

NPA presentation to SCOPA on SIU referrals



National Prosecuting Authority
South Africa

15/02/2022

Contents

01

Introduction: NDPP

02

SCCU Progress

03

AFU Progress

04

ID Progress

Introduction: NDPP

Different, Complementary Mandates and Roles of SIU and NPA



National Prosecuting Authority
South Africa

SIU and NPA are governed by different Acts; operate under different legal regimes and mandates.

- SIU governed by SIU Act, mandated to investigate maladministration in state institutions and municipalities.
- Mandate and legislation provide for investigations to be conducted through civil procedure.

The police and NPA are responsible for criminal procedure elements of investigations and prosecutions.

- Investigations & findings of civil nature are made on **balance of probabilities**
- Burden of proof is much lower compared to requirement in criminal cases, to **prove guilt beyond reasonable doubt**.

Beyond these mandate differences, SIU referrals are not trial ready matters for criminal trial

- Referrals provide useful information to assist a criminal investigation
- May form a good basis for investigators to follow suspicious transactions.

Introduction: NDPP

Different, Complementary Mandates and Roles of SIU and NPA



National Prosecuting Authority
South Africa

➤ To assist in expediting this process and preparing more detailed referrals:-

- DPCI should be involved with investigations done by SIU at an earlier stage.
- This will enable the seizure of exhibits and ensure witness statements are taken in a timely and effective manner.
- The NPA should be involved from the outset to guide the investigations.

➤ Legislative changes required in order to address the process in which referrals to NPA may not be necessary

➤ There are also implications for the work of the NPA's AFU:-

- The SIU Act enables SIU to proceed with asset recovery processes prior to referral to NPA
- The SIU asset recovery process is different to NPA's case-specific approach linked to the finding of criminality
- Unlike SIU, AFU is dependent on finalisation of criminal investigation to consider proceeding on Chapter 5 applications
- AFU and SIU can improve AFU involvement with SIU investigations much earlier in order to identify and seize assets prior to dissipation as previously been agreed.
- This will improve our coordination and the combined impact of our work pursuant to our respective mandates

Introduction: NDPP

Relevant Developments at NPA



National Prosecuting Authority
South Africa

➤ Important developments at the NPA that relate to our intense focus on enhancing our ability to deal effectively with complex and high level corruption matters include:

- **The next exciting era for the ID:** As the president said in SONA, ID is now poised to deliver on its mandate.
- First phase was about setting up and laying foundation.
- Next phase is about action and cases.
- New head about to be appointed; ID team is in place and motivated for the next era of action.
- New building, new leader, clear strategy, and determination to succeed.

➤ But we still face some challenges:

- including the current legal framework and lack of specialised resources.
- We need to change the law to ensure a full and effective prosecution-led model.
- We need to be bold and innovative in how we get additional skills
- The ID needs to be established as SA's leading and permanent anti-corruption capacity, under the NPA Act. Not just a Proclamation⁵

INTRODUCTION: NDPP

Relevant Developments at NPA



National Prosecuting Authority
South Africa

➤ ID has obtained a deviation to recruit skills and capacity from the Commissions

- Plans to transition State Capture Commission resources and capability to the ID delayed by Commission extension with significant impact on ID work.
- Slow procurement processes within the State a further delaying factor

➤ **Bold and innovative approaches to getting the resources and skills we need:**

- In line with the President's commitment during SONA, the NPA will be engaging appropriately with private sector to get support and resources, through national treasury and with the required safeguards
- We cannot win this battle without additional resources and skills
- Private sector and civil society are essential partners in this endeavour.
- Donor Oversight Mechanism

NPA working with ACTT Partners



National Prosecuting Authority
South Africa

- NPA (NPS/SCCU/STU, AFU and ID) work closely with ACTT stakeholders including SIU, DPCI, SARS, DPSA, National Treasury and others
- Case Management Committee of ACTT revitalised and actively monitor and assess all serious corruption cases including SIU referrals on the ACTT Priority Case list
- Dedicated team within NPA working on collaboration of State Capture cases – both from reports and emerging evidence (some already in court or near enrolment)



National Prosecuting Authority
South Africa

Legal Framework on SIU Referrals

SIU Act

- In terms of section 4(1)(d) of the SIU Act, the SIU must,
 - during an investigation of any matter in terms of the SIU Act, wherein the evidence collected *points to the possible commission of an offence*;
 - refer the matter to the NPA *as soon as is practicable*

