

Perspectives on KwaZulu-Natal

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South Africa's witness protection programme: Majority of witnesses are from KwaZulu-Natal

About 60% of the people being kept in the custody of South Africa's witness protection programme are from KwaZulu-Natal, a trend that has been evident for the last four years. The director of the programme until the end of February, Piet Kleynhans, attributes this to the peculiar offences, such as faction fighting and political violence, that characterise crime in KwaZulu-Natal. In addition, he says that other crimes which occur in other provinces, such as taxi violence and cash-in-transit robberies, are also perpetrated in KwaZulu-Natal.

The witness protection programme was used extensively by special police investigator Director Bushie Engelbrecht who investigated the high profile Richmond murders and the Shobashobane massacre in KwaZulu-Natal. Engelbrecht put 30 witnesses in the programme while investigating the murder of 18 people at Shobashobane on the south coast of the province on Christmas Day in 1995, and used it for 25 witnesses during his investigations of Richmond in 1997 and 1998.

Witness protection in South Africa

Prior to 1992 no witness protection programme existed. However, the Criminal Procedure Act made provision for witnesses to be placed in "protective custody" if it was deemed necessary. Protection was involuntary and witnesses were only allowed access to lawyers with permission.

People were usually coerced into giving evidence and once a conviction was obtained, witnesses were released to fend for themselves regardless of

As of the middle of February, there were almost 700 witnesses under protection, including 205 being kept in custody in KwaZulu-Natal. Although this represents far less than two-thirds of the total, attempts are made for witnesses to be kept in a province different from the one in which they usually reside.

However, Kleynhans says that many witnesses are, understandably, reluctant to leave closely-knit communities

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the consequences of having given evidence.

Although the Witness Protection Act came into operation on March 31, 2000, the current National Witness Protection Programme has been in place since the Minister of Justice created a Directorate of Witness Protection in 1995.

The Act provides for:

- the protection of witnesses giving evidence in commissions of inquiry, inquest and special tribunal proceedings, and investigations of the Independent Complaints Directorate which investigates complaints against police members, as well as criminal cases
- a written notice advising witnesses of, and giving reasons for, their discharge and advising witnesses of their right to appeal to the Minister of Justice for this decision to be reviewed
- the disclosure of information that may endanger the security of witnesses to be regarded as an offence
- the Minister of Justice to enter into agreements with international bodies, institutions, organisations or foreign countries in order to protect a witness who may need to be protected outside South Africa.

The Director of Witness Protection is based in Pretoria and is supported by a small team of officers from the South African Police Services, who provide protection in each province.

and often want to stay in an environment to which they are accustomed. Witnesses who have children, for example, often want them to continue being educated in the same language as that which was taught in the area from which they were forced to move. In exceptional circumstances, witnesses may even be able to stay in their own houses under guard, while at the other extreme, some witnesses may even be compelled to leave South Africa for their own protection.

The programme is undergoing significant changes nationally. The national directorate of public prosecutions has taken over the running of the programme from the Department of Justice and the former head of the Scorpions in KwaZulu-Natal, Chris MacAdam has taken over the programme in an acting capacity. Public prosecutions director Bulelani Ngcuka says that having the programme under his authority means that the people most passionate about making sure witnesses were available to give evidence for the State are now running the programme.

The witness protection programme has come under criticism recently after the assassination in the Western Cape of Yusuf and Fahiema Enous on Christmas Day. The two were witnesses in connection with the attempted bombing of a Cape Town restaurant. In KwaZulu-Natal 24-year-old Sibusiso Makaya Khumalo was shot dead while in the custody of the witness programme. A witness to a murder in Durban, Khumalo was living in a house in Newcastle at the time.

Kleynhans emphasises that the programme does not provide full-time bodyguards for

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witnesses. To have just one policeman around the clock at about 350 houses at which the witnesses are kept would cost more than R50 million a year. With a budget of R26.4 million for the last financial year such protection is impossible.

