



SUB-PROGRAMME 2:
WITNESS PROTECTION

Sub-programme 2: Witness Protection

Introduction

Witness protection deals with the safekeeping of identified and intimidated witnesses and related persons requiring prosecution whilst testifying in cases being prosecuted.

Purpose

The Office for Witness Protection (OWP) provides a support service to the criminal justice system by the protecting threatened or intimidated witnesses (and related persons) and by placing them under protection, thus ensuring that they will testify in criminal and other defined proceedings.

Measurable Objectives

To reduce the number of witnesses who abandon the witness protection programme

Service Delivery Achievements

A number of the key performance indicators in dealing with witnesses and related persons on the witness protection programme are reflected in Table 6, which tracks performance over a five-year period.

Table 6: Service Delivery Performance Indicators-2004/05-2008/09

Witness Protection							
Indicator	2004/05	2005/06	2006/07	2007/08	2008/09	Change over prev yr	Change over period
Witnesses	247	220	229	231	218	-5.6%	-11.7%
Total including families	499	488	497	428	431	+0.7%	-13.6%
Witnesses harmed	0	0	0	0	0	+0.0%	+0.0%
Walking off program (%)	6%	3%	3%	24%	16.9%	-29.6%	+181.7%
Formal grievances laid (%)	3%	1%	2%	2%	2.4%	+20.0%	-20.0%

Highlights of Achievements

No witnesses or related person on the programme were threatened, harmed or assassinated in the past seven (7) years. The definition of a walk-off was amended in this year (2009/10) to include all persons who voluntarily left the programme before testifying, were given notice to leave the programme due to misconduct or who left the safe-house without prior notice*. The unit had 431 witnesses, including family members, on the programme at the end of 31 March 2009. The unit had 218 witnesses on the programme as at the 31 March 2009. Forty four (44) witnesses walked off the programme during the year.

A witness stabbed his wife to death and then committed suicide by hanging himself while on the programme. Another witness drowned at sea while swimming in Durban. A witness and her baby were injured while being transported. The programme intends to protect witnesses from outside threats or attacks. For this reason these incidents are not included in the figures as reported above as deaths or harm inflicted.

A significant achievement of the unit is a saving of R3 004 896 that resulted from a decision to eliminate and reduce luxury and unnecessary accommodation allegedly used for operational purposes.

Air transport for witnesses and extended family members has been successfully phased in at regional office level.

* Percentage is calculated at the end of the financial year using the total number of witnesses that remain on the programme plus those that walked off as a denominator.



Stakeholder Engagement

All stakeholders within the CJS are engaged with on a regular basis and representatives of the OWP attend joint meetings at national and regional level.

Resourcing Plan

The ratio of protector to witnesses protected is much lower than international best practice. An additional 153 posts are required to meet these standards. The unit also urgently requires the professional services of psychologists to evaluate witnesses on the programme in order to identify witnesses who are at risk of causing injury to themselves or others due to emotional factors. The budget of the unit is insufficient in this regard. These funds are critical to ensure that incidents of suicide and murder are prevented, or where they do occur, they are managed with counselling.

Challenges Experienced

The unit requires additional funding to increase its capacity in order to comply with standards set by the United Nations (UN).

The establishment of an operational control room is still a serious challenge and is required for the safety of witnesses and protection teams in transit. While the plan is at an advanced stage however, it requires sufficient funding.

Forecast

The co-operation and liaison with relevant partners and stakeholders will underpin the strategy of the OWP in 2009. Protectors will be available on a 24/7 hour basis to expeditiously meet the demand for services. The turnaround times will be closely monitored and mechanisms put in place to improve thereon. A holistic approach to protect witnesses will be followed, taking care of both their physical and mental wellbeing. Factors that can lead to witnesses walking off the programme will be identified and dealt with speedily. Intervention by investigators and prosecutors will always happen on neutral ground to prevent places of safety being compromised. The OWP will ensure that the witness is timeously brought to court (or other forum) to testify.





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SUB-PROGRAMME 3:
DIRECTORATE OF SPECIAL OPERATIONS

Sub-programme 3: Directorate of Special Operations

Introduction

This sub-programme deals with the disruption and prosecution of serious, complex and organised crime.