SIU and NPA MoU

- MoU to refine the referral process from the SIU to the NPA for investigation and prosecution, is currently in draft;
- The NPA refers these matters to the SAPS/DPCI to register a case docket and to obtain further court directed, admissible evidence required to make a decision
- DPCI to be included in the refined MoU

SIU / NPA / DPCI Working Methodology



- The SIU, in terms of section 4(1)(d) of the SIU Act, refers any matter in which evidence points to the commission of an offence, to NPA (Head: NPS)
- Head: NPS refers matter to DPP (Regional) office under whose area of jurisdiction it resorts, informs Head of SIU accordingly
- DPP refers matter to SCCU and AFU (to explore asset forfeiture potential)
- SCCU Regional Head allocates a prosecutor to the matter (PGI Methodology)
- DPCI registers the case docket and allocate an investigating officer
- The decisions made by the prosecutor are explained to SIU Investigators and DPCI investigators

Practical Application of Methodology (SAPS / DPCI)

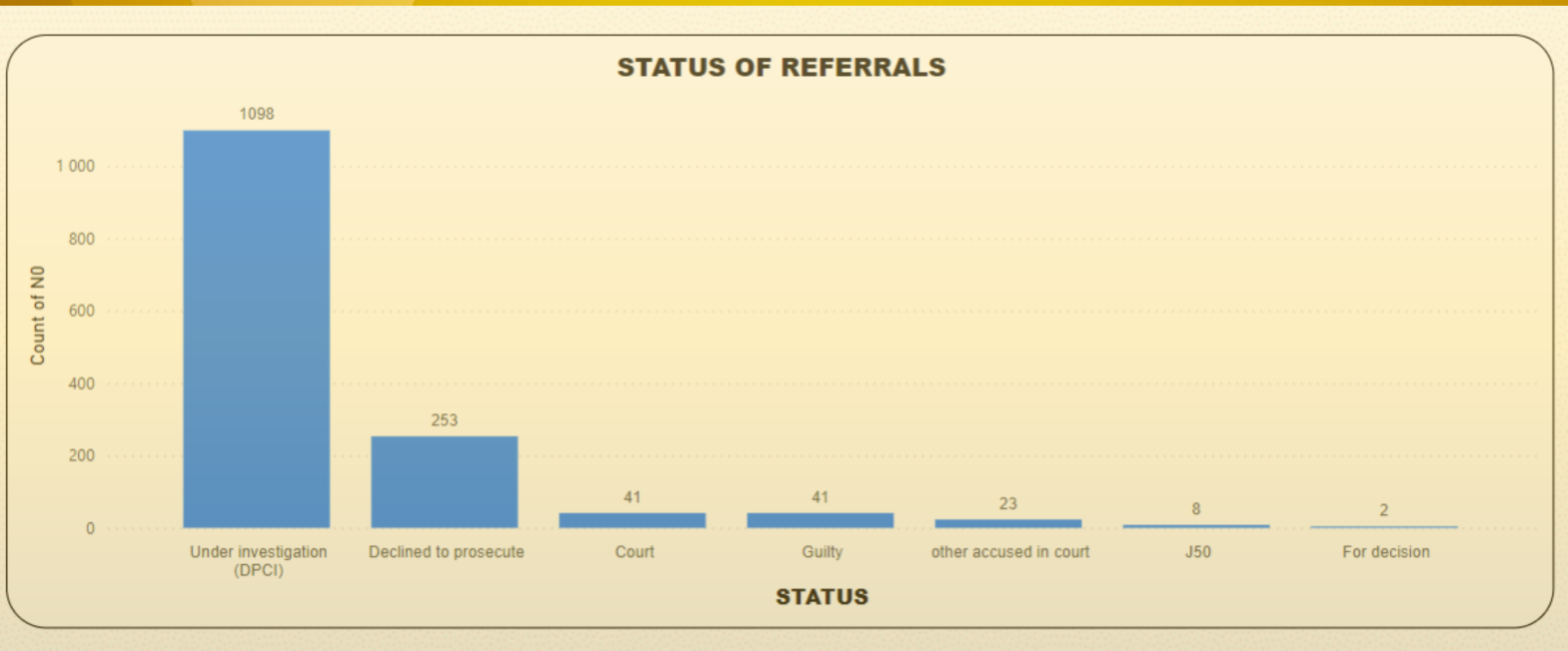


- Further to statements obtained by SIU, additional evidence has to be obtained by the DPCI/SAPS for court readiness e.g. forensic audit reports, cash flow reports, section 205 statements in respect of bank records as those obtained by SIU are not admissible in criminal matters
- The SIU mostly cover legislative contraventions and not offences such as money laundering, fraud and theft
- Case dockets become larger and investigations become much more complex than what is contained in initial SIU referrals
- Audit reports in some instances contain 75+ arch lever files to be studied and compared to statements and documents in the case docket, which is time consuming.

