

ANNUAL REPORT 2020/21

Reclaiming our role as
Lawyers for the People



NATIONAL PROSECUTING AUTHORITY
South Africa



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LIST OF ABBREVIATIONS/ACRONYMS

ACTT	Anti-Corruption Task Team
AFU	Asset Forfeiture Unit
AG	Auditor-General
AVR	Audio Visual Remand
APA	Africa Prosecutors Association
CARA	Criminal Assets Recovery Account
CAVS	Court Audio Visual Solutions
CITES	Convention on International Trade in Endangered Species
CJS	Criminal Justice System
DCS	Department of Correctional Services
DG	Director-General
DNDPP	Deputy National Director of Public Prosecutions
DoJ&CD	Department of Justice and Constitutional Development
DPCI	Directorate for Priority Crime Investigation
DPP	Director of Public Prosecutions
DPSA	Department of Public Service and Administration
ECMS	Electronic Case Management System
ERAP	Emergency Response Action Plan
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
GBV	Gender-Based Violence
GBVF	Gender-Based Violence and Femicide
HLPP	High-Level Private and Public individuals
IAP	International Association of Prosecutors
ID	Investigating Directorate
IMU	Integrity Management Unit
IPAC	Independent, Professional, Accountable and Credible
IPID	Independent Police Investigative Directorate
IPSO	Innovation and Policy Support Office
ISM	Information System Management
ISS	Institute for Security Studies
JCPS	Justice, Crime Prevention and Security Cluster
KZN	KwaZulu-Natal
LAD	Legal Affairs Division
MLA	Mutual Legal Assistance
MoU	Memorandum of Understanding



LIST OF ABBREVIATIONS/ACRONYMS

MPTT	Missing Persons Task Team
GBVF-NSP	Gender-Based Violence and Femicide National Strategic Plan
NATJOINTS	National Joint Operational and Intelligence Structure
NDPP	National Director of Public Prosecutions
NICBMPP	National Integrated Criminal Case Backlog Management Plan
NPA	National Prosecuting Authority
NPA Act	National Prosecuting Authority Act, 32 of 1998
NPS	National Prosecutions Service
NTR	Non-Trial Resolutions
OCE	Office for Complaints and Ethics
OECD	Organisation for Economic Cooperation and Development
ONDPP	Office of the National Director of Public Prosecutions
OWP	Office for Witness Protection
PRASA	Passenger Rail Agency of South Africa
POCA	Prevention of Organised Crime Act, 121 of 1998
PCLU	Priority Crimes Litigation Unit
PP	Public Protector
PPE	Personal Protective Equipment
SADC	Southern African Development Community
SAPS	South African Police Service
SARB	South African Reserve Bank
SARS	South African Revenue Service
SCA	Supreme Court of Appeal
SCCU	Specialised Commercial Crime Unit
SDPP	Special Director of Public Prosecutions
SIU	Special Investigating Unit
SMS	Security Management Services
SOC	Strategy, Operations and Compliance
SOCA	Sexual Offences and Community Affairs
SOE	State-Owned Enterprises
SORMA	Sexual Offences and Related Matters Amendment Act, 32 of 2007
TCC	Thuthuzela Care Centre
UK	United Kingdom
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime
USA	United States of America
WPP	Witness Protection Programme



FOREWORD

BY THE NATIONAL
DIRECTOR

FOREWORD

BY THE NATIONAL DIRECTOR



Adv Shamila Batohi

After an initial period of rebuilding and strategising for impact, the National Prosecuting Authority (NPA) is on track to becoming fit-for-purpose to deliver justice to the people of South Africa, pursuant to our Constitutional mandate. With an ambitious new 2020 – 2025 Strategy in place, and a revitalised leadership team on board, we were able to sharpen our focus on service delivery during 2020/21. Despite the challenges posed by the COVID-19 pandemic this past year, we were able to demonstrate that the wheels of justice are turning in the right direction.

Like many parts of government, the service delivery of the NPA was negatively impacted with the onset of the COVID-19 pandemic. We responded innovatively to ensure business continuity and we made noteworthy gains in the last quarter, specifically in our efforts to fight corruption. While recognising that we are still far from where we want to be in terms of ending impunity, several high-impact matters were enrolled, and a significant amount of assets have been frozen.

We have prioritised bringing high-level corruption cases to court to address the endemic corruption that has plagued South Africa. The operations of the Judicial Commission of Inquiry into Allegations of State Capture are drawing to a close. South Africans understandably expect that what will follow will be the prosecution of those most responsible for blatantly stealing from the people of South Africa, and the seizure of their ill-gotten gains. These cases are highly complex and will take time to investigate and prosecute. However, we remain committed to regaining the confidence of the people of South Africa and the international community, including investors, by ensuring that impunity for high-level corruption will no longer be the norm in this country.

Whilst accountability for corruption understandably tends to be at the forefront of the public discourse, the NPA is also acutely aware of the devastating impact that serious and violent crime, including sexual and gender-based crime, has on the quality of the lives of our people, in particular women and children. We are committed to acting against the perpetrators of organised and violent crimes, especially those who offend against the most vulnerable. We cannot do so alone; we depend on our partners, particularly the South African Police Service.

While the COVID-19 pandemic impacted on the ability to process cases, driving down the number of cases finalised, high conviction rates have been maintained in cases that went to trial. This is an important statistic; we need to strive for high conviction rates, but never at the expense of justice.

To deliver on our mandate and obligation to ensure that justice prevails in South Africa, the NPA requires highly skilled prosecutors and other professionals. The additional budget allocation has been critical; it enabled the NPA to revive its Aspirant Prosecutor Programme and to fill critical vacancies in key focus areas. Still more is needed for the NPA to effectively address the current and changing nature of crime

facing the country. In the coming year, the NPA will continue to focus on recruiting and developing staff to meet these changing needs.

Critical positions in the NPA's senior leadership were filled over the last year. These include Advocates Ouma Rabaji-Rasethaba as Deputy National Director of Public Prosecutions (DNDPP) of the Asset Forfeiture Unit, Rodney de Kock as DNDPP of the National Prosecutions Service and Anton du Plessis as DNDPP of Strategy, Operations and Compliance. These are trusted colleagues who have the experience, expertise, determination and, importantly, the leadership skills required to ensure that we deliver justice in an increasingly complex and high-pressure environment.

The NPA can only succeed if its most important resource, its staff, is engaged, motivated and committed. We undertook another staff survey in the period under review and have a good understanding of the issues that affect employee wellbeing. A project has been initiated to specifically build staff morale and improve the culture of the NPA, as underpinned by our values. Values are not just words; they must be reflected in our behaviour as professional and committed civil servants.

I acknowledge and appreciate the support of the Minister and the Director-General of the Department of Justice and Constitutional Development, as the accounting officer of the NPA, the support of whom is critical to the delivery of our ambitious goals.

I conclude by thanking the hard-working staff of the NPA, whose dedication and commitment to serve and deliver justice has helped carry us through this past year of unprecedented challenges. As I have said before, challenges have always existed and will continue to do so; it is in the meeting of these challenges that we will fashion ourselves as a nation. It won't be easy and the NPA cannot do it alone – but we commit to doing our part and, together with the support of South Africans, we will succeed.

Date: 31 May 2021

Adv Shamila Batohi
National Director of Public Prosecutions



ORGANISATIONAL STRUCTURE



Adv Shamila Batohi
National Director of Public Prosecutions



Adv Rodney de Kock
Deputy National Director of Public Prosecutions: NPS



Adv Ouma Rabaji-Rasethaba
Deputy National Director of Public Prosecutions: AFU



Adv Anton du Plessis
Deputy National Director of Public Prosecutions: SOC



Adv Nomvula Mokhatla
Deputy National Director of Public Prosecutions: LAD



Adv Priya Bisewar
Special Director of Public Prosecutions



Adv Karen van Rensburg
Acting Head of Administration & OWP



Adv Hermione Cronje
Investigating Director
Investigating Directorate



Adv Mthunzi Mhaga
Special Director of Public Prosecutions: Special Advisor

DIRECTORS OF PUBLIC PROSECUTIONS



Mr Livingstone Sakata
Director of Public Prosecutions (Acting)
Eastern Cape Division



Adv Navilla Somaru
Director of Public Prosecutions (Acting)
Free State Division



Adv Sibongile Mzinyathi
Director of Public Prosecutions
Gauteng Division Pretoria



Adv Andrew Chauke
Director of Public Prosecutions
Gauteng Local Division



Adv Elaine Zungu
Director of Public Prosecutions
KwaZulu-Natal Division



Adv Ivy Thenga
Director of Public Prosecutions
Limpopo Division



Mr Sonja Ntuli
Director of Public Prosecutions (Acting)
Mpumalanga Division



Mr Barry Madolo
Director of Public Prosecutions
Mthatha Division



Adv Abraham Botha
Director of Public Prosecutions (Acting)
Northern Cape Division



Adv Rachel Makhari-Sekhaolelo
Director of Public Prosecutions (Acting)
North West Division



Adv Nicolette Bell
Director of Public Prosecutions (Acting)
Western Cape Division

SPECIAL DIRECTORS OF PUBLIC PROSECUTIONS



Adv Chris Macadam
Special Director of Public Prosecutions (Acting):
PCLU



Adv Lebo Baloyi
Special Director of Public Prosecutions:
SCCU



Adv Bonnie Currie-Gamwo
Special Director of Public Prosecutions:
SOCA



**NPA VISION,
MISSION, VALUES
AND STRATEGIC
OUTCOMES**



NPA VISION, MISSION, VALUES AND STRATEGIC OUTCOMES

VISION

Justice in our society so that people can live in freedom and security.

MISSION

Guided by the Constitution, we in the NPA ensure justice for the victims of crime by prosecuting without fear, favour or prejudice, and by working with our partners and the public to solve and prevent crime.

VALUES

Integrity, which is demonstrated through ethical conduct, high moral standards, honesty, moral principles and values, zero tolerance for bribery and corruption, keeping promises, truthfulness and being beyond reproach.

Accountability, which is based on transparent actions and spending, regular contact with partners and routine reporting.

Service excellence, which is proven by providing first class customer service and complying with the Batho Pele principles.

Professionalism, which is evidenced by commitment, dedication, punctuality, competence, and professional conduct in and out of court.

Credibility, which is built by behaving consistently and aiming to inspire belief and trust.

These values are contextualised in the NPA Code of Conduct and underpin the National Director's Independent, Professional, Accountable and Credible pillars, which are highlighted in this and previous reports.

STRATEGIC OUTCOMES

The strategic outcomes of the NPA for 2020-2025 are the following:

- Increased feelings of safety and security for all South Africans.
- Improved investor confidence in South Africa through high-impact prosecutions.
- Improved access to NPA services for all.

To achieve these outcomes, the NPA commenced the implementation of several strategic initiatives:

- Enhancing internal accountability through the development of an Office for Complaints and Ethics to monitor and strengthen internal integrity and service delivery.
- Capacitating the NPA and ensuring that all regions and business units have the requisite specialist capacity.
- Increasing the use of information technology and digitisation.
- Institutionalising the Innovation and Policy Support Office.
- Implementing a countrywide Community Prosecution Initiative.



STRATEGIC INITIATIVES

BY THE OFFICE OF THE
NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS



STRATEGIC INITIATIVES BY THE OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS DIRECTOR

The Office of the National Director of Public Prosecutions (ONDPP) supports the National Director in the delivery of her core job functions pursuant to the Constitution and the National Prosecuting Authority Act, 32 of 1998 (NPA Act). In addition to providing ongoing support to the National Director, the Office is also responsible for executive liaison with the Office of the Minister of Justice and Correctional Services, the Deputy Minister for Justice and Constitutional Development, as well as the Office of the Director-General, in coordination with relevant DNDPPs. The ONDPP's substantive capacity consists of the legal advisor to the National Director and the spokesperson for the NPA. ONDPP support staff serve as secretariat to the Executive (ExCo) and Management (ManCo) Committees of the NPA.

Justice, Crime Prevention and Security Cluster

In March 2020, the Justice, Crime Prevention and Security (JCPS) Cluster established the JCPS Governance Restructuring Task Team to conduct a thorough review of its governance framework, including the functional dynamics of its sub-committees. The National Director was appointed as a co-chair of this Task Team, together with Advocate Xolisile Khanyile of the Financial Intelligence Centre (FIC). In 2020 this Task Team conducted a review of the sub-committees of the JCPS through a series of meetings and workshops. This process entailed in-depth interviews with current and former Directors-General, with a view to gathering information to assess the broader JCPS structure and functioning. The findings and recommendations will be reported to the JCPS in 2021.

Anti-Corruption Task Team

In July 2010 the JCPS was tasked by the President to establish a task team to fast track high-priority investigations and prosecutions on corruption-related matters. The multi-agency Anti-Corruption Task Team (ACTT) was formed to enhance cooperation, integration, accountability and alignment of priorities to ensure the realisation of government's objective to effectively address corruption. The NPA is an active member of the Committee which made progress on the following in 2020:

- The development of national forensic capability for government.
- Approved Case Selection Criteria.
- Development of an effective Case Management Committee to select new cases and manage the existing ones.
- Establishment of Regional ACTT centers.
- 25 new cases enrolled.

Racketeering Authorisations

The process of issuing racketeering certificates in terms of the Prevention of Organised Crime Act (POCA) by the NDPP has been reviewed to improve the efficiency thereof. A new process map for the compilation and submission of the applications has been implemented. In addition, comprehensive guidelines were issued to ensure applications are both comprehensive and provide the National Director with the information required to make appropriate decisions. In the past two years more than 20 certificates on matters ranging from gangs, drugs, theft of cell-phone tower batteries, house breakings, aggravated robberies, to rhino poaching.

Reviews and representations

The National Director has delegated the powers, duties or functions of review and representations, as envisaged in Section 22 (2)(c) of the NPA Act, to the DNDPP: NPS. Thus, only matters envisaged in Part 4 (paragraph B 3) of the NPA Prosecution Policy Directives, i.e. sensitive or contentious matters, are reviewed by the National Director. The National Director reviewed three of these matters during the period under review.

Moreover, the National Director issued 35 directions for trials to be held in another jurisdiction, in terms of Section 22(3) of the NPA Act, read with Section 111 of the Criminal Procedure Act, 51 of 1977.

Africa Prosecutors Association

South Africa has been part of the Africa Prosecutors Association (APA) for many years. APA plays a critical role in enhancing collaboration and sharing of good practices among African prosecutors. South Africa is a member of the Executive Committee of the APA. The Executive Committee is comprised of the President (Egypt), the Secretary General (Mozambique), the Treasurer General (Zambia). The Deputy Presidents are Mauritius, Morocco, Rwanda and Tanzania. Additional members are South Africa, Kenya and Namibia. The Executive Committee meetings are held quarterly, the various countries rotate in hosting the meetings. Since the onset of COVID-19 early in 2020 there have been no meetings, but the President has confirmed a virtual meeting for June 2021.

International Association of Prosecutors

The NPA is a long-standing institutional member of the International Association of Prosecutors (IAP). The IAP is the only worldwide organisation of prosecutors, with organisational members from almost 180 countries. Building on previous engagement and strategic roles within the IAP, the National Director was elected to be a member of the Executive Committee of the IAP in September 2020.

The NPA's strong relationship with the IAP lead to the National Director being nominated to serve on the IAP Training Committee, an advisory sub-committee of the IAP Executive Committee. The Training Committee is responsible for ensuring that IAP members are provided with a coherent programme of training and capacity building through partnerships with international and regional organisations, national authorities and the private sector. This initiative will support the NPA's capacity-building priorities and promote important international and regional cooperation amongst prosecutors.

Memoranda of Understanding with Key Partners

The ONDPP leads the process to negotiate and sign Memoranda of Understanding (MoUs) with key partners working to enhance the rule of law and justice globally and in Africa.

Attorney General Alliance-Africa

The Attorney General Alliance-Africa (AGA-Africa) fosters robust relationships with justice and law enforcement agencies and officials throughout Africa to support the rule of law and combat transnational criminal activity. AGA-Africa collaborates with African ministries of justice, attorneys-general, solicitors-general and public prosecution agencies to share knowledge and experience in the fight against crimes such as human and wildlife trafficking, corruption, money laundering, cybercrime and other cross-border criminal activity.

In early 2021, the NPA and AGA-Africa signed a MoU whereby AGA-Africa will provide regional and international subject-matter experts and facilitators for tailored NPA trainings and workshops.

Institute for Security Studies

There is a long history of collaboration between the NPA and the Institute for Security Studies (ISS). ISS is Africa's pre-eminent policy research institute, which aims to enhance human security and justice on the continent. In early 2021, the NPA signed an updated MoU with the ISS that provides, *inter alia*,

a framework for a more structured and constructive engagement mutually beneficial for both parties. This includes support for training initiatives, international and regional liaison visits to partners, research support, and strategic support to the NPA's Innovation and Policy Support Office (IPSO).

Innovation and Policy Support Office

IPSO was created by the National Director soon after she assumed office in 2019. IPSO provides ongoing and cutting-edge research and strategic support to the NPA. It works and partners with academic institutions, civil society and private sector organisations to identify national and international good practices that can assist in addressing key challenges facing the NPA in itself, and the NPA in the context of the broader criminal justice system.

Together with the NPA's business units, IPSO supported the key initiatives outlined below in the year under review.

Office for Complaints and Ethics

To improve the credibility and enhance accountability of the NPA, we are in the process of establishing an Office for Complaints and Ethics (OCE) as specified in section 22(5) of the NPA Act. The NPA Act allows for the creation of a structure in terms of which anyone may report complaints, alleged improper conduct, or conduct that has resulted in impropriety or prejudice on the part of a member of the NPA.

