

NPA PRESENTATION TO THE PORTFOLIO COMMITTEE ON COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS: Local Government related cases

25 March 2022



National Prosecuting Authority
South Africa

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National Prosecuting Authority
South Africa

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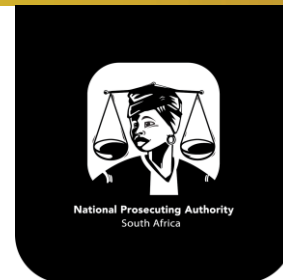
INTRODUCTION BY NDPP



Introduction: NDPP

- NPA made a presentation to the Committee on 20 November 2019
- Cases emanating from:
 - SIU Proclamations involving Municipalities
 - Other work involving Municipalities
 - Fusion centre cases

NPA Mandate



The National Prosecuting Authority was established in terms of section 179 of the Constitution of the Republic of South Africa. The duties and powers of the prosecuting authority are outlined in the Constitution as to:-

- institute and conduct criminal proceedings on behalf of the State;
- carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and
- discontinue criminal proceedings

Thus, the NPA bears the vital 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 protects certain witnesses

AFU / SCCU Mandates



The Specialised Commercial Crime Unit (SCCU)'s mandate is to guide criminal investigations and conduct the prosecution of complex commercial crime cases emanating from the commercial branches of the SAPS, more specifically from the DPCI

DNDPP – Adv Rodney De Kock

SDPP – Adv Lebo Baloyi (appointed with effect from 1 February 2021)

Asset Forfeiture Unit (AFU) seizes assets that are the proceeds of crime or have been part of an offence through a criminal or civil process.

DNDPP – Adv Ouma Rabaji-Rasethaba

SDPP – Adv Priya Biseswar (appointed with effect from 1 February 2021)

AFU Legal Regime



- POCA creates two distinct mechanisms in respect of asset forfeiture procedure:
- Chapter 5 thereof provides for the ‘forfeiture’ of the benefits derived from crime. Its mechanisms may only be invoked when criminal proceedings are pending, and ‘forfeiture’ only takes place after conviction. Although the proceedings under this chapter are civil proceedings, the ‘forfeiture’ at which they are directed is commonly known as ‘criminal forfeiture’ as it is based on and only follows a criminal conviction.
- Chapter 6 thereof provides for forfeiture of the proceeds of and/or instrumentalities used in crime but is not conviction based. It may be invoked even when there is no criminal prosecution. It is for that reason commonly known as ‘civil forfeiture’.

AFU: “Taking the Profit Out of Crime”



- The AFU was created in order to ensure that the powers in POCA to seize criminal assets would be used to its 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 Investigative Directorate.
- Further investigations/analysis by AFU financial investigators

Legal Framework on SIU Referrals



SIU Act (preamble)

- › To provide for the establishment of Special Investigating Units for the purpose of investigating serious malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well
- › as any conduct which may seriously harm the interests of the public, and for the establishment of Special Tribunals so as to adjudicate upon civil matters emanating from investigations by Special Investigating Units; and to provide for matters incidental thereto.

SIU Search, seizure and confiscation

- › SIU Act allows members of SIU to conduct searches, seizures and production of documents by parties (civil evidence)
- › Criminal Procedure Act allows for similar processes for criminal proceedings and much stricter:
- › Sections 19 to 37 deals with specific requirements as to how, when and by whom evidence may be collected
- › Section 21 states *inter alia*: “...Subject to the provisions of sections 22, 24 and 25, an article referred to in section 20 shall be seized only by virtue of a search warrant issued-
 - (a) by a magistrate or justice, ...
 - (b) by a judge or judicial officer presiding at criminal proceedings...”