Progress on Referrals

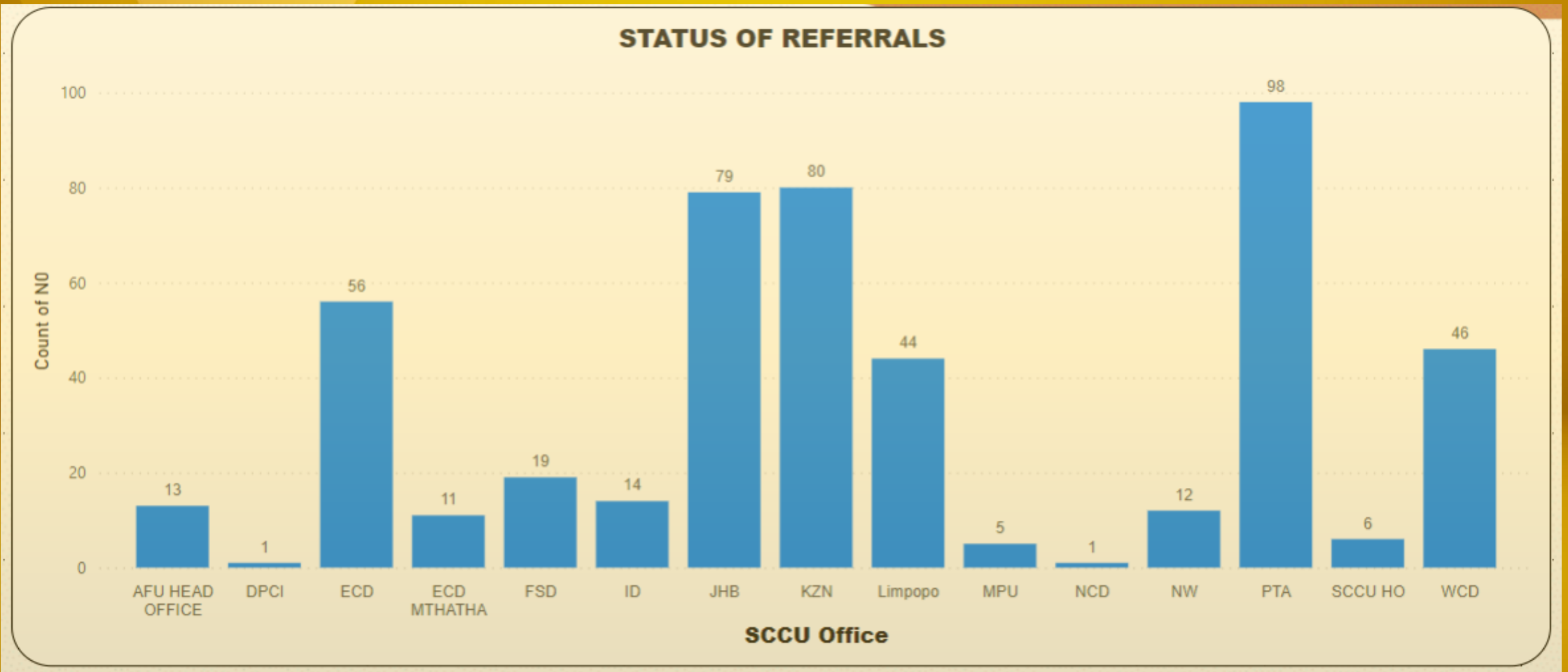


Register (data since 2014) contains 1 515 referrals (suspects) from SIU with progress below:



