sentenced to 15 life imprisonment terms plus an additional 30 years' direct imprisonment.

SEXUAL OFFENCES AGAINST CHILDREN (CONT.)



Adv Heinrich Koert

State v C Stevens

The Worcester Regional Court sentenced a 65-year-old foster father to 50 years imprisonment for the rape of two minor girls. Earlier, the court convicted Charles Stevens for rape of two girls aged 11 and 12 years old. The regional court sitting in Montague sentenced him to 25 years imprisonment for each rape count. The court ordered the sentences to run concurrently.

The two cousins were removed from their biological parents due to socio economic conditions of the parents and neglect. They were placed in the foster care of Stevens and his wife but she was not aware of the abuse as the incidents happened while she was asleep.

Stevens threatened the girls that they would all go to jail if they said anything and promised them sweets and money. The abuse came to light when the 12-year-old fell ill at school and was taken to a clinic. She reported the abuse to a health care worker. As part of investigation, the 11-year-old was also interviewed by police and she reported the rape. A forensic medical examination at Robertson Hospital confirmed signs of penetration.

The Worcester Thuthuzela Care Centre (TCC) was instrumental in ensuring that both girls were immediately removed from the house and placed in another safe place. The Case Manager at the Worcester TCC, and the Site Coordinator at the TCC liaised with social workers and Child Welfare Robertson to ensure that support services were provided to the victims.

State v Luvuyo Hendricks

The Wynberg Magistrates' Court sentenced learner transport driver, Luvuyo Gerald Hendricks, to two life sentences after convicting him on two counts of rape of a minor with disabilities. It ordered that his name be entered into the National Register of Sex Offenders and declared him unfit to possess a firearm.

The victim was a patient at Cape Mental Health at the time and although she was 14 years old, she functioned as a five-year-old. The 54-year-old accused; who was also a pastor and owned a crèche, transported the victim to and from school.

One morning in August 2016, he stopped his vehicle near business premises in Philippi and raped the victim. When he spotted a police vehicle driving by, he got out of the vehicle and pretended that his vehicle had a mechanical failure. On closer inspection, the police found the victim in the passenger seat of the vehicle with no underwear and shoes. She told them that the accused has raped her. Police arrested him. He was also linked to the crime through injuries and DNA.

TRAFFICKING IN PERSONS



Adv Fiona Cloete

State v Evelina Fortuin

The accused in this matter was charged with various offences: Kidnapping, Trafficking in Persons for sexual exploitation under Section 4 of Act 7 of 2015, Section 17 of Act 32 of 2007 (Exploitation of a child), Section 21 of Act 32 of 2007 (Causing a child to witness a sexual offence.)

The accused was known to the complainant as she is friends with the mother of the complainant. The 11-year-old complainant was playing with her friends when they were approached by the accused and another man in a car to go with them. The complainant refused and the accused pulled her into the car and they drove off to some bushes where the accused caused her to be touched by the male driver on her private parts. The accused and the male driver had sex in the presence of the complainant. After that they drove back and the accused gave the complainant R20.

The accused entered into a plea and sentence agreement with the State and pleaded guilty to all the charges and was sentenced to an effective 27 years imprisonment term.



Adv Maria Marshall

State v Malibongwe Gudwana And Others

The accused in this matter were charged with various offences, inter alia, Trafficking in Persons for sexual exploitation under Section 71 of Act 32 of 2007, rape, kidnapping, assault with intent to cause grievous bodily harm. Some of the offences were committed in the Eastern Cape, and the matter was centralised in the jurisdiction of the Western Cape.

The complainant, a 14-year-old girl at the time was originally from Mount Fletcher in the Eastern Cape. After the death of her father she stayed with her aunt. After her father's passing, her aunt informed her that a person by the name of Malibongwe was looking for a wife in Cape Town.

She put the young girl in a taxi and instructed the taxi driver not to let her off anywhere except in Phillipi. Malibongwe and another met her at the taxi rank and she was told that she was going to be married to Malibongwe. The complainant protested and said that she did not want to get married and that she wanted to go home. Malibongwe told her that he had paid for her father's funeral. He beat her up and raped her. The accused were all found guilty and the highest sentence imposed was an effective sentence of 25 years imprisonment.

State v James Madidimallo Devine Thubakgale

Pastor James Devine Thubakgale was convicted on three counts of rape, assault common and count of calling a person a witch on 15 March 2021 and sentenced to life imprisonment plus 10 years and four months on 24 March 2021.

He would target young girls from his church who were under 16 years and who showed commitment to the word of God. He promised them marriage, telling them that it was God himself who wanted them to be married.



Mr Mpoti Chalale

State v Seleke

41-year-old Mojalefa Seleke was on 12 October 2020 sentenced to two life terms after he was convicted of raping two minor girls aged seven and nine years. Seleke's grandfather was responsible for the safekeeping of the church keys. Seleke took the keys as if he was going to clean but he lured the girls to church and raped them on different occasions in 2011.