The NPA has affirmed its commitment to a high integrity institutional culture. Such a culture – which underpins accountability, compliance, good governance and strong institutional performance – is required to meet both the legal and public service requirements of the NPA, as well as enabling the NPA to meet its goal of becoming an independent, professional, accountable and credible (IPAC) institution. A task team was established in mid-2020 to set up the OCE by the end of November 2021.

Donor Oversight Committee

In an increasingly constrained fiscal environment, the NPA needs to explore additional funding options in line with relevant prescripts to enable it to become a cutting-edge prosecution service. The NPA frequently receives proposals from stakeholders to provide free or reduced rate services, as well as offers of assistance in the form of funding support to strategic, non-confidential initiatives. The NPA follows the National Treasury Guidelines in respect of accepting donations. Nevertheless, to underscore its independence, accountability and credibility, the NPA will add an additional governance structure in the form of a Donor Oversight Committee to monitor all donations and ensure transparency, fairness and legal compliance.

The Committee will function independently of the NPA and will report on its findings to the Minister of Justice and Correctional Services and the Director-General of the Department of Justice and Constitutional Development (DoJ&CD). Future NPA annual reports will contain a report by the Donor Oversight Committee.

Community Prosecution Initiative

Community prosecution is a grassroots, collaborative and solutions-based approach to addressing the public safety concerns of local communities. The role of a community prosecutor expands beyond traditional prosecuting to working with communities and partners to make their neighbourhoods safer by finding solutions to crimes plaguing a particular community, as well as collaboratively developing proactive crime-prevention interventions, dealing with quality-of-life crimes, and delivering public awareness and information programmes.

In late 2020, the first cohort of community prosecutors convened to collaboratively develop community prosecution interventions in their respective regions. Thus far, 22 community prosecution sites have been established, focusing on a variety of public safety issues including gender-based violence (GBV),

drug-related offences and stock theft. A sophisticated monitoring and evaluation framework has been developed to track progress and ensure effective institutional learning for the future expansion of the initiative.

Non-Trial Resolutions

A growing number of jurisdictions are using non-trial resolutions (NTRs) to resolve corporate corruption and foreign bribery cases. NTRs are agreements between legal or natural persons and enforcement authorities to resolve corruption cases before they become full criminal proceedings. Appropriately utilised, NTRs can provide a pragmatic and efficient way to resolve cases before they reach court – cases that would otherwise require tremendous time and resources to investigate and prosecute. During the period under review, with the support of international experts, a NPA task team explored the applicability of NTRs in the South African context with a view to developing policy-compliant guidelines for the NPA in the coming months.

NPA Staff Survey

The NPA can succeed only if its staff is motivated, enabled to innovate and are able to fully deploy their skills and talents, while finding meaning and fulfilment in their work. The NPA commissioned a survey in early 2020 to give all staff the opportunity to express their views on a range of issues, including job satisfaction, operational experiences and expectations of the National Director.

Notwithstanding years of neglect and a challenging work environment, the findings of the 2020 staff survey reflect a resilient and spirited workforce. Nine out of 10 respondents felt their job made a positive difference in the lives of others. Three-quarters felt their work gave them a feeling of personal accomplishment and were satisfied with their jobs overall. The proportion of respondents who felt proud to be affiliated with the NPA increased significantly from a previous survey conducted in 2019.

Yet several challenges and demotivating factors were identified, including concerns about pockets of unethical conduct by staff. The leadership of the NPA is committed to addressing these concerns and will continue engaging with staff to develop sustainable solutions to further enhance staff morale and job satisfaction. Part of this effort involves the development of a new cultural enhancement initiative that will be launched in mid-2021. The initiative, tentatively titled “Delivering as one; committed to the rule of law” will be implemented over the coming years, and will include a focus on harassment, racism, sexism and abuse in the workplace.



STRATEGIC INITIATIVES

BY THE DEPUTY NATIONAL
DIRECTORS

STRATEGIC INITIATIVES BY THE DEPUTY NATIONAL DIRECTORS



Adv Rodney de Kock

Deputy National Director of Public Prosecutions: National Prosecutions Service

Advocate Rodney de Kock was appointed DNDPP of the National Prosecutions Service (NPS) on 1 June 2020. He brings a wealth of legal experience and leadership to the prosecution service, having served as the Director of Public Prosecutions (DPP) of the Western Cape for 15 years.

The 2020/21 year was characterised by the unique and unplanned challenges associated with the COVID-19 pandemic. During the initial stages of the lockdown (level 5), resources had to be re-organised to balance the need to protect the lives of both staff and the public without compromising on service delivery. Providing essential services required continuous monitoring of the situation and rapid and creative responses to changes in the environment.

Two NPA officials were allocated to the National COVID-19 Command Centre on a full-time basis. Daily meetings were held with the National Joint Operational and Intelligence Structure (NATJOINTS), which was leading the response and legislative processes. Directives to prosecutors were continuously monitored and adapted as the lockdown levels were adjusted.

NPS monitored the displacement of crime and changing crime trends specifically in level 5 of the lockdown period, during which the movement of the public was strictly prohibited. The sale of illegal or expired goods increased significantly, while some unoccupied schools were vandalised and had equipment stolen.

Despite the disruptions caused by the COVID-19 pandemic, NPS was able to achieve important successes in the administration of justice. NPS also participated in the Court Optimisation Project and the National Integrated Criminal Case Backlog Management Plan (NICCBMP), which prioritises certain cases to ensure public concerns are attended to.

The DNDPP NPS held regular meetings with the National Head of the Directorate for Priority Crime Investigation (DPCI). One of the focus areas of these meetings was to monitor the progress of corruption cases, a priority of the JCPS Economic Recovery Strategy.

Authorisation was obtained from the Department of Public Service and Administration (DPSA) to appoint 50 senior state advocates on contract to assist the Specialised Commercial Crime Unit (SCCU) in addressing serious corruption and commercial crime cases for a period of three years.

NPS is ramping up efforts to modernise the prosecution service and broader criminal justice system. The prosecution service has enhanced the use of the Electronic Case Management System (ECMS)

and the development of electronic systems and solutions related to trials, although legislative changes are required for the admission of such evidence. Increased use of audio-visual remand (AVR) systems and the development of court audio visual solutions (CAVS) form part of the solutions agreed by the entities in the criminal justice system (CJS) to enhance service delivery.

NPS participated in strengthening the legal frameworks that support the following:

- The adoption of the National Anti-Corruption Strategy in November 2020.
- The establishment of the Fusion Centre, which responds to maladministration and corruption linked to COVID-19 pandemic relief funds. The work of the Fusion Centre resulted in 146 incidents investigated, of which 118 cases were under investigation and 28 closed at the end of March 2021, as well as 18 court cases (involving 35 accused persons). Resources remain a challenge and more needs to be done to enhance the efficiency of and collaboration within the Fusion Centre.
- The issuance of a new Proclamation allowing evidence from the Judicial Commission of Inquiry into Allegations of State Capture (Zondo Commission) to be used for criminal court purposes.

NPS has also developed and implemented several training and development programmes for prosecutors. It adopts a collaborative approach and engages with several partners within the broader CJS. NPS has also engaged substantively with the Zondo Commission on several aspects relevant to the work of the NPA.

Mutual Legal Assistance and Extradition

In addition to normal prosecutorial functions, important work within NPS includes international cooperation in criminal matters with international agencies such as the Organisation for Economic Cooperation and Development (OECD), United Nations Office on Drugs and Crime (UNODC), United Nations Convention against Corruption (UNCAC) and the Financial Action Task Force (FATF).

The following cases illustrate the effectiveness of South African laws and processes on extradition.

In the **Marsland** matter, the accused was arrested in Johannesburg pursuant to the request for his provisional arrest and extradition by the Government of the Republic of Botswana. Mr Marsland was accused of obtaining funds by false pretences and money laundering. His extradition was based on the Southern African Development Community (SADC) Protocol on Extradition. In this instance, the SADC Protocol was complemented by a bilateral treaty on extradition between the two countries, as well as the Extradition Act, 67 of 1962. Mr Marsland challenged his extradition to Botswana by approaching the High Court as well as the Supreme Court of Appeal (SCA). His appeal failed, as it was held that the provisions of the Extradition Act and the SADC Protocol worked in harmony and thus his extradition to Botswana was lawful.

In the matter of **Mr. Raheem and 9 others**, the accused were part of an organised crime syndicate operating in various countries. Numerous victims were defrauded in several jurisdictions. The United States of America (USA) submitted a request to South Africa for the accused's provisional arrest. The extradition request followed within the 60-day period stipulated in the treaty between the two countries. The accused were found extraditable and were ultimately surrendered to stand trial in the USA after protracted litigation challenging their extradition.

Representations

Representations and reasons for decisions enable victims, complainants and accused to have decisions made by prosecutors internally reviewed. The National Director has delegated the powers, duties or functions, as envisaged in Section 22(2)(c) of the NPAAct, to the DNDPP NPS. Only sensitive or contentious matters are reviewed by the National Director.

A total of 1 162 representation files were opened during the reporting period; 763 files were finalised, and 399 files remained pending as of 31 March 2021. A total of 118 matters falling in the general stream of prosecutions were formally reviewed. In six instances, the decision of the DPP was overturned and/or not confirmed.



Deputy National Director of Public Prosecutions: Asset Forfeiture Unit

Adv Ouma Rabaji-Rasethaba

Advocate Ouma Rabaji-Rasethaba was appointed DNDPP of the Asset Forfeiture Unit (AFU) on 1 June 2020. She brings 30 years of legal experience to the NPA, having been admitted as an attorney in 1990 and an advocate six years later. She was previously employed as the Special Director: AFU. She brings a wealth of knowledge having been a governance and risk officer in listed companies for ten years. She is a qualified mediator, negotiator and arbitrator.

AFU relies on referrals by various partners within the CJS. AFU leadership and experts have regular stakeholder engagements with departments and units such as the DPCI, FIC, the Special Investigating Unit (SIU), the South African Revenue Service (SARS) and National Treasury. AFU also works closely with the NPA's Investigating Directorate (ID) and SCCU.

The AFU was negatively impacted by the loss of capacity a few years ago, as well as the removal of South African Police Service (SAPS) investigators who were co-located with the AFU. This impacted on performance and staff morale. As a result, the AFU prioritised several interventions to address the situation, including:

- Commissioning a staff survey to identify challenges and opportunities for reform and improvement.
- Securing additional funds to fill vacant posts, including senior management posts such as the Special Director of Public Prosecutions, which was filled on 1 February 2021.
- Securing authorisation to appoint investigators and lawyers on contract to assist with the high-value cases currently being investigated.
- Spearheading a number of priority initiatives, the most notable of which include the AFU/DPCI Top 10 Priority Case list and joint target setting and prioritisation with AFU partners.
- Motivating for the co-location of DPCI investigators with the AFU for improved collaboration and efficiency.
- Representing the NPA in the process to create specialist forensic investigative capacity within the JCPS cluster to deal with serious corruption cases.
- Participating in the establishment of the Fusion Centre within the FIC and providing dedicated AFU resources for the initiative.
- Initiating the process of establishing an MoU with the Auditor-General (AG) to capitalise on the new powers bestowed on the AG.



Deputy National Director of Public Prosecutions: Legal Affairs Division

Adv Nomvula Mokhatla

The Legal Affairs Division (LAD) provides civil litigation support to prosecutions in dealing with malicious prosecution claims, delictual claims and matters incidental to prosecutions that are civil and semi-civil in nature. Most high-profile matters dealt with by LAD are now before the SCA or the Constitutional Court. The matters relate to challenges to the decision to prosecute and the constitutionality of certain provisions of the legislation relied upon in formulating charges and the remedial findings of the Public Protector (PP).

LAD plays a pivotal role in coordinating parties, briefing counsel, monitoring cases, attending to specific requests from any relevant party cited from the NPA (mostly DPPs), providing progress reports, making settlement recommendations and providing input into or settling the relevant legal documents for filing in court.

The recent amendments to the State Attorney's Act, 56 of 1957, which created the office of the Solicitor General and 13 State Attorneys' offices nationwide, bolsters confidence that improved and real-time services will be provided to the DPP offices.

Malicious Prosecutions

The NPA continues to rely solely on the state attorney as its attorney of record. However, LAD plays an active role in ensuring that the instructions to defend matters are timeously issued. The unit then proceeds to identify where the matter arises, whether it has been finalised and in what manner, source the docket, report from the relevant DPP office, and obtain the DPP's final instructions. LAD considers all the information gathered, makes an informed decision as to whether or not the matter warrants the given instruction, and advises accordingly.

Opinions

Where matters are defended or pursued, the brief to the state attorney is prepared for purposes of drafting a plea and/or advising on the next course of action to be taken, if it differs from the instruction given by the DPP. In the event of a recommendation for settlement, a meeting of several parties – LAD, DPP, state attorney and counsel (if appointed), the relevant DNDPP or Special Director and other cited defendants/respondents (mostly SAPS) – is required.

Other than trial-related opinions, LAD provides necessary legal assistance, upon request, on various topics to other business units within the NPA, including the Office of Witness Protection (OWP). While the MLA and extradition components reside within the NPS, LAD renders support where required.

Capacity

In light of the prevailing laws governing state litigation, the NPA expects to see its officials handling more than the pre-litigation and outside-of-court processes. This includes appearing in courts more often, rather than outsourcing, especially in matters incidental to instituting criminal proceedings in all fora. LAD has embarked on a process with the Organisational Development Unit to motivate for an increase in capacity at head office and at the regional level. This will enhance efficiency and curb the litigation spend, either in costs or in claims paid out.

Noteworthy Cases

A H Olsen: Olsen sought direct access to the Constitutional Court to have sections 4, 5 and 6 of the Prevention of Organised Crime Act, 21 of 1998 (POCA,) and section 29 of the Financial Intelligence Act, 38 of 2001, declared unconstitutional. Direct access was refused.

Thales: Thales brought an application to review and set aside two authorisations by the then-National Director in terms of POCA to institute racketeering charges in the prosecution of Zuma and Thales in the KwaZulu-Natal (KZN) High Court, Pietermaritzburg. The application failed.

Rodrigues: Rodrigues was charged with premeditated murder in 2018, after an inquest into the death of Ahmed Timol (an anti-apartheid activist) on 27 October 1971 was reopened. Rodrigues sought a permanent stay of prosecution with respect to the charge of murder, alleging that he had suffered a delay in respect of the prosecution that had resulted in an infringement of his right to a fair trial in terms of section 35(3) of the Constitution. On 28 June 2019, the court dismissed the application and the application for leave to appeal against the full bench decision of the South Gauteng High Court in the matter was also dismissed. Rodrigues' legal team petitioned the SCA against the judgement. The SCA set down the application for hearing before a full bench and it was dismissed.

Panday: Panday was investigated for his alleged involvement in procurement fraud related to SAPS. His co-accused, Colonel Madhoe and Captain Narainpershad, were officers within the procurement division of SAPS in Durban. It is alleged that they, *inter alia*, collaborated to inflate the amount that SAPS paid for temporary accommodation for police officers during the FIFA 2010 Football World Cup by approximately R60m. At the end of a lengthy investigation, a decision was taken by then KZN DPP, Advocate Moipone Noko, not to prosecute the Applicant. The National Director reviewed the decision in terms of the provisions of the Constitution read with the NPA Act. The Applicant challenged the decision of the National Director to prosecute in the matter. The main argument of the Applicant was not based on the strength of the State's case but rather on that fact that the interception of his telephone calls was, according to the Applicant, "so grossly irregular that it forever stains the proceedings".

The Applicant then approached the Supreme Court of Appeal for leave to appeal the High Court's decision, which was finally dismissed on 19 April 2021.¹

Public Servants Association obo Meintjes and 55 Others: The NPA is currently involved in litigation instituted by senior members of the NPA in relation to the non-implementation of the occupational specific dispensation in respect of themselves. This must be managed carefully to prevent negative staff morale whilst at the same time protecting the finances of the State. The matter is due to be heard later in 2021.

The Public Protector v The President of the Republic of South Africa and 6 Others: In Report number 37 of 2019/20 of 19 July 2019, the PP reported on her investigation into allegations on the violation of the Executive Ethics Code by the President and an improper relationship between the President and Bosasa. In paragraphs 8.2 and 9.4 of her Report, the PP ordered remedial action against the National Director.

In its judgment of 10 March 2020, the Full Bench set aside, *inter alia*, the remedial action ordered against the National Director. The remedial action was set aside because section 6(4)(c)(i) of the Public Protector Act, 23 of 1994, does not empower a PP to order the remedial action set out in the Report.

The PP argued that the Full Bench misinterpreted the scope of a PP's constitutional powers to order remedial action and the nature of the remedial action, and that its finding on the scope of the remedial action conflicts with previous findings of the High Court. The National Director argued that because the wording is in the form of a directory rather than a mere recommendation, the wording of the remedial action directed against the National Director could not be lawfully ignored. There was a constitutional and statutory obligation to comply with that remedial action or seek a court order to set aside the remedial action. The Constitutional Court has reserved judgment.

¹Also see the report on the progress in the criminal case as reported by the Investigating Director

Another CCT201/19 [2020] ZACC 25

The applicant, the Economic Freedom Fighters, challenged the constitutionality of section 18(2)(b) of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956) (“the Act”) after the National Prosecuting Authority preferred criminal charges against their President, Mr J Malema, for inciting other people to commit trespassing in contravention of the Act.

The Constitutional Court handed down judgment on 27 November 2020 and found that the wording of the said section was overbroad in that it limits the right to freedom of expression. The operation of section 18(2)(b) was suspended for a period of 24 months to enable Parliament to rectify the defect. During this period, the court provided for a reading-in to cater for the offence of incitement in respect of serious crimes.



