RESEARCH COLLOQUIUM: TOWARDS THE DEVELOPMENT OF AN IDEAL AND SUITABLE POLICING MODEL FOR THE SOUTH AFRICAN POLICE SERVICE. 6 – 10 FEBRUARY 2017  #CrimeMustFall
PROSECUTING CRIMINAL CASES RESULTING FROM MULTI-AGENCY OPERATIONS: COMMON CHALLENGES AND WAYS TO OVERCOME THEM

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BACKGROUND:


- The mandate of the Hawks relates to national priority offences, which include selected serious organised crime, serious commercial crime and serious corruption.
PURPOSE OF PRESENTATION:

• To highlight challenges experienced with multi-disciplinary operations/investigation, with reference to prosecution. A comparative case study has been made with reference to a number of countries and regions.

• Successful prosecution is also dependant on qualitative investigation and reference is made to problems experienced by both investigators and prosecutors.

• Combating crime successfully is dependant on proper crime threat identification/intelligence support and using all possible tools, including asset freeze and forfeiture.

• Purpose is to assess challenges and propose improvement of Multi-Agency / Disciplinary investigations.
WHOLE OF GOVERNMENT APPROACH:

S. 41 (Constitution) **Principles of co-operative government and intergovernmental relations**

(1) **All spheres of government and all organs of state within each sphere must**—

- co-operate with one another in mutual trust and good faith by—
  - fostering friendly relations;
  - assisting and supporting one another;
  - informing one another of, and consulting one another on, matters of common interest;
  - co-ordinating their actions and legislation with one another;
MULTI-DISCIPLINARY APPROACH:

According to section 17B(b) of the SAPS Act there is a need to ensure that the Directorate (Hawks)-

• Implements, where appropriate, a multi-disciplinary approach and an integrated methodology involving the cooperation of all relevant Government departments and institutions;

• has the necessary independence to perform its functions;

• is equipped with the appropriate human and financial resources to perform its functions;

• is staffed through the transfer, appointment, or secondment of personnel whose integrity is beyond reproach.
MULTI-DISCIPLINARY APPROACH CONTINUE:

- Government departments or institutions shall, when required to do so, take reasonable steps to assist the Hawks in the achievement of its objectives.

- The National Head of the Hawks may request the secondment of personnel from any other Government department or institution.
MULTI-DISCIPLINARY APPROACH CONTINUE:

• National Director of Public Prosecutions must ensure that a dedicated component of prosecutors is available to assist and co-operate with members of the Hawks in conducting its investigations.

  – The Hawks shall be supported by the Crime Intelligence Division of the Service to gather, correlate, evaluate, co-ordinate and use crime intelligence in the performance of its functions.
MULTI-DISCIPLINARY APPROACH CONTINUE:

• The Head of the Crime Intelligence Division of the Service shall upon a request of the National Head of the Hawks make available crime intelligence capacity to assist the Directorate in a specific investigation.

• If the National Head of the Hawks so requests, any person seconded to the Hawks shall retain the powers, duties and functions endowed by any law governing the powers, duties and functions of that department or institution, and that person may exercise such powers, duties and functions under the command of the National Head of the Hawks or his or her delegate, but subject to such conditions as may be determined by the Head of the seconding Government department or institution.
PARTICIPANTS IN MULTIDISCIPLINARY / FACETED TEAM:

The SAPS Act provides in section 17J for an Operational Committee, which comprises:

- the **National Head of the Hawks**, as chairperson;
- the **Deputy National Head of the Hawks**, as deputy chairperson;
- a Deputy National Commissioner of the South African Police Service designated by the National Commissioner;
- the Head of the Crime Intelligence Division of the South African Police Service;
PARTICIPANTS IN MULTIDISCIPLINARY / FACETED TEAM CONTINUE:

- the National Director of Public Prosecutions;
- the Directors-General of Finance, Justice and Constitutional Development, the State Security Agency and Home Affairs;
- the Commissioner of the South African Revenue Service;
- the Head of the Financial Intelligence Centre; and
- such other persons as the Operational Committee may require from time to time, for the duration determined by the Operational Committee.
RELEVANT CRIMES:

