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The National Prosecuting Authority of South Africa
Igonyo Jikelele Labetsutshisi loMzantsi Afrika
Die Nasionale Vervolgingsageng van Suid-Afrika

Address to Portfolio Committee – 8 March 2006

The Chairperson, members of the committee, ladies & gentlemen, it gives me pleasure to address you on the work of the National Prosecuting Authority. As you are aware I have just completed one year as National Director of this organization and while I had oversight of the administration of the NPA in my previous position, this past year has afforded me the opportunity to get to grips with the nuts and bolts of the work of prosecutors. I would like to at the outset, commend all my staff for the effort, commitment and dedication they have demonstrated whilst working in conditions that are not always conducive to achieving maximum output.

While the past year has not been an easy one, I am proud of the achievements attained. We have recognized that we still have some way to go in terms of improving our services and working environment, which is why the transformation programme, Serurubele, was embarked upon. You will hear more about the progress made in this programme from our CEO later today. Our financial position has also been an area for some concern, however, we have done our best to manage the situation, though, it has impacted on service delivery to some extent. In terms of our current planning and the funds allocated to us, I am optimistic that we have a better year ahead of us.

We have planned our presentations in the following way:

I will give you an overview of some of our activities and challenges for the past year, thereafter, each Deputy National Director, heading the various units will provide you with a report on their units work, covering the previous financial year,

progress made to date in respect of targets for the current financial year and a brief insight into the priorities for the new financial year. I think it is appropriate at this stage to advise that Adv. Jan Henning, who was the head of the National Prosecuting Service unit, has retired from the organization on medical grounds. We acknowledge his commitment and dedication to the work of the NPA and more particularly his drive to achieve high standards in prosecutions. As this position has not been filled as yet, I have assumed the role of head of the NPS in the interim.

OVERVIEW OF WORK

The core work of the NPA is that of prosecutions. There can be no doubt about this and I have been very clear that in all our planning processes this takes priority. However, in analyzing our service provision, we have recognised certain shortfalls, which have a direct impact on the work we do. In order to address these gaps we have developed our strategic initiatives to ensure that we move forward in a constructive and co-ordinated manner which will enable us to effectively monitor and evaluate our progress. These plans will not just look good on paper, but will be captured in unit plans as well as individual performance contracts, thereby ensuring greater accountability and chances of success. As a result of the lack of funding to give effect to the results of job evaluations that were conducted, we faced the possibility of labour action at the beginning of this financial year, which we were fortunately able to avert, through much discussion and communication with the affected personnel.

During the 2005/6 financial year, the NPA set aside an amount of R 23 million from forced savings in order to implement the first phase of the upgrading of the salaries of 447 Regional Court Prosecutors and 65 Junior Advocates. These groups were targeted as part of the NPA's retention strategy as we were experiencing high staff turnover amongst these groups.

The NPA has obtained R 80 million from National Treasury for the 2006/07 financial year for the implementation of Job Evaluation results and will commence with the upgrading of salaries of Prosecutors and Advocates with effect from 1 April 2006. Approximately, 1 450 prosecutor and advocate posts and approximately 230 Special Investigator posts will be upgraded. In addition thereto, a number of Corporate Services' posts will be upgraded to ensure parity within the various NPA Business Units as well as within the Public Service. The cost will be R 110 million.

This process will now ensure career pathing for prosecutors and advocates.

As a result of the financial constraints we faced this year, the NPS had 219 vacancies at the end of December 2005. This obviously had a negative impact on service delivery.

During the coming financial year, however, the NPS intends filling its vacancies as well as the 173 newly created prosecutor posts, in addition to formalising the 68 Court Preparation Officer's posts. The finalization of the job evaluation process is certainly a victory for the organization.

I would like to spend some time to share with you some of our successes, which we are quite proud of.

The Directorate of Special Operations has, despite some negative publicity, performed well in the 12 months under review. This is borne out by the statistics and impact reflected in the Annual Report; and the performance depicted in the presentation they will be making shortly.

A significant 70% of the monies paid into the Criminal Asset Recovery Fund are generated through DSO investigations. Approximately R2.5 billion of contraband and drugs were confiscated during this period, an intervention, which in itself, punched a hole in organised crime. Our impact in fighting corruption is borne out by the research study on the Joint Anti-Corruption Task Team, conducted by the Public Service Accountability Monitor at Rhodes University.