Deputy National Director of Public Prosecutions: Strategy, Operations and Compliance

Adv Anton du Plessis

The DNDPP of Strategy, Operations and Compliance (SOC), Advocate Anton du Plessis, took office on 1 March 2021. He returned to the NPA after many years, during which he obtained invaluable local and international experience in criminal justice reform and related strategic management matters. Together with the experienced management team in SOC (previously known as the Administration component), the new DNDPP aims to position SOC as a vital pillar of the NPA's capacity to develop, implement and monitor compliance with the organisation's 2020 – 2025 Strategy.

SOC is responsible for ensuring that the NPA is well governed and resourced so that it can deliver on its core mandate effectively, within budget, with proper oversight and reporting, and in line with the NPA's values. The National Director leads the process of developing the roadmap to guide the NPA to where it needs to go, while SOC supports efforts to ensure that the organisation gets there. This requires a collaborative approach with other DNDPPs to ensure a holistic implementation of the NPA's strategy.

The DNDPP initially focused on understanding the challenges faced by the various units within SOC at headquarters and is now shifting to focus on the regions in which the services are rendered. The aim is to ensure that SOC delivers a quality, timely service while appreciating how the strategic support and related support services lie at the foundation of the prosecuting service.

The activities of SOC are captured below in respect of the following units.

Strategy Management Office

The Strategy Management Office (SMO) is responsible for ensuring that the NPA develops and implements clear strategies and performance plans that articulate the impact that the NPA seeks to achieve. In March 2021, and in support of the last strategic planning cycle, the NPA identified four short-term priorities aimed at demonstrating results that will regain public and investor confidence, and assist in building NPA capacity and staff morale to enable the organisation to deliver on its mandate now and into the future.

These priorities are: addressing corruption; addressing organised and serious and violent crime; improving the capability of the NPA; and addressing staff morale. Each of these priorities is assigned to a DNDPP and progress is carefully communicated and closely monitored.

The NPA identifies and manages internal and external threats and service delivery impediments through a pro-active risk assessment process. The “disruption to business operations”, largely driven by the COVID-19 pandemic, is one of the key risks to the NPA.

The performance of the NPA is monitored on a quarterly basis. Where factors that impact either positively or negatively on the achievement of the set targets are identified, the NPA seeks to find ways to address these or to leverage them.

SMO undertakes ongoing and targeted research to ensure that the NPA is an evidence-driven organisation. Key research projects conducted during the period include an ID secondment/reassignment survey, a quality prosecution pilot survey, and a needs assessment survey for the comprehensive evaluation of the employee health and wellness programme. Ad-hoc projects were also conducted. This included research and/or secretariat support to the Community Prosecution Initiative, OCE task team, and Thuthuzela Care Centre (TCC) prosecutor-guided investigation projects. The NPA Knowledge Management Framework was implemented based on knowledge management maturity assessment surveys conducted in previous years. This included the development and maintenance of the AFU and ID knowledge management portals. Several NPA policies and other governance instruments were reviewed and amended.

SMO led the NPA COVID-19 Strategic Task Team, which coordinated the NPA response to the pandemic and information sharing. The Task Team drafted the NPA Risk Adjusted Strategies and plans for each of the various alert level lockdown phases.

Communications Unit

Effective communication is an essential element of strategically aligned and cutting-edge organisations. As such, SOC is raising the strategic profile, relevance and capacity of the NPA's Communications Unit. The Communications Unit engaged in intensive research and consulted various internal and external stakeholders to review the communication strategy. The final strategy was presented to the NPA leadership and adopted. The focus is on creating a digital platform in line with the need to modernise.

The next step is to capacitate the Unit to deliver on the ambitious plans, especially in creating the balance between the use of owned media (digital and social media platforms) and earned media (traditional media platforms). This was particularly relevant when it came to adapting the NPA's communication processes to the new circumstances brought about by the COVID-19 pandemic and the related social distancing limitations.

Public education and awareness campaigns and outreach events, which have traditionally been carried out in person at large gatherings, were mainly conducted through social media platforms (such as Facebook and Twitter) and, to a more limited extent, through making use of the website to share relevant information. Some events were conducted in a hybrid format – as an in-person meeting but also video-recorded and then featured on the NPA Facebook page and in radio interviews.

There was also a strong focus on enhancing media engagement at a national and regional level, with the NPA spokespersons increasing their visibility in the print and broadcast media to publicise information about prosecutorial performance and key case outcomes. Internal communication was also improved through additional platforms, such as webinars, to encourage internal engagement and participation by employees. Key internal communication interventions were identified in the last quarter, which will be implemented as part of the organisation's 6-month priorities to improve staff morale.

Integrity Management Unit

The Integrity Management Unit (IMU) ensures that the integrity of the NPA and its staff is maintained and enhanced. The focus for the year has been on managing the process of establishing the OCE in the NPA. The intention is to create a single, coordinated repository for complaints and to influence and manage the integrity and governance oversight functions of the NPA. The capacity will be housed in the ONDPP and the process will be completed during the coming year.

Online integrity workshops were conducted during the reporting period and numerous integrity-related communiques were shared via the NPA Internal Communications platforms.

All senior management staff and 98.3% of non-senior management staff filed financial disclosures. There was a significant increase in the number of remunerative work applications received in line with the poor

economic outlook, which was compounded by the fact that there was no salary increase. The possible conflict of interest that could arise as a result of the work performed outside of the NPA is closely monitored.

The investigations' function was severely impacted by the lockdown restrictions. The traditional detection programme, where fraud and corruption risks are identified, was also impacted and the team had to resort to an online intervention to establish possible risks.

Financial Management

Prudent and cost-effective financial management remains a priority for the NPA, especially in the current constrained fiscal environment. The Finance Management Unit supports the NPA by ensuring that the budget allocation is optimised to deliver on the NPA's mandate while remaining compliant with strict government frameworks. The NPA budget (including the Goods and Services budget) remains under strain and is insufficient to address the growing needs of the NPA.

The NPA spent 97.6% of its budget. Expenditure on Compensation of Employees was at 92% (R3.5bn) due to delays in filling vacancies and appointing Aspirant Prosecutors as a result of the lockdown, which resulted in an underspending of R103m.

The NPA, in consultation with the DoJ&CD, overspent on its Goods and Services budget by 6.8% (R29m) and the amount was made available to the NPA from the available budget within the Vote.

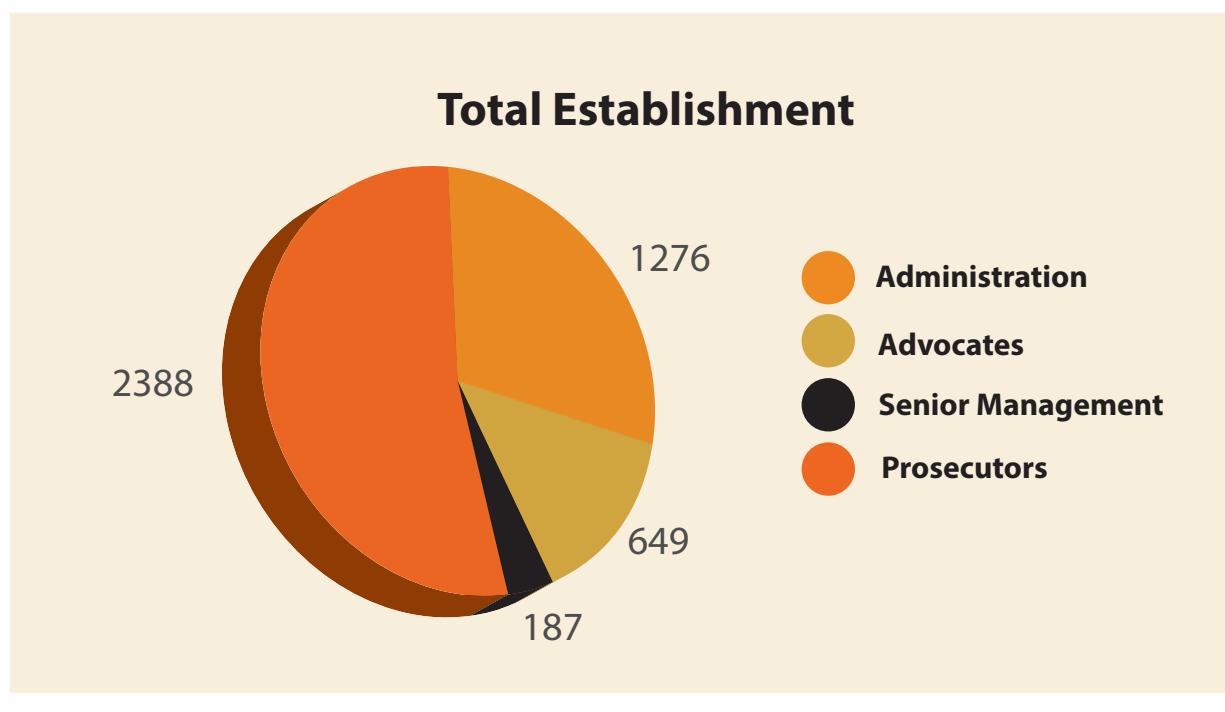
The NPA spent R5.1m on personal protective equipment (PPE) for its staff. The procurement processes in the National Department of Public Works and Infrastructure relating to accommodation and maintenance and repairs are cumbersome and slow. The NPA has not been allocated a budget to undertake maintenance and repairs of buildings.

No irregular expenditure was incurred. Only R5,000 of fruitless and wasteful expenditure relating to the abuse of state vehicles was identified; which is under investigation.

Human Resource Management and Development

Human Resource Management and Development aims to ensure that the NPA has the required staff with the relevant capabilities. An additional budget allocation enabled the NPA to revive its Aspirant Prosecutor Programme, which led to the intake of 425 Aspirant Prosecutors for 2021. The NPA was also able to create much-needed capacity in the regions, specifically for the SCCU and the AFU, and to generally fill needed posts.

Figure 1: Total NPA establishment as of 31 March 2021



The total establishment of the NPA as of 31 March 2021 was 4 500, with the breakdown indicated in Figure 1. In terms of gender, 53.2% of NPA staff are female and 46.8% are male, which represents a 1.2% increase in females and a 1.2% decrease in males. The number of filled posts increased by 302, of which 221 are prosecutors. The NPA contracted 617 people, of which 519 are prosecutors.

Training continued despite the COVID-19 pandemic, with 792 employees attending various training programmes. The training modalities were amended to develop the capability of migrating from traditional modes of training to virtual platforms. Of all the officials trained, 71% (561) were prosecutors. In addition, 119 prosecutors were trained on complex commercial crimes.

In terms of employee relations, there was a decrease in the number of labour matters finalised due to the prohibition by the DPSA on conducting hearings during the lockdown period.

The impact of the COVID-19 pandemic coupled with the inherent nature of psychosocial stressors within the CJS are noted as potential threats to employees' wellbeing and organisational performance. Emotional and mental health issues accounted for the bulk of the cases managed during the past year.

Security Management Service

As the NPA becomes more effective in addressing crime, the threat to NPA staff will increase. The Security Management Service (SMS) must ensure that the operating environment is safe for all staff. Security measures were implemented at courts for six high-risk cases and for two special events. With the assistance of Crime Intelligence, threat assessments are conducted on prosecutors whose lives may be at risk and, where warranted, protection is provided. In the last financial year, eight prosecutors were afforded protection at a cost of about R15m.

SMS played a critical role in crafting customised security screening criteria for the ID applicants/intake, with the SIU applying a Layered Voice Stress Analysis. In the process, 48 candidates were screened. SMS also assisted in the recruitment drive, where 1 889 applicants underwent security screening.

SMS assisted the NPA to respond to the COVID-19 pandemic. SMS officials were appointed as COVID-19 regulations compliance officers at both national and regional levels. The unit participated in the NPA COVID-19 Strategic Task Team and conducted risk assessments in all offices to ensure implementation of and compliance with COVID-19 regulations and protocols in line with NPA Risk Adjusted Plans drafted in response to all alert levels.

Information and Systems Management

Information and Systems Management leads the NPA's modernisation drive to enable the organisation to effectively leverage the benefits of emerging technologies and respond to growing threats and challenges stemming from digital technology and cyber-crime. The COVID-19 pandemic demonstrated the importance of being responsive to change, forcing the NPA to reconsider its operating model and to embrace Information and Communications Technology as an enabler.

The challenge remains that not all NPA staff are on the NPA networks, and the DJ&CD infrastructure is outdated and no longer fit for purpose. Significant changes in this area are expected in the coming year.

Staff on the NPA networks can work remotely and collaborate using Microsoft Teams and relevant video conferencing systems. An online screening application was developed to minimise contact and to eliminate the use of paper. All end users' workstations were upgraded, as were the data centres and data storage. A record number of 6 762 items were added to the library. The implementation of eBooks will continue, while Evolve, online Juta and Lexis Nexis will be introduced.

The ECMS is integral to the modernisation of the CJS. Usage of the system is low due to, *inter alia*, connectivity issues, lack of training and lack of capacity. Prosecutors are being trained virtually and are provided with support on the use of the ECMS. Further training modules have been developed, including modules on investigating officer diaries and decision dockets.



ACTIVITIES

OF INVESTIGATING DIRECTOR AND SPECIAL DIRECTORS



ACTIVITIES OF INVESTIGATING DIRECTOR AND SPECIAL DIRECTORS

Investigating Director

The Investigating Directorate's (ID) mission is encapsulated in the Presidential Proclamation under which it was established, which is to deal with cases emerging out of several public commissions of enquiry, namely the Nugent Commission of Enquiry into Tax Administration and Governance by SARS, the Mpati Commission into Alleged Impropriety by the Public Investment Corporation, and the Zondo Commission.

Delivering in a challenging environment

The ID spent much of the year pursuing the capacity to implement its mandate. It developed a resourcing model that drew on the willingness of partner agencies to support its work through secondments, as envisaged in the NPA Act. Whilst this assisted with securing much-needed staff, many of those seconded arrived with existing work backlogs. Due to protracted procurement processes, the ID was not able to appoint the required level of scarce skills that were identified, putting at risk deliverables within the five-year tenure of the ID's Investigating Director.

Related to the dearth of specialist skills and historic experience to deal with matters of grand corruption, is the need for an appropriate methodology for investigating and prosecuting complex economic crime. Whilst various global instruments are being developed to provide a framework to deal with transnational crime such as anti-bribery and anti-money laundering legislation, similar efforts at the level of regional and national jurisdictions lag behind.

The modern approach to dealing with complex transnational organised crimes that transcend international jurisdictions and boundaries lies in collaborative efforts that bring to bear a multiplicity of resources, knowledge, experience, information and shared data. Such collaboration should be aided by advancements in technology, as well as new methods for detection, investigation and prosecution in line with international lessons. This means the ID must seek ways to build information-sharing platforms (and address legislative barriers to such), make greater use of diverse remedial actions (such as asset forfeiture and tax evasion options), pursue the use of international frameworks for mutual legal assistance, and strengthen its participation in the broader anti-corruption coalition with civil society and other partners.

It is anticipated that the onboarding of digital forensic experts, along with the technology utilised during the Zondo Commission, will greatly enhance the ID's ability to pursue its mandate in a more scientific way, using data analytics and, potentially, artificial intelligence, in line with good practice.

Highlights of progress

The work of the ID is focused on three synergistic streams: corruption in the security sector; corruption in State-Owned Enterprises (SOE); and corruption by high-level private and public individuals (HLPP) involving particular families.

There are currently 32 ID investigations across these sectors, for which 137 dockets have been opened. By December 2020, a total of 154 Section 28 subpoenas had been issued and nine mutual cooperation requests sent to other agencies such as SARS and FIC.

Table 1: Breakdown of matters in terms of the three focus areas

	Security Sector	SOE	HLPP
Investigations	19	5	8
Dockets	78	27	32

The following represent the year's highlights in each of the focus areas.

Security Sector

- The Blue Lights case exposed the capture of the SAPS' supply chain processes and exposed the collusion of the highest-ranking officials.
- A racketeering charge was added to the fraud and corruption charges against the accused for offences committed during the 2010 World Cup in KZN.
- On 9 December 2020, International Anti-Corruption Day, Major General Solomon Lazarus, the Chief Financial Officer of Crime Intelligence, was sentenced to 10 years' imprisonment for corruption.

Significant progress was made in SAPS investigations, in part due to the excellent work of DPCI and Independent Police Investigative Directorate (IPID) officials who have been seconded to the ID. The Security Sector currently has four cases on the roll:

- **State v Mokwena and 12 others** (blue lights, R191m)
- **State v Lorette and 43 others** (police vehicle branding, R85m)
- **State v Thoshan Panday and 3 others** (World Cup, R47m)
- **State v Richard Mdluli and 2 others** (slush fund)

SOEs

- **State v France Hlakudi and 3 others**, which relates to corruption worth R745m in Eskom's Kusile Power Station, was enrolled in December 2019. Excellent co-operation with foreign partners resulted in United Kingdom (UK) authorities arresting Michael Lomas, whose extradition is sought in the matter.
- SARS led the tax charges on the **State v France Hlakudi** R30m tax fraud case and the **State v Maphoko Kgomoeswana** R5m tax fraud case.
- **NDPP v Kuben Moodley** involves corruption estimated at R232m relating to the ID's investigation into kickbacks for securing Transnet contracts by Regiments Capital and efforts to restrain the disposal of assets. It forms part of a bigger investigation into corruption within Transnet.