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 to register a case and to obtain further court directed, admissible evidence required to make a decision

DPCI and SAPS included in the MoU

DPME assisting in getting signatures from SAPS

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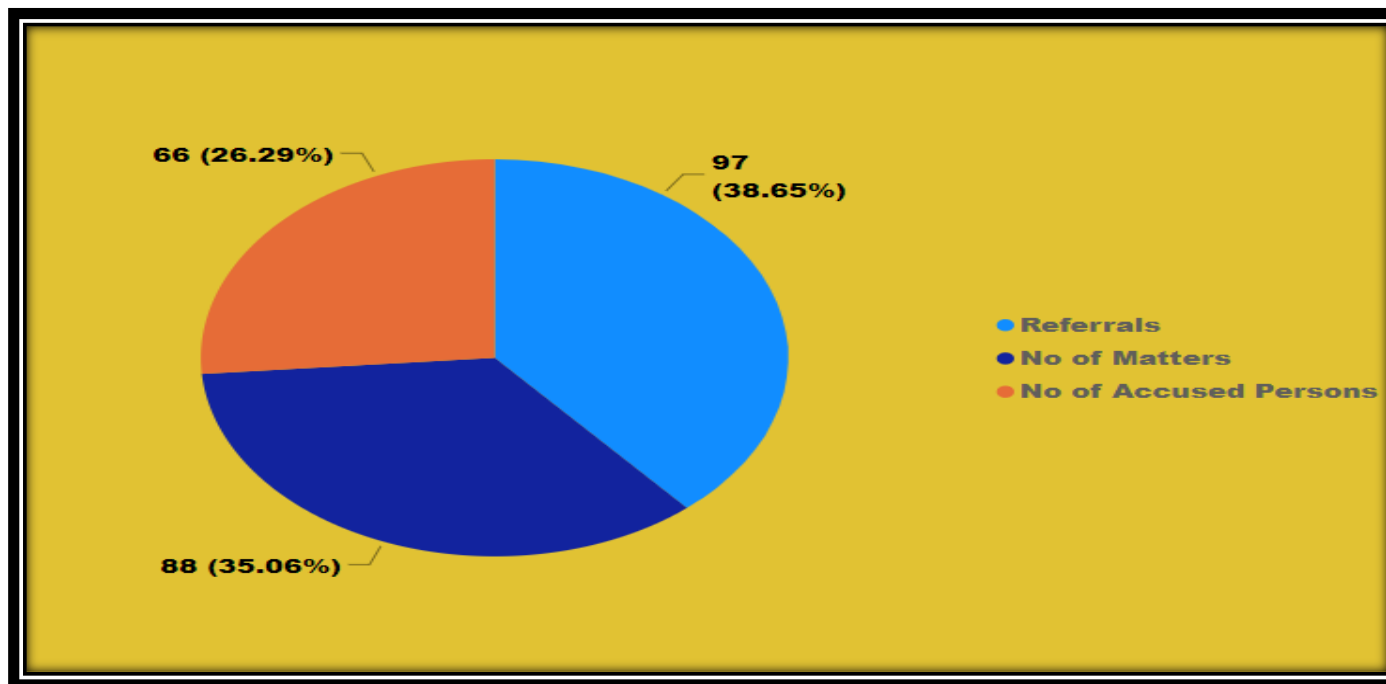
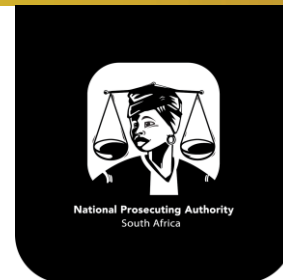
2 PROGRESS:

Breakdown of COGTA SIU Referrals



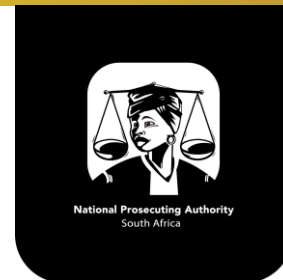
Number of referrals	2019	Current (2022)
Number of cases under investigation	64	70
Number of cases before court	3	6
Number of cases finalised in court	1	1
Number of cases declined	3	5
Number of cases referred to the DPCI to register dockets and assign Investigating Officers	3	1
Number of cases with prosecutors for case planning	7	12
Referred to SIU for clarification		2