Within the broad category of serious organised crime, serious commercial crime and serious corruption, for which the Hawks is responsible, the Schedule to the SAPS Act refers to amongst others to:

- **High treason; and sedition;**
- any offence referred to in paragraph (a) of the definition of 'specified offence' of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004);
RELEVANT CRIMES CONTINUE:

- any offence referred to in Chapters 2, 3 and 4 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998);
- any offence referred to in section 13 (f) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992);
- any offence referred to in the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act 87 of 1993);
- any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament and the unlawful possession of such firearms, explosives or armament;
RELEVANT CRIMES CONTINUE:

- any offence referred to in the National Conventional Arms Control Act, 2002 (Act 41 of 2002);
COMPARATIVE STUDY

- Association of South East Asian Nations (ASEAN) in respect of Trafficking in Persons (TIP).
- Human Trafficking (TIP) in the United States (US).
- Gangs in the US.
- Organised Crime in Australia.
- Organised Crime in The Netherlands.
- Poaching and Illicit Wildlife Trade in Kenya.
- Use of Comparative Study on 48 Countries on the use of Multi-Agency Task Forces to Combat Financial Crimes.
- European Union: Multi-Agency Cooperation to Prevent and Combat Domestic Violence.
SUMMARY OF CHALLENGES:

The following common challenges were identified from the comparative study:

• Lack of awareness and knowledge and expertise relating to new legislation such as trafficking in persons legislation.
• Lack of understanding and cooperation between police and prosecutors.
• Cases are complex and time-consuming.
• Lack of adequate funding, training and resources to address large number of cases.
• Early involvement of prosecutor required and to work hand in hand with investigator during investigation and trial.
SUMMARY OF CHALLENGES CONTINUE:

• Pro-active investigative techniques such as informants and undercover operatives and techniques and covert gathering methods (surveillance) is required.
• Need for specialised units of prosecutors and investigators.
• Need for proper international cooperation.
• Lack of support with language skills.
• Huge challenges to obtain cooperation of witnesses, ensure protection of witnesses and gain their trust. Prosecutors also wary of value of evidence of witnesses.
SUMMARY OF CHALLENGES CONTINUE:

• Lack of institutional resources, structures and guidance to prosecutors and investigators.
• Many gang members are juveniles and pass through the criminal justice system without serving any sentence.
• Shortcomings in the juvenile justice system such as a shortage of detention facilities for juveniles is a hampering factor.
• Community involvement with matters such as combating of drugs and gangs is required.
PROPOSED SOLUTIONS:

• It is suggested that Police and investigators should be trained together re the elements of crime and requirements to ensure successful prosecution, including best practices for obtaining corroborating evidence and legal strategies and case law on relevant matters and the impact of trauma on victims, evidence by victims.

• Victims to be protected against intimidation by syndicates.
PROPOSED SOLUTIONS CONTINUE:

• Proper prioritisation of high profile cases to target the “big fish”. This emphasises the role of intelligence, Asset Forfeiture Unit and the Financial Intelligence Centre.

• Prosecutors and investigators to be trained on how to sensitively use witnesses which are vulnerable and to explain conflicts in statements.

• Joint training programmes on new legislation to prosecutors and investigators.

• Reluctance to investigate and prosecute new legislation must be overcome.
PROPOSED SOLUTIONS CONTINUE:

• Intelligence support to do pro-active targeting for investigation.
• Comprehensive long-term victim protection and support. Also training on the existence and use of the witness protection programme.
• Development of toolkits for investigators and prosecutors with information on updated laws as well as legal strategies and common legal impediments in cases where multi-disciplinary investigations are and contact details of experienced prosecutors and investigators in this type of case to call for guidance.
• Role-players must be convinced of the advantages of multi-agency operations/investigations.
IMPLEMENTATION OF MULTI-AGENCY INVESTIGATIONS / OPERATIONS IN SA

- There is already a unique legal framework in South Africa providing for multi-disciplinary investigations.
- In respect of High treason; and sedition; specified offences in terms of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; offences under the Non-Proliferation of Weapons of Mass Destruction Act, 1993; the Regulation of Foreign Military Assistance Act, 1998, and the National Conventional Arms Control Act, 2002, the **Priority Crime Litigation Unit (PCLU)**, established by Proclamation of the President, share the same mandate as the Crimes Against the State (CATS Unit) of the Hawks. These crimes fall under mandate of the NDPP.
IMPLEMENTATION OF MULTI-AGENCY INVESTIGATIONS / OPERATIONS IN SA