HLPP

- **Bosasa:** The appearance of high-profile individuals, former ANC Member of Parliament Vincent Smith and Bosasa Chief Operating Officer Angelo Agrizzi, on fraud and corruption charges in October 2020 attracted significant attention. The decision to grant bail conditional on the handing over of foreign title deeds was novel.

Special Director of Public Prosecutions: Specialised Commercial Crimes Unit

Advocate Lebo Baloyi was appointed Special Director of Public Prosecutions (SDPP) for the SCCU on 1 February 2021. The SCCU is a specialist component within the NPS.

SCCU aims to reduce commercial crime and corruption through the effective investigation and prosecution of complex commercial crime cases. SCCU participates in the Anti-Corruption Task Team (ACTT), where both private and public sector corruption is addressed by the identification, investigation and prosecution of priority cases.

Through its participation in the ACTT, SCCU contributed to the development of the National Anti-Corruption Strategy, which was signed off by Cabinet on 18 November 2020. The ACTT Case Selection Committee was resuscitated and is comprised of various relevant departments who form part of the ACTT. The case intake criteria adopted by the ACTT mandates SCCU to deal only with complex commercial crime and corruption. Less serious corruption and commercial crime cases were migrated to dedicated prosecutors within general prosecutions, with their progress monitored.

Regions review cases to determine whether they should be included on the current ACTT Priority Case list—currently the list consist of approximately 250 cases.

Apart from those cases on the ACTT Priority Case list, cases relating to various vulnerable groups are also being monitored. Significant progress has been made on these cases, which include cases in respect of municipalities (especially from the North West Inter-Ministerial Intervention), national and provincial government departments, foreign bribery, SOEs and Fusion Centre cases on COVID-19-related corruption.

SCCU also engages with external stakeholders on a national, regional and international basis regarding matters of mutual interest, with the view to staying abreast of various commercial crime trends across the globe. Ongoing engagements are held with, amongst others, the OECD (relating to foreign bribery offences), the FATF (relating to money-laundering offences), and the Global Action on Cybercrime (relating to cybercrime offences).

SCCU has reactivated a money-laundering desk within the NPA to improve the co-ordination of the NPA's efforts to combat money laundering and terror financing, ensure effective stakeholder engagement, effectively address emerging trends, and facilitate better consultation with the law enforcement community and other entities engaged in addressing money-laundering threats.

SCCU vacancy rate decreased by 15% compared to the previous year. Authorisation was obtained from DPSA to appoint 50 senior state advocates on contract, pending the finalisation of the establishment and recruitment process, to assist SCCU for a period of three years in addressing the serious corruption and commercial crime cases.

Six more dedicated specialised commercial crime courts to deal with priority corruption cases were established by the DoJ&CD in collaboration with the NPS in Limpopo (three), Mpumalanga, North West and the Northern Cape during the year under review. This ensures that there are dedicated courts in each of the provinces. More dedicated SCCU courts are to be established in the new financial year.

Fraud and corruption cases

Testimony during the judicial commissions that have been established by the President, particularly the Zondo Commission, reveals that in recent years corruption has centred around those in positions of power and influence in the public sector diverting public funds into the private sector. There is no shortage of allegations and information in public discourse, but the most onerous task for law enforcement agencies is to turn such information into evidence that will be admissible in court.

CORRUPTION IN NUMBERS: NPS & SCCU



Priority corruption cases identified
93



Priority cases enrolled
44



Government officials convicted
93



Private sector individuals convicted
147

CORRUPTION IN NUMBERS: AFU



Value of forfeitures and confiscations
R135,8M



Recoveries: POCA
R111,3M



Restraints obtained through ID
R278,8M



Number of freezing orders
308



Corruption Recoveries
R3,3M



Value of corruption related CARA payments
R723K



Value of freezing orders
R611M



Value of corruption related to government officials
R127K



Value of corruption-related victim payments
R2,6M



Total Value:
Confiscations / Forfeitures:
R11,4M



CASE STUDIES

The cases below reflect examples of successful prosecutions, as well as action through the AFU's criminal and civil forfeitures, to ensure that the proceeds of crime are reclaimed.



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 for R300m. Several high-ranking officials were involved, including, inter alia, the former Premier of the Free State, the former Mayor of Mangaung and the former Head of the Free State Department of Human Settlements. The accused manipulated procurement processes and committed tender fraud in the Free State Department of Human Settlements. 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. Several officials received undue and corrupt payments.

State v Eric Phukwana: Phukwana, former Municipal Manager of Naledi Municipality, was sentenced by the North West Regional Court in Vryburg. The court found that Phukwana awarded a tender worth R131 518 000 for the construction of 3 000 low-cost houses to Khasu Engineering Services, without following proper procurement procedures. Phukwana later received gratification to the value of R350 000, which was paid into his account by Khasu Engineering Services. He was sentenced to an effective 10 years' imprisonment for corruption, fraud and two counts of the contravention of the Municipal Finance Management Act, 56 of 2003. He also consented to a forfeiture, in terms of section 19(1) of 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. The AFU is in the process of effecting the recovery.

Albatime matter: In this matter, the ID obtained a restraint order to the value of R232m. The matter involves a company, Albatime, and K Moodley, the director of Albatime. The matter relates to fraud and corruption perpetrated in the awarding, by Transnet, of tenders and contracts in the acquisition of locomotives and the provision of rail maintenance. The criminal prosecution is ongoing. This is a Zondo Commission matter.

L Gumede matter: The respondent submitted false claims to the Unemployment Insurance Fund in terms of the COVID-19 funds made available for that purpose. The AFU office in Johannesburg obtained a preservation for the proceeds of the fraudulent claims for 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 stolen money.



State v Phoshoko and Mdingi

Adv Derrik Vogel

The first accused was a prosecutor and was charged together with his co-accused with defeating the ends of justice and corruption. The prosecutor was convicted on both counts after a marathon trial and sentenced to an effective 5 years' imprisonment. His co-accused, a private person, was sentenced to 5 years' imprisonment suspended on conditions.



State v Wilmien Bernardo

Adv Louis van Niekerk

State v Wilmien Bernardo: The accused was an Agricultural Development Officer at the George Regional Office of Casidra Pty Ltd, which is a developmental organisation that aims 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 Comprehensive Agricultural Support Programme projects in the Eden District Municipality. The accused submitted the details of her husband's bank accounts as being those of contractors used by Casidra. Over a period of more than two years, the accused transferred cash to four of her husband's bank accounts under the pretence that they were supplier accounts. The accused was charged with 79 counts of fraud to a total value of R142 098. The total amount transferred from Casidra's bank account to the savings accounts of her husband was R1,2 million.



Special Director of Public Prosecutions: Sexual Offences and Community Affairs

The Sexual Offences and Community Affairs (SOCA) unit is located within the NPS. Advocate Bonnie Currie-Gamwo was appointed SDPP: SOCA on 1 February 2021. The SOCA unit focuses on sexual offences, domestic violence, maintenance, trafficking in persons and child justice. The mandate has recently been extended to include community prosecutions and court preparation officers.

The TCCs are regarded as an international best practice model in dealing with sexual offences matters and minimising secondary victimisation. The model has a victim-centric approach, expediting finalisation and improving conviction rates through prosecutor-guided investigations and stakeholder engagement. This court preparation model has resulted in an increase in life and long-term sentences in respect of matters emanating from TCCs. There are currently 55 operational TCCs and a further six have been identified to be established with Criminal Assets Recovery Account (CARA) funding. The SOCA unit has developed detailed directives and training modules in respect of sexual offences, domestic violence, trafficking in persons, maintenance and child justice.

Public awareness is required to address GBV. During the 16 Days of Activism against Gender-Based Violence campaign, 46 of the TCC sites participated in various GBV and femicide (GBVF) discussion topics, webinars, radio talks shows and community awareness campaigns. An estimated 130 events took place during this campaign.

Gender-based violence and femicide (GBVF) has become a scourge and has resulted in the President declaring a national crisis. The first Presidential Summit on GBVF held in November 2018 was followed by the development of the Emergency Response Action Plan (ERAP) to address GBVF and the National Gender-Based Violence and Femicide Strategic Plan (GBVF-NSP) in 2020. Pillar 3 of the GBVF-NSP places particular obligations on the NPA, in terms of which the NPA participated in various stakeholder engagements and submitted several comprehensive reports on activities and deliverables actioned by the NPA.

The NPA will give effect to its obligations by:

- Ensuring that all GBV survivors can access efficient and sensitive criminal justice that is quick, accessible, responsive and gender inclusive.
- Strengthening our capacity within the CJS to address all impunity and effectively respond to femicide and facilitate justice for GBV survivors.
- Participate in the amendment of legislation related to GBV that build on legislative reforms initiated under ERAP, including the proposed amendments to the Criminal Procedure Act, Domestic Violence Act, Sexual Offences and Related Matters Amendment Act, 32 of 2007 (SORMA), any new legislation introduced, and the Victim Support Services Bill (led by the Department of Social Development).

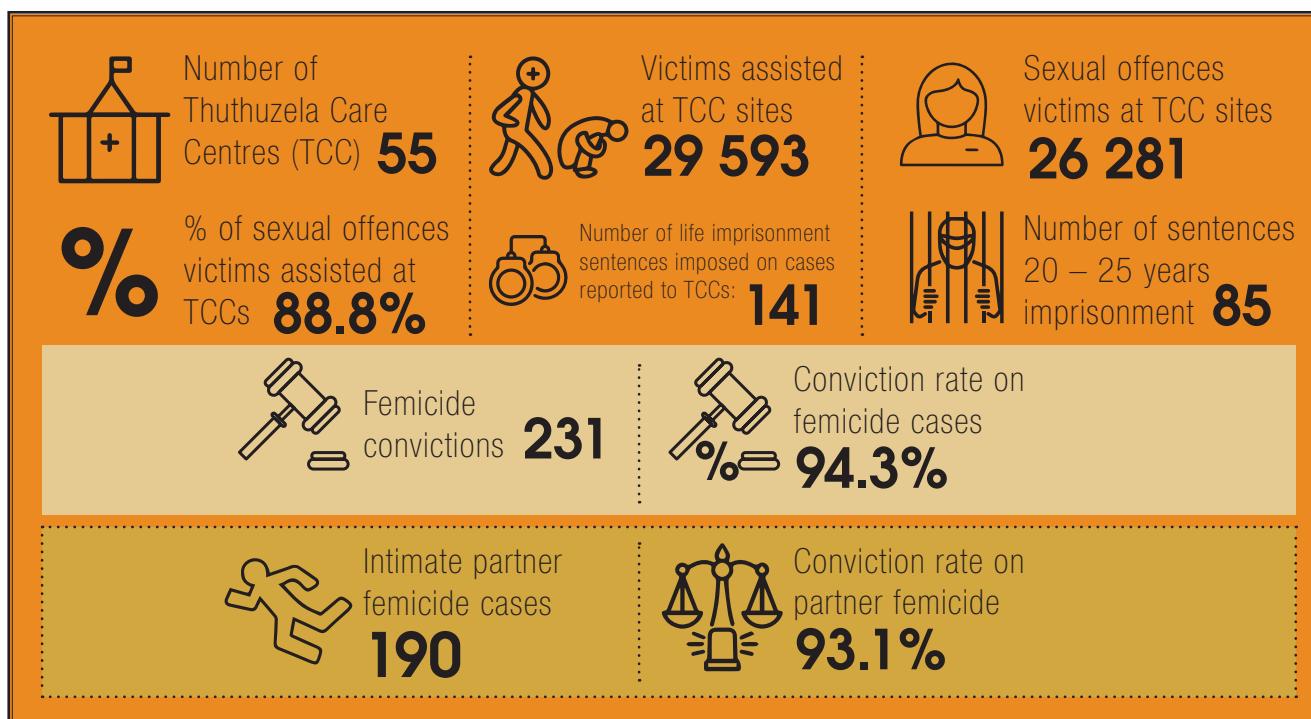
SOCA has already played an invaluable role in the drafting and amendment of related directives on sexual offences and trafficking in persons, and the development of regulations on section 55A of SORMA. The NPA also participated in reviewing legislation, which has resulted in three GBV Bills (Criminal Procedure Act, 51 of 1977, Domestic Violence Act, 116 of 1998, and SORMA).

The unit successfully delivered crucial training sessions nationally on virtual platforms, focusing on sexual offences, domestic violence, maintenance, child justice, trafficking in persons and integrated stakeholder training at TCC sites. Together with experts from various academic institutions, SOCA designed and developed a Court Report Training Manual encompassing all forms of expert assessment reports required in court and the submission of reports and viva voce evidence by experts in court.

The use of court preparation officers by the NPA to prepare witnesses for court is an initiative aimed at empowering witnesses and victims and reducing secondary trauma. In the reporting period, 55

579 witnesses were assisted by the court preparation officers and 4 189 victim impact statements were facilitated. Witnesses appearing in all criminal courts are assisted, however, the bulk of the witnesses are in respect of regional courts cases (83.6%) with a particular focus on witnesses in sexual offences cases (53%).

GBVF IN NUMBERS



The following cases reflect the significant efforts of our prosecutors to strive for the most severe sentences being imposed by the courts in line with minimum sentences provisions in the various GBVF crimes. In relation to the prosecution of TCC cases over the past two financial years, the courts have imposed more life imprisonment and long-term sentences, specifically on convictions of rape offences – 18.1% of all accused convicted of rape received life imprisonment sentencing, whilst an additional 50.5% of the accused received long-term imprisonment sentences in line with the minimum sentences' legislation.



CASE STUDIES



State v Amos Mphikeleli Ngubeni

Adv Cornelia Harmzen

State v Amos Mphikeleli Ngubeni: Ngubeni, a 28-year-old serial rapist from Benoni, was convicted of 13 counts of rape, as well as kidnapping, theft, robbery, four counts of housebreaking with the intention to commit an offence unknown to the state, and seven counts of robbery with aggravating circumstances. He was sentenced to 10 life imprisonment terms and a further 159 years' imprisonment for offences he committed against 14 women. During his crime spree, which lasted from August 2011 to March 2012 mainly in Tsakane and Duduza, Ngubeni accosted his unsuspecting victims after dark, either alone or with other co-perpetrators, or broke into the homes of his victims and attacked them there. The accused robbed his victims and took turns raping them where he had co-perpetrators. One of his accomplices, Anthony Sithole, was convicted and sentenced to several life imprisonments in December 2019.



State v Mkhwanazi

Adv Faghre Mohamed

State v Mkhwanazi: Mkhwanazi was convicted of the murder of Palesa Modiba, a University of Johannesburg student whose remains were found at a friend's home in Soweto. He was found guilty of murder, defeating the ends of justice, and unlawful possession of a firearm and ammunition. He was sentenced to 31 years' imprisonment.





State v Xander Bylsma

Adv Johan Smit

State v Xander Bylsma: Xander Bylsma murdered his former girlfriend (16 years old) and her niece (17 years old) by strangling them in a school hostel in Stella. Bylsma, who was 18 years old at the time, tried to cover up his tracks by sending a fake text message from his former girlfriend's phone to her dad implying that she had committed suicide. Bylsma later made certain admissions to a private investigator, which placed him at the scene of crime. The accused was found guilty of pre-meditated murder and sentenced to two life terms by Deputy Judge President Ronald Hendricks.



State v C Stevens

Adv Heinrich Koert

State v C Stevens: The Worcester Regional Court sentenced a 65-year-old foster father to two terms of 25 years' imprisonment for the rape of two minor girls aged 11 and 12 years old. The cousins were placed in the foster care of Stevens and his wife after being removed from their biological parents due to adverse socioeconomic conditions and neglect. Stevens threatened the girls with jail if they said anything and promised them sweets and money. The abuse came to light when the 12-year-old, who was taken to a clinic after falling ill at school, reported the abuse to a health care worker. As part of the investigation, the 11-year-old was interviewed by police and reported the rape. A forensic medical examination at Robertson Hospital confirmed signs of penetration. The Worcester TCC was instrumental in ensuring that both girls were immediately removed from the house and placed in a safe place. The Case Manager and Site Coordinator at the Worcester TCC liaised with social workers and Child Welfare Robertson to ensure that support services were provided to the victims.



State v Evelina Fortuin

Adv Fiona Cloete

State v Evelina Fortuin: The accused in this matter was charged with kidnapping, trafficking in persons for sexual exploitation, exploitation of a child and causing a child to witness a sexual act. The accused, who was known to the 11-year-old complainant, called the complainant to the car she was in with a male driver and asked her to go with them. When the complainant refused, the accused pulled her into the car and drove to some bushes where the accused instructed her to take off her underwear. When the complainant again refused, the accused pulled down the complainant's underwear and the male driver touched her vagina. The accused and the male driver had sex in the presence of the complainant. After they drove back, the accused gave the complainant R20. The accused entered into a plea and sentencing agreement with the State and was sentenced to an effective term of 27 years' imprisonment.

Special Director of Public Prosecutions: Priority Crimes Litigation Unit

The Priority Crimes Litigation Unit (PCLU) is a directorate falling under NPS that focuses primarily on crimes impacting state security. It also exercises oversight over the Missing Persons Task Team (MPTT). Despite the impact of the COVID-19 pandemic and related lockdowns, PCLU continued to deliver on its mandate by staff adopting new ways of working.

During the period under review, extensive training was provided internally, as well as to other government departments and international bodies. Wide-ranging activities were conducted to discharge the PCLU's international obligations. PCLU operated with the posts of Special Director and two Senior State Advocates still vacant. This had a major impact on the professional staff members who had to manage the extra work. DPPs in several divisions indicated that they lack the necessary capacity to attend to PCLU matters and therefore contract appointments are being considered.

PCLU was involved in a particularly significant matter in which two right-wing terrorists who planned to carry out terrorist attacks on Black Friday (29 November) 2019 were convicted of terrorism at an act of preparation stage and terror financing. The convictions have opened the way for the prosecution of the leader of the terrorist group.