Purpose

The DSO has the authority and flexibility to source multi-faceted crime information, in particular on the trail of money, drugs and people in syndicated organised crime. The purpose of the directorate is to gather and analyse information, investigate and prosecute particular serious crimes, organised crimes and crimes of national interest which threaten democracy and the economy. Focus areas include financial crime, organised public sector corruption, syndicated organised crime, racketeering, money laundering and human trafficking.

Measurable Objectives

Combat serious organised crime by increasing the number of investigations and prosecutions conducted and maintaining a very high conviction rate

Service Delivery Achievements

A number of the key performance indicators for the DSO are reflected in Table 7 below, which tracks performance over a five-year period.

Table 7: Service Delivery Performance Indicators: 2004/05-2008/09

Directorate of Special Operations							
Indicator	2004/05	2005/06	2006/07	2007/08	2008/09	Change over prev yr	Change over period
Investigations finalised (no. of cases)	325	318	267	178	78	-56.2%	-76.0%
Investigations new (no. of cases)	334	380	368	111	55	-50.5%	-83.5%
Arrests (no of persons)	471	447	617	144	126	-12.5%	-73.2%
Prosecutions finalised (no. of cases)	234	243	214	182	64	-64.8%	-72.6%
Conviction rate	88%	82%	85%	94%	98%	+4.3%	+11.4%
Restraint orders with AFU (R'000)	R 180,000	R 236,000	R 550,000	R 45,425	R 17,021	-62.5%	-90.5%
Contraband seized (R'000)	R 2,460,000	R 445,000	R 956,580	R 4,084,775	R 35,571	-99.1%	-98.6%



Highlights of Achievement

The NPA and DSO management were extremely busy with the Government's decision to transform the CJS and more specifically, to disband the DSO in its current format and the establishment of DPCI unit within SAPS. The negotiations and drafting of the NPA and SAPS bills, establishments of joint task teams, the NPA task teams, sub-committees, Joint Operational Management Committees, audit processes, the drafting and tabling of reports and task team meetings drained energy and valuable operational time from NPA and DSO management during the reporting time.

The NPA team responsible for the negotiations and drafting of the legislation was fairly successful in their endeavours to build reasonable to good relationships with other role-players in the process.

The operational progress of the DSO regarding casework was influenced by the drawn-out process of finalising the SAPS and NPA Bills, the impending appointment of the Head of DPCI and the smooth transformation process of staff to their respective new destinations.

The exceptional conviction rate of the DSO is testimony of its integrated approach to investigation, crime analysis and prosecutions. The DSO focussed on finalising cases instead of taking on new cases.

In spite of this, a number of cases or projects were dealt with that are worth mentioning:

S vs Mokoena and Others: The five accused were convicted of fraud and sentenced to between five (5) and 15 years imprisonment. All the accused were declared unfit to possess a firearm in the near future.

S vs Makhafola: The accused was sentenced to 10 years imprisonment on a charge of fraud.

Programme Guanxi: Two accused were arrested. 3 611 dried abalone with a weight of 283kg value at R340 572-00 were seized. The matter was placed on the roll and finalised within one month. The abalone was forfeited to Marine and Coastal Management. A further five suspects were arrested and 658 kg of dried abalone to the value of R 789 600 was seized. Two vehicles, an Isuzu Truck and Mercedes Benz to the value of R 155 000 were also seized. During another operation 9 750kg of shucked abalone and 4 167 abalone valued at R262 500 were seized. During a further operation the team confiscated 81 bales of counterfeit clothing and leather jackets to the approximate value of R 25 million.

S vs Masolompane: The accused was convicted on eight counts of fraud, one count of theft and obstructing the course of justice and five counts of unlawful possession of altered documents. He was sentenced to an effective 20 years imprisonment.

S vs Hughes: Accused 1 was convicted for fraud and two counts of corruption and sentenced to 15 years imprisonment for fraud and 16 years imprisonment for corruption. Accused 2 was convicted of fraud and sentenced to 15 years imprisonment. Accused 3 was convicted of fraud and sentenced to 10 years imprisonment and accused 5 was convicted for fraud and sentenced to five years imprisonment.

