

SIU REFERRALS TO NPA OF NATIONAL LOTTERIES COMMISSION CASES

PRESENTATION TO PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY



National Prosecuting Authority
South Africa

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INTRODUCTION

- Responding to serious corruption is a priority for NPA
- Adopted several initiatives to ensure systematic and strategic response to serious corruption matters
 - Rebuilding of NPA to deal with state capture effects
 - Enhancing the capacity of the SCCU
 - Revitalising AFU for proactive and enhanced impact
- NPA is making progress in the prosecution of high-profile government and private sector actors
- Yet, the successful prosecution of serious corruption cases is complex, considering the onerous standard of proof.

FINALISED CORRUPTION CASES YTD (WITH CONVICTION)

303

Corruption
Convictions



124

Government
Officials



84

Companies



179

Private
Individuals



INTRODUCTION (CONT.)

Following **Case Prioritisation** approach

- Prosecuting cases that will deliver the most impact
- Follow a harm reduction approach that focuses on cases that have been most damaging to our constitutional democracy, which includes NLC matters.
- Three key requirements to enhance effectiveness:
 - IDAC to be established
 - Adoption of Prosecution-Led Investigation (PLI) model enabled by enactment of NPA Amendment Bill currently before Parliament
 - Increased engagements and innovative practices to recover assets - accountability involves not only prosecution but also seizure of ill-gotten gains. Use of non-conviction based forfeiture, international asset recovery and corporate ADR.

NPA Mandate

The National Prosecuting Authority (NPA) was established in terms of section 179 of the Constitution and bears the 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 recovers stolen funds; and
- protects certain witnesses in the process.

SIU Legal and Referral Framework

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

For its part, the **SIU Act** allows members of the SIU to conduct searches, seizures and production of documents by parties (civil evidence)

The Investigation of SIU Matters

- The report of the Special Investigating Unit (SIU) referred to the NPA does not satisfy the criminal standards for prosecution
- NPA must thus refer the report of the SIU on NLC cases to the Directorate for Priority Crime Investigation (DPCI) or South African Police Service (SAPS) to conduct criminal investigations and ensure that the evidence collected meets the standard required to institute a criminal prosecution
- The work of the SIU is important since it contributes to the identification of potential criminal misconduct, but this initial identification requires criminal investigation.

The Investigation of SIU Matters (cont.)

- In order to strengthen the manner in which SIU referrals are managed, a Memorandum of Understanding (MoU) was entered into by the respective Heads of the NPA, SAPS, DPCI and SIU.
- There is thus a special focus on the referrals of the SIU in order to prioritise the investigations of these matters.
- The cases relevant to the National Lotteries Commission (NLC) are managed in terms of the MoU

**Progress on National
Lotteries matters by
Specialised
Commercial Crimes
Unit (SCCU)**

NPA WORK RELATED TO NLC MATTERS

- Twenty-six (26) dockets related to the National Lotteries have been registered and are being investigated as part of the project.
- Various section 205's subpoenas have been signed thus far.
- Authentication of SIU documents is also ongoing.
- The SIU has made 10 criminal referrals against NLC officials, non-profit organisations, and companies, which have been sent to the NPA.
- These individuals include senior employees/ former employees of the NLC.
- In addition to the SIU referrals, 16 NLC cases are investigated by the SAPS Detective Services.

THE 10 REFERRALS FROM SIU

POLICE STATION	CAS NO.	STATUS	Investigating Agency
SUNNYSIDE	48/09/2020	Under investigation	DPCI
SUNNYSIDE	281/12/2020	Under investigation	DPCI
SUNNYSIDE	282/12/2020	Under investigation	DPCI
SUNNYSIDE	283/12/2020	Under investigation	DPCI
SUNNYSIDE	277/12/2020	Under investigation	DPCI
VUWANI	61/12/2020	Under investigation	DPCI
MAKHADO	162/03/2020	Under investigation	DPCI

THE 10 REFERRALS FROM SIU (cont.)

- All NLC matters are currently investigated by SAPS as part of one NPA project.