5 years after its formal establishment, the DSO has become one of the pinnacles of law enforcement in South Africa. Its handling of financial crime investigations has been noteworthy, particularly in the collapses and corporate failures, evident in **Leisurenet, MACMED, GEMS, Regal Bank, SAAMBOU** and others. It is fair to say, we are competently dealing with complex matters now, that 5-years earlier, we would have been unable to.

The DSO's success in Identity Hijacking prosecutions, the continued focus on East-Asian Oriental Criminal Syndicates, precious metal investigations and the use of racketeering legislation, has added a different dimension to the Prosecuting Authority of South Africa.

Human trafficking has become a major focus area for the DSO in its efforts to counter organised smuggling of contraband. As a consequence the DSO has signed a Memorandum of Understanding with the International Organisation on Migration and has been collaborating with the Chief Prosecutor of the International Criminal Court and the United Nations office on Drugs and Crime.

At a marketing level the DSO has also achieved Superbrand status as one of the top 20 South African brands for 2005. Its continued interaction with international law enforcement agencies has contributed to cementing international relations.

For the future, the DSO will be looking primarily at ways of maximising integrated operations with other law enforcement institutions. As an example, the DSO and

the FIC have agreed jointly to explore more effective means of tracking profits of illegal activities and to interrupt the process of exchange. More emphasis will also be placed on Transnational organised crime, structured money-laundering through escrow accounts and utilisation of Section 23 and 24 of the new Corruption Act.

Our SOCA unit has also performed very well and I would like to high light here the training initiatives embarked upon by this unit. A total of 898 people, covering domestic violence, sexual offences, child justice and maintenance were trained during 2004-2005 financial year.

In addition the Thuthuzela Care Centres which are 24-hour one-stop service centres where victims have access to all services that include police, counseling, doctors, court preparation and a prosecutor have proved very successful. The main objectives for these centres are to eliminate secondary victimisation, reduce case cycle time, and to increase convictions. In addition to the five TCC's, (Manenberg, Nyandeni, Mdantsane, Soweto, and Galeshewe) Mamelodi , Mmabatho and Natalspruit were established during the 2004-05 financial year.

Our Witness Protection Unit has through its efficient performance enhanced confidence in R.S.A. Our Witness Protection Unit has become internationally acclaimed with many countries seeking our assistance to establish similar structures and processes. We are proud to say that no witness or related persons who complied with protection agreement and rules of programme were **threatened, harmed or assassinated** since December 2000. This gives us a clean record for more than five years.

Our Priority Crimes Litigations Unit has also performed well. In mid 2005, Cape Town businessman, Asher Karni, pleaded guilty in a US Federal Court to charges relating to exporting nuclear weapons technology to Pakistan. The US Attorney General commended the PCLU for its role in securing evidence which led to his conviction.

The Managing and Design Directors of Krisch Engineering (Pty) Ltd were indicted in the High Court, Pretoria in May 2005 on five charges relating to an attempt to supply Libya with a nuclear weapons capability. The Swiss and UK governments have formally requested the PCLU to assist with the investigation of their nationals who are implicated in the same activity.

In July 2005, Nedlloyd shipping company pleaded guilty to transporting armaments to the Saudi Arabian Defence Force with out the necessary conveyance permits from the National Conventional Arms Control Committee. This was the first ever prosecution under the new National Conventional Arms Control Act.

A series of convictions have been obtained arising from the *coup* to overthrow the government of Equatorial Guinea.

The remains of 23 Apartheid victims were exhumed and a special high level ceremony was arranged in respect of five of the victims' families. Special support is being provided to the families of the victims. A specialized DNA laboratory is being developed at the University of the Western Cape which will be able to provide a service to the continent. A special forensic anthropology team is being developed to provide a similar service.

On 17 January 2006 a member of the NPA briefed the Portfolio Committee on our proposals to amend the Prosecution Policy of the NPA, which will allow the NPA to decide whether or not to prosecute cases arising from conflicts of the past and which were committed before 11 May 1994.

The President had made it clear that there would be no general amnesty as this would fly in the face of the Truth and Reconciliation Commission process. The President's proposal was to leave the matter in the hands of the National

Directorate of Public Prosecutions to pursue any cases that, as is normal practice, it believed deserved prosecution and could be prosecuted. We emphasised that all our proposals were within current legislation and policy. In determining whether or not to prosecute, the previous NDPP had issued general criteria governing such a decision. In deciding whether some matters of the past were prosecutable, these guidelines were insufficient and required specific policy guidelines. The NPA recommended that policy be determined in terms of section 179(5) (a) of the Constitution.

These Policy Guidelines were noted by the Portfolio Committee and came into operation on 1 December 2005.