S vs Brits: The accused was found guilty on seven counts of fraud and one of section 4 of the Prevention of Organised Crime Act (POCA) and was sentenced to 15 years imprisonment suspended for 5 years and an amount of R100 000 was paid into the Criminal Asset Recovery Account (CARA).

Project Yogurt: 1.5 tons of contraband tea worth R1.5 million and 833 cartons of counterfeit cigarettes worth R166 600 was confiscated.

Project Zone 14: One suspect was arrested for dealing in drugs. The team confiscated 22.824 kg of compressed cannabis with an estimated value of R 2,718,794.

S vs Abader: The accused was convicted of murder and sentenced to 18 years imprisonment.

S vs Goodwin: One accused was convicted of 36 counts involving fraud, corruption and money laundering and sentenced to a total of 50 years imprisonment. The accused and others misappropriated approximately R200 million TETA investment funds, corrupt payments of approximately R4.6 million, and the money laundering of approximately R 90 million through his entities. The sentences are structured as follows: One count of fraud, 20 years imprisonment of which 10 years is suspended on certain conditions. Two counts of corruption, 15 years imprisonment of which five years is suspended. Thirty three counts of money laundering, 15 years imprisonment of which seven years is suspended. All the sentences will run concurrently.



S vs Manyoni: The accused was convicted for 46 counts of fraud and sentenced to 10 years imprisonment.

S vs Fick: the accused was convicted of 124 counts of fraud and one count of money laundering and sentenced to five years imprisonment. The amount of R2, 4 million in compensation was paid to the victim.

S vs Heckroodt and 4 Others: Four accused were convicted of 931 counts of fraud and eight statutory charges in respect of the Banks Act with an amount involved of R54 million. Accused 1-3 received sentences of 15 years imprisonment of which portions were conditionally suspended. The fourth accused was sentenced to 10 years imprisonment of which six years were conditionally suspended.

Training Division

A number of training interventions took place dealing with the areas of focus of the DSO.

Stakeholder Engagement

Members of the DSO liaised with various state departments such as SAPS, South African Revenue Service (SARS), Financial Intelligence Centre (FIC), National Intelligence Agency (NIA), Department of Health and South African Secret Service (SASS). They also liaised with the UN, Interpol (South Africa, United Kingdom and France), Serious Organised Crime Agency (UK) and international justice departments. The DSO was represented at an international workshop on illicit trade in Cape Town together with 123 delegates (police, custom officials and prosecutors) from international law enforcement agencies from Sub-Sahara countries, the Middle East, UK, United States of America, Turkey, Interpol, Japan and private partners.

The DSO also continues to interact with international law enforcement agencies from Hong Kong, UK, Namibia, USA and Australia within the parameters of the legal framework.

Challenges Experienced

The DSO continues to lose staff. In this quarter 19 people resigned. The current vacancy rate in the unit is 51.8 % and it is a challenge to get all the work done.

Currently the biggest challenge for the DSO is to manage the relocation of staff to SAPS effectively.

Forecast for the Next Quarter

The NPA, DSO and NPA Task Team will focus on ensuring that the transition to the new unit in SAPS is smooth and without prejudice to the successful investigation and prosecution of cases. The management will continue to motivate the staff to provide a world-class service to the DSO clients despite the reduced personnel. The DSO will focus on speeding up the finalisation of outstanding investigations and prosecutions.





SUB-PROGRAMME 4:
ASSET FORFEITURE

Sub-programme 4: Asset Forfeiture

Introduction

The Asset Forfeiture Unit (AFU) ensures that the powers in the Prevention of Organised Crime Act of 1988 to seize criminal assets are used effectively to remove the profits of crime. The unit focuses on restraining and forfeiting the proceeds of crime or the property used to commit crime. Chapter 5 of POCA provides for the forfeiture of assets from a person convicted of an offence. Chapter 6 provides for a civil process that is not dependent on criminal prosecution for forfeiting assets that are the proceeds of crime, or have been involved in the commission of crime. Forfeited money is paid into the Criminal Assets Recovery Account (CARA), unless there is an identified victim of the crime, in which case the victim is compensated first. Applications in terms of POCA are civil in nature and are mostly conducted in the High Court. The AFU therefore occupies a unique position in the NPA as essentially a specialist civil litigation unit.

