

NPA REPORT TO STANDING COMMITTEE ON PUBLIC ACCOUNTS (SCOPA): SELECTED SOEs AND OTHER CASES

16 November 2022



**National Prosecuting Authority
South Africa**



National Prosecuting Authority
South Africa

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INTRODUCTION BY NDPP

Introduction

NPA presentation to the Committee on 16 November 2022 on cases emanating from:

- ❖ SIU Proclamations involving:
 - ✓ Department of Water and Sanitation, Eskom, Transnet, SABC, Denel, SAA, PRASA
- ❖ ***Issues to be covered:***
 - ✓ Number of cases withdrawn
 - ✓ Reasons for withdrawal
 - ✓ Cases before the courts
 - ✓ Cases finalised
 - ✓ Cases where sentences have been handed down
 - ✓ Reasons why investigations are taking long
 - ✓ Cases where assets have been recovered.

NPA Mandate and SIU Referral Framework

The National Prosecuting Authority (NPA) was established in terms of section 179 of the Constitution and bears the responsibility of providing a coordinated prosecuting service that:

- ❖ ensures justice is delivered to the victims of crime through general and specialised prosecutions;
- ❖ removes the profit from crime and recovers stolen funds; and
- ❖ protects certain witnesses in the process.

For its part, the **SIU Act** allows members of the SIU to conduct searches, seizures and production of documents by parties (civil evidence).

Why the need for SIU Referrals?

- ❖ In essence, the investigations undertaken by the SIU or as part of the State Capture Commission of Enquiry (Zondo Commission) do not satisfy criminal standards for prosecutions.
- ❖ Therefore, the NPA must work with investigators (either within the ID or the DPCI) to conduct criminal investigations and ensure that the evidence meets criminal prosecution standards. That said, the work of the SIU is important and contributes greatly in this process.
- ❖ Whereas the Zondo Commission's reports remain a critical point of reference for the work of the NPA in relation to high level and complex corruption, the inclusion of a recommendation in those reports does not determine whether the NPA will prosecute a particular case. For this to happen, cases must meet criminal standards for prosecution, and this necessitates criminal investigations to be undertaken.

Measures to enhance prosecutions

- ❖ The tide is turning – impunity is no longer a given.
- ❖ Over the past 6 months, since we were last before SCOPA, the NPA's leadership and its staff – by design and not by default - have implemented key initiatives to rebuild a fit-for-purpose organisation to deliver accountability and uphold the rule of law.
- ❖ The Investigating Directorate (ID) has stable and competent leadership, whose successes result from enhanced internal and external collaboration and focused case prioritisation. This strategy resulted in the enrolment of nine seminal cases at the end of September 2022, the product of long-standing investigations by the ID and Directors of Public Prosecutions (DPPs), in close collaboration with the DPCI.

Measures to enhance prosecutions (cont.)

- ❖ Establishment of **joint NPA/DPCI Task Force**, multiple partner approach between DPCI, NPA (ID, SCCU, DPPs, AFU, STU, SOC) and FIC. Its **mandate** is to drive coordination and coherence in responses to Zondo reports. Reliance on prosecution-guided investigation (PGI) approach.
- ❖ **Increased collaboration through other structures:** Bodies feeding into Task Force include an Advisory Panel, Top Priority Corruption Task Team, ACTT EXCO and Case Management meetings; NPA EXCO and DPP Case Management Meetings.
- ❖ **Co-location** of investigators, analysts and prosecutors
- ❖ **Building partnerships and adopting bold and innovative measures** with the private sector to strengthen and supplement the skills of our prosecutors through specialised training and the contracting of forensic specialists, while zealously guarding our independence.

Measures to enhance prosecutions (cont.)

- ❖ **Establishing the ID as a permanent entity** as announced by the President in his response to the Zondo Commission's recommendations – beneficial for several reasons:
 - ✓ Facilitate attraction of needed specialised skills and qualifications
 - ✓ Provide security of tenure to investigators and prosecutors as permanent staff
 - ✓ Enable continuity in case work without risk of being recalled/reassigned as currently the case
 - ✓ **Safeguard the independence** of a pivotal anti-corruption fighting entity in SA architecture
- ⚠️ ➤ Permanence will require **legislative changes that will take time** – in the *interim*, the Minister has been asked to confer, by regulation, **peace officer powers to ID investigators** in terms of the CPA *without delay* to enhance significantly their ability to do their work.