He first raped a 9-year-old girl, asked her not to tell anyone and offered her yogurt. He later raped a 7-year-old girl and offered her a packet of potato chips to buy her silence. A few months after the incidents, the mother of the 9-year-old girl discovered a written piece of paper in her room that raised suspicions that she may have been violated.

Months later the 9-year-old girl overheard her 7-year-old sister telling her friends what Seleka did to her and realised that she and her sister were violated in the same. She reported the incident to her parents and the accused was arrested.



Adv Deoline Willemse

State v Malibongwe Ncokolo

In November 2020 the Bhisho High Court sentenced a Mdantsane serial rapist, Malibongwe Ncokolo (46), to seven life terms and 300 years imprisonment for two counts of murder, 18 counts of rape, attempted rape, four counts of assault, and two counts of theft. This will go down as a landmark sentence in the province, sending a strong message of zero-tolerance of rape, especially of minors; and gender-based violence.

His arrest on 07 June 2017 signalled the end of his reign of terror for many women in the East London and surrounds.

He raped 18 females in the East London and Mdantsane areas from 2014 to 2017. His arrest followed a failed attempt at raping a 14-year-old girl who managed to fight him off, escaped and alerted community members, who apprehended him at his home the following day. He was later arrested by the police. The youngest of his victims was 11 years old.



Adv Dansi Mpemvane

State v Twala

Muzi Wiseman Twala was on 15 September 2020 sentenced to life and 83 years imprisonment, after he pleaded guilty to six counts of rape, murder and seven counts of theft. Twala (37) terrorised the community of Harrismith when he raped six women aged between 15 and 25 years old, from August 2011 until February 2018.

Twala raped the women and stole their cellular phones. The victims could not identify him until 2 February 2020 when he pounced on a 20-year-old woman who was sitting in a car with her boyfriend. Twala fatally shot the boyfriend and raped the woman. The woman managed to identify him at an identity parade and he was linked to the other crimes by DNA.



Adv Eric Mabapa

State v Ntiyiso Xilumane

A 26-year-old man, Ntiyiso Xilumane from Giyani was convicted and sentenced to life imprisonment on 15 September 2020 after killing his ex-girlfriend who was an intern doctor in Mankweng Hospital in Limpopo. Xilumane had a young child with Sibongile Nkwashu. It emerged in a statement read in court that he travelled to the hospital after he received a message from Nkwashu, which agitated him. When he got at her workplace, she met him at the entrance and they left to her place within the hospital grounds. At her place, an argument ensued over how her father was interfering in their relationship and according to Xilumane, she informed him that she wanted to end their relationship and bit him on his finger. He then reacted by throttling her and threw her on the bed until she was no longer moving.



Adv Johan Smit

State v Xander Bylsma

Xander Bylsma, murdered his former girlfriend and her niece by strangling them in the school hostel in Stella.

The girls were 16 and 17 years of age, respectively. Bylsma 18 at the time tried to cover up his tracks by sending a fake text message from his former girlfriend's phone to her dad. The undertone of the message was that she had committed suicide.

Bylsma had later during the fateful day made certain admissions to a private investigator that placed him on the scene of crime. The matter was prosecuted by former DPP of the North West Adv. JJ Smit SC, assisted by advocates Sipiwo Jika and Martie van Wyk. The accused was found guilty of pre-meditated murder and sentenced to two life terms by Deputy Judge President Ronald Hendricks.



Adv Mooketsi Molaudi

Maintenance

The defendant is a practising engineer and was responsible for the maintenance and upkeep of the applicant and her minor children. He dismally failed in his maintenance duty and instead of providing for them, decided to hide funds in different investment accounts. After the involvement of the Senior Maintenance Prosecutor (SMP) it was decided to withdraw the criminal case against the accused and to invoke the civil enforcement provisions of the Maintenance Act. As a result, it was discovered that the defendant had two retirement annuities which he never declared. The SMP applied for the necessary attachment and enforcement orders and the amounts of R390 000 and R150 000 were seized. The discovery and the hidden funds brought considerable delight and relief to the distressed applicant and undoubtedly raised chagrin and disbelief of the defendant. Lesson learned is that the civil maintenance procedure is much more effective and swifter than the criminal procedure in cases where maintenance defaulters hide their funds.

State v Ephraim Malose Motebele

A 35-year-old man from Baipeing Phagameng, Ephraim Malose Motebele was sentenced to 30 years imprisonment, after he was convicted on four counts of rape and four counts of sexual grooming.

The court sentenced Motebele to 30 years for rape and 10 years for sexual grooming. The sentences were ordered to run concurrently. Motebele used the 15-year-old victim to lure other young girls from the age of nine to 15 years at Baipeing Phagameng area. He would then let them sniff glue and while they were in an intoxicated state, he would rape them.







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