In late 2005, the President of Namibia requested the Missing Persons' Task Team for assistance in the exhumation of mass graves found in Namibia. An all-embracing proposal is being formulated to provide the necessary support to Namibia.

The SCCU has again exceeded all expectations in the area of service delivery. For the period 2004/5, the SCCU finalised 1772 cases with a 94.78% conviction rate. This has proved to us that by having a specialised unit such as the SCCU we have begun to successfully deal with those economic crimes that threaten to ruin our economy. The main area of activity has been the investigation and prosecution of complex commercial crime which has been accomplished by the close co-operation between the investigative team of SAPS and our prosecutors.

Our Asset Forfeiture unit has been growing from strength to strength in terms of its performance. During 2005, the AFU reached a major milestone as it has now frozen more than R1 billion of assets since it was formed nearly 7 years ago

It will also reach another milestone soon when R100 million is paid into the Criminal Asset Recovery Account (CARA). The distribution of the monies, from

the CARA account, needs to take place. Our Minister has been experiencing difficulties convening the committee due to the unavailability of committee members, however, we are given to understand that this meeting will take place shortly.

The AFU also obtained two important judgments in the Supreme Court of Appeal that will make it significantly easier to deal with drug houses and other fixed properties used as a base by criminals.

Our Corporate services unit has, despite its capacity and skills gap, managed & facilitated a strategy process from September 2005 to February 2006 that led to the adoption of a new 15-year strategy for NPA, Strategy 2020.

We were also able to finalise our EE Plan and submit same to the Department of Labour. We have also submitted 1st Workplace Skills Plan to the SASSETA

Of the areas of weakness identified, I mention more particularly the areas of customer management & operations management. In taking a closer look at our customer management we realized that our work extends beyond the court room. We realized that we needed to adopt a more robust approach to how we interact with victims, the community and the accused. While planning is taking place to deal with this in a more co-ordinated manner as we go into the new financial year, our prosecutors have taken various commendable initiatives to walk the talk. I would like to mention a few examples to demonstrate the new face of the NPA that is emerging.

In the North West Province, in the Rasuge matter, members of our prosecuting team saw fit to meet with members of the community, in their own time late into the night, so as to keep them informed of developments and explained why certain decisions had been made. This clearly demonstrated to us how important

this aspect is, as we were able to defuse a very volatile situation which improved public confidence in the Prosecuting Authority.

We have had cases in KZN where prosecutors have gone into communities to pick up witnesses who have no means of getting to court, just to ensure that cases that are ready to proceed are not further delayed. This is also aimed at clearing backlogs that have developed over the years. Witness management is a very important area in prosecutions, for without our witnesses we have no case. Our initiatives in the year ahead will also see us manage this area more effectively. Our witnesses who are at risk of harm are dealt with via our Witness Protection unit, which you will hear more about later today.

Another area that we are beginning to get more involved in, is community prosecutions. This involves prosecutors taking a problem-solving approach to effectively dealing with crime. As prosecutors we need to start assessing the value of our efforts, for example, what impact does our effort have on ordinary school environments, and the vitality of local business districts or on the safety and integrity of public housing projects on communities' feelings of safety? The prosecutor will work with the communities, businesses, schools etc. to reshape the community conditions specific to the local needs and to enhance the quality of life in their neighbourhood. The idea is to develop the mechanism for community participation in identifying problems and together with all stakeholders develop solutions.

The community courts or community justice centres will challenge prosecutors and other stakeholders to use tools beyond the Criminal Justice System, such as conflict mediation and other alternate dispute resolution mechanisms to prevent and reduce both serious and quality of life crime. What is thought to distinguish community prosecution from traditional prosecution is the emphasis on the social, environmental and other community conditions that allow both petty and serious crimes to flourish.

This drive to be more involved with the public and focus on public interest matters, has many objectives. By doing public education, we hope to achieve a greater public understanding of how the CJS works, to sensitise youth on the dangers of drug and alcohol abuse, to create awareness in dealing with and preventing any form of abuse and more particularly domestic violence, providing awareness of rights and procedures in maintenance matters etc. We have "adopt a school projects" which are also running in many provinces as we realize that this awareness needs to begin with our youth, if we are to strive for crime free communities in the years to come. I could go on for many hours dealing with all the projects and initiatives our prosecutors have embarked upon to make their contribution to creating "**Justice in our society so that people can live in Freedom and Security**", however time will not permit this. We have however, provided you with a copy of a document setting out all the initiatives and outreach projects our prosecutors have embarked upon. This is our contribution to creating **a better life for all**. I have no doubt that you will begin to see the new face of the NPA. I would also like to point out that many of these projects are dealt with in conjunction with our partners in the CJS as well as other stakeholders.