High-Level Overview of Cases

- ❖ Most matters related to ESKOM, TRANSNET, DENEL, SABC and SAA have been declared by the Investigating Directorate in terms of Section 28(1) or 28(13)
- ❖ Some matters or ‘legs’ relating to the above and dealt with by the ID as well as SCCU or DPP offices, have not been the subject matter of SIU referrals
- ❖ Close working relationship and cooperation between the ID, DPCI and NPS (collective of SCCU, Serious and Complex Tax Component, Organised Crime and DPP offices) exist
- ❖ Collaboration between law enforcement agencies has resulted in magnificent improvements in the investigation and prosecution of SIU matters



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SOE Referrals - NPS

DEPARTMENT OF WATER AND SANITATION

- 19 matters referred to NPA – 10 referrals which were recently received in 2022
- One matter declined to prosecute due to main witness retracting her statement and insufficient evidence
- Lepelle Water Board Polokwane CAS 23/12/2015 is on the Top Ten Priority List for close monitoring of progress as various challenges were experienced, namely:
 - Reluctant witnesses
 - Changes of prosecutors due to resignations/death, relocation of staff, inclusion of other legs from other Divisions
 - Availability of documents
- Pretoria CAS 475/08/2020 is an example where the offence was committed in 2015, SIU Proclamation in 2018 and DPCI docket opened in 2020. Delays result in additional burden to obtain statements, documents and required chain evidence as well as memory recollection of witnesses

DEPARTMENT OF WATER AND SANITATION (cont.)

➤ *Court case*

➤ In September 2022, several accused were charged in the ongoing probe relating to the malfeasance at the bulk water utility Mhlathuze Water, involving about R37m. Case is postponed until 6 December 2022. Six people have been arrested, including Nonhlanhla Mkhize, Director-General in the KZN Premier's Office.

➤ *Sentence:*

➤ The Klerksdorp Regional Court sentenced Antoinette Hillary Naidoo (39) to 12 years imprisonment, with 2 years suspended effectively convicting her to 10 years direct imprisonment, on 25 charges of fraud. She defrauded Midvaal Water Company, known as Midvaal of an amount of R1,3 million while employed as the Financial Accountant. (Not SIU Referral)

SABC

➤ **SUMMARY:**

- 7 matters referred to NPA : One in court (partly heard), two declined to prosecute, four under investigation

➤ **DETAILS:**

- One matter in court, partly heard and postponed to 1 December 2022 (SABC Group Executive: Sport Division, State v Sully Motshweni)
- In matter of Brixton CAS 167/07/2018 the prosecutor has declined to prosecute. Parallel civil process unfolding between the parties in JHB High Court on diverted funds of R7 308 741,95.
- In matter Brixton CAS 127/03/2020, prosecutor declined to prosecute as there is no evidence to support the allegation of a general corrupt relationship between main witness and suspect.

PRASA

➤ SUMMARY:

- 3 matters referred to NPA : All under investigation (One in early stage Hillbrow Cas 544/01/2022)

➤ ENTITIES THAT INVESTIGATED PRASA

- Auditor General of SA (AGSA) (2015)
- Public Protector (2015 / 2016)
- PRASA internal investigation (Werksmans Attorneys)

PRASA v Swifambo Rail Agency (Pty) Ltd (2017 (6) SA 223 (GJ))

Swifambo v PRASA (2020 (1) SA 76 (SCA))

- Judicial Commission of Inquiry into State Capture (ZONDO CJ)
- Special Investigating Unit (SIU)
- DPCI

PRASA (cont.)

➤ CHALLENGES:

- Documents presented to the entities investigating PRASA must be obtained, and these include authenticity and chain evidence
- Time lapses since offences were committed (10 years+) complicate investigations in locating relevant witnesses, refreshing memories and ensuring policies and directives at a specific time are kept in mind.
- Several potential witnesses were initially reluctant to provide assistance, apparently as they themselves were complicit in illegal activities within PRASA
- Both Hillbrow CAS 405/08/2015 and CAS 278/09/2015 are on the ACTT Priority list, the Top Ten Priority List, and monitored by the Task Force as part of the cases in the Zondo Commission recommendations
- DPCI, NPA and other entities are closely collaborating in investigation efforts

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SOE Referrals : ID

INVESTIGATING DIRECTORATE

- In March 2019, the President issued a proclamation creating an Investigating Directorate (ID) within the Office of the NDPP in terms of s7 of the NPA Act largely in response to allegations of widespread corruption at the State Capture Commission (SCC)
- The initial Head of the ID was appointed in May 2019 and capacitation of the ID began in July 2019 primarily through
 - reassignment of prosecutors from within the NPA;
 - secondment of investigators from the SAPS, IPID, SARS and SIU; and placement on duty arrangements of DPCI investigators
 - recruitment of investigators and prosecutors on contract for 3 years additional to NPA establishment. First cohort of 21 financial investigators joined in January 2021

INVESTIGATING DIRECTORATE (cont.)