Introduction To Permutations



Referrals (above) contains a small portion of criminal cases investigated within local government sphere. On all Local Government matters, SAPS have in excess of 250 case dockets and NPA have more than 50 cases in court comprising more than 100 accused

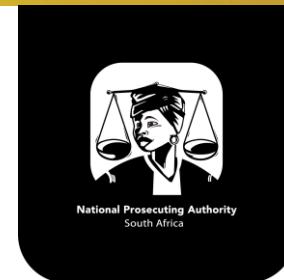
Variety of Permutations: #1



PROC NO	MATTER	PROVINCE	STATUS
R51 of 2014	Vhembe District Municipality	Limpopo Province	<p>See PC 54 on ACTT:</p> <p>Leg 1 = Case was in Sibasa Regional Court on 2013/12/11 and suspects were found not guilty</p> <p>Leg 2 = Maufhe Family Trust: Awaiting other legs for decision</p> <p>Leg 3 = Matter was struck off the roll on 12/12/2019. The defence argued that they were provided with incomplete and illegible further particulars. Matter to be reinstated. Re-allocated to new PP 16 Feb 2022</p> <p>Leg 4 = Matter closed as allegations cannot be substantiated</p> <p>Leg 5 = Declined to prosecute</p> <p>No AFU potential – SIU recovery</p>

One or more police dockets may be related to one Proclamation and yet, several projects or legs may be instituted during the investigation and prosecution of such a matter

Variety of Permutations: #2



PROC NO	MATTER	PROVINCE	STATUS
R36 of 2017	Alfred Nzo Municipality	Eastern Cape (Mthatha)	Fort Beaufort CAS 101/09/19. Under investigation. One prosecution team comprising SCCU members from Mthatha and EL. No AFU Potential – SIU recovery
R6 of 2018	Raymond Mhlaba Municipality	Eastern Cape (Mthatha)	Fort Beaufort CAS 102/09/19. Under investigation. One prosecution team comprising SCCU members from Mthatha and EL. No AFU Potential – SIU recovery

- Two separate proclamations and separate municipalities but the accused in these matters are linked and some are the same accused. Decision on single prosecution to be instituted and conducted collectively in interest of justice

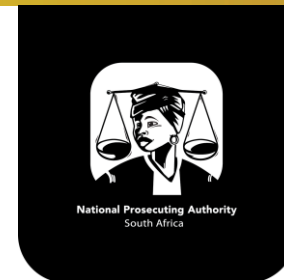
Variety Of Permutations: #3



PROC NO	MATTER	PROVINCE	STATUS
R6 of 2011	Oudtshoorn Local Municipality	Western Cape Province	<p>Oudtshoorn CAS 35/08/2011: Accused found not guilty and discharged on 31/01/2014;</p> <p>Oudtshoorn CAS 36/08/2011 - Former Municipal Manager was convicted on 5 charges of contravention of section 173 of the MFMA and sentenced to 5 years imprisonment on 31 March 2017. Sentence changed to two years imprisonment on Appeal</p> <p>Oudtshoorn CAS 37/08/2011 - Accused found not guilty and discharged on 15/09/2015</p> <p>Oudtshoorn CAS 38/08/2011 and CAS 33/02/2012 - Accused found not guilty and discharged during Feb 2014;</p> <p>Oudtshoorn CAS 297/02/2012 - Matter was withdrawn after representations by the defence</p> <p>Oudtshoorn CAS 952/2/2012 - NDPP decided not to continue with prosecution following representations by accused;</p> <p>No AFU orders</p>

- One or more dockets may be divided into multiple prosecutions or court cases

Variety Of Permutations: #4



PROC NO	MATTER	PROVINCE		STATUS
R23 of 2020	Laingsburg Local Municipality	Western Province	Cape	<p>SIU report: This investigation is closed and there are no outcomes (Slide 36)</p> <p>Laingsburg CAS 114/01/2019 = Under investigation (53 witness statements already obtained)</p> <p>No AFU Potential – SIU recovery</p>