With regard to the area of operations management, I wish to point out that special skills are required to ensure that we manage our operations more effectively. In order to meet the demands of our work, it is important for managers to effectively utilize resources available to meet those needs. We are mindful of not just throwing more human resources at a problem, but rather to devise processes and systems that will enhance our performance and productivity. Over the years prosecutors have moved into more senior positions which require both their skills as prosecutors as well as operational managers. These positions were often sought as a means to earn better salaries rather than elevate to a different career. Unfortunately the training and development in this area was not adequately addressed which has impacted negatively on our work.

The career path created by the JE process as well as development programmes will now address this problem.

We have also experienced many problems with our support services, i.e. HR, IT and procurement. The lack of capacity and appropriate skills has impacted negatively on support to the core business. As this is an area of grave concern, special projects have been initiated to fast track improvements. We are also working with the Department of Justice & Constitutional Development to ensure support to prosecutors in court where possible, especially with regard to equipment etc. The EXCO of the NPA has in recent months met twice with the Minister, Deputy Minister and the EXCO of DOJ & CD to discuss closer working relations and identify areas where support and assistance could be provided. Further discussions and plans will be put in place to prevent duplication of functions and resources.

With regards to other challenges experienced in prosecutions, I would like to highlight our problems with appeals. As background it should be mentioned that following the Steyn decision (S v Steyn 2001 SACR 25 CC) declaring Sections 309B and 309C of the Criminal Procedure Act unconstitutional and invalid we saw a substantial increase in the number of appeals to the High Court. The new legislation, requiring leave to appeal, only came into operation on 1 January 2004.

It is common knowledge that the effect of an appeal is not felt immediately as the paper work, typing of records etc must first be done before the appeals are placed on the rolls.

During March 2004 the NPS requested the previous NDPP for permission to outsource appeal matters to private counsel. This request was made after consultation with the DPP's and the concerns raised by a number of them that they were struggling to work down the backlogs.

An amount of R 4 758 000-00 was set aside to deal with the backlogs. An arrangement was made with the Department of Justice & Constitutional Development that private counsel be briefed by the State Attorney and paid a flat rate of R 1000-00 per appeal. An amount of approximately R 3 999-553 has up until December 2005 been spent and approximately 3 800 appeals have been finalised.

Funds were utilised by the DPP offices in Grahamstown, Cape Town, Johannesburg and Pretoria. The Grahamstown office had by June 2005 managed to work down the backlog of approximately 700 appeals. One of the important reasons why they managed to deal with the backlog was through special arrangements made with the JP. This was an important step and entailed organizing, in conjunction with the Judge President, two special weeks of appeals. This exercise involved all the Judges of the Division, the Justice Centres in Grahamstown and Port Elizabeth and the members of the Grahamstown and Port Elizabeth Bars. The Judges undertook to sit five days of the week in 5 courts hearing 6 appeals in each court. (30 appeals per day). This co-operation proved extremely successful.

One of the main problems in the Gauteng Division, affecting the DPP Witwatersrand and Pretoria is the lack of appeal courts made available. The other factor is the critical shortage of staff.

The DPP offices which are still struggling with backlogs are as follows:

Pietermaritzburg:	1 782
Cape Town:	600
Pretoria:	1 300
Johannesburg:	1 134

We have requested an amount of R 8 000 000-00 to be allocated to deal with the backlog in the coming financial year. Further a committee will be established to decide on the amount payable to the private counsel as the R1000 flat fee is no longer competitive in view of the fact that even the Legal Aid Board has increased the fees payable. Complexity of the appeals will also be a factor for consideration.

A meeting is due to be held soon with advocates dealing with the appeal rolls in the DPP offices to share and look at best practices so as to enable us to deal once and for all with the legacy of the said decision. We intend inviting a representative of the Legal Aid Board as we experience unnecessary recycling of appeals emanating from this office. It appears that the new legislation requiring leave to appeal is effective and that the influx, without the baggage of the backlogs, can be dealt with by the DPP offices.

With regard to issues concerning the Judiciary and Magistracy, I would like to mention that it would be good if there was a **single champion** for both the Judiciary and the Magistracy. It has been my experience from my previous position, that the work and rights of Magistrates are not always given the status and focus they require. Having a single champion / leader for both the Judiciary and Magistracy can only be an advantage to the CJS. In any event, this would support the move towards a single Judiciary.