- The powers and functions of the Directorate are set out in chapter 5 of the NPA Act, they include the power to:
 - subpoena witnesses to furnish documents or to answer questions;
 - apply for and execute search and seizure warrants;
 - compel witnesses to answer questions under oath, including self-incriminating questions, subject to a use immunity
 - prosecute cases after consultation with the relevant DPP
- Through secondment arrangements entered into with partners organisations, the ID can access additional powers such as police powers, subject to the direction of the National Commissioner of Police and through MoUs with SARS, the FIC and the SIU, the ID can use additional capabilities to investigate corruption

INVESTIGATING DIRECTORATE (cont.)

- The ID's mission is to hold those most responsible for serious, complex and high-level corruption accountable in a criminal court
- Any person may report a matter to the head of the ID by means of an affidavit (s27) and the Director, in the absence of a report, may authorise an investigation into the matter if the following requirements are met:
 - There are **reasonable grounds to suspect** that an offence has been committed (s 28(2)); and
 - the offence is a **specified offence**, which is defined in the NPA Act as, **any matter which in the opinion of the head of an Investigating Directorate falls within the range of matters set out in the proclamation**
- If the **NDPP refers** a matter in relation to the commission of a specified offence to the Director, the **ID is obliged to conduct an investigation** into the matter - (s 28(1)(b))

INVESTIGATING DIRECTORATE : Investigations

- **Investigations into TRANSNET and ESKOM** authorised on 31 July 2019
 - The Report of the Public Protector on the "State of Capture" dated 14 October 2016;
 - Testimony before the SCC alleging serious and high-level corruption within State Owned Enterprises, particularly testimony relating to ESKOM and TRANSNET;
 - Ongoing criminal investigations into unlawful activities committed at ESKOM and TRANSNET relating to serious and high-level fraud and corruption;
 - Ongoing civil litigation relating to alleged irregularly awarded contracts and payments made by ESKOM and TRANSNET and related entities;
 - A report submitted in terms of section 27 of the NPA Act on fraud and corruption.
- **SIU Referrals to ID in relation to:**
 - Unlawful activities committed at ESKOM, namely ABB – Impulse, Kusile Project, and SAP
 - Unlawful activities committed at Transnet, namely Neotel, Cutting-Edge, and SAP

INVESTIGATING DIRECTORATE: OVERVIEW

- Overview of progress on SOE's Investigations

Under investigation	08
Reasons why investigations are taking long	Refer to slides (23 to 30)
Number of cases withdrawn	None
Reasons for withdrawal	N/A
Cases before the Courts	05
Cases finalised (Verdict)	None
Cases where sentences have been handed down	None

SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority / Key Focus Areas	ESKOM & TRANSNET SAP CONTRACTS		Case number	Sunnyside CAS 170/12/2017		
Date Reported	29 April 2021	Contract Value	R545 million (Transnet) R558 million (Eskom)			
Offence	PRECCA, POCA and CA contraventions, Fraud and Corruption					
Summary	Improper or unlawful conduct by Eskom & Transnet officials or employees in respect of the contracting for or procurement of software licenses and support services to Eskom Transnet.					
Action to Date	<p>The matter is still under investigation.</p> <p>Reason for why the investigations are taking long:</p> <p><input type="checkbox"/> Complex nature of Investigations</p>					

SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority / Key Focus Areas	TRANSNET NEOTEL CONTRACTS		Case number	Nat HO Anti-Corruption Enquiry 08-10-2019		
Date Referred	14 February 2020	Contract Value	R 834 million			
Offence	PRECCA, POCA and CA contraventions, Fraud, Corruption, and PFMA					
Summary	<p>Improper or unlawful conduct by Transnet officials or employees in respect of the contracting or awarding through confinement without procurement process being followed:</p> <p><input type="checkbox"/> The appointment of Neotel was unlawful and invalid in terms of section 2 of the constitution, because the procurement process was not compliant with applicable prescripts regulating public sector procurement.</p>					
Action to Date	<p>The matter is still under investigation.</p> <p>Reason for why the investigations are taking long:</p> <p><input type="checkbox"/> Complex nature of Investigation</p>					

SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority / Key Focus Areas	TRANSNET CUTTING EDGE CONTRACTS		Case number	Not yet registered		
Date Referred	25 October 2021	Contract Value	R84 million			
Offence	PRECCA, POCA contraventions, Fraud, Corruption, and PFMA					
Summary	<p>Improper or unlawful conduct by Transnet officials or employees in respect of the contracting or awarding through confinement without procurement process being followed:</p> <p><input type="checkbox"/> The appointment of Cutting Edge was unlawful and invalid in terms of section 2 of the constitution, because the procurement process was not compliant with applicable prescripts regulating public sector procurement.</p>					
Action to Date	<p>The matter is still under investigation.</p> <p>Reason for why the investigations are taking long:</p> <p><input type="checkbox"/> Complex nature of Investigation</p>					

SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority	TRANSNET LOCOMOTIVES CONTRACTS		Case number	JHB Central CAS 384-06-2017
Contract Value	<p>95 locomotives = R2.6 billion 100 locomotives = R4.4 billion 1064 locomotives : 359 CSR = R 18billion 322 CNR = R 9billion Maintenance = R 6.1billion</p>		Offence	Corruption PRECCA contraventions Fraud Theft PFMA contraventions POCA contraventions
Summary	<p>95 Locomotives : In late 2011 Transnet issued a R2.7bn tender for 95 electric locomotives for its general freight business, which eventually awarded to a consortium led by China South Rail Zhuzhou Electric Locomotive (CSR). CSR owned 70% of the consortium with local partner Matsetse Basadi owning the remainder. CSR was awarded the contract in October 2012, shortly after Transnet CEO, Brian Molefe, had visited them in Hong Kong, which he claims was to check they had the necessary facilities to do the job.</p> <p>1064 Locomotives : It is alleged that JJT and CGT were replaced as conduits during 2015: a contract was put in place on 18 May 2015 (after the contract had been awarded) between CSR and a company called Tequesta that was directed by Salim Essa. CSR would pay 21% of the total fee it received from Transnet for the supply of 359 locomotives to Tequesta or any other firm of Tequesta's choosing as an "advisory fee".</p> <p>100 Locomotives : Brian Molefe submitted a new confinement motivation to a special Transnet board meeting, except that the contract was to be confined to CSR, not Mitsui. Molefe's request to the Transnet board to confine the bid to CSR was still based on "urgency", despite the fact that CSR (unlike Mitsui) did not have a proven, off-the shelf product, which would lead to significant delays in production and delivery. Transnet's board approved the uncontested award for 100 Electric Locomotives to CSR the same day, 24 January 2014.</p>			
Action to Date	<p>The matter is still under investigation.</p> <p>Reason for why the investigations are taking long:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Complex nature of Investigation 			

SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority / Key Focus Areas	TRANSNET RELOCATION OF 2 OEMs TO DURBAN HARBOUR	Case number	Hillbrow CAS 597/08/2019
Date Reported	August 2019	Contract Value	R1.2 billion
Offence	Corruption PRECCA contraventions, Fraud, Theft, and POCA contraventions		
Summary	<p>In 2014, Transnet approved the placement of two Original Equipment Manufacturers (OEMs) i.e., Bombardier (BT) and China North Rail (CNR) for establishment at Bay Head Durban for the manufacture of Locomotives. At the time the placement of these two OEMs was called a relocation of the OEM's, a term that was regarded as a misnomer. The two OEMs relocated to the Durban Port after being invited by Transnet SOC to forward pricing for the costs of relocation that is estimated to an amount of R1.2 billion for both OEM's.</p>		
Action to Date	<p>The matter is still under investigation.</p> <p>Reason for why the investigations are taking long:</p> <ul style="list-style-type: none"><input type="checkbox"/> Complex nature of Investigation		

SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority / Key Focus Areas	SAA - JM AVIATION/SWISSPORT		Case number	ORTIA CAS 114/12/2019 & ORTIA CAS 14/7/2022		
Date Authorised	05 August 2022	Contract Value	R1.2 billion			
Offence	Fraud, Theft, PRECCA, POCA Contraventions, and PFMA					
Summary	Improper or unlawful activities relating to the contract concluded between SAAT and a joint venture between AAR and JM Aviation South Africa. Corruption, fraud and other unlawful activities relating to the ground handling contract entered between SAA and Swissport, the appointment of JM Aviation South Africa as BEE partner, as well as the ground handling unit purchase and sale.					
Action to Date	<p>The investigation of the matter has been authorised and ongoing.</p> <p>Reason for why the investigations are taking long:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Complex nature of Investigation 					

SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority / Key Focus Areas	SAA – MUMBAI/LUFTHANSA		Case number	Enquiry CAS 03/04/2022		
Date Authorised	19 July 2022	Contract Value	Still to be determined			
Offence	Fraud, Theft, PRECCA, POCA Contraventions, and PFMA					
Summary	Improper or unlawful activities relating to the pressure applied to terminate the Lufthansa Consulting contract and also applied to close down the Mumbai Route					
Action to Date	<p>The preparatory investigation of the matter has been authorised and ongoing.</p> <p>Reason for why the investigations are taking long:</p> <p><input type="checkbox"/> Complex nature of Investigation</p>					

SOE MATTER REFERRED BY SIU UNDER INVESTIGATION

Investigation Priority / Key Focus Areas	DENEL	Case number	Not yet registered
Date Authorised	Not Yet Authorised	Contract Value	Still to be determined
Offence	Fraud, Theft, PRECCA, POCA Contraventions, and PFMA		
Summary	Improper or unlawful activities relating to the contract concluded between Denel and VR-Laser.		
Action to Date	<input type="checkbox"/> Matter to be authorised in 3rd Quarter of 2022 / 2023 financial year for investigation.		

SOE MATTER REFERRED BY SIU ENROLLED

Investigation Priority	ESKOM ABB IMPULSE CONTRACTS		Case number Sandton CAS 413/7/2017
Date Reported	July 2017	Contract Value	R1.58 billion (Overpayments to ABB and the Variation Orders – this excludes Rotek Contracts)
Offence	Corruption PRECCA contraventions and Fraud	Entity involved/Person/s involved	<ul style="list-style-type: none"> • Eskom: Executives • ABB : Employees • Impulse International Employees
Summary	<ul style="list-style-type: none"> <input type="checkbox"/> During the period 2013 – 2017 Eskom/Rotek awarded contracts to ABB and Impulse International (Pty)Ltd. <input type="checkbox"/> ABB was awarded the Early Works Order and ultimately the Control & Instrumentation (C&I) contract at Kusile Power Station in 2015 to replace Alstom. <input type="checkbox"/> ABB appointed a sub-contractor, Leago EPC and Leago Engineering, to conduct work i.t.o. the C&I contract at Kusile. <input type="checkbox"/> ABB was later awarded Variation Orders at Kusile Power Station and appointed a sub-contractor, Impulse International (Pty) Ltd to complete the work. <input type="checkbox"/> ABB was awarded contract after it was included in the submission to the tender committee after report was finalised; <input type="checkbox"/> ABB received an unfair advantage over its competitors as it received information not available to other bidders; <input type="checkbox"/> After a fall out between Leago EPC/Engineering, Impulse was brought on board; <input type="checkbox"/> Further contracts awarded to Impulse International (Pty)Ltd by Rotek and Eskom due to of a corrupt relationship; <input type="checkbox"/> There was a corrupt relationship between employees of Impulse International (Pty)Ltd and employees of ABB 		
Action to Date	<ul style="list-style-type: none"> <input type="checkbox"/> The matter was enrolled on 27 October 2022. The accused were arrested and appeared in the Middelburg SCC Court, and they were granted bail. It is now postponed to 23 March 2023 for further investigation. <input type="checkbox"/> The following accused are before the court: <input checked="" type="checkbox"/> Matshela Koko, Koketso Aren, Mosima Koko, Thato Choma, Watson Seswai, Johannes Coetzee, Thabo Mokwena, Frans Sithole 		

SOE MATTER REFERRED BY SIU ENROLLED

Investigation Priority / Key Focus Areas	ESKOM KUSILE PHOLA BUILD PROJECT		Case number	Phola CAS 123/3/19 & Phola CAS 124/3/19
Date Reported	March 2019		Contract Value	Over R1.5 Billion
Offence	Corruption PRECCA contraventions Fraud Theft PFMA contraventions POCA contraventions		Entity involved/Person/s involved	<ul style="list-style-type: none"> • Babinatlou Business Services CC • Tubular Holdings (Tubular) • Esor Construction (Esor) • Stefanutti Stocks (Stefanutti) • Tenova Mining & Minerals SA (Tenova)
Summary	<p><input type="checkbox"/> It is alleged that employees of Eskom service received gratification from contractors. Investigations conducted revealed that an entity by the name of Babinatlou received an amount of R74 999 035.03 from Kusile Build project contractors namely: Tubular Holdings (Tubular), Esor Construction (Esor) Stefanutti Stocks (Stefanutti) and Tenova Mining & Minerals SA (Tenova). The monies paid to Babinatlou were for either Corporate Social Investment (CSI) projects or consulting works according to contracts obtained from aforementioned Eskom Contractors.</p>			
Action to Date	<p><input type="checkbox"/> Tubular Holdings (Tubular) Investigation (Bedfordview CAS 345/08/2017 & Phola CAS 125/03/2019). The matter is current enrolled, to reappear on 05 April 2023.</p> <p><input type="checkbox"/> Stefanutti Stocks Investigation and Tenova Mining & Minerals SA (Tenova) are still under investigation.</p> <p><input type="checkbox"/> Reason for why the investigations are taking long:</p> <ul style="list-style-type: none"> ▪ Complex nature of Investigation 			