- Despite outcome from SIU, dockets may be opened and still require full investigation by the DPCI and consideration by the NPA

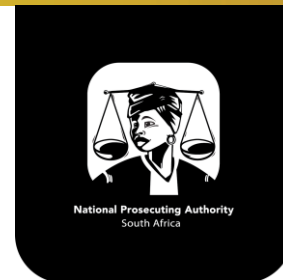
Variety Of Permutations: #5



PROC NO	MATTER	PROVINCE	STATUS
R25 of 2017	Lesedi Local Municipality	Gauteng	Entry 493 received May 2021 (Heidelberg CAS 166/01/2022) Entry 535 received August 2021 (Heidelberg CAS 176/01/2022) Same suspects on certain allegations in both referrals AFU not involved

- Despite that referrals received from SIU may be months apart, dockets may be combined and require full investigation by the DPCI and consideration by NPA as to the number of charges, accused and dockets to be joined

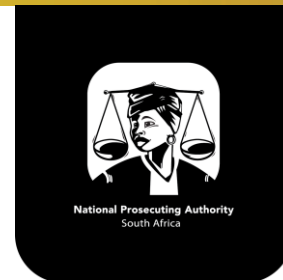
Variety Of Permutations: #6



PROC NO	MATTER	PROVINCE	STATUS
R28 of 2018 / R5 of 2019	Ekurhuleni Metropolitan Municipality	Gauteng	Entry 408 received October 2020 – Under investigation
No Proclamation	Ekurhuleni Metropolitan Municipality	Gauteng	Boksburg CAS 203/07/2019: False journal entries on outstanding water and lights accounts; matter under investigation
No Proclamation	Ekurhuleni Metropolitan Municipality	Gauteng	Boksburg CAS 95/09/2020: An employee of Ekurhuleni at the cash hall Department reversed payments as if a mistake was made and would then take this cash amount for himself; matter under investigation

- Cases do not always have Proclamations when municipalities are involved
- Dockets may be opened despite SIU investigations still ongoing and no referrals have been made or no referral may even be made to NPA

Variety Of Permutations: #7



PROC NO	MATTER	PROVINCE	STATUS
R17 of 2019	City of Johannesburg	Gauteng	<p>Entry 552 in register – under investigation (One entry / referral) received <u>Sep 2021</u> = SOS Protectsure (<u>Hillbrow CAS 442/06/2020</u>)</p> <p>Entry 536 in register (11 entries and referrals) of which 2 accused in court = Fire Raiders</p> <p>AFU not involved – SIU proceeding</p>

- One or more dockets may be registered, investigated and even be part of prosecutions or court cases before any referral is received from SIU

Inter-Ministerial Task Team: NW



• Number of cases:	51
• Matters in court:	17
• For decision with NPA and guidance	2
• Under investigation:	19
• Finalised:	13
• Total amount involved:	R2 371 281 878

Fusion Centre Cases



- Number of cases: 21
- Matters in court: 3
- Under investigation: 9
- Finalised: 9

VBS Mutual Bank



- Number of municipalities involved 20
- Matters in court: 6
- Due to complexity of the matter, prosecutors from SCCU and organised crime together with a team from DPCI work closely in the strategic planning, investigation and prosecution of these cases

Finalised Court Cases



TSHWANE METROPOLITAN MATTER (S VS JACOBUS BAREND LERM)

Facts of the case

- The accused, a former employee of Tshwane Municipality, flouted SCM regulations, causing the City a loss of more than R50m.
- A 2010 report by the City's SCOPA found that Lerm flouted the supply chain management policy by creating orders and procuring quotes for services directly from suppliers, instead of going through the procurement system.
- He then split up orders into smaller amounts to stay under the radar of the R300 000 cap

Outcome

- Accused pleaded guilty i.t.o S105A.
- Convicted and sentenced to 15yrs imprisonment, 5yrs of which was suspended for 5yrs (an effective term of 10 years imprisonment).
- AFU was involved in the matter, but found no assets available for attachment