Moving on from this aspect, another risk that we identified that needed to be proactively dealt with was our partnership management with the relevant stakeholders in the CJS. In this regard mechanisms have been put in place to ensure the representation and active participation of appropriate members of the NPA. Meetings have been held with the heads of the Provincial Departments of Safety and Community Liaison to ensure closer working relations with those Departments and our DPPs. This has resulted in committees being established that are now taking important initiatives forward.

Our participation in the Provincial Joints, National Joints, JCPS, NICOC and other important committee meetings are in place with reporting and feedback processes also having been established.

In April 2005, during the State Presidents visit to Chile, I signed and MOU with the Chilean Prosecuting Authority. This marked an important event for the NPA as the Chileans have already adopted our Thuthuzela Care Centre model and have indicated their intention to visit South Africa to learn from our innovations, while at the same time offering their assistance to us.

This event however, alerted me to the fact that while we were entering into agreements with countries, outside our region, we had not made any inroads within the SADC member countries. I immediately planned and scheduled meetings with all my counterparts in the SADC countries.

A draft MOU was prepared and this constituted the main item on the agenda of all the meetings held. In addition, the meetings also served to strengthen co-operation with these countries in order to deal more effectively with trans-national crime and contribute to the development of more effective criminal justice systems as well as upholding the rule of law.

In terms of this drive, we held meetings with the Attorney-Generals, Directors of Public Prosecutions and their senior management, as well as Ministers of Justice, Chief Justices, Law Societies and Bar Councils in some of the countries. The countries we interacted with are as follows:

- **Zimbabwe**
- **Lesotho**
- **Mozambique**
- **Malawi**

- **Namibia**
- **Botswana**
- **Swaziland**
- **Angola**
- **Seychelles**
- **Zambia**
- **Tanzania**
- **Mauritius**
- **DRC**

A meeting with Madagascar is due to take place before the end of this financial year. We were very warmly received by our counterparts who expressed their appreciation for the initiative taken to hold such meetings and for laying the foundation for greater co-operation.

In addition to the above initiatives, we have hosted meetings in South Africa with the following countries/bodies in order to assist with providing information, guidance and advice on legislation, systems and structures, more particularly in dealing with corruption and economic crimes:

- **Nigeria**
- **Malawi**
- **Mauritius**
- **Zimbabwe**
- **Burundi**
- **Sudan**
- **Iceland**
- **United States**
- **International Criminal Court**

Over the past year we have entered into MOUs on behalf of the NPA with the following organizations / departments:

South African Federation against Copyright Theft (SAFACT)

Road Accident Fund (RAF)

Department of Health

International Organisation for Migration (IOM)

We are currently finalising negotiations on the MOUs with the Departments of Correctional Services, Social Development and Home Affairs. These MOUs relate to co-operation with the NPA. In some instances funding is provided for the NPA to pursue forensic investigations and engage the services of expert skills and capacity which are not available within the NPA. The key issue here is fostering partnerships that ensure effective crime fighting and successful prosecutions.

With regard to our other international co-operation activities, we are currently dealing with 5 extraditions applications which we have made to other countries and with 4 applications which we are processing on behalf of foreign States. With regard to Mutual Legal Assistance matters we have for 2005 made 11 requests and are processing 47 requests from other countries.

With regard to the media, the nature of the work of the NPA always attracts a great deal of media attention, both locally and internationally. This aspect of our work is extremely time-consuming especially as it is not initiated by the NPA but by the media itself. We have sought to deal with these matters in the most appropriate manner deemed fit, regard having been had to the issues of confidentiality, legislation and the impact on the prosecution of our cases. Our media strategy has been clearly articulated and conveyed to all in the organization. In instances, where public confidence is threatened or issues being seriously misrepresented in the media or where there is a need to keep the

public informed of key developments, I have called media briefings to inform the public personally.

The work undertaken and dealt with by all the core units of the NPA, viz. NPS, DSO, AFU, SCCU, WPU, PCLU & SOCA has had a significant impact on our successes as an organization and while some of the work has attracted negative and often unfair criticism, our staff have nevertheless persevered in their work with the vigor and enthusiasm required. I would also, at this stage, like to point out that the Khampepe Commission has caused some anxiety amongst the affected staff and it is hoped that the outcome would be communicated soon, so as to enable staff in that unit and the organization as a whole have certainty on the way forward.

Finally, I would like to say that my year as National Director has been a challenging, enlightening and fulfilling one. I look forward to the years ahead with great enthusiasm and pride.

Thank you