Although constrained in conducting investigations and exhumations due to the COVID-19 pandemic, the MPTT continued its work of tracing the fate and whereabouts of those who disappeared in political circumstances between 1960 and 1994, and attempting to recover their remains where possible. Notable cases include a breakthrough in establishing the fate of a unit of four missing uMkhonto We Sizwe members who disappeared in 1970 and establishing the probable identity of an unidentified Pan Africanist Congress detainee who was killed by Vlakplaas operatives in the late 1988 (currently undergoing confirmation). Extensive excavations were carried out in partnership with DPCI in search of persons who disappeared in the former KwaNdebele homeland area.

Special Director of Public Prosecutions: Asset Forfeiture Unit

Advocate Priya Biseswar was appointed SDPP of AFU on 1 February 2021 and is responsible for the national operations management of the AFU. There are 12 provincial AFU offices, headed by the regional heads.

AFU forms part of a joint stakeholder committee aimed at better utilising each stakeholder's mandate and available legislation to target unexplained wealth. Cases are identified for this purpose and the relevant law tested with the intention of developing jurisprudence in this area. Whilst the committee is in the beginning stages of implementation, it is anticipated that significant strides will be made in the coming financial year.

AFU has benefitted extensively from the expertise of Diana Cottrell, a specialist in asset forfeiture law and practice, made available to the AFU by the UK's Crown Prosecution Service. To date, amongst others, the following have been achieved:

- A week-long intensive training workshop was held on international assistance (mutual administrative assistance and MLA), which included theoretical and practical input as well as a post-course assignment. The Asset Forfeiture Manual, in particular the chapter on international co-operation, has been reviewed to ensure that it is up-to-date, relevant, valid and sufficiently detailed to be a source of reference material.
- An official MLA request template has been developed to assist AFU lawyers in drafting requests to ensure that requests meet the necessary requirements and that delays in execution are reduced.
- Technical assistance has also been provided in respect of the interpretation and application of sections of POCA. One such example is the notion of joint and several liability in confiscation cases. Ms. Cottrell provided a detailed legal opinion that included the UK's experience supported by case law. The UK and South African conviction-based forfeiture provisions are similar in nature, making this a valuable engagement.

AFU has provided resources to ensure that the re-structuring and functioning of the ACTT can be achieved. The SDPP also attends the ACTT executive committee meetings as representative of AFU in her capacity as head of operations.

AFU has also provided resources and guidance for the Section 18 project. The project envisages the roll-out of practices and procedures to encourage prosecutors in the lower courts to move Section 18 of POCA confiscation proceedings in applicable cases. AFU developed the guidelines and training material and is assisting with the training of prosecutors, at a regional level, in preparation of the final implementation of the programme.

AFU is involved in several stakeholder engagements involving different projects such as the Top 10 Case Priority list, ACTT, the Health Sector Anti-Corruption Forum, the Inter-Agency Working Group on Illicit Financial Flows, negotiations with the AG on entering into a MoU, and negotiations with the ID to finalise a partnership agreement.

AFU is also involved in several international engagements. The SDPP represented the AFU in the FATF Mutual Assessment and is responsible for submission to the FIC as well as the FATF assessors, as lead department in the FATF assessment process. AFU also participated in the OECD and the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA), with South Africa serving as the secretariat of the latter.

Delivering in a challenging environment

AFU faced several challenges during the period under review. The most significant was the national lockdown occasioned by the COVID-19 pandemic. The unavailability of investigating officers, witnesses and other parties contributed to a situation where the potential performance of the unit was severely hampered. Most importantly, the closure of the courts, at one point hearing only urgent matters, made it impossible to move preservations, restraints and other orders. This had a knock-on effect with the unit being unable to finalise orders.

One of the initiatives taken during the COVID-19 pandemic lockdown was to continue with the preparation of applications in anticipation of the opening of the courts. The AFU was therefore able to exceed its targets set for the number and value of freezing orders, by 17% and 28% respectively. The AFU won 99% of the matters litigated by them.

National corruption targets set for the value of freezing orders and recoveries could not be achieved due to the impact of the COVID-19 pandemic and the complex nature of serious corruption cases that require long periods of time to investigate. When the targets were set, there were no precedents for the time that it would require to finalise such cases to base the estimates on. However, the converse is also true and the finalisation of one or two cases in any given financial year may allow the AFU to exceed these targets by a substantial margin. It is clear from the different initiatives in place aimed at addressing and prioritising corruption, that good progress is being made in large cases.

One indicator that has traditionally posed a challenge for the AFU to achieve is the value of recoveries against government officials convicted of corruption. The target was achieved in the financial year, and it is evident from the cases referred that there is an increasing trend in the prosecution of more senior office bearers. This is a positive trend and is indicative of the political will to address corruption.

Office for Witness Protection

Although located in the NPA, the OWP is governed by separate legislation in terms of which the Director-General is the accounting officer and the Director of the OWP reports directly to the Minister of Justice and Correctional Services.

The office remained fully operational during the COVID-19 pandemic lockdown, ensuring that no witnesses were harmed or threatened by those who they are protected from while on the Witness

Protection Programme (WPP) during this period. Regrettably, two witnesses passed away due to natural causes while on the programme.

The OWP largely operates in accordance with international good practice. Witnesses and related persons must voluntarily agree to be admitted. Witnesses are not kept under 24-hour guard; they are assigned to places of safety so that they may re-integrate into society. Witnesses sometimes leave their places of safety without informing the OWP. These incidents are referred to as "walk offs" and the OWP immediately informs the investigating officer and prosecutor if a "walk off" happens. There are several interrelated reasons for "walk offs", namely:

- Strict conditions of the Protection Agreement and the rules of WPP
- Removal from danger area or historical homes
- Removal from family support, community support and comfort zone
- Trauma
- Profiling of witness, e.g., persons incriminated in criminal activity that turn state witness
- Family pressure from spouse, partner and children or other related persons in the WPP.

During the last year, 3 witnesses and 2 persons related to them (0,9%) "walked off" the WPP. However, in 99.9% of cases, witnesses who "walked off" still testified. The OWP aims to address "walk offs" by undertaking continuous inductions from date of admission until discharge.

During the reporting period, the OWP successfully executed 445 operations, of which 188 were for judicial proceedings. All requests for judicial proceedings were met. Sixty-five witnesses and 45 related persons were discharged, resettled or relocated through amicable resettlement agreements after completing their testimony or after it was decided by the prosecution not to use them as witnesses. Thirty-one witnesses returned to the danger area. A number of witnesses in any given year cannot go back to their homes because the danger still exists. The OWP assists persons in the WPP to successfully reintegrate into society; however, due to budget constraints, aftercare, discharge and resettlement are limited. Despite this, there has still been a 100% successful resettlement.

Innovative measures were put in place to ensure the well-being of witnesses, their related persons and personnel of the OWP during the COVID-19 pandemic lockdown period. These included deep cleaning safe houses and operational houses, COVID-19 questionnaires for potential witnesses and related persons being admitted, screening witnesses and related persons prior to admission, and a quarantine period for new admissions.



ACTIVITIES OF DIRECTORS OF PUBLIC PROSECUTIONS



ACTIVITIES OF DIRECTORS OF PUBLIC PROSECUTIONS

Eleven divisions, each headed by a DPP, are responsible for all prosecutions within their respective jurisdictions. These offices are located at the seat of the High Court in each province and are staffed by Deputy Directors of Public Prosecutions (who assist the DPP in managing the region), as well as senior and junior state advocates who perform chamber work and prosecute mainly in the High Court.

Each division also consists of two or three clusters headed by a Chief Prosecutor. The clusters consist of several magistrates' courts where senior prosecutors manage staff, assisted by control prosecutors. Prosecutors work in both the regional and district courts, performing chamber and court work.

The DPPs fall under NPS and focus on smart, victim-centred impactful prosecutions that are dealt with through two main streams: specialised prosecutions and general prosecutions. A collective focus with the AFU aims to take the profit from criminal activities. Twenty-two identified sites were established during the year to focus on community prosecutions with the main aim of enhancing service delivery in those communities whilst ensuring expeditious justice.

Fewer witnesses were assisted in this year compared to the previous year which correlates with the decline in finalised cases associated with the COVID-19 pandemic.

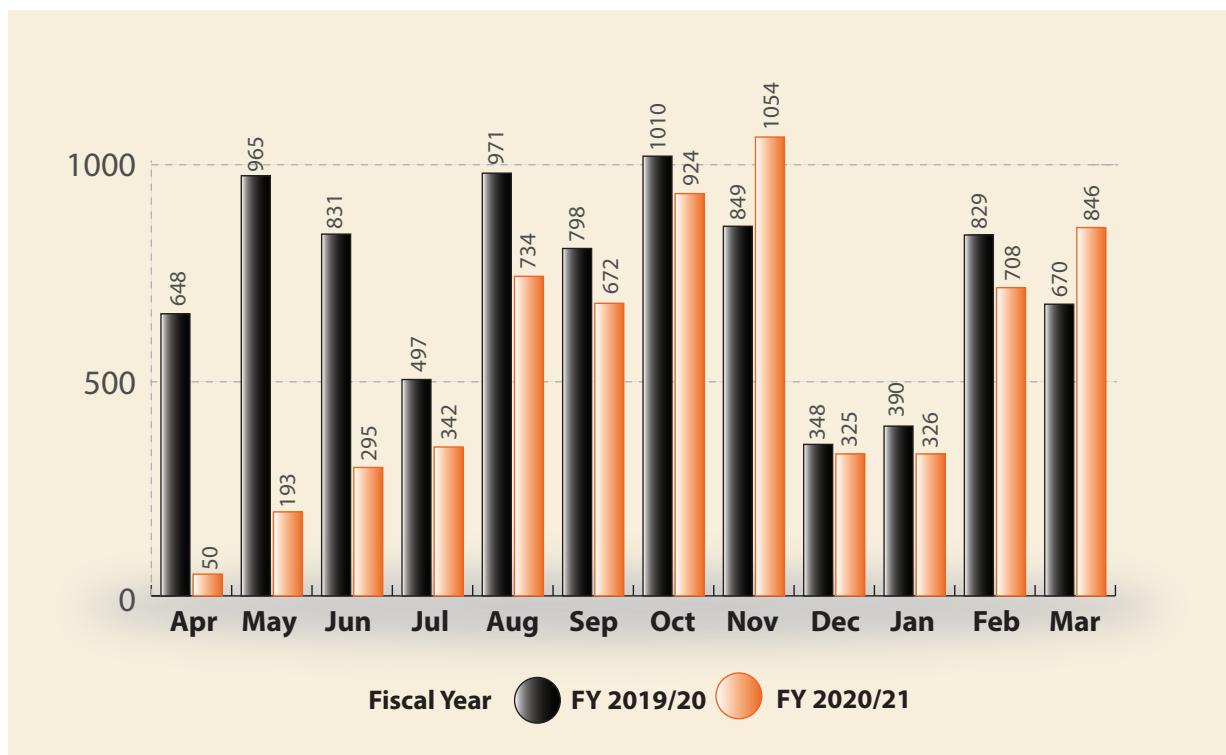
The PCLU, SCCU, SOCA, Organised Crime component and Specialised Tax component at Head Office support the divisions in their prosecution of specialised matters.

Impact of COVID-19 pandemic restrictions and infections on court services

On 15 March 2020, President Ramaphosa declared a National State of Disaster following the outbreak of the COVID-19 pandemic. On 23 March 2020, the President announced the lockdown of all non-essential services and placed restrictions on the movement of persons to contain and prevent the spread of COVID-19. The initial lockdown from 27 March to 16 April 2020 was extended for a further two weeks until 30 May 2020.

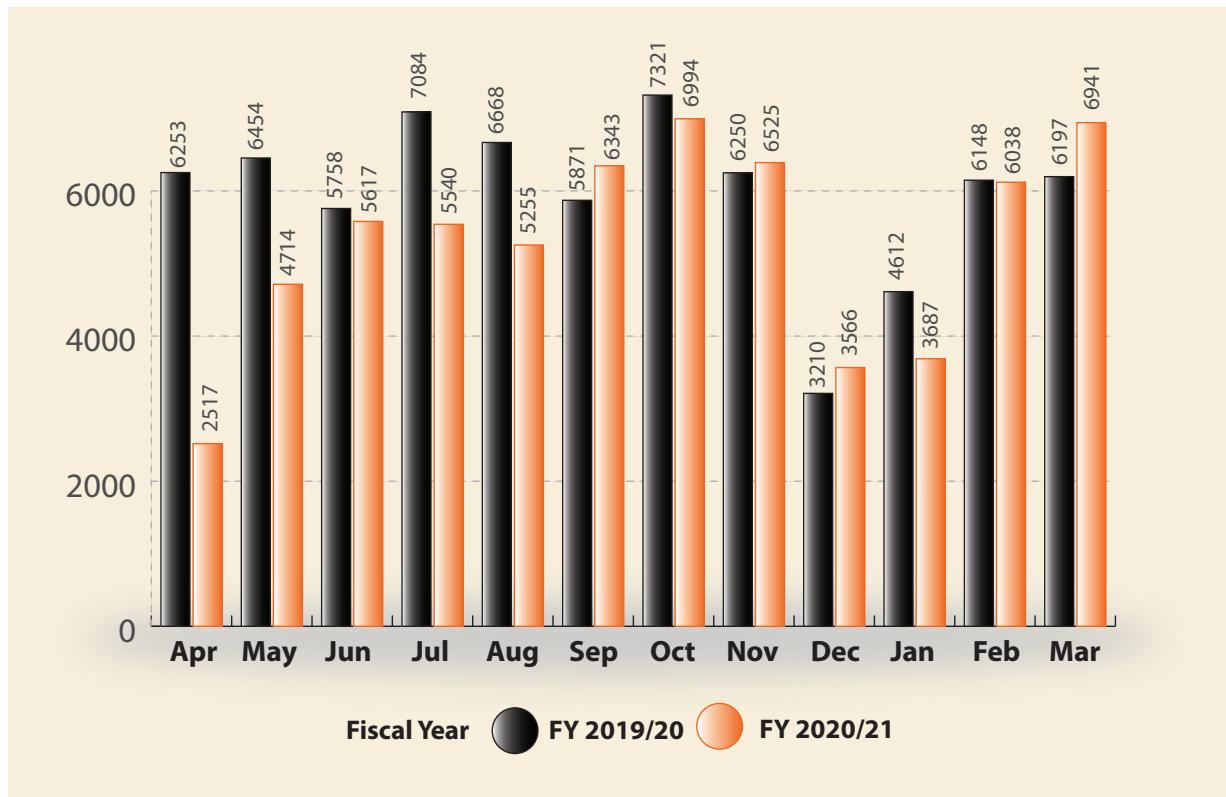
The Minister of Justice and Correctional Services issued Directions regulating how courts and the administration of justice should operate during the lockdown. The Directions stipulated that courts and other justice service points should only deal with urgent and essential criminal cases, including first court appearances, postponements in absentia where it is possible to inform accused persons and/or witnesses of a future trial date, bail applications, postponements through the AVR system and guilty pleas. The restrictions resulted in a reduction in the number of court days that could be utilised. The following figures compare the number of court days to the previous year for each judicial forum and depicts the impact of COVID-19 pandemic restrictions, especially between April and August 2020.

Figure 2: Comparison of court days utilised in the high courts: 2019/20 and 2020/21



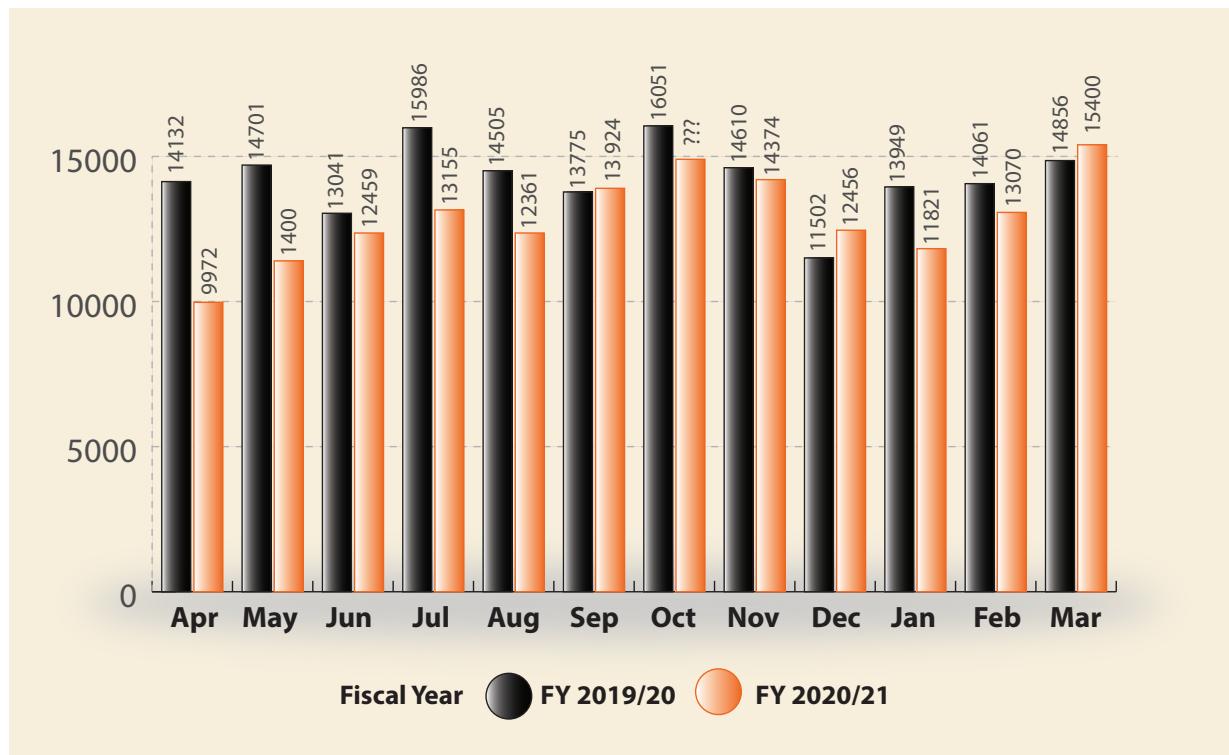
In addition to the normal COVID-19 pandemic-related problems in the courts, the high courts also deal mostly with accused in custody who must be transported from Department of Correctional Services' (DCS) facilities to the courts. In many instances, these accused could not be safely transported to courts due to the need for social distancing and decontamination.

