



The National Prosecuting Authority of South Africa  
Igunya Jikelele Labeshutshisi Bo Mzantsi Afrika  
Die Nasionale Vervolgingsgesag van Suid-Afrika

# **PRIORITY CRIMES LITIGATION UNIT**

## **REPORT**

**PERIOD 2006 -2007**

**AR ACKERMANN SC  
HEAD: PCLU**



## THE ROLE OF THE PCLU

### PROSECUTIONS

- The PCLU is not an investigative unit and relies for its investigations on SAPS and the DSO. The PCLU however provides legal support to such investigations to ensure that prosecutions are not prejudiced by defective investigations, for example, the PCLU gives guidance to investigators in the drafting of legal processes such as applications for search warrants.
- The PCLU is responsible for the institution of all prosecutions arising from cases falling within its mandate.
- The complexity of cases dealt with by the PCLU are such that successful prosecutions would not result without the adoption of a multi-disciplinary approach. The PCLU therefore actively engages with State departments, controlling bodies and agencies who may enhance the investigations and prosecutions dealt with by the unit. As a result, the PCLU has working agreements in place with numerous stakeholders.
- The international nature of the cases dealt with by the PCLU is such that the PCLU is required to develop expertise in the field of mutual legal assistance and extradition. The PCLU closely engages with other components of the NPA and the Justice Ministry in these fields. The expertise of the PCLU has been recognized to the extent that assistance in these fields in matters not falling within the PCLU's mandate is often requested.
- In order to contribute to a reduction of crime, the PCLU engages in proposing legislative amendments where applicable and provides training and seminars to agencies responsible for the enforcement of laws falling within the PCLU mandate.
- In order to strengthen the capacity of other components of the NPA, the PCLU, upon request, conducts legal research relevant to prosecutions and furnishes legal opinions.
- PCLU prosecutors, upon arrangement, also conduct prosecutions and other legal processes on behalf of the DPP's.

### MISSING PERSONS

- The Missing Persons' Task Team was established to investigate the cases of missing persons who disappeared in political circumstances during the period 1960 to 1994 with the aim of exhuming and returning the remains of the persons to their families. This arises from the President's response to the final report of the Truth and Reconciliation Commission (TRC).
- The task team actively engages with other State departments (e.g. SAPS, Health, Home Affairs, Arts & Culture), Provincial and Local Government and non-Governmental organizations as well as the families themselves.

- The task team is aligned to the Ministry's TRC unit and provides inputs into the formulation of relevant policies.
- The task team has adopted a number of initiatives in the development of forensic and DNA skills.
- The task team actively contributes to Government's restoration of dignity programmes.

## STRATEGIC DIRECTION OF THE PRIORITY CRIMES LITIGATION UNIT

The PCLU is committed to ensuring that all investigations and prosecutions conducted by it are successful and that thereby, a reduction in crime is achieved. This direction requires focus on enhancing:

- investigative capacity;
- prosecution efficiency;
- engagement with relevant role players and stakeholders;
- legislative developments;
- research and training; and
- transferring of skills within the NPA.

The Missing Persons' Task Team is a short-term project dedicated to finalizing the investigation of the reported missing persons. Upon finalization of this project, the team will disband. No long-term strategic goals have been formulated.

## THE UNIT'S STRATEGIC PLAN AND DELIVERABLES

### FOCUS AREAS OF UNIT'S STRATEGIC PLAN.

- Effective investigations and prosecutions;
- Effective relationships with stakeholders;
- Training and development;
- Effective management of resources;
- Outcomes.

## SUMMARY OF PERFORMANCE / MAJOR ACHIEVEMENTS

- Prosecutions
  - (i) Nuclear non-proliferation
  - The State v Geiges, Wisser & Krisch Engineering



The accused face 10 charges related to activities aimed at supplying nuclear weapons technology to Libya and Pakistan. The final indictment has been served on the accused and the matter postponed for trial in the Pretoria High Court from 31 July 2007 to conclusion. The case is regarded as the most serious of its kind in the world. Cooperation with the International Atomic Energy Agency (IAEA) and other foreign bodies is taking place.

- Thefts at a nuclear facility were investigated, but there is insufficient evidence to justify a prosecution.
- Three further sensitive matters are under investigation.

(ii) Chemical / Biological non-proliferation

- As a result of the unit obtaining the first ever conviction under this legislation (*S v African Amines*), the unit was nominated by the Non-Proliferation Council to form part of a South African delegation to attend the International Non-Proliferation Conference in The Hague in December 2006.
- A decision was taken not to prosecute in two matters relating to the export of dual use goods to neighbouring states.