Progress on Referrals: Investigations with DPCI

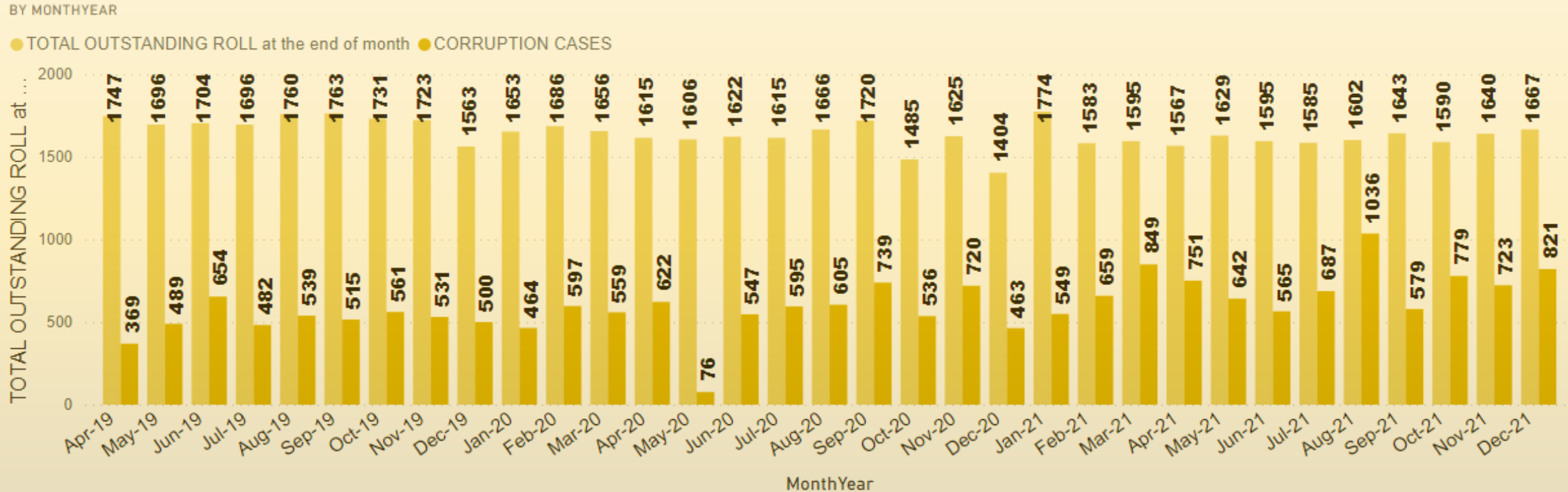
Register (data since 2014) contains 1 515 referrals (suspects) from SIU with progress below:



SCCU Court Rolls

Outstanding Cases & Corruption Cases on the Roll

TOTAL OUTSTANDING ROLL at the end of month, CORRUPTION CASES



Fusion Centre Cases



Report date	INCIDENTS		CASES		CASES IN COURT, FINALISED CONVICTIONS OR ACQUITTALS					FIC Freezing of bank account number and estimated value	AFU Recoveries (POCA) - number and estimated value	SIU Recoveries (Tribunal) number and estimated value	SARS Recoveries number and estimated value
	Under Investigation	Closed	Under investigation	Closed	Court	Accused	Finalised in Court	Convictions obtained	Acquittals				
2022-02-03	187	45	137	51	51	104	17	16	1	23 R271	27 R170m	24 R460m	20 R727m

➤ **Fusion Centre Objectives:** To apply an overarching integrated working method for managing the flow of crime related information and intelligence across levels and sectors of government and to integrate information for analysis, to assist with:

- Deployment of multi-disciplinary and integrated approach;
- Investigations;
- Criminal proceedings or any necessary functions incidental thereto, including asset forfeiture proceedings; and
- Facilitating, reviewing, monitoring and improving inter-departmental co-operation.
- To provide immediate responses and decentralised services
- Liaison with dedicated staff or partners in other departments

Fusion Centre Cases



- Similar to normal SIU referrals:
 - Fusion Centre incidents in various matters are closed without any criminal case docket being registered
 - Even after a case docket has been registered, several matters are closed without sufficient evidence to proceed with criminal prosecutions
- As at 03 February 2022, there were:
 - 51 cases in court that relate to 104 accused persons.
 - Multiple accused are involved in these offences, not only related to corruption
 - May include UIF related offences and other less serious offences

Progress SIU on ACTT PC List

25 Cases finalised since 2014 on ACTT PC List in collaboration with ACTT Partners:

Since 2021 new Case Selection Criteria based on:

- Monetary Value
- Officials / Persons involved
- Categories of Priorities
- Government Priorities / National Interest /

Other Risk Factors

CONVICTED	NOLLE PROSEQUI	UNDETECTED	WITHDRAWN	Total
	1			1
	1			1
		1		1
1				1
			1	1
	1			1
1				1
	1			1
	1			1
2	1		1	4
			1	1
1				1
1				1
1				1
6			1	7
1				1
14	6	1	4	25