Figure 3: Comparison of court days utilised in the regional courts: 2019/20 and 2020/21



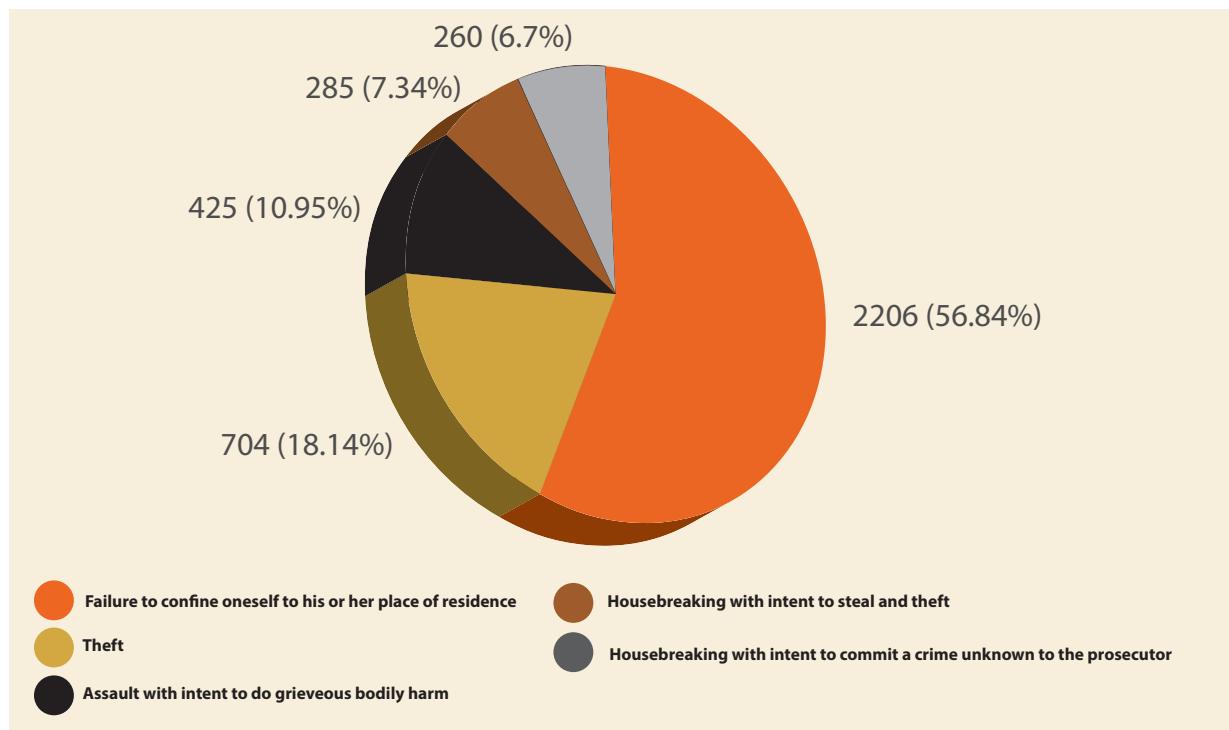
The impact on the court days in the regional courts improved from September 2020, although the reduction in the number of court cases finalised is difficult to recover.

Figure 4: Comparison of court days utilised in the district courts: 2019/20 and 2020/21



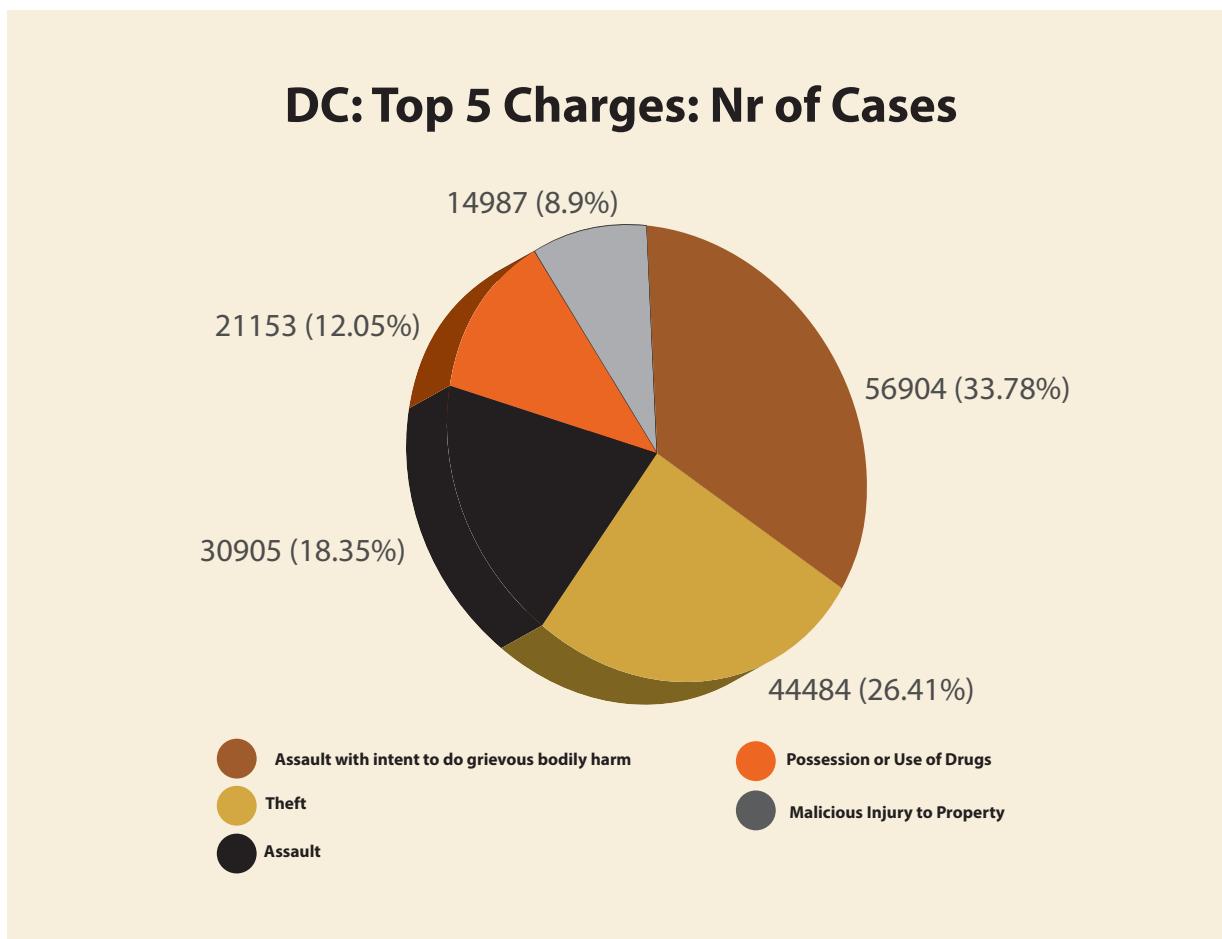
SAPS crime statistics reflect a decrease in crime during the months of April to June 2020, and fewer cases came into the courts, especially during April 2020.

Figure 5: Analysis of the crime types of new cases enrolled in the district courts during April 2020



Most of the new cases received in the district courts related to new crimes created to curb the infection rate, as reflected in Figure 5. There is a clear disparity between the crime types of new cases received in April 2020 in comparison to those received over the whole year, as reflected in Figure 6.

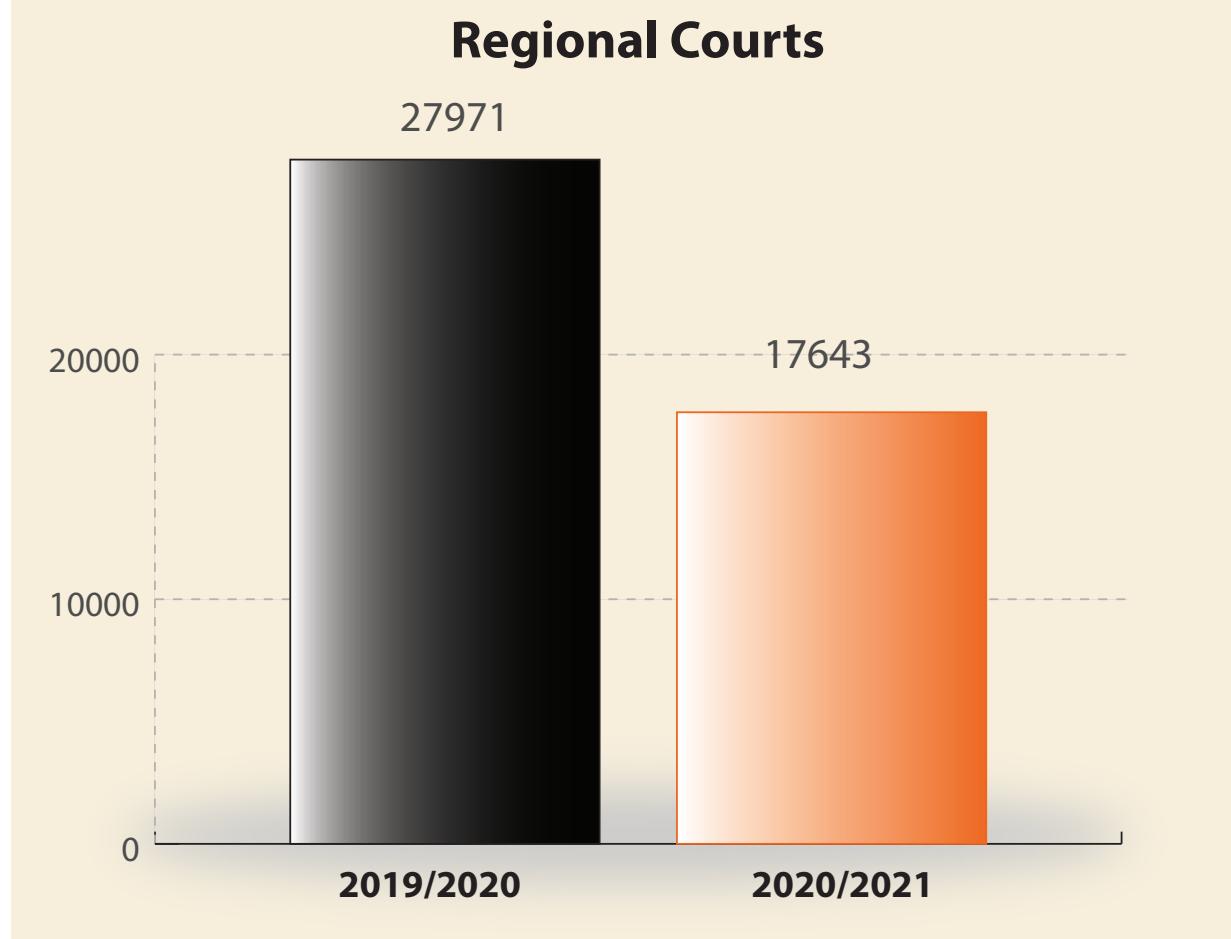
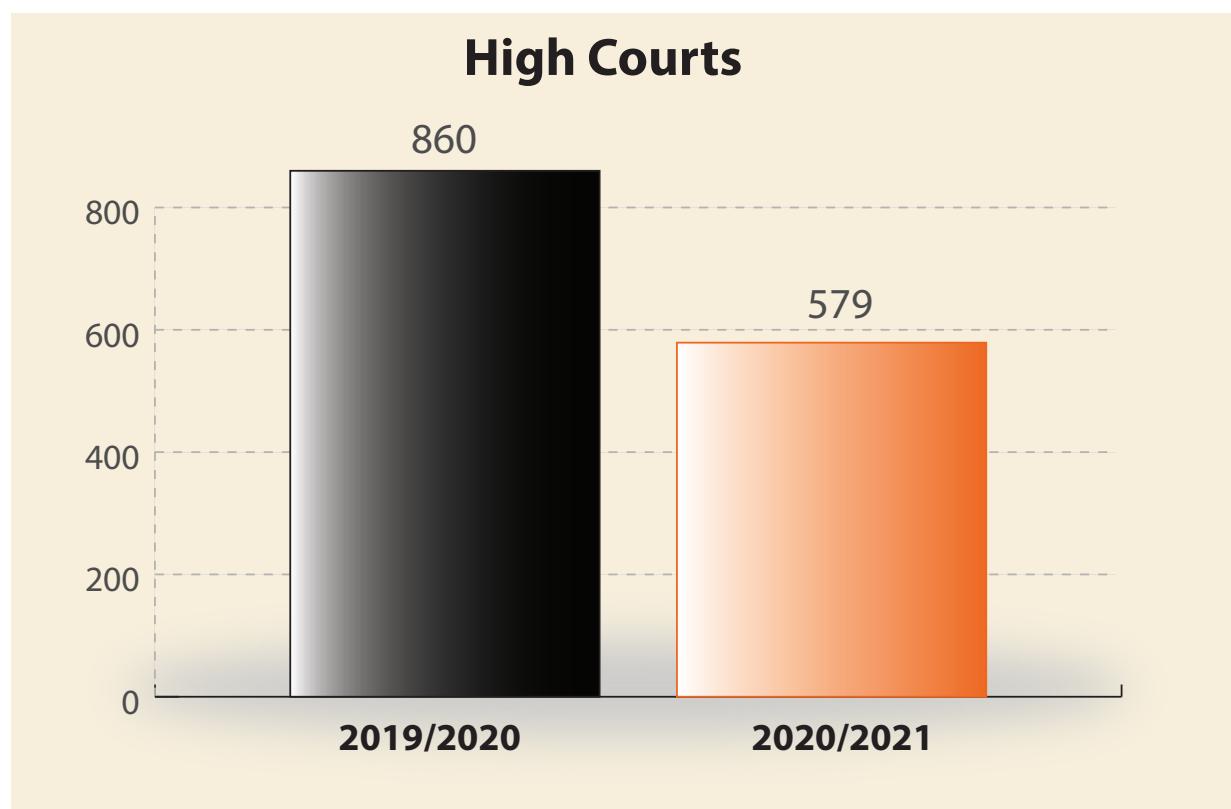
Figure 6: Analysis of the crime types of new cases enrolled in the district courts from April 2020 to Mar 2021

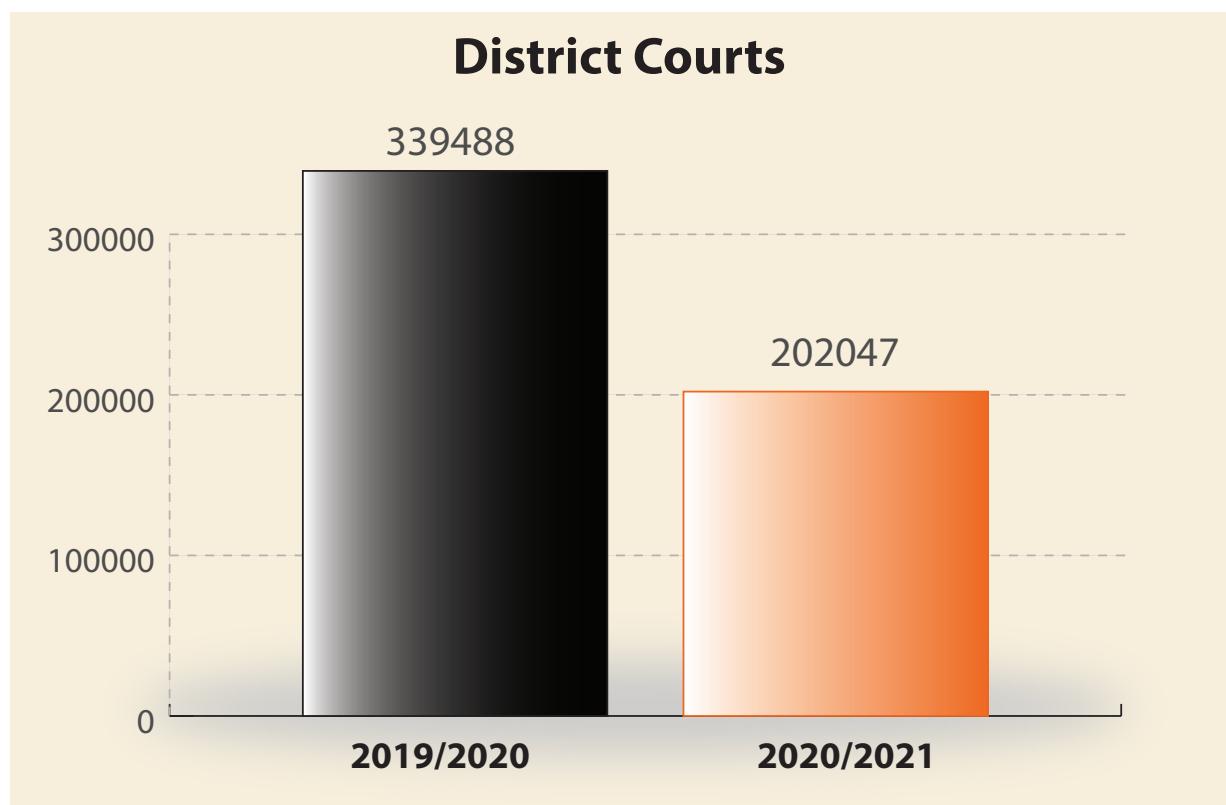


The cases finalised with a verdict in all forums decreased by nearly 50% compared to the previous year. The decrease in finalised cases in each forum is depicted in Figure 7. Several factors contributed to the decrease in finalisation, namely:

- Offices closed for decontamination
- Witnesses, accused and court staff (magistrates, prosecutors, attorneys, interpreters, court clerks and/or investigating officers) not attending court due to COVID-19 related issues
- Courts combining due to the absence of stakeholders
- Investigations hampered by businesses closed during lockdown and delays in obtaining evidence (witness statements, exhibits and documentary evidence).