(iii) Mercenary activities

- **S v Archer & 6 Others**  
The 7 persons were tried in the Pretoria Regional Court on a charge of attempting to overthrow the Government of Equatorial Guinea. The 7 accused were acquitted on the basis that they were unaware that their conduct was unlawful. The Court criticized the State for not taking action against the perpetrators before they left for Zimbabwe and Equatorial Guinea. Despite the acquittal, cooperation is taking place with foreign countries regarding the role of foreign nationals.

(iv) International terrorism

- The Department of Foreign Affairs nominated the unit to represent the South African Government at an International Counter-Terrorism Conference held in Namibia under the auspices of the United Nations.

(v) Conventional arms

- The unit executed a request for mutual legal assistance received from the Czech Republic relating to the prosecution of a Czech company which had traded in conventional arms in contravention of Czech law.

- A case involving the export of a military vehicle to a conflict region in Africa is currently under investigation.

(vi) Statute of Rome

- The lawyer acting for Khalid Rashid laid a charge under the Statute of Rome, relating to his client's deportation to Pakistan. The unit was requested to deal with the matter by the DPP: KZN. The Full Bench of the Pretoria High Court has recently ruled that the deportation was legal in terms of the country's Illegal Immigrant laws and a decision on the matter will be made shortly.
- The unit provided the National Director with an opinion regarding the possibility of the country taking over certain of the war crimes currently being dealt with by the International Criminal Tribunal for Rwanda.
- The unit is assisting with the execution of a request for mutual legal assistance from the Belgian Government relating to its investigation into the murder of Belgian peace keepers in one of Africa's conflict regions.

(vii) Civil litigation

- **Singh v The Minister & NDPP**  
The applicant sought a mandamus compelling the NDPP to provide him with a Certificate *nolle prosequi* so as to enable him to institute a private prosecution against the former NDPP and other key NPA officials. The unit did the legal research which resulted in the application being dismissed with costs. The judgment is a landmark decision regarding private prosecutions. Had the Court found in favour of the applicant, this would have opened the door to any disgruntled accused being able to prosecute members of the NPA and would have had a highly disruptive impact on the functioning of the NPA. Further litigation involving the same applicant is being defended.

(viii) Other matters

Assistance was provided to a foreign law enforcement agency wishing to investigate cases of human trafficking involving the recruitment of South African citizens to work under slave labour conditions in the foreign State.

(ix) Legal research and opinions

Research and/or opinions were provided to both offices of the Directors of Public Prosecution and the DSO. Topics dealt with related to sexual offences, the development of the common law, the State's right of appeal,

relating to international terrorism.

(x) TRC prosecutions

o S v Van Zyl & Another

The two accused are appearing in the Port Elizabeth High Court, charged with the murder and kidnapping of the Pebco 3. The accused's review of the decision by the TRC's Amnesty Committee must however be finalized before the trial can commence.

o 16 other matters 16 other matters have been identified by the unit as warranting investigation with a view to instituting prosecutions. Representations continue to be received requesting that other matters be looked into.

o The Minister of Safety & Security The Minister of Safety & Security directed that the Samora Machel air crash should also be further investigated.

o As a consequence of the adoption of the guidelines, a multi-departmental task team was set up to advise the NDPP on making decisions. This task team first requested that all previous decisions be reviewed before considering new matters. 20 cases have been considered by the task team and closed.

o Missing Persons

(i) Exhumations conducted

The pace of exhumations was decreased mid way through 2006 due to the directive from the Minister of Justice & Constitutional Development to suspend exhumations while developing an exhumation policy framework with all relevant stakeholders.

o Ten exhumations Ten exhumations were carried out from March 2006 to March 2007.

o Seven cemeteries Seven cemeteries were surveyed.

o Forty eight burial sites Forty eight burial sites were forensically examined

o The Post Chalmers site The Post Chalmers site where five individuals were allegedly a phased forensic examination plan was developed.



(ii) Identifications

Fourteen identifications were positively concluded between March 2006 and March 2007

- o DNA identifications were concluded in 11 of the 14 cases
- o Identifications based on anthropological and investigative data were concluded in the other 3 cases

(iii) Reburials

- o Nine reburials were conducted
- o Fourteen reburials are imminent

(iv) Investigations and Planned Exhumations

Although exhumations were suspended during the development of exhumations policy, investigations to trace burials sites continued. As a result, exhumations of the following 22 individuals are ready to take place as follows as soon as the exhumation policy is finalised:

- Mafikeng (2)
- Nelspruit (3)
- Piet Retief (1)
- Vryburg (1)
- Port Elizabeth (1)
- Makhado (6)
- Thohoyandou (5)
- Soweto (1)
- Zeerust (2)

In addition, archaeological excavations will take place at two identified sites in the Eastern Cape and Mpumalanga provinces to trace any remains of individuals who were burnt on wood pyres.

(v) STAFFING

- o One additional investigator was appointed on a contract basis.
- o Short term contracts (forensic skills and investigations) on specific cases are also undertaken.

Administration support is urgently required.