POLICE STATION	CAS NO.	STATUS	Investigating Agency
SUNNYSIDE	191/06/2023	Under investigation	DPCI
SUNNYSIDE	318/06/2023	Under investigation	DPCI
SUNNYSIDE	480/07/2020	Under investigation	DPCI

NLC INVESTIGATIONS BY SAPS DETECTIVES

POLICE STATION	CAS NO.	STATUS	Investigating Agency
SUNNYSIDE	118/07/2022	Under investigation	SAPS
SUNNYSIDE	540/05/2023	Under investigation	SAPS
SUNNYSIDE	541/05/2023	Under investigation	SAPS
SUNNYSIDE	557/5/2023	Under investigation	SAPS
SUNNYSIDE	77/05/2023	Under investigation	SAPS
SUNNYSIDE	76/5/2023	Under investigation	SAPS
SUNNYSIDE	839/5/2023	Under investigation	SAPS

NLC INVESTIGATIONS BY SAPS DETECTIVES (cont.)

POLICE STATION	CAS NO.	STATUS	Investigating Agency
SUNNYSIDE	843/5/2023	Under investigation	SAPS
SUNNYSIDE	410/08/2023	Under investigation	SAPS
SUNNYSIDE	411/08/2023	Under investigation	SAPS
SUNNYSIDE	409/08/2023	Under investigation	SAPS
SUNNYSIDE	415/08/2023	Under investigation	SAPS
SUNNYSIDE	416/8/2023	Under investigation	SAPS
SUNNYSIDE	644/8/2023	Under investigation	SAPS

NLC INVESTIGATIONS BY SAPS DETECTIVES (cont.)

POLICE STATION	CAS NO.	STATUS	Investigating Agency
SUNNYSIDE	750/9/2022	Under investigation	SAPS
SUNNYSIDE	843/5/2023	Decision	SAPS

INVESTIGATIONS OF NLC MATTERS

- Most investigations outstanding relate to original grant agreements to be obtained.
 - Meeting between SAPS Management and Commissioner from Lottery arranged.
 - Statement by Commissioner will probably be required.
- One matter was declined to prosecute
 - Reason for *nolle prosequi* due to overlap with other cases already under investigation.

**Progress on
National Lotteries
matters by Asset
Forfeiture Unit
(AFU)**

Powers and Role of the AFU

- The AFU derives its authority from the Prevention of Organised Crime Act 121 of 1998 (POCA)
- Chapters 5 and 6 of POCA
- Chapter 5 of POCA provides for:
 - Conviction-based restraint and confiscation
 - Targets the benefit of crime
 - A Restraint can be done at any stage of the process and is done where there is a risk of dissipation of assets
 - Confiscation takes place after conviction but before sentence

Powers and Role of the AFU (cont.)

- Chapter 6 of POCA provides for:
 - Civil or non-conviction based preservation and forfeiture.
 - It is a two-stage process of preservation and forfeiture.
 - Targets the proceeds and instrumentalities of unlawful activities.
 - Can be brought at any stage, even if there is no criminal prosecution
 - Is speedy in nature
- POCA provides far-reaching powers and is a powerful tool in the disruption of crime by removing the benefit from unlawful activities.

AFU Performance

- In existence for 21 years.
- Vast experience in Asset Forfeiture.
- The ability to respond quickly to ensure the preservation of Assets.
- Good working relationship with all role Departments in the JCPS.
- National Footprint
- Strong, well-developed legislation and case law.
- Strong relationship with the Financial Intelligence Centre (FIC)
- Being a part of the NPA means that wider strategies, in addition to prosecution, can be adopted to combat crime

AFU Performance (cont.)

Performance at the end of December 2023

- The figures below represent the performance of the AFU since its inception in 1999
- 7475 confiscations and forfeitures to the value of R11bn
- 7762 freezing orders to the value of R30bn
- Recoveries to the value of R10,4bn
 - CARA payments to the value of R4bn
 - Victim payments to the value of R6,4bn

AFU Results to Date

Freezing Orders

- The AFU has obtained three preservations in the NLC cases.
- The facts of all three matters are similar and are summarised as follows:
 - The SIU investigated alleged serious maladministration at the NLC.
 - Widespread fraud, corruption and theft was uncovered by the SIU
 - This was amongst employees and certain Non-Profit Organisations (NPOs) who worked in concert when applying for grants
 - Grants were paid out to the NPOs.
 - The funds were not used for their purported purposes but rather to buy properties for the benefit of employees and members of the NPOs.
- Preliminary investigations revealed that almost R344m was lost.