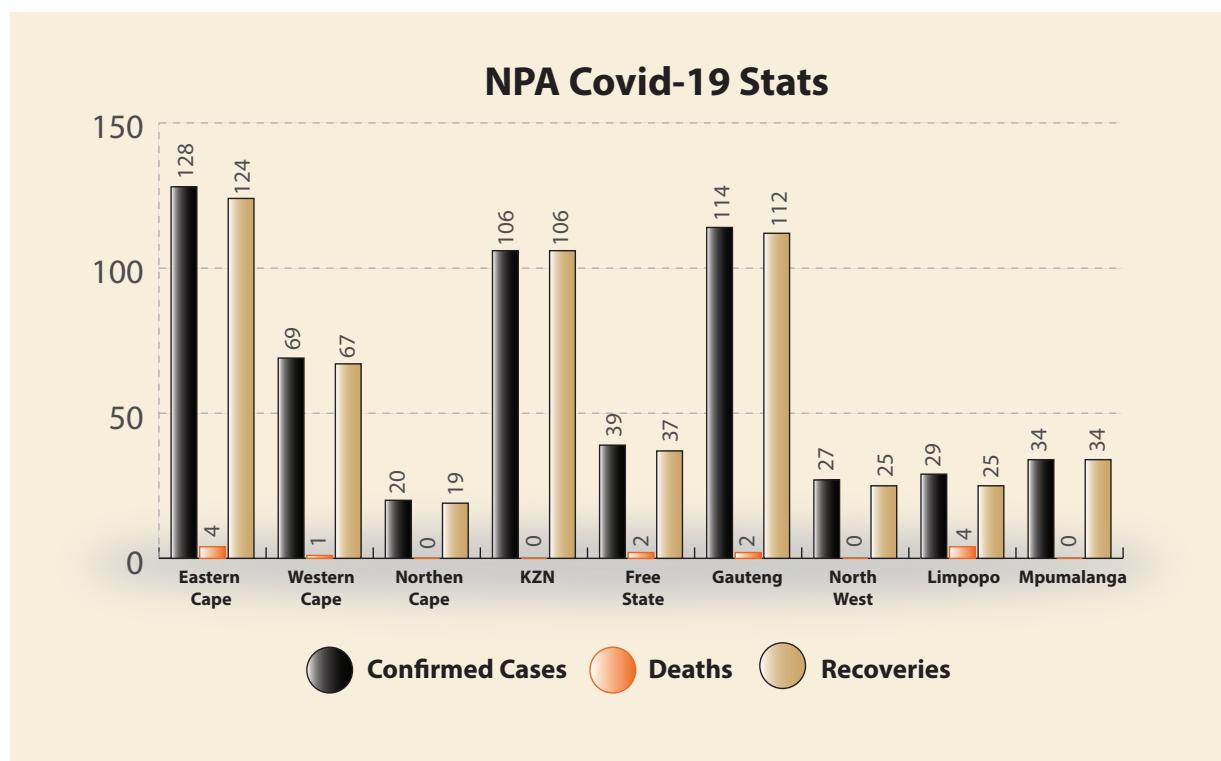
Figure 7: Number of criminal court cases finalised with a verdict in the high, regional and district courts





It is with great sadness that the NPA reports the loss of 13 officials due to COVID-19. A further 566 officials tested positive for COVID-19 during the year; this represents 23% of NPA staff compared to the national average of 2.5% of the population. The spread across the country is depicted in Figure 8.

Figure 8: Spread of COVID-19 across NPA offices in the provinces



Personnel in the Free State Division (FSD) were regularly exposed to COVID-19, with four or five prosecutors sometimes isolating at any one time. Many staff members became ill and there was one fatality. Courts and offices had to be closed for decontamination on a regular basis. However, prosecutors worked to ensure that as many courts as possible were able to function, sometimes serving up to three different courts in different towns per day, showing their resilience and willingness to work as a team. No trials were attended to under hard lockdown resulting in court rolls rising and the backlog increasing during the last year, although fortunately not too markedly.

The Gauteng Local Division (GLD) experienced staff becoming infected with COVID-19 or going into self-isolation as a result of their exposure. Those who did not have access to the internet at home were expected to work on decision dockets, inquests, etc. during this time. The resilience and dedication of staff in the GLD must be highlighted as one of its strengths.

During the COVID-19 pandemic lockdown, the high court and the lower courts in the Mpumalanga Division (MD) operated with a 19.6% vacancy rate, which meant that supervisors, prosecutors, advocates and administration were working under strenuous operational conditions to deal with the added workload. Although appointments were made, the situation did not improve as lower-level positions became vacant due to promotions.

The proper management of COVID-19 pandemic-related challenges was and still is very much part and parcel of the day-to-day business in the Northern Cape Division (NCD). A local steering committee was appointed to deal with the risks and issues relating to the COVID-19 pandemic in the province.

The Western Cape Division (WCD) engaged in several initiatives to mitigate the impact of COVID-19. A submission was made to the DCS with proposals to facilitate the reduction in the number of remand detainees. The Division liaised with Valkenburg Hospital to develop protocols to allow for criminal capacity assessments to recommence. Guidelines were developed regarding the enrolment and the prioritisation of cases, including GBV and related matters.

Human resources issues in Divisions

The Eastern Cape Division (ECD) management focussed on addressing staff morale. While the true worth of staff members is based on skill, competence, knowledge and the need to redress the imbalances of the past, ECD management is also mindful of the fact that the empowerment of staff members is fundamental to their wellbeing and productivity. The ECD implemented a staff empowerment drive that dealt with staff mentoring and training programmes, growth opportunities, resourcing, succession programmes, rotation programmes and employment equity compliance initiatives.

The FSD participated in a recruitment drive to reduce the 24% vacancy rate experienced in the province. Skills levels were retained by promoting and filling the vacancies from within the FSD's ranks. This, however, had the negative effect of creating new vacancies. The severe staff shortages were alleviated by the appointment of contract personnel. Training under the Aspirant Prosecutor Programme is well underway in Welkom, Bloemfontein and Phuthaditjhaba.

In the Gauteng Division Pretoria (GDP), a new labour relations officer at the office of the DPP is now dealing with employee and/or employer-related issues. Connectivity and software issues emanating from the need for virtual training impacted the GDP's training capabilities. In 2021, the Justice College and other service providers have committed to virtual training and the Regional Training Forum chair has requested that recordings of all trainings be placed on Microsoft Teams to allow staff to access as required.

The priority focus for the Limpopo Division (LD) was establishing a full staff complement, filling vacancies and creating new posts to respond to the workload. Despite an improvement in staffing, the delay in filling vacant positions continues to impact negatively on performance.

In the MD, an Acting DPP was appointed in the latter part of the reporting period and is implementing processes to accommodate the workload of the new division proclaimed on 1 May 2019. Critical vacancies in both the lower and high courts continue to impact on service delivery. There has been an increase in the resignation of experienced prosecutors to fill magisterial roles.

An Innovation Team has been set up in the NCD. The team has already proposed suggestions on how to improve performance management, support newly appointed prosecutors, improve recruitment processes, build a positive image of the NPA in communities, improve the prosecution of GBV, debrief prosecutors and support promotion within the NPA. The NCD is also focused on filling vacancies, capacitating the SCCU with additional posts and contract appointments, and conducting in-house training for prosecuting sexual offences, SCCU matters and Section 18 applications.

In the North-West Division (NWD), an Acting DPP was appointed during the last quarter of the reporting period. Many posts are vacant in the clusters and the DPP office. Some components, like the AFU, are barely functioning. There is no tax unit and no dedicated prosecutor to deal with PCLU cases. The vacancy rate will be reduced by a continued drive to appoint personnel on all levels.

The WCD filled 219 vacancies with a recruitment drive that started in late 2019. However, the vacancy rate remains much the same, increasing from 19.15% in April 2019 to 19.72% in April 2021. This is because additional posts have been created but not yet filled. The WCD's staff component in April 2021 is 664 because of the creation of new posts. During the COVID-19 pandemic lockdown, management meetings (including the Provincial Management Meeting that includes all Senior Public Prosecutors) were conducted via MS Teams to monitor performance and provide leadership.

Partnerships in Divisions

The ECD has fostered coordinated and integrated working relationships with stakeholders, focusing primarily on addressing ECD crime priorities areas and fighting gang crimes affecting communities in general and specifically around the northern areas of Port Elizabeth.

GDP regularly engages with stakeholders, such as the Provincial Efficiency Enhancement Committee (PEEC) and NATJOINTS, and feedback is provided to the relevant staff.

The Mthatha Division attends various meetings in the region, including PEEC, the Regional Efficiency Enhancement Committee (REEC), DEVCOM, JCPS, Provincial Joint Operational and Intelligence Structure (PROVJOINTS), etc. The DPP of the Mthatha Division sits on the National Council for Correctional Services and the Review Board.





ORGANISED CRIME



ORGANISED CRIME

Under the guidance of the DNDPP NPS, the national coordinator for organised crime, Advocate A Johnson, oversees the implementation of the NPA's strategy to address organised crime with its partners. Within each Office of the DPP, a deputy DPP is responsible for the same function and is supported by senior and junior state advocates.

"The organised criminal economy is mostly sustained by unsophisticated and ad hoc criminal networks, along with corrupt relationships. Sophisticated and structured criminal groups do exist, but these are not the only form of organised criminality."

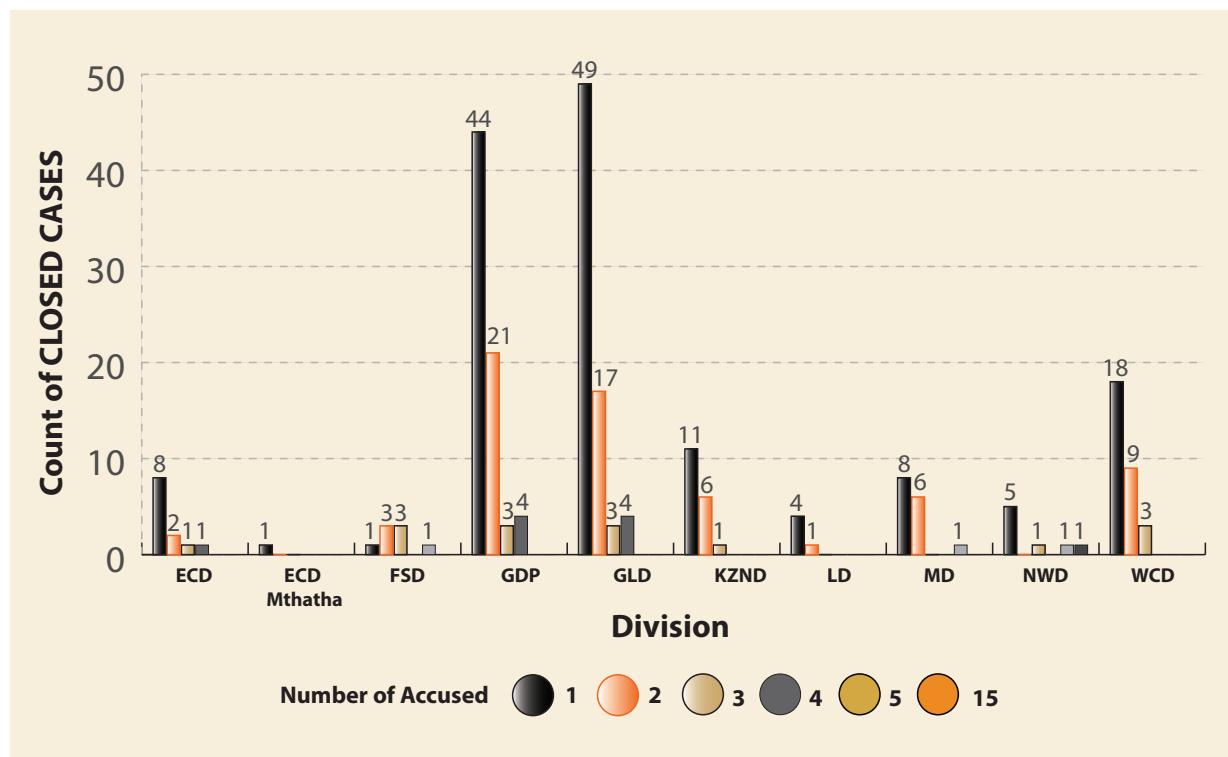
Fluid criminal networks and illicit business dealings have an even larger impact on the citizenry, and it is the failure to account for that these leads to systemic organised crime issues. In South Africa, criminal networks that are more commonly associated with organised crime include drug-trafficking syndicates, gangs in the Cape Flats, cash-in-transit operations and poaching syndicates. However, groups like housebreaking gangs, cellular phone thieves, second-hand metal dealers and cable thieves also fuel the organised criminal economy."²

South African criminal law provides for the combating of organised crime through the provisions of POCA. The Act prohibits activities relating to racketeering activities, criminal gang activities, money laundering and an obligation to report certain information. It also provides for the recovery of the proceeds of unlawful activities and incorporates provisions previously contained in the (repealed) Proceeds of Crime Act, 76 of 1996.

The Organised Crime Component of the NPA deals with prosecutions related to racketeering, criminal gang activities and money laundering, which are underpinned by predicate offences committed by the members of such criminal gangs or criminal enterprises. Such offences include murder, rape, aggravated robberies, cash-in-transit offences, drug dealing offences, criminal gang related offences, illicit mining, and the theft of fuel and non-ferrous metals.

Organised crime also includes environmental crimes such as rhino poaching, illegal fishing, dealing in abalone and lion bone, illegal dealing in and possession of ivory, as well as waste and pollution, illicit mining, copper theft, damage to essential infrastructure and the disruption of construction sites and/or extortion at building projects. Extortion mostly involves certain companies, individuals and branded and non-branded gangs using mafia-type tactics to demand tenders from municipalities, as well as contractors and sub-contractors on major infrastructure projects. Essential infrastructure offences relate to theft of cellular phone tower batteries, theft of fuel from pipelines, railway line cable theft and electricity and other cables required to provide essential services to the public. Cases often involve syndicates and groups committing these crimes in an organised fashion. Even though most of the cases with convictions resulted from single-accused cases, several cases with multiple accused also resulted in convictions (see Figure 12). Various cases involving syndicates (ranging from 5 to 40 accused) have been enrolled and are part heard.