Instead the police officers appointed by the police's provincial management to run the programme attempt to visit witnesses regularly and are supposed to be witnesses' only link to the real world. In some provinces even regular visits are all but impossible. KwaZulu-Natal is a case in point. In mid-February there were 11 policemen responsible for the 205 witnesses - a ratio of one police member to every 18.6 witnesses - being housed in the province. It is an improvement from the ratio in April last year of one police officer for every 26 witnesses, but by no means eliminates the problems encountered as a result of staffing shortages. As the police members in question are responsible to their provincial management, surplus members in some provinces cannot be transferred to the areas where resources are lacking. This has resulted in male police officers not being able to implement programme instructions that prohibit them from being alone with female witnesses and requiring a female police officer to be present at all times, according to a report written by research consultants Injobo Ne Bandla for the Centre for the Study of Violence and Reconciliation.

Staff shortages have also resulted in problems arising where witnesses do in fact need far superior supervision. The report, entitled *Testifying Without Fear* states: "In one incident, youth that were witnesses were placed in a safe house without any adult supervision. After some time tensions began to develop and the youth began to victimise each other and to indulge in alcohol. When the situation reached crisis proportions and an emergency security situation developed, staff of the protection programme were unreachable. The witnesses were under the age of 15 years at the time they were on the programme. According to a report by the Network of Independent Monitors, some of the youths misused their allowances, spending them on alcohol rather than food and transport." The Network subsequently had to step in and remove a witness when he was threatened with death by the other youths.

Province	Number of Police	Number of Witnesses	Ratio
KwaZulu-Natal	11	205	1:18.6
Gauteng	9	93	1:10
Eastern Cape	14	92	1:6.6
North West	3	88	1:29.3
Northern Cape	3	51	1:17
Western Cape	8	70	1:8.75

Kleynhans says that attempts have been made to improve the programme by increasing the number of protectors. National police commissioner Jackie Selebi undertook in December to provide an additional 40 police members - with 10 going to KwaZulu-Natal - in an attempt to reach the ideal ratio of one police member per 12 witnesses. Staff shortages force those police members working on the programme to work "very, very

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hard", according to Kleynhans, but also means that witnesses do not get visited by their caretakers often.

South Africa's witness protection programme is entirely voluntary, but on acceptance witnesses have to sign a memorandum of understanding which sets out their rights and obligations and those of the witness protection programme. Witnesses receive an allowance that varies according to whether the witness has forfeited employment by joining the programme and whether the witness is staying in catered or self-catering accommodation. Witnesses can choose to leave the programme before being discharged, but have to sign a waiver stating that the programme will no longer be responsible for their safety.

Potential witnesses qualify for admission to the programme by being able to give evidence with regards to a Schedule One offence (such as murder or rape), bribery, blackmail, perjury or defeating the ends of justice, as well as by being "in danger" as a result of their testimony. The Director of Public Prosecutions makes the final decision on whether a person should be kept on the programme.

Allegations about the misconduct of police officers appointed to protect witnesses are common. A witness to a police murder inquiry claimed in 1997 that a police sergeant who was in charge of his safety had threatened him with death on two occasions. Twenty-three year old Nhlakanipho Nxumalo told the *Mail & Guardian*: "I am scared that I am going to be killed while in the witness protection programme because I am convinced that (the sergeant), and perhaps other police from the programme, want to kill me. A man in a passage of the hotel approached me ... He asked me my name but before I managed to tell him who I was he pulled out a pistol and shot me twice ... About ten minutes after regaining consciousness I saw (the sergeant) enter the room. He stared down at me and left. I suspect he was involved in the attempt to kill me."

The former head of the police team in KwaZulu-Natal has faced serious accusations and was prosecuted on a charge of raping a police woman who was being kept on the programme. He was recently acquitted of the charges and has been appointed as assistant director in the Department of Justice in charge of the witness protection programme for the province.