Finalised Court Cases



The State Versus Patricia Nokwazi Chule and Hlengiwe Precious Hlela

Facts of the case

The matter related to the commission of the offences of fraud and money laundering involving an amount of R7 500 000.00. (seven million and five hundred thousand rand) fraud and money laundering

Outcome

Their co-accused, Mex Dhladhla had pleaded guilty to money laundering, and was sentenced to 12 years direct imprisonment. Both Chule and Hlela were employees of the COGTA, and Chule was in a romantic relationship with Dhladhla
AFU not involved - SIU

Finalised Court Cases

The State Versus Chule



Facts of the case

The offence occurred when Chule transferred R7 500 000 meant to be paid from COGTA to the Ingwe Municipality, for the construction of a crèche/community centre, into Dhladhla's bank account

Outcome

- The accused were each sentenced to 15 years direct imprisonment for fraud and 10 years direct imprisonment for money laundering. The court ordered that the sentences should run concurrently, and the accused will thus serve effective terms of 15 years direct imprisonment
- No AFU orders

Finalised Court Cases



The State Versus T Gqola

Facts of the case

- The matter relates to a Councillor taking money from members of the public on the pretence of awarding RDP houses.
- The amount involved was R7 000.00
- He was convicted and sentenced for fraud and corruption

Outcome

- Sentenced to an effective term of 6 years imprisonment.
- He was denied leave to appeal the sentence imposed
- No AFU proceedings instituted.

Finalised Court Cases



The State Versus Peterson

Facts of the case

- The matter involves a municipal manager of the Oudtshoorn Municipality

Outcome

- Convicted of a contravention of the MFMA and sentenced to a direct term of 5 years imprisonment
- Sentence was confirmed on appeal
- No AFU proceedings instituted

Finalised Court Cases



The State Versus Fritz Malcolm

Facts of the case

- The matter involves a City Ombud Official who accepted a R1 200 bribe to arrange the purchase of a house
- He was convicted and sentenced for corruption

Outcome

- Sentenced to a direct term of 4 years imprisonment
- No AFU involvement

Finalised Court Cases



The State Versus Bongo Nombiba

Facts of the case

- The accused was an ANC councillor in the employ of the Nelson Mandela Metropolitan Municipality.
- He inflated a request for funding submitted by an NGO, and insisted that the NGO withdraw the money received and hand the cash to him

Outcome

- The accused was charged and convicted of fraud (1 count) and money laundering (1 count – Section 4 of POCA), and was sentenced to an effective term of 5 years direct imprisonment
- The court made an order in terms of sec 18 for an amount of R20 000, payable to the Nelson Mandela Bay Metro
- No AFU – SIU recovery

Finalised Court Cases

The State Versus Kolantso and Another



Facts of the case

- Accused 1 was a financial officer in the employ of a Municipality
- His duties entailed, amongst others, assisting families of the deceased to lodge claims for provident fund benefits
- He colluded with Accused 2, whereby he amended a beneficiary form of one of the beneficiaries, and outlined details of Accused 2 thereon as the wife of the deceased employee

Outcome

- Both pleaded not guilty but were convicted of forgery and uttering, fraud and money laundering.
- They were each sentenced to 4 years' imprisonment (forgery), 4 years imprisonment (Uttering), 8 years' imprisonment (fraud), and 3 years' imprisonment (money laundering charge). Accused 1 was sentenced to an effective 13 years' direct imprisonment and accused 2 sentenced to an effective 10 years' direct imprisonment.
- AFU obtained forfeiture and monies paid to Victim - R84 818.37 on 19 Dec 2013

Finalised Court Cases



The State Versus Ntombizanele Patricia Williams

Facts of the case

- The accused was a ward councillor at the Maletswai Municipality, who unlawfully sold plots earmarked for a housing development to members of the public. She was arrested after she was caught in a police trap. She pleaded guilty to three counts of fraud. In two of the counts, there were actual prejudice of R2000 and R6000 respectively, and in the third count only potential prejudice of R 10 000