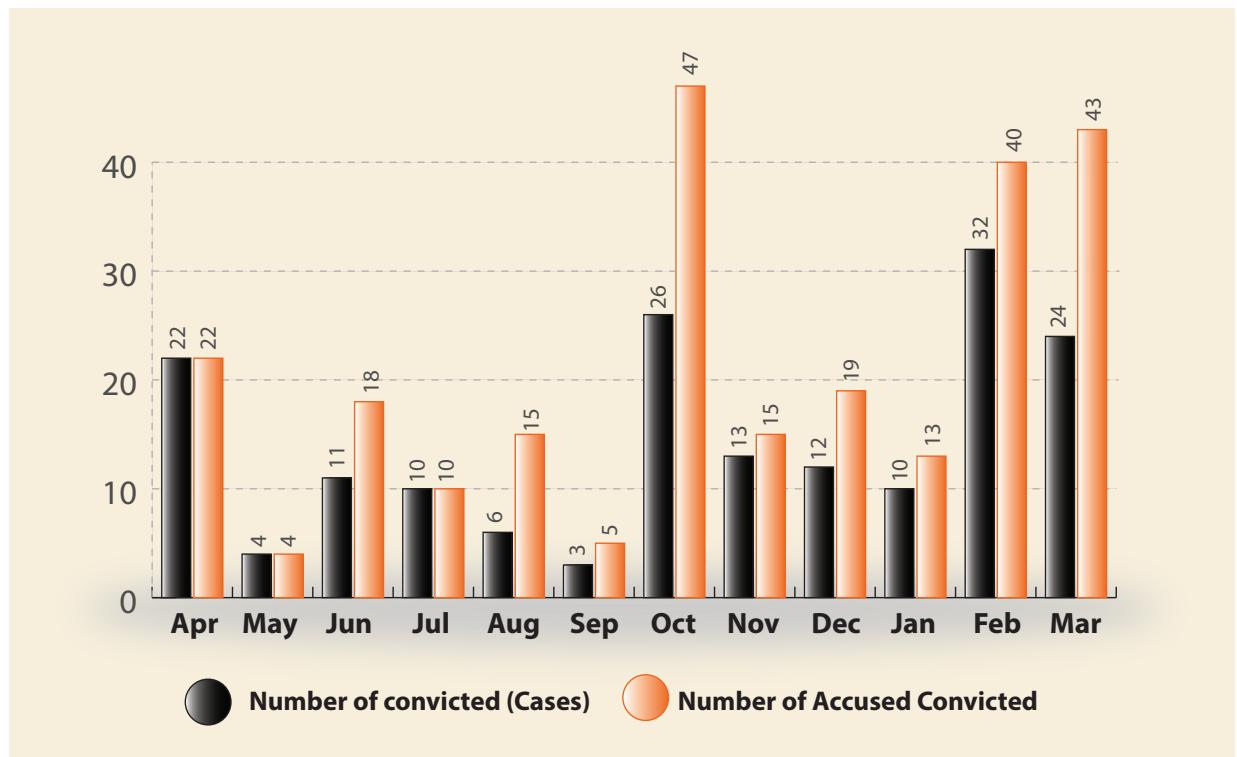
²Goga, K. (2015) 'Organised crime is not always sophisticated and structured, and fighting this scourge should also focus on loose, informal and ad hoc networks', ISS Today, 25 August 2015. Available at: <https://issafrica.org/iss-today/the-business-of-dis-organised-crime-in-south-africa>

Figure 9: Accused convicted on charges relating to damage to essential infrastructure

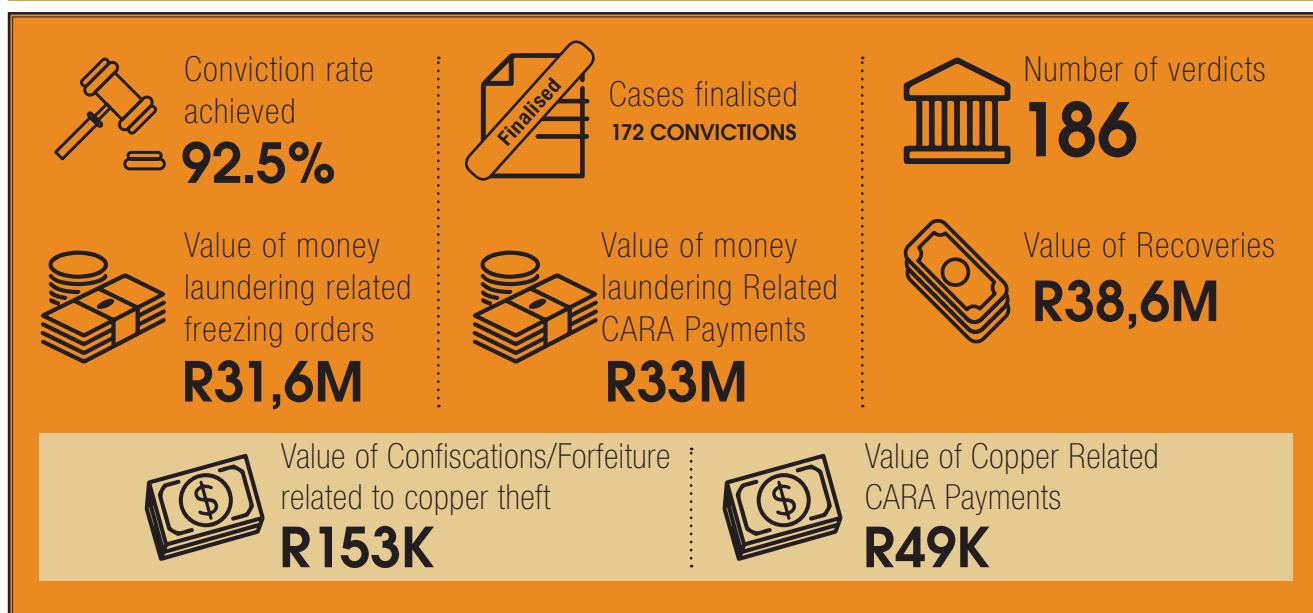
Wildlife trafficking is no longer purely a conservation and environmental management problem but constitutes a form of serious and highly sophisticated transnational organised crime that poses a threat to national security. In collaboration with other stakeholders in government, the NPA has been participating in the development of a holistic strategy that will ensure effective combating of wildlife trafficking. This strategy is directed specifically at endangered species such as rhino, elephant, pangolin, abalone and cycad.

The trends in the organised crime cases finalised followed a similar pattern to the general cases finalised due to the impact of the COVID-19 pandemic. Since organised crime deals with syndicates and groups of persons committing these crimes in a well-planned and organised methods, the 172 cases finalised involved 251 accused who were convicted.

Figure 10: Number of cases and number of accused convicted of organised crime per month



ORGANISED CRIME IN NUMBERS





CASE STUDIES

The cases below illustrate the successes achieved in dealing with organised crime in the various categories identified above.

Essential Infrastructure



State v David Jenkins

Adv Ronelle Stone

State v David Jenkins: The Cape Town Regional Court sentenced Jenkins to an effective term of 13 years' imprisonment after convicting him of 25 counts of theft. He was sentenced to 20 years' imprisonment for each of the 25 counts, which collectively amounted to 500 years' imprisonment. The accused stole broadband over power lines (BPL) cards from MTN cellular phone towers across Cape Town and some parts of the Boland. He also stole Small Form Pluggable Optical Modules, which are compact media connectors that provide instant fibre connectivity for networking gear and provide high speed internet to users, from Cell C. The equipment he stole is worth R1,6 million.



State v F Faro

Adv Aradhana Heeramun

State v F Faro: Faro entered into a plea and sentencing agreement with the state and was subsequently sentenced to 15 years' imprisonment of which 5 years were conditionally suspended for each of the ten counts. The court ordered the sentences to run concurrently resulting in an effective sentence of 10 years' imprisonment. Faro stole computer hard drives from railway stations – equipment that was utilised to determine the types and trends of crime at the various stations. The theft of this equipment meant that no proper planning could be conducted, and crime escalated at the various stations. Robberies and assaults against commuters could not be prevented, which led to major claims being instituted against the Passenger Rail Agency of South Africa (PRASA)/Metrorail. Trains were also burned at different stations. The identity of the perpetrators of these crimes could not be traced or identified, and future trends could not be determined. PRASA spent approximately R5m to have the CCTV installed and maintained on the various stations within the region.



CASE STUDIES

Environmental Crimes



State v Huang and Others

Adv Farhana Patel

State v Huang and Others: A major investigation, code-named “Python”, was conducted by the DPCI in Middelburg. The investigation targeted the “Huang syndicate”, which trafficked and smuggled illegal rhino horns from South Africa to Asia. An undercover agent was deployed to infiltrate the syndicate and dealt with the kingpins of the syndicate, Yuchen Huang and Shuihua Chen. Some of the criminal dealings were conducted at Emperors Casino in order to disguise their true nature and origins, as well as to conceal the exchange of money. As a result, certain monies were deposited in a casino card and casino chips, which were seized along with two vehicles used by the perpetrators. The AFU office in Johannesburg obtained a preservation order in the amount of R3.06m and is proceeding with the forfeiture.



Liao Wen Chen and Others

Adv Waldo Smit

Liao Wen Chen and Others: SAPS searched four premises in the Buh-Rein Estate in Kraaifontein after receiving information about the possession and smuggling of abalone, which was discovered at three of the premises. Cash to the value of R1.9m and vehicles were seized. AFU Cape Town obtained a forfeiture order to the value of R2.1m and is proceeding with the recovery.



Illicit Financial Flows



The Up Money Matter

Adv Nandipha Tuntulwana

The Up Money Matter: Up Money was a Ponzi scheme disguised as a business for members to buy groceries. Member rewards were determined by the number of new members recruited, a typical modus operandi of Ponzi schemes. R42m was received in a First National Bank account in the span of two months, attracting the attention of the fraud unit of the bank and the FIC. 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 a preservation application. Three preservation orders were obtained to the value of R19,5m. The AFU is proceeding with the forfeiture applications.

Gang-Related Murders

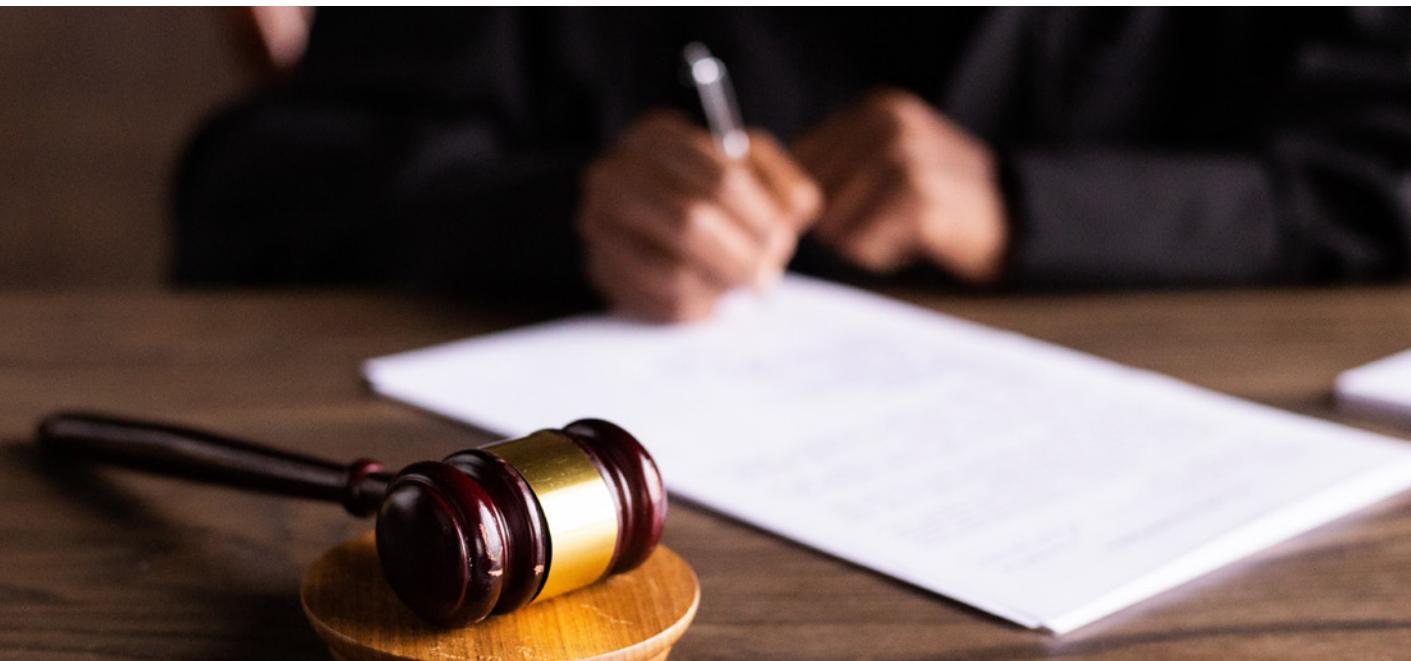


State v Brandon September and Another

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







**SERIOUS AND
VIOLENT CRIME**



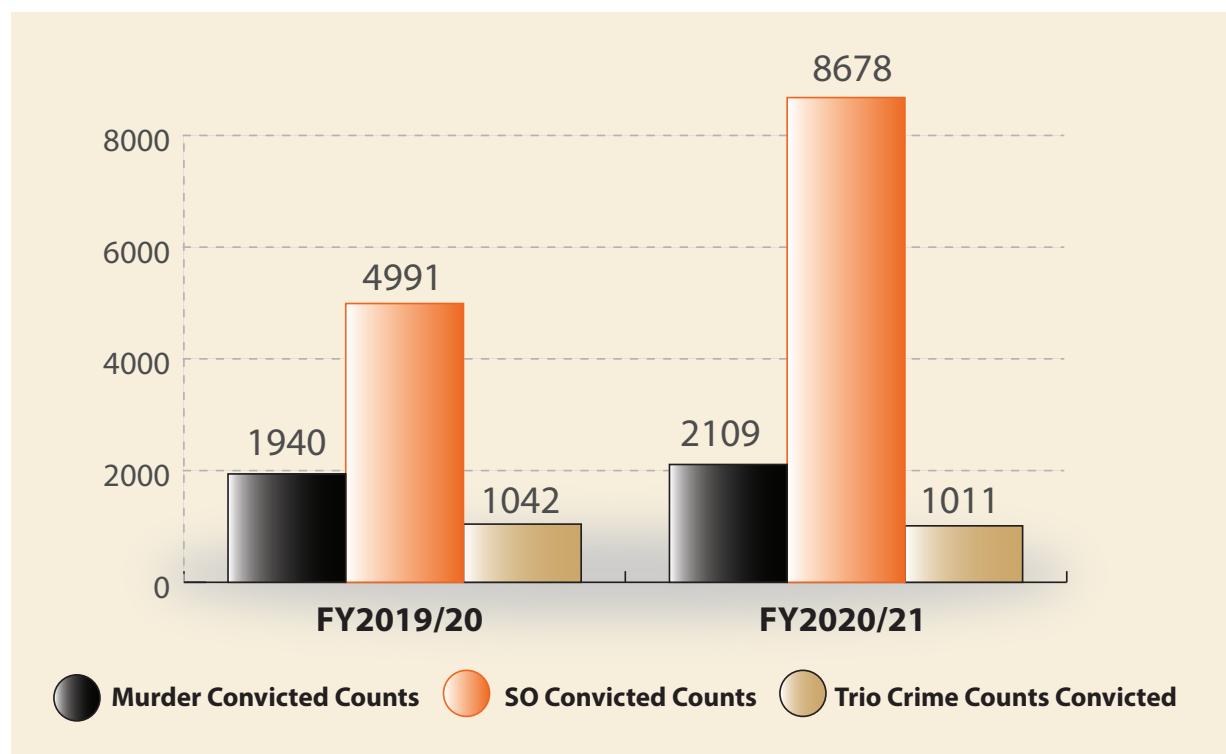
SERIOUS AND VIOLENT CRIME

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, domestic violence, hate crimes, gang-related violence, rape and murder. One of the most serious areas of violent crime is homicide - killing a person.

This type of crime is prevalent in the poorer violence-prone communities that are affected by high levels of interpersonal violence and property crime, and affect hundreds of thousands of South Africans. In essence, these are the types of crimes that leave South Africans feeling fearful and insecure.

According to the SAPS Crime Stats, murders in South Africa remained high in 2019/20, with a 1.4% increase 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. Despite the negative impact of the COVID-19 pandemic on court operations in general, the dedication of prosecutorial staff in respect of serious and violent crimes contributed to an increase in the number of convictions in murder and sexual offences when compared to the previous financial year. The number of convictions relating to trio crimes was not significantly less than that recorded in the previous year.

Figure 11: Number of counts of murder, sexual offences and trio crimes in which convictions were obtained



SERIOUS & VIOLENT CRIMES IN NUMBERS



Number of trio crimes convictions
809



Number of sexual offences convictions
2 539



Murder cases finalised
2 123



Trio crimes conviction rate
85.2%



Sexual offences conviction rate
75.8%



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





CASE STUDIES

The cases below illustrate the successes achieved in addressing serious and violent crimes in the various categories identified above.

Robbery, Housebreaking and Serial Rape



State v Mhlongo

Adv Michelle Bayat

State v Mhlongo: The accused operated as a serial rapist, robber and housebreaker for 5 years in three different provinces. From July 2012 to April 2015 the accused accosted women in the street and raped them. He also robbed three of his victims. He was charged with 47 counts emanating from 13 case dockets and the trial was centralised in the Johannesburg High Court. The High Court sentenced the accused to life imprisonment.

Contract Killings



State v Shongwe

Adv Ntsika Mpolweni

State v Shongwe: Simangele Edith Shongwe was sentenced to life imprisonment and 28 years for killing her husband, Vusi Mona, the principal of Zwelisha Primary School in the District of Mbombela. Mona was abducted from his home, driven to Pienaar and murdered. The police investigator at the crime scene noticed that there was no forced entry into the house and that video footage showed how the premises were accessed. Shongwe seemed unshaken after the crime was committed and all evidence pointed to her being behind the killing, in an apparent murder-for-hire case. The three men who conducted the killing have not been found or identified.

Child Murders

State v Adolf

State v Adolf: The accused was charged with the murder of an 18-month-old boy. 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.

Conspiracy to Murder



Adv Mujaahid Sandan

State v Lunga Mbondo and Nosicelo Kamba

State v Lunga Mbondo and Nosicelo Kamba: 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 dumped it in a bushy area. Two years later, Kamba's boyfriend was badly assaulted, his body put in the boot of his vehicle and driven by Mbondo to Peddie and then burnt in his vehicle. The evidence was based on circumstantial, cell phone and tracker evidence. Both accused were sentenced to life imprisonment.

Muti Killings



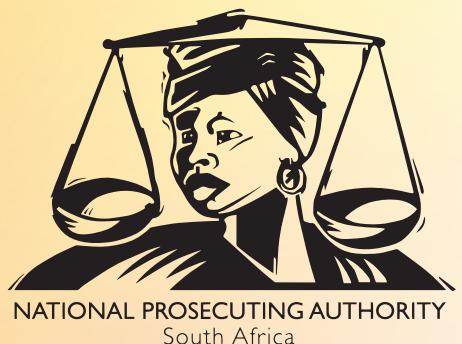
Adv Absah Madzhuta

State v Dzambukeri, Mhlongo, Mahumani and Chuma

State v Dzambukeri, Mhlongo, Mahumani and Chuma: The trio were convicted and sentenced to life imprisonment for the murder of Hlayisani Hlungwani by the Thohoyandou High court. The state alleged that the trio unlawfully and intentionally killed Hlungwani by stabbing her with a knife and then cutting off her lips, breasts and vagina for ritual purposes at Hlomela village outside Giyani.



NOTES



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