Purpose

The sub-programme: Asset Forfeiture seizes criminal assets that are the proceeds of crime or have been involved in the commission of an offence either through a criminal or civil process.

Measurable Objectives

Contribute to removing the profit of crime through increasing the value and number of orders and the success thereof.

Service Delivery Achievements

A number of the key performance indicators for the AFU are reflected in Table 8, which tracks performance over a five-year period.

Table 8: Service Delivery Performance Indicators-2004/05-2008/09

Asset Forfeiture Unit							
Indicator	2004/05	2005/06	2006/07	2007/08	2008/09	Change over prev yr	Change over period
New restraint orders (no.)	161	252	252	223	275	+23.3%	+70.8%
Value of new restraints (R'000)	R 234,406	R 344,129	R 1,294,569	R 395,229	R 320,254	-19.0%	+36.6%
Completed forfeiture cases (no.)	151	221	242	223	277	+24.2%	+83.4%
Value of assets forfeited (R'000)	R 172,855	R 106,748	R 100,600	R 127,322	R 271,588	+113.3%	+57.1%
Money paid to CARA	R 24,500	R 18,823	R 19,291	R 45,564	R 65,933	+44.7%	+169.1%
Success rate (overall)	87%	88%	88%	88%	86.5%	-1.5%	-0.5%
Success rate in judgments	65.2%	72.4%	81.8%	80.0%	63.2%	-16.8%	-2.0%



Highlights of Achievements

In the past year the AFU made a significant impact in the fight against crime. The AFU had a good year in terms of the value of its cases and exceeded most of its targets. It had the best year ever for the number and value of deposits into CARA at R66m, the highest ever number of seizures and total orders, the highest ever numbers for forfeitures applied for and forfeitures completed.

Below is the AFU's performance over the past financial year:

- 275 seizures (restraint and preservation orders) against a target of 255 (7.8% above target and 23.3% above previous year)
- 277 completed cases (confiscation and forfeiture orders) against a target of 250 (10.8% above target and 24.2% above previous year)
- 459 other orders against a target of 400 (15% above target and 20% above previous year)
- Seized and froze assets to the value of R320.3m against a target of R330m (3% below target and 19% below previous year)
- Completed cases (confiscation and forfeiture) to the value of R271.6m against a target of R120m (126% of target and 113.3% above previous year)
- 34 judgments against a target of 30 (13% above target)
- Deposited R65.9m into CARA against a target of R25m (164% above target and 44.7% above previous year)
- Returned about R29m to the victims of crime against a target of R20m (45% above target)

The AFU undertook a number of community interest cases. In the Eastern Cape a restraint order was granted for R28m against seven officials from the Mt. Ayliff Municipality in a corruption/tender fraud case. A beach front property was confiscated in Port Elizabeth where absentee owners allowed letting agents to rent out to tenants engaged in criminal activity including drug dealing, prostitution, cigarette and car syndicates.

A joint SAPS, City Council and AFU project targeting council owned houses used as drug outlets or shebeens was established in Cape Town. The purpose of the project is to identify council property used for drug dealing and the unlawful sale of liquor. Tenants are evicted and the AFU brings applications to forfeit assets in the properties and the proceeds generated from the activities at these premises. The council properties are then re-allocated.

The AFU is making a significant contribution to South Africa's anti-piracy efforts with a number of successful CD/DVD piracy related forfeitures. In the Eastern Cape a counterfeiter was convicted and a fine of R100 000 was imposed and R24 395 forfeited to CARA. Forfeiture is under way of a property in Pretoria used to produce illegal CD/DVDs. A property in Johannesburg used to manufacture and copy DVDs and CDs in a large counterfeiting operation was forfeited.