SCCU Capacity



National Prosecuting Authority
South Africa

SCCU HEAD OFFICE CAPACITY

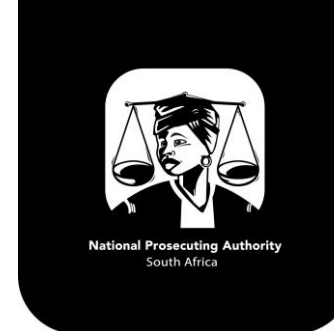
- Closer monitoring of SIU cases
- Legal staff involved with monitoring are assisting in identifying problem areas
- Senior officials appointed taking control and managing processes
 - 1 x SDPP (1 FEB 2021 appointed)
 - 1 x DDPP
 - 4 x SSA
 - 4 x Admin

SCCU REGIONAL CAPACITY

- All Divisional capacity increased – dedicated staff with Regional Heads (DDPP) appointed in North West, Limpopo, Mpumalanga, Northern Cape
- Increase from April 2020 to January 2022 in Table below
- Dept of Justice in collaboration also established dedicated courts in above Provinces since April 2021

Report Date	Active, filled	Active, vacant	Additional, filled	Additional, vacant	Total
⊕ April 2020	135	7	7	3	152
⊕ January 2022	176	22	31		229

Constraints



- Cases often have to be closed without prosecution as witnesses or evidence are no longer available due to long time lapses
- Referrals of individuals connected to one matter are misleading, difficult to follow up.
- SIU referral process of matters based on suspects rather than cases involving the finding of criminality creates a misalignment in respect of the cases generated.
- Prosecutors and DPCI investigators deal with facts contained in the case dockets. Persons or identities identified in SIU referrals do not always emerge as suspects in the criminal investigations
 - In such instances; often, no decision is made on such individuals or entities
 - Time of submission by SIU of referrals related to different projects are often received months apart and often include the same suspects or entities

Solutions



- It is suggested that the DPCI be involved with investigations done by SIU at a much earlier stage
 - in order to seize exhibits and ensure statements of witnesses are taken at a time when memories are still fresh and exhibits are still available.
 - From the Fusion Centre model, parallel investigations give better results
- Once the DPCI is involved and has registered a case docket, the NPA can get involved in guiding the investigation with the investigating officer
- Legislative changes are required in order to address the above process in which referrals to NPA may not be necessary
- Closer cooperation between the criminal investigation and the SIU investigation would be beneficial to both the civil and criminal investigations



National Prosecuting Authority
South Africa

Crimes & Sentences: Examples

Ref 425/2010: Accused convicted of 945 counts of fraud relating to irregular tenders awarded

- Sentenced to **15 (fifteen) years imprisonment** plus conditionally suspended for 5(five) years

Proc R72 of 2009: North West Province Municipality: Naledi Municipality

- On 12 February 2021 – Corruption: **6 (six) years imprisonment**
- Fraud: 5 years imprisonment suspended for 5 years
- MFMA: 10 years imprisonment suspended for 8 years.

S v Velero + others:

- 5 Accused convicted in 2019 and still awaiting sentence
- Accused were convicted of Fraud (in respect of an amount of R21 806 331); AND
- Corruption (in an amount of R12 678 602) in contravention of section 13(2)(a)(ii) of Act 12 of 2004



Concluding SCCU Remarks

- NPA provided updates to SIU in 2018 and thereafter regions were required to jointly report with their SIU counterparts in terms of the MoU
- As indicated, due to additional staff at National office of the SCCU, the data is still being cleaned, purified and properly analysed to establish where the gaps are in reporting given the obligations on both parties in terms of the MoU
- Coordination with other stakeholders, to wit SIU and the DPCI are ongoing
- Managers are taking responsibility for ensuring the processes, progress and records are monitored, interrogated and analysed



Asset Forfeiture

Current referrals to the AFU (Jan 2020 to 10 February 2022)

Results (Current referrals)

- 80 Referrals (39 matters)
- 1 Drafting
- 35 Under Investigation (AFU 21 / DPCI 14)
- 15 Awaiting Referral
- 5 Awaiting Charge Sheet
- 24 No AFU Potential
(SIU proceeding with civil recovery)