SOE MATTER REFERRED BY SIU ENROLLED

Investigation Priority / Key Focus Areas	ESKOM KUSILE PHOLA BUILD PROJECT (Cont.)	Case number	Phola CAS 123/3/19 & Phola CAS 124/3/19
Date Reported	March 2019	Contract Value	Over R1.5 Billion
Offence	Corruption PRECCA contraventions Fraud Theft PFMA contraventions POCA contraventions	Entity involved/Person/s involved	<ul style="list-style-type: none"> • Babinatlou Business Services CC • Tubular Holdings (Tubular) • Esor Construction (Esor) • Stefanutti Stocks (Stefanutti) • Tenova Mining & Minerals SA (Tenova)
Action to Date	<p>SARS Contribution</p> <p><input type="checkbox"/> Polokwane 389/12/19 and 391/12/19 State vs Hudson Kgomoeswane currently on the roll at Pretoria Regional Court. Matter postponed to 09 & 10 March 2023 for trial.</p> <p><input type="checkbox"/> Garsfontein 248-250/12/19 State vs France Hlakudi is currently on the court roll at Pretoria Regional court. Matter postponed to 16 November 2022 for judgement to be handed on objection of charge sheet.</p>		

SOE MATTER REFERRED BY SIU ENROLLED

Investigation Priority	TRANSNET TRANSACTION ADVISORY CONTRACT		Case number	JHB Central CAS 465/10/2019		
Contract Value	13 Contracts = R 1.9 billion	Alleged Bribes / Gratification	R635 million			
Offence	Corruption PRECCA contraventions Racketeering Acts Fraud Theft POCA contraventions PFMA contraventions	Entity involved/Person/s involved	<ul style="list-style-type: none"> • Trillian • McKinsey • Regiments Capital • Transnet Officials and • Members of the Transnet Board 			
Date Reported	October 2019	Next Court Date	30 November 2022			
Summary	<p>It is alleged that Transnet appointed and payed the following transactional advisors: Regiments and Trillian without following proper procedures as stipulated by their Procurement Policy Manual and the PFMA.</p> <p>Contracts were mostly issued on confinement.</p> <p>Albatime owned by Mr. Kuben Moodley received a fee ranging from 5% from all invoices paid by Transnet to Regiments and Trillian. The company Albatime also laundered money through its bank accounts held at Bank of Baroda and ABSA to the alleged front companies or so-called letter box companies</p>					
Action to Date	<input type="checkbox"/> The matter was initially enrolled on the 27 May 2022. It is further postponed to 30 November 2022 for final signed indictment and docket disclosure. <input type="checkbox"/> The following accused are before the court: <input checked="" type="checkbox"/> Koban Moodley, Siyabonga Gama, Garry Pita, Phetolo Ramosebudi, Eric Wood and Daniel Roy, Brian Molefe, Anoj Singh and Regiments Directors: Nevin Pillay and Litha Nyhonyha					

SOE MATTER REFERRED BY SIU ENROLLED

Investigation Priority / Key Focus Areas	ESKOM ABB GRATIFICATION		Case number Sandton CAS 620/3/2020
Date Reported	March 2020	Contract Value	R549 million
Offence	Corruption PRECCA contraventions AND Fraud	Entity involved/Person/s involved	<ul style="list-style-type: none">• ABB Employees• Impulse International (Pty)Ltd
Summary	<p>It is alleged the two former ABB employees and their spouses received gratification from Impulse International (Pty)Ltd (“Impulse”) to secure contracts/inflate prices with ABB, who was their employer at the time.</p> <p>From the investigation it was discovered that ABB employees received large amounts of money from Indiwize Construction (Pty)Ltd (“Indiwize”), a company owned by the late Pragassen Pather who was also the sole director (except for the period March – September 2016) of Impulse International.</p>		
Action to Date	<ul style="list-style-type: none"><input type="checkbox"/> The matter was enrolled on 12 July 2022. It was postponed to 14 October 2022 for the State to analyse the information collected during the search and seizure operation conducted on 12 July 2022. The next court date is 21 February 2023.<input type="checkbox"/> The following accused are before the court:<input checked="" type="checkbox"/> Vernon Pillay, Aradhna Pillay, Mohammed Essop Moodheen, and Raeesa Moodheen		