Outcome

- The court took the counts together for purposes of sentence, and sentenced her to 8 years imprisonment of which two were conditionally suspended for five years. The accused will therefore serve an effective term of 6 years direct imprisonment
- No AFU proceedings

Finalised Court Cases



The State Versus Jakob Claassen

Facts of the case	Outcome
<ul style="list-style-type: none">• J Claassen separation of trial from Wendell Louw 7/117/2016. SCM tender fraud at George hospital. J Claassen was a buyer within the SCM department who colluded with W Louw to favour entities in which Louw had an interest.	<p>Accused 1:</p> <ul style="list-style-type: none">• Date: 01/09/2020 Outcome: Guilty Sec 105A, plea and sentence agreement• Sentence: Counts 1-82: 10 years imprisonment suspended for 5 years• Count 83: 36months in terms of sec 276(1)(h)• No AFU involvement

Finalised Court Cases



The State Versus Shu Wei Lu (1), CEst Gyms cc (2)

Facts of the case

- PC # CA Shu Wei Lu -Tenders fraudulently obtained from City of Cape Town by fronting

Outcome

- Not Guilty-Sec 174
- No AFU proceedings

Finalised Court Cases

The State Versus Scholtz



Facts of the case

- Scholtz defrauded Bergrivier Municipality of R 4.7 million

Outcome

Accused 1:

Date: 10/06/2021

Outcome: Guilty upon Trial

Sentence: Counts 1-10: 12 years imprisonment of which 4 years suspended

Count 11: 5 years imprisonment

The court ordered both sentences to run concurrent, thus the accused is serving an effective term of 8 years imprisonment.

No AFU involvement

Finalised Court Cases

The State Versus T Salman



Facts of the case

- The accused was employed by the Oudtshoorn municipality. He unlawfully transferred monies into his friends accounts and paid them a fee to use the same

Outcome

- Accused 1:
- Date: 2017/08/29
- Outcome: Guilty upon Trial
- Sentence: 5 counts of Fraud and 1 count of Money Laundering taken together for purpose of sentence , 9 years of which 3 years is wholly suspended
- The accused is thus serving an effective term of 6 years imprisonment
- No AFU Involvement

Finalised Court Cases



The State Versus Michelle Witteveen

Facts of the case	Outcome
<ul style="list-style-type: none">Michelle Witteveen was a financial clerk at Kuils River Primary school. She misappropriated school funds by diverting it to her and her family members accounts	<ul style="list-style-type: none">Accused 1:Date: 2017/07/28Outcome: Guilty Sec 105A plea and sentence agreementSentence: 6 years imprisonment wholly suspended for 5 years, and the court further ordered the accused to repay R 400 000No AFU Involvement

Finalised Court Cases



The State Versus Vernon Adams

Facts of the case	Outcome
<ul style="list-style-type: none">Vernon Adams misrepresented to the City of Cape Town Housing Board that Wilma Titus fulfilled the criteria to be allocated an RDP house.	<ul style="list-style-type: none">Accused 1:Date: 26/09/2018Outcome: Guilty Section 105A plea and sentence agreementSentence: 7 years imprisonment wholly suspended for 5 years.No AFU involvement.

FINALISED COURT CASES



The State Versus Jongikhaya Mokoetlane (1), Restless Trading CC (2)

Facts of the case

- The accused defrauded the Department of Education by submitting fraudulent and inflated invoices that he had delivered the correct numbers of the books to various schools

Outcome

- (Acc 1): Date: 24/04/2017, Outcome: Withdrawn,
- (Acc 2): Date: 24/04/2017, Outcome: Guilty Sec 105A, Sentence: R 500 000 of which R 400 000 susp for 5 yrs
- AFU recovery of R1 426 677 paid to Department on 25/05/2017

COURT CASES



Context on Trial court cases

- First appearances in 2009, last court date in November 2021 and next court dates from May to June 2022
- Some cases with multiple accused and legal representatives must be postponed in accordance with availability of all parties involved
- Especially in partly heard cases, evidence emerging during trial and cross-examination impacts on future evidence and may require additional consultation from both accused and State side
- Time not wasted as presiding officer also able during these times to add to his/her notes and prepare on evidence presented, legal arguments that may have been considered and even preparing for judgment

3

AFU – Municipal Matters

Asset Forfeiture



Municipal cases that the AFU is currently working on but have not obtained orders yet.