- 1 Confiscation R500k
- 2 Restraints (1 obtained by ID) R1,5bn



National Prosecuting Authority
South Africa

Asset Forfeiture

- SIU Referrals – Results (SIU as Referral Agency since 2002 incl. ACTT)
- Confiscations/forfeitures
 - Number **48**
 - Value **R1,7bn**
- Preservations
 - Number **70**
 - Value (One obtained by the ID) **R4,1bn**
- Value of Recoveries **R1,7bn**



AFU Capacity

AFU HEAD OFFICE CAPACITY

AFU REGIONAL CAPACITY

- Enhanced capacity required to make impact
- Appointments made:
 - 1 x SDPP (Appointed 1 FEB 2021)
 - 2 x SSA
 - 2 x Admin

- Limited Divisional capacity increased – dedicated staff with Regional Heads (DDPP) appointed in Eastern Cape, Western Cape, Mpumalanga. Awaiting appointments in Pretoria, East London, North West, KwaZulu Natal
- Resourcing of the Investigative capacity in the regions is currently being prioritised

Constraints



National Prosecuting Authority
South Africa

- The Special Investigating Units and Special Tribunals Amendment Act 2 of 2001, amended the Special Investigating Unit and Special Tribunals Act 74 of 1996 (the Act) and came into operation on 31 July 2001
- The Rules issued by the President of the Tribunal on 26 August 2021 in terms of the Special Investigating Unit and Special Tribunals Act No 74 of 1996; enables the SIU to proceed with asset recovery processes prior to referral to NPA
- Referrals of individuals connected to one matter is misleading, difficult to follow up and creating misperceptions on cases emerging from referrals.
- SIU referral process of matters based on suspects rather than cases involving the finding of criminality creates a misalignment in respect of the cases that are generated.
- The AFU is dependant on the finalisation of the criminal investigation to consider proceeding on Chapter 5 applications
- Investigative and forensic capacity regionally

Solutions



National Prosecuting Authority
South Africa

- The AFU and SIU can improve AFU involvement with investigations done by SIU at a much earlier stage in order to identify and seize assets prior to dissipation as previously been agreed.
- This methodology can also be improved at a regional level to ensure timeous institution of the recovery process.
- From the Fusion model, parallel investigations give better results
- Early collaboration between the AFU and SIU will ensure that assets are timeously seized and confiscated.
- The AFU is dependant on the DPCI to conduct criminal investigations as the AFU has no criminal investigative powers
- Colocation between the AFU and DPCI is currently under way. 18 DPCI members collocated within the AFU regional offices since December 2021 and the process is still ongoing



National Prosecuting Authority
South Africa

Concluding AFU Remarks

- Many referrals have no or little AFU potential due to the SIU proceeding with civil recovery
- Referrals require substantial additional criminal investigation when received from the SIU
- The SIU is included as key stakeholder in a number of the Anti-Corruption structures such as the ACTT, Fusion Centre and Priority Case Review process

Investigating Directorate



National Prosecuting Authority
South Africa

Head of the ID appointed in **May 2019**

Capacitation of the ID began in July 2019 primarily through:

- reassignment of prosecutors from within the NPA;
- secondment of investigators from the SAPS, IPID and placement on duty arrangements of DPCI investigators
- appointment of Zondo Commission investigators as follows:
 - 23 Digital forensics, 6 Investigators (one recently deceased), 8 Evidence leaders
 - 3 more Investigators in the process of appointment and one Evidence leader.
- recruitment of investigators and prosecutors on contract for 3 years additional to the NPA establishment. 21 financial investigators came on board in **January 2021**.
- Good collaboration with SARS, which can be seen with enrollment of tax matters in court stemming from state capture.
- Discussions underway for possibility of secondment of SARS investigators.
- Co-location of ID's multidisciplinary teams scheduled to be completed by end of February 2022

Investigating Directorate



National Prosecuting Authority
South Africa

- Secondment of investigators from the SAPS and IPID (consideration to seconding investigators from SIU and the FIC, with the understanding that the latter investigators have full access to FIC databases).
- Investigators from the State Capture Commission are also currently assisting at the ID;
- To attract the necessary skills needed in the ID, permanent investigator and prosecutor posts should be created in the ID;
- The ID should be made a permanent structure within the NPA, similar to the former DSO – in order to reduce the risk of improper interference or undue influence or political interference in the structure. This will require an amendment to s7 of the NPA Act
- Where there are prosecutor capacity constraints within the ID or NPA to effectively deal with State Capture cases, ad hoc prosecutors (outside counsel) should be appointed in terms of s. 38 of the NPA Act



ID: Powers and Functions



The powers and functions set out in Chapter 5 of the NPA Act. They include the powers 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 and bring asset forfeiture applications



Through secondment arrangements entered into with partner organisations, the ID can access critical additional investigatory powers in terms of the CPA, that are bestowed on police officials, subject to the direction of the National Commissioner of Police and through MoUs with SARS, the FIC and the SIU to investigate corruption

Section 30 of the NPA Act must be re-enacted, with the necessary changes, to grant full investigation powers to all investigators in the ID, who are not seconded SAPS investigators.