Development of Jurisprudence

The AFU had 34 contested cases with a success rate of 63.2% in the financial year under consideration. A number of noteworthy cases are the following:

The Constitutional Court dealt with the **Schabir Shaik** matter and dealt specifically with the interpretation of the word “benefit” in s18 of POCA. The Court found in favour of the NPA that the word “benefit” should not be limited to net proceeds of crime. The Court found that a Court of Appeal should only interfere with a confiscation order granted if the Court is satisfied that the Court which determined the amount acted un-judicially or misdirected itself or where the Appeal Court is of the view that the amount considered is disturbingly inappropriate.

“Affected gifts” were considered for the first time by the Supreme Court of Appeal (SCA) in the matter of **NDPP vs Procopos**. The daughter of the Respondent used her mother’s bank account to receive payments from investors. The court was concerned with the question whether the Respondent indeed received an affected gift from the Defendant, her daughter, when she took possession of the money in her bank account. The case of the Respondent was that she was a mere conduit, and therefore did not receive an affected gift. The SCA found that the standard of proof of a balance of probability applies when dealing with affected gifts. The court indicated that before the deeming provision in s16 of POCA can take effect, (1) there has to be a transfer of property by the Defendant to another person. (2) This supply by another person of some consideration to the Defendant and (3) proof that such counter-consideration was worth significantly less than the property in respect of which it was transferred. The Court found that the NDPP’s reliance on the fact that the Appellant paid the bank charges and the Appellant allowed her credit worthiness to be used did not trigger the operation of s16. In this case the matter was referred back to the High Court for oral evidence to be heard.

In the **Braun matter** a BMW X5 was used as a venue in which sexual offences with young girls were committed and as a means to transport the girls to and from other venues where such offences were committed. In 2005, Braun fled South Africa and left his BMW X5 at Windhoek airport. The NDPP obtained a preservation order in respect of the BMW X5. This order was set aside on reconsideration whereupon the NDPP brought a second application for a preservation order. In the meantime the DPP requested the Namibian authorities to repatriate the vehicle to South Africa for purposes of evidence. Braun was not notified of this request, despite having requested notice, as the DPP was of the opinion that he had no entitlement to notice. The Court was faced with the question whether the failure to notify the Namibian authorities of the application for reconsideration and of Braun’s request to be informed of an application to repatriate the vehicle to South Africa fell short of the constitutional standard and if so, whether the NDPP should not be non-suited. The Court found that the NDPP must always act with the utmost good faith which means that all material facts must be disclosed. The Court found that not all the relevant facts were disclosed in this matter and that the action of the NDPP did not comply with the constitutional requirements for fair administrative action and a fair public hearing. The Court however found that despite this, a decision not to entertain the application for a new preservation would be too severe a sanction since Braun committed very serious offences and the NDPP’s conduct had not caused him irreparable harm or prejudice. The Court thus found that an appropriate sanction would be to deprive the NDPP of a cost order.

In a further Braun application the NDPP obtained a preservation order in respect of immovable property belonging to Braun on the basis that Braun used it to commit unlawful sexual acts with children younger than 16 during a two year period. The Court found that the fact that an offence was committed on the property does not necessarily mean that the property is concerned in the commission of an offence. Evidence of a close connection is required. The Court found that on the facts, the property had little or no connection with Braun’s offences. Many, if not the majority of the crimes took place elsewhere – many in public places.



In the matter of the **NDPP vs Walsh**, there was an application for a restraint order. The order was provisionally granted, coupled with a rule nisi which was extended on several occasions. On the final extended return day the NDPP discovered that the court file was missing. The matter was not called in open court and no further date was set for the extension or discharge of the rule nisi. In view of the above, the NDPP applied for a revival of the rule nisi. The Court found that the rule nisi is not in itself an interdict, but simply an order directed to particular persons, calling upon them to appear in court on a certain fixed date, showing why the rule should not be made final. The Court found that POCA intended the provisional restraint order to operate like an interim interdict constrained temporally by the time frame of the rule nisi and thus rejected the notion that the rule nisi endured beyond the extended return date and accepted that it lapsed and was discharged by default of the NDPP's appearance. The court however found that it is possible to reverse the effect of the lapsing of such an order by reviving the rule. The court was satisfied that the NDPP had a strong case for revival of the rule nisi and revived the rule.