SOE MATTER REFERRED BY SIU ENROLLED

Investigation Priority / Key Focus Areas	ESKOM REHABILITATION OF FUNDS		Case number	Sunnyside CAS 427/04/2021		
Date Reported	September 2017	Contract Value	Over R1.7 billion			
Offence	Fraud, Theft, Money Laundering, Perjury, Uttering and Forgery	Entity involved/Person/s involved	<ul style="list-style-type: none"> • Alleged Companies Directors, and • Former Executives • Relevant Board Members 			
Summary	<p><input type="checkbox"/> Eskom (Over R1.7 billion) unlawful actions relating to the Rehabilitation funds of the Optimum Mine and Koornfontein Mine.</p> <p><input type="checkbox"/> During the investigation of the Eskom leg of the State Capture investigation under Sandton CAS 507/9/2017 it was established the accused committed unlawful actions relating to the Rehabilitation funds of the Optimum Mine and Koornfontein Mine</p>					
Action to Date	<p><input type="checkbox"/> Matter enrolled on the 25th of May 2022.</p> <p><input type="checkbox"/> The following accused were arrested and appeared in the Randburg magistrate court:</p> <p>✓ Ronica Ragavan, Joel Raphela, Pushpaveni Govender</p> <p><input type="checkbox"/> On the 13th of July 2022 the matter was transferred to the Johannesburg High Court, and it will appear on the 14 April 2023 for pre-trial.</p>					

IMPEDIMENTS TO INVESTIGATIONS

- Criminal conduct characterised by a high degree of sophistication concerning the methods of committing and camouflaging the crimes;
- This complexity contrasts with the broad lack of training of investigators and prosecutors in specific relevant matters such as forensic accounting, public procurement processes of state-owned entities;
- Roles players include senior political figures, senior executives and multi-national companies supported by enabler accountants, lawyers and management consulting firms; and
- Data intensive dockets run into terabytes of information that require careful management in light of onerous discovery requirements in criminal cases

INSTITUTIONAL IMPEDIMENTS

- Skilled and capable investigators and prosecutors –who are equal to the scale and scope of the investigations and prosecutions the ID is seized with
- Dire skill shortages in the public sector with constraints on employing skills outside of the NPA - recruitment of financial investigators and critical litigation skills at sustainable remuneration rates remains a challenge
- Digital and Commercial investigation capability critical in cases where terabytes of data have to be analysed and processed



4

Asset Forfeiture

AFU LEGAL REGIME

OVERVIEW OF PROVISIONS OF PREVENTION OF ORGANISED CRIME ACT, 1998 RELATING TO ASSET RECOVERY IN THE NATIONAL PROSECUTING AUTHORITY

- The Prevention of Organised Crime Act, 1998 (POCA) enjoins the NPA & National Director to give effect to the following asset recovery measures:
 - Conviction-based forfeiture to recover the benefit derived from crime (Chapter 5 of POCA)
 - Non-conviction-based forfeiture to recover the proceeds of unlawful activities and instrumentalities of offences (in terms of Chapter 6 of POCA);
- The legal architecture of POCA applies to organised crime and all individual wrongdoing.
- AFU mandate is to conduct litigation on behalf of the National Director of Public Prosecutions through conviction and non-conviction-based forfeiture mechanisms

AFU: “TAKING THE PROFIT OUT OF CRIME”

- The Asset Forfeiture Unit (AFU) was created in order to ensure that the powers in POCA to seize criminal assets are used to their maximum effect in the fight against crime, and particularly, organised crime
- In determining the asset forfeiture potential of any matter, the AFU is guided and relies on:
 - Forensic audit reports, FIC reports and/or any other investigation reports by other law enforcement agencies
 - Investigations by the SAPS, DPCI and/or the Investigating Directorate
 - Further investigations/analysis by AFU financial investigators