Cases Under Investigation	16
Recently referred cases being assessed for asset forfeiture potential	3
Cases being monitored for envisaged confiscation proceedings	21
Court Papers being drafted	1
Total amount involved (value still being determined in 7 matters)	R581m

Asset Forfeiture SIU Referral List



- As evident from the list, the SIU proceeds with civil proceedings in the vast majority of cases
- There is therefore little or no remaining asset forfeiture potential
- To avoid duplication, the AFU does not contest the same matters as the SIU
- There are however some exceptions in cases where the AFU can proceed.
- AFU has restraints in 3 matters to the value of R76m
- AFU has one preservation to the value of R1.75m
- One confiscation to the value of R500k was obtained

AFU Orders – All Time



- The figures provided represent the AFU totals in all Municipal Cases
- Restraints and Preservations
 - Number of Orders **115**
 - Value of Orders **R758m**
- Confiscations and Forfeitures
 - Number of Orders **71**
 - Value of Orders **R67.4m**
- Recoveries **R32m**

AFU Orders



- **Corruption Cases**
- Restraints and Preservations
 - Number of Orders **29**
 - Value of Orders **R98m**
- Confiscations and Forfeitures
 - Number of Orders **14**
 - Value of Orders **R15.5m**
- Recoveries **R5m**

AFU Orders



- **Fraud Cases**
- Restraints and Preservations
 - Number of Orders **54**
 - Value of Orders **R46m**
- Confiscations and Forfeitures
 - Number of Orders **34**
 - Value of Orders **R21m**
- Recoveries **R15m**

AFU Orders



➤ Theft Cases

- Restraints and Preservations

- Number of Orders **18**

- Value of Orders **R10m**

➤ Confiscations and Forfeitures

- Number of Orders **13**

- Value of Orders **R5m**

- Recoveries **R1.7m**

Asset Forfeiture – Covid Cases



- The SIU proceeded to recover monies in terms of their proclamation and there were few cases referred to the AFU from the Fusion Centre.
- There were however several other matters the AFU could proceed with.



AFU Orders – Covid Cases

- Restraints and Preservations
 - Number of Orders **27**
 - Value of Orders **R168m**
- Confiscations and Forfeitures
 - Number of Orders **14**
 - Value of Orders **R120,7m**
- Recoveries **R4,45m**

Asset Forfeiture - Comments



- As stated above the AFU has two asset forfeiture regimes.
- Restraints and confiscations in terms of Chapter 5 of POCA
- dependent on the successful finalisation of the criminal trial.
- The AFU process is pended for the duration of the criminal trial. It could be several years
- Preservations and forfeitures in terms of Chapter 6 of POCA is non-conviction based.
- This is also known as civil forfeiture.
- The AFU process is still dependent on the criminal investigation
- AFU needs to prove criminality in its papers – civil standard of proof.

4

Closing remarks

Way Forward



- NPA is in weekly consultation with the DPME and the SIU in ensuring progress are monitored collectively
- Developing a coordination and monitoring mechanism for SIU referrals led by DPME
- Internal monitoring has been enhanced – still in progress
- Consultation with SIU and DPCI on proposed weekly / bi-weekly meetings to be scheduled are to be arranged (Fusion center concept)
 - Ensure alignment
 - Better coordination and understanding within Departments
 - Speedy referrals will result in more speedy and complete investigation due to evidence being more readily available



National Prosecuting Authority
South Africa

Thank you

Head Office: 012 845 6000

E-mail: communication@npa.gov.za

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

www.npa.gov.za