Reports of an insensitive and negative attitude to witnesses were recounted in Injobo Ne Bandla's document, which states that the police watchdog body, the Independent Complaints Directorate, was investigating 11 cases of complaints made against the staff of the witness protection programme in KwaZulu-Natal. "There have been numerous complaints that protectors have been completely insensitive to the situation of witnesses. In some cases this attitude has resulted in the protectors insulting and even threatening witnesses. An affidavit taken from one witness in KwaZulu-Natal claims protectors from the programme verbally abused him. Interviews conducted with other witnesses indicate that this incident was not an isolated one. One witness claims a police officer on the programme told a fellow witness his problem was that he 'had too big a mouth'. The comment was made in direct reference to the witness supplying information on certain criminals."

Witnesses under protection as of February 15, 2001, according to the province in which they are accommodated	
Province	Number of Witnesses

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KwaZulu-Natal	205
Gauteng	93
Eastern Cape	92
North West	88
Northern Cape	51
Western Cape	70
TOTAL	696

Kleynhans says that allegations of misconduct, and other serious crimes, regularly surface about police members who are involved in witness protection. "It is not uncommon amongst witnesses to express their displeasure towards those who are, effectively, restricting their movement." But Kleynhans says that only one prosecution has ensued against the protection programme members and this involved a man who was accused of defrauding the state of about R260 000 when he created "ghost" witnesses and allegedly took money on their behalf.

However, Injobo Ne Bandla warn that people on witness protection are vulnerable because they have given up their freedom. "As a result, the protector has immense power over the witnesses who are dependent on the protector not only for their security, but also for their allowance and welfare. A problem that has arisen is how to balance the power in the relationship and thereby prevent abuse."

The security obtained by putting witnesses into protective custody outweighs the administrative difficulties that may be faced, according to Director Engelbrecht. He describes in his book *A Christmas to Remember* how a witness to Richmond violence, who initially decided not to go on the witness programme, subsequently lost five members of her family. Engelbrecht says that the attackers were attempting to eliminate the witness, but she was not at home at the time. He writes: "The Khumalo family had fled Magoda (outside Richmond) when they received threats (after) the Khumalo witness decided to testify. The bravery of the Khumalo woman, who decided to go ahead with her testimony even after her two children, her mother and two of her sister's children had been massacred, has led to the apprehension, conviction, and removal from society of some of South Africa's most wanted of killers." The witness decided after the attack on her home to join the protection programme with 15 members of her family.

However, Engelbrecht questions in his book what would happen to the witness and her family after she finished testifying for the State because, according to the current provisions of the protection programme, witnesses are not protected after the conclusion of a criminal case. Understandably witnesses are likely to be in serious danger from those they have accused once a case is completed - whether the individuals are convicted or not. This, according to *Testifying Without Fear*, is one of the biggest problems relating to the witness protection programme. The report states that "in most cases, once the trial is completed, the witness is left to his or her own devices". Two witnesses were killed in KwaZulu-Natal in 1999 as they alighted from a bus they had been travelling on after giving evidence in a murder trial. Other examples illustrated in the report are of witnesses who have been left stranded and are unable to return home because they fear reprisal attacks as a result of giving evidence. The report regards the treatment of witnesses after cases

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are concluded as vitally important and says that the justice system needs to show that human lives are valued.

In its recommendations, Injobo Ne Bandla suggests that a lesson that could be learned from the United States is the use of a dual programme. This provides for limited protection for witnesses requiring less sophisticated protection, but more advanced protection with relocation for those that require additional security. The report also encourages the assistance of other government departments in implementing the witness protection programme and suggests that the provision of buildings by departments, such as Public Works, would assist to alleviate the programme's biggest expense of property rental. Another approach has been adopted in Venezuela. "Due to a lack of resources, the government has turned a prison into a witness protection venue. The inside of the prison has been made comfortable for witnesses and the outside has been fortified. All witnesses requiring protection are housed here." The report also recommends that support and complaint mechanisms for witnesses be put in place, an audit of the programme be conducted and cases involving witnesses in protection be fast-tracked.

According to *Testifying Without Fear*, key witnesses are unlikely to co-operate with authorities in giving vital evidence if the protection programme is ineffective and not regarded as credible by the general public. "The current protection programme has experienced certain problems, which are impacting on the credibility of the programme and it is therefore essential that these problems are addressed."