AFU INVOLVEMENT IN SIU REFERRALS

- The AFU is intimately involved in cases relating to SAA, Denel, PRASA, Transnet, SABC, Eskom and the Department of Water and Sanitation together with different structures in Law Enforcement
- The AFU is part of the Top Priority Case Forum where cases such as Lepelle Water Board, SAA, Eskom and PRASA priority cases are being investigated and prosecuted
- Eskom referrals by SIU overlap with existing investigations conducted by the Unit, in consultation with the Investigating Directorate of the NPA, in respect of the recommendations of the Zondo Commission
- In many instances the SIU is proceeding with civil recoveries or asset recovery type applications in the Special Investigating Tribunal. The Asset Forfeiture Unit is accordingly not in a position to proceed with asset forfeiture proceedings in cases where the SIU is already dealing with recoveries
- AFU, together with other law enforcement agencies, is also evaluating the civil asset recovery potential of all matters, if and when referred by the SIU, and which matters are not already dealt with by the SIU

AFU RECOVERIES TO DATE

- The AFU made two recoveries in Eskom matters which were referred by the SIU after the orders were obtained.
- **Eskom/Mc Kinsey Consultancy Fees**
 - The AFU obtained a preservation order in McKinsey on 14 December 2017. The recovery of R902m was made on 7 Jul 2018.
 - The matter was initiated before the Proclamation R11 of 2018 was published in the Government Gazette on 6 April 2018.
- **Koornfontein and Optimum Colliery Mine Rehabilitation Fund Case**
 - AFU obtained a preservation order on 8 March 2018; R1,939bn was recovered on 26 April 2018.
 - The recovery was made 20 days after Proclamation R11 of 2018 was published in the Government Gazette but before the matter was referred by the SIU.

AFU FREEZING ORDERS TO DATE

- The AFU has several freezing orders currently in place:
- **Eskom/France Hlakudi and Others:**
 - Relating to the manipulation of contracts for condensers at Kusile Power Station
 - The AFU restrained R1,49bn on 20 April 2021. The criminal matter is ongoing.
- **Eskom/Moroka Matter**
 - Relates to a financial controller at Eskom colluding with suppliers to generate fictitious invoices
 - The AFU restrained R11,7m on 9 November 2021. The criminal matter is ongoing
- **Eskom/Tegeta/Optimum Coal Mine and Terminal**
 - The AFU has obtained a preservation order in the amount of R3,975bn on 23 March 2022. The forfeiture process is ongoing

AFU PRESERVATIONS AND RESTRAINTS TO DATE

➤ Eskom/Tegeta/OCM/Templar

- The AFU obtained a preservation for R1,385bn on 24 March 2022. The forfeiture process is ongoing

➤ SAA/Vuma matter

- Relates to the illegal sale of aircraft parts
- The AFU obtained a restraint in the amount of R5m on 5 Jul 2021. The criminal matter is ongoing

➤ Transnet/Albatime/Moodley

- Relates to fraud and corruption linked to procurement of locomotives and rail maintenance
- AFU obtained a restraint in the amount of R232m on 21 June 2020. The criminal matter is ongoing

➤ Transnet/Regiments Capital

- The matter relates to the looting of the Transnet Pension Fund.
- The AFU obtained a restraint for R1,685bn on 18 November 2019. The criminal matter is ongoing



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CLOSING REMARKS

Concluding remarks

- There is still work to be done, but the hard, focused work and close collaboration are bearing fruit.
- The President's response to the SCC recommendations confirms that SA is continuing with its multi agency approach to tackling corruption, but with enhanced capacities, partnerships, and of course improved coordination. This means that the NPA and SIU need to further improve collaboration and alignment, while respecting their respective mandates.
- By drawing on our respective strengths, we can tackle corruption from various angles, and therefore more effectively. It's not a competition - it's a team effort.
- In line with the above, an **MoU between the NPA, SIU and SAPS (including DPCI) is to be signed** very soon.

Concluding remarks (cont.)

- Criminals will exploit the gaps in law enforcement cohesion. We need clear strategies to stay one step ahead of them by ensuring our respective mandates align to close these gaps. Recent joint successes show that this is possible. Take for example the collaboration between the SIU and the NPA's AFU in the recent Lotto case.
- Our focus is on building the NPA as a fit-for-purpose organisation that lives the fundamental values of integrity, professionalism, accountability and credibility. We are grateful for our recent budget allocation, which will enable us to continue to pursue bold and innovative partnerships, including with non-traditional partners, such as the private sector to build this capacity.
- The wheels of justice - grinding at first - are now turning and will gain momentum. Our actions demonstrate that impunity is no longer a given; we are confident that the rule of law will prevail.



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Thank you

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