Case Registration Process



National Prosecuting Authority
South Africa

- ID's mission is to hold to account all those responsible for serious, high profile and complex corruption and/or related cases;
- The Head of the ID must authorise investigations or preparatory investigations on matters arising from the State Capture Commission or in respect of other cases or offences or criminal activities specified in the State President's Proclamation;
 - Any person may report a specified offence to the ID for investigation (s. 27 of the NPA Act);
 - NDPP may refer a matter in relation to the alleged commission to the Head of the ID (s. 28(1)(b) of the NPA Act
 - Authorising an investigation or preparatory investigation at the instance of an NDPP referral to the ID, is peremptory;
 - Head of the ID can of his / her own accord authorise an investigation or preparatory investigation in relation to a specified offence or other offence connected with the subject of an investigation (s. 28(1)(a) and (c) of the NPA Act);
 - The Head of the ID can designate any person appointed in the ID, and as referred to in s. 7(4)(a) of the Act, to conduct an investigation. With a DPCI referral to the ID for investigation, the Head of the ID may designate any member of the prosecuting authority or DPCI to conduct the investigation concerned.



Transnet and Eskom 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;
- 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, and
- The SIU also referred matters to ID in relation to unlawful activities committed at ESKOM and TRANSNET
- The status in relation to the five referrals is dealt with in the following slides

SOE Investigations referred by SIU



Investigation Priority / Key Focus Areas	ESKOM & TRANSNET SAP CONTRACTS		Case number	Sunnyside CAS 170/12/2017	
Date Reported	December 2017	Date Referred by SIU	29 April 2021	Alleged Bribes / Gratification	Not Quantified
Offences	Contravention of PRECCA, POCA and Companies Act. Fraud and Corruption		Entity involved/Person/s involved	<ul style="list-style-type: none"> ○ SAP South Africa ○ CAD House ○ Eskom 	
Summary	<p>Improper or unlawful conduct by Eskom officials or employees in respect of the contracting for or procurement of software licenses and support services by Eskom and payments made in respect thereof in a manner that was:</p> <ul style="list-style-type: none"> (i) not fair, equitable, transparent, competitive or cost-effective (ii) contrary to applicable: <ul style="list-style-type: none"> ○ Legislation ○ manuals, guidelines, circulars, practice notes or instructions issued by the National Treasury ○ manuals, policies, procedures, prescripts, instructions or practices of, or applicable to Eskom 				
Action to Date	<ul style="list-style-type: none"> ○ The matter is still under investigation. ○ Resources from the State Capture Commission have been on-boarded to assist with investigations. 				

SOE Investigation referred by SIU



Investigation Priority / Key Focus Areas	ESKOM		Case number	Sandton CAS 413/7/2017
Date Reported	July 2017	Date Referred by SIU	20 February 2020	Alleged Bribes / Gratification
Offences	Corruption, PRECCA contraventions and Fraud		Entity involved/Person/s involved	<ul style="list-style-type: none"> • Eskom: Executives • ABB:Employees • Impulse International Employees
Summary	<p>Improper or unlawful conduct by Eskom officials or employees in respect of the contracting ABB-IMPULSE contracts and payments made in respect thereof in a matter that was:</p> <ul style="list-style-type: none"> (i) Not fair, equitable, transparent, competitive or cost effective (ii) Contrary to applicable <ul style="list-style-type: none"> ○ Legislation ○ Manuals, guidelines, circulars, practice notes or instructions issued by National Treasury ○ Manuals, policies, procedures, prescripts, instructions or practices of, or applicable to Eskom. 			
Action to Date	<p>Current Status</p> <ul style="list-style-type: none"> ○ The matter is under investigation, due to its complexity, resource constrains and multi-jurisdictional investigation. ○ It is expected that outstanding investigations will be finalised by the 2nd quarter 2022/23. 			