In the matter of the **NDPP vs Motaung** the NDPP obtained a restraint order, but the Defendant was discharged in the criminal trial. As a result of this the NDPP applied for and obtained a rescission of the restraint order in terms of the provisions of POCA. The only issue was the cost of the restraint proceedings and of the rescission application. The Court found that different considerations apply when a Court must exercise its discretion in respect of costs involving statutory and quasi judicial bodies and public offices than would normally be the case when civil matters are considered. The Court ultimately concluded that an appropriate cost order in respect of the restraint proceedings would be to make no cost order at all. In respect of the rescission application, each party was ordered to pay their own costs.

In the matter of the **NDPP vs Van der Burg** the matter dealt with an unlicensed shebeen run from a residence by the Respondent for several years. The issue arose whether the preservation order was fatally flawed if it was not personally served on the Respondent within the 90 day period prescribed by section 40. The court found that evidence that the forfeiture application was filed within 90 days of the preservation order being published in the Government Gazette, is sufficient to hold that the forfeiture application is in order. It was further held that evidence of the undeterred sale of liquor without a license for years, together with storage of liquor throughout the premises, and adaptations to the premises, are enough to find the property an instrumentality of an offence. Undeterred sale of liquor from premises together with a lack of other satisfactory methods to counter the commission of offences make forfeiture proportionate.

In the **De Vries matter** the question was considered whether under POCA there is any basis for the NDPP to seize any additional property as a result of the previous transfers of property by the first and second Defendant. In order to confiscate property held by a third party the Applicant must establish that such a person received property from a defendant without being a bona fide purchaser of such property. The Applicant may be able to confiscate the immovable property from a wife or ex wife of a defendant if the Applicant has proof that she could not have paid for the property because of her lack of income to do so or that adequate compensation was not given by the wife for the transfer. The Applicant may also be able to confiscate other property she holds to satisfy such an order.



Stakeholder Engagement

The AFU has strong regional and international relationships. The AFU has attended to requests for assistance from Germany, the United Kingdom, the Botswana Director of Public Prosecutions (DPP) and Swaziland, Namibian prosecutors and High Court Judges

South Africa participated in a mutual evaluation process initiated by the Financial Action Task Force on money laundering (FATF). Concerns were expressed about terror financing and the effectiveness of the implementation of South Africa's anti-money laundering laws. The South African asset forfeiture regime's compliance with the FATF Recommendations was confirmed.

South Africa was represented by the AFU at its first country review conducted in terms of the 1997 Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in Paris. The AFU participated in a discussion by a panel of experts on international asset forfeiture law and practise organised by the Basel Institute's International Centre for Asset Recovery (ICAR) in Lausanne, Switzerland. ICAR assists developing countries in building capacity to use international mutual legal assistance in criminal matters to recover stolen assets sequestered abroad.

The Asset Recovery Inter-Agency Network of Southern African (ARINSA) was launched under the auspices of United Nations Office on Drugs and Crime (UNODC) to create an informal gateway to share best practice, coordinate the work of law enforcement and judicial authorities in the field of asset seizure. It is modelled on the Camden Asset Recovery Inter-Agency Network (CARIN). The ARINSA secretariat will be based at the AFU for the first three years.

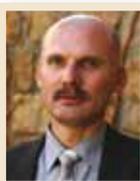
The AFU has undertaken training of NPA prosecutors, particularly the aspirant prosecutors, magistrates as well as members of the SAPS, to build awareness.

Challenges

The uncertainty of the future of the DSO resulted in a reduction of referrals to the AFU. Historically the DSO provided the source of the majority of high value cases for the AFU. Relying on other partner agencies has meant undertaking a higher number of lower value cases to meet the targets. The quality and value of SAPS Organised Crime referrals have not matched the previous referrals from the DSO. Organised crime cases are complex and time-consuming and it is often difficult to link kingpins to the crime. Resource and capacity constraints hampered the effectiveness of efforts to fight bigger criminals and syndicates.

The establishment and consolidation of the Directorate for Priority Crimes Investigation will address some of the questions around sourcing our future referrals. Strategies to address our partner relationships continue to be developed.

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