- In respect of high profile commercial crime investigations, Special Commercial Crime Units have been established in Pretoria, Durban, Port Elizabeth, East London, at the DPPs and dedicated capacity in Kimberley.
- In respect of high profile organised crime investigations a dedicated capacity (Organised Crime Units) of Prosecutors has been established to guide investigations of the Hawks in the jurisdiction of all 9 Directors of Public Prosecutions. These have been established in liaison with the Hawks and taking into account the needs of the Hawks.
IMPLEMENTATION OF MULTI-AGENCY INVESTIGATIONS / OPERATIONS IN SA

- Capacity to prosecute organised crime established in each High Court Division.
- Nodal point for organised crime created in: NPS Head Office and in each DPP Office.
- Posts created in respect of advanced regional court prosecutor, state advocate, senior advocate and deputy director.
- Dedicated prosecution capacity to be structurally arranged as a component in DPP Office.
- Organised Crime Initiative important development between the prosecution and police investigative agencies: Cemented working relationships.
- Dedicated capacity in police and prosecution services created to deal with crimes committed in an organised fashion.
- Focused also on the implementation of the POCA legislation and developed capabilities to investigate and prosecute racketeering offences.
IMPLEMENTATION OF MULTI-AGENCY INVESTIGATIONS / OPERATIONS IN SA CONTINUE:

• Joint training programmes have been developed, especially in relation to racketeering and gang related offences in terms of POCA.
• Ensured effective coordination of activities at a National and Provincial level towards successful prosecutions and development of jurisprudence.
• Immigration, customs, border security (South African National Defence Force), in addition to the agencies mentioned in the Operational Committee of the Hawks must also be considered as part of a multi-disciplinary team in appropriate circumstances.
• The Witness Protection Programme is also available in appropriate cases.
• Recently the National Head of the Hawks recently announced Task team to investigate corruption in Eastern Cape Municipalities.
PARTNERS IN COMBATING CRIME

During investigations by the South African Police Service investigators liaised closely and cooperated with prosecutors (both in respect of Hawks and Detective Service investigations) as well as:

- South African Revenue Service (SARS).
- The Department of Labour.
- The Enforcement Unit of the National Conventional Arms Control Committee.
- Department of Home Affairs.
- Customs.
- Financial Intelligence Centre.
- Department of Mines.
PARTNERS IN COMBATING CRIME CONTINUE

- The State Security Agency.
- Asset Forfeiture Unit.
- Department of International Relations and Cooperation.
- Department of Environmental Affairs & Parks Board.
- Witness Protection Programme.
- Department of Social Development.

This is not a closed list.
WAY FORWARD

- Unlikely that anything is necessary in respect of the legislative framework. The multi-faceted methodology is well established in South Africa.
- Cooperative partners need to be selected according to the needs of a particular investigation and all role-players need not be involved in every investigation or prosecution, nor need these partners be part of the team, but where their expertise and input is required it must be sourced.
- Ignoring strategic partners may leave gaps in the investigation and make prosecution difficult or lead to duplicate investigations.
- It should be noted that partners are not only required in respect of complicated high level organised crime, terrorism and financial investigations, but also in respect of crimes such as domestic violence.
WAY FORWARD CONTINUE:

- Multi-Agency Teams and use of partners must be promoted and joint training provided in respect of the effective use of partners in investigation and prosecution.
- Even more attention to victim orientated policing especially where victims are traumatised or victimised to ensure the building of trust and successful prosecution.
- Operational procedures and understandings need to be developed with partners.
- The biggest challenge in South Africa is the shortage of experienced prosecutors and investigators to address high profile cases. In terms of the threat of crime it should be a priority to address these shortages.
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Thank you.
Major General PC Jacobs
B Iuris (UFS) LL.B. (UNISA) Diploma: Advanced Public Administration (UNISA) LL.D. Public Law (UP) D Phil International Relations (UP) #CrimeMustFall