AFU Results to Date (cont.)

Freezing Orders (First Order)

- The first order was obtained on 21 December 2022 in the amount of R56,3m
- The order was in respect of 1 movable property, 9 immovable properties and two franchises.
- It was established that the cash purchases of the abovementioned property were linked to the grants allocated by the NLC. A total of R22,4m in grants were used to pay for the fixed properties.
- The properties were registered in the names of trusts or entities of which employees, NPO members and families had a direct interest.
- One respondent, Terry Pheto, admitted that monies stolen from the NLC were used to buy the property. The property has been sold and the proceeds paid to the curator



House of Alfred Nemuthanda, Former CEO of the NLC

AFU Results to Date (cont.)

Freezing Orders (Second Order)

- The second preservation order was obtained on 28 September 2023 in the amount of R14,8m
- The order is in respect of 5 immovable properties.
- The cash purchases of R20m are linked to grants allocated to NPOs by the NLC.
- The immovable properties, mostly located in upmarket areas, were purchased between January 2016 to April 2019.
- Arthur Mafokate purchased a property to the value of R7,5m with NLC grant monies.
- The AFU has secured a favourable judgement in the reconsideration of Mafokate and can now enrol the matter for the forfeiture application.

AFU Results to Date (cont.)

Freezing Orders (Third Order)

- The third preservation order was obtained on 4 November 2023 in the amount of R23,2m
- The preservation order was granted against 4 immovable properties and 3 luxury vehicles. One vehicle, a Rolls Royce Phantom was sold on to an innocent party and has been excluded from the operation of the order.
- The evidence uncovered that the cash purchases of R10m are linked to grants allocated by the NLC to NPOs.
- The AFU has filed a Forfeiture application.

AFU Results to Date (cont.)

Freezing Orders

- Whilst the AFU would, in the ordinary course of events already have obtained a forfeiture order in the first matter, the matters are heavily contested.
- The respondents have already launched several interlocutory applications.
- An interlocutory application is an urgent request made to court to compel compliance with procedure and time periods to secure some end necessary and essential to the progress of a case. It is collateral to the issues to be adjudicated in the main application.
- Interlocutory applications are regularly used by defendants in complex matters to frustrate the main application and to try and pre-empt the process.
- AFU must spend considerable time responding to and addressing such applications effectively.

AFU Results to Date (cont.)

Interlocutory Applications

- In the **first preservation**, there have been four interlocutory applications from different respondents.
 - Three applications were brought for the exclusion of property from the operation of the preservation order.
 - One application in terms of Rule 30 of the Uniform Rules of Court was brought to have a supplementary affidavit struck from the record.
 - All were successfully opposed.
- In **the second preservation**, there have been two interlocutory applications:
 - One application was filed to compel the AFU to submit information irrelevant to the application. The application was opposed. The respondent must file a replying affidavit or enrol the matter.
 - An application for reconsideration of the preservation order was successfully opposed.

AFU Way Forward

- Interlocutory applications must be dealt with appropriately by the AFU which means that considerable time is spent on responding to and addressing such applications effectively.
- The AFU is considering bringing further preservation applications.
- It has been the experience of the AFU that such high value and high-profile matters take long to finalise.
- To this end the AFU is focusing on non-conviction based forfeiture proceedings in terms of Chapter 6 of POCA.
- Confiscations, in terms of Chapter 5 of POCA, may be considered in the future, depending on the outcomes of the criminal investigations and prosecutions.

CONCLUDING REMARKS

- NLC cases are receiving priority by the NPA
- We are part of the criminal justice system value chain, and we pursue a prosecution-guided model of investigation with SIU, DPCI and the SAPS.
- We continue to focus on asset recovery in these matters through the work of the NPA's AFU
- We have dedicated prosecutors in the SCCU working with the investigations to maximise effectiveness.
- We will continue to pursue bold and innovative ways to partner with stakeholders to consolidate gains made thus far in building the NPA and its specialised units and thus enhance our ability to deliver on serious corruption matters.



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Thank you

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