SOE Investigation referred by SIU



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	Date Referred by SIU	08 and 27 March 2019	Alleged Bribes / Gratification	Over R1.5 billion
Offences	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) • ESKOM 	
Summary and Action to Date	<p>Synopsis Of The Case</p> <ul style="list-style-type: none"> ○ 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>Current Status</p> <p>Tubular Holdings (Tubular) Investigation</p> <ul style="list-style-type: none"> ○ The matter is current enrolled, to reappear on 30th March 2022. <p>Stefanutti Stocks Investigation</p> <ul style="list-style-type: none"> ○ Under investigation. It is expected that outstanding investigations will be finalised in the 2nd quarter of 2022/23 financial year. <p>Tenova Mining & Minerals SA (Tenova)</p> <ul style="list-style-type: none"> ○ Under investigation. Outstanding investigations expected to be finalised in the 2nd quarter of 2022/23 financial year. 				

SOE Investigation referred by SIU



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	Date Referred by SIU	08 and 27 March 2019	Alleged Bribes / Gratification	Over R1.5 billion
Offences	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) • ESKOM 	
Summary and Action to Date	<p>SARS Contribution</p> <ul style="list-style-type: none"> ○ Polokwane 389/12/19 and 391/12/19 State vs Hudson Kgomoewane currently on the roll at Pretoria Regional Court. Matter postponed to 13-14 April 2022 for plea and trial. ○ Garsfontein 248-250/12/19 State vs France Hlakudi is currently on the court roll at Pretoria Regional Court. Matter postponed to 25 & 26 May 2022 for further trial. <p>AFU Contribution</p> <ul style="list-style-type: none"> ○ AFU freezing order of R1.4 billion against the accused on 04 May 2021 				

SOE Investigation referred by SIU



Investigation Priority / Key Focus Areas	Transnet Neotel Contracts		Case number		CAS 08-10-2019 (Enquiry)
Date Reported	October 2019	Date Referred by SIU	14 February 2020	Alleged Bribes / Gratification	Not Quantified
Offence	PRECCA, POCA and CA contraventions. Fraud and Corruption PFMA Racketeering		Entity involved/Person/s involved	<ul style="list-style-type: none"> ○ Neotel ○ TechPro ○ Homix ○ Transnet 	
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: Not Quantified</p> <ul style="list-style-type: none"> ○ 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. 				
Action to Date	<ul style="list-style-type: none"> ○ The matter is still under investigation. 				

SOE Investigation referred by SIU



Investigation Priority / Key Focus Areas	Transnet Cutting Edge Contracts		Case number		JHB Central CAS 466/10/2019
Date Reported	October 2019	Date Referred by SIU	25 October 2021	Alleged Bribes / Gratification	Not Quantified
Offence	PRECCA, POCA contraventions. Fraud and Corruption PFMA		Entity involved/Person/s involved	<ul style="list-style-type: none"> ○ Cutting Edge ○ Transnet 	
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> <ul style="list-style-type: none"> ○ 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. 				
Action to Date	<ul style="list-style-type: none"> ○ The matter has been incorporated in the on-going investigation of Transnet Consultancy Agreements. The investigations are at an advanced stage, and planned to be put on the court roll by end of February 2022. 				



National Prosecuting Authority
South Africa

Investigation Challenges

- 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
- Role players include senior political figures, senior executives and multi-national companies supported by enablers such as accountants, lawyers and management consulting firms
- Data intensive dockets run into terabytes of information that require careful management in light of onerous discovery requirements in criminal cases

Institutional Impediments



National Prosecuting Authority
South Africa

➤ Skilled and capable investigators and prosecutors – who are equal to the scale and scope of the investigations and prosecutions the ID is seized with

➤ ID dependent for personnel on secondments from law enforcement partners, NPA Act and temporary contractors – the NPA Act does not make provision for appointment of investigators in the NPA on a permanent basis.

➤ 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

➤ ID has obtained a deviation to recruit skills and capacity from the Commissions, but plans to transition State Capture Commission resources and capability to the ID delayed by Commission extension with significant impact on ID work. Slow procurement processes within the State a further delaying factor

➤ Digital and commercial investigation capability critical in cases where terabytes of data has to be analysed and processed



National Prosecuting Authority
South Africa

Head Office: 012 845 6000

E-mail: communications@npa.gov.za

VGM Building, 123 Westlake Avenue (Cnr Hartley Street),
Weavind Park, Silverton, Pretoria, 0184

Learn more ...

www.npa.gov.za