Case Studies:
Collective successes

Western Cape Province
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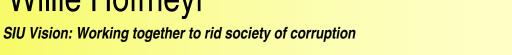*against corruption*

Background
Asset Forfeiture Unit

- Willie Hofmeyr is head of both
  - The Special Investigating Unit, and
  - The Asset Forfeiture Unit

- AFU is a unit in National Prosecuting Authority

- Set up in 1999 to implement Prevention of Organised Crime Act to take the proceeds of crime and property used to commit crime

- Specialises in civil litigation and deals with all crime

Background
Special Investigating Unit

✳ SIU is separate from NPA, AFU or Scorpions

✳ But works closely with SAPS, NPS or Scorpions when there is evidence of criminal activity

✳ 1995 – Heath Commission established by E Cape government – headed by former Judge Heath

✳ 1996 – became a national body in terms of the SIU Act, 1996

✳ 1997 – first SIU set up by Proc R24

✳ 2001 – 31 July: New SIU set up by Proc R118 Head Willie Hofmeyr

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SIU has investigative powers

- The SIU has formal powers similar to a commission
  - Members can take affidavits
  - It can subpoena documents and records
  - It has powers of search and seizure
- The SIU can produce a court ready docket (not just a report) as it has formal investigation powers

- It has important power to interrogate witnesses and suspects under oath
  - Compel them to answer self-incriminating questions
  - Cannot be used against them in criminal trial
  - But can be used to recover money

Power to institute civil litigation

- The major innovation with the SIU is that it does not only investigate, but can take civil legal action to correct any wrongdoing it finds
- Thus the SIU can, for example, obtain court orders:
  - to compel persons to repay any wrongful benefit they received
  - to cancel contracts when the proper procedures were not followed
  - to stop transactions or other actions that were not properly authorised

SIU – a one-stop service

SIU tries to provide a one-stop service to departments:

* Do a complete multi-disciplinary investigation
* With law enforcement powers,
    * Ie court admissible evidence, not just a report
* Prepare disciplinary inquiries and testify
* Work with SAPS to ensure arrest
    * Prepare court-ready docket
* Work with NPA to speed up prosecutions
    * Even assist with prosecution directly
* Do civil recovery, eg set aside contracts or claim from pensions of officials guilty of causing losses
* Advise on systemic improvements

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Working with Departments

- A major innovation has been to work closely with depts to deal effectively with corruption

- They have agreed to pay the costs of the investigation

- These partnerships have driven the growth of the SIU and its increased capacity to fight corruption

- **Dept of Social Dev** – growing to R58m pa (200 people)

- **Dept of Transport** – R16.8m (75 people)

- **Dept of Correctional Services** – R10m pa (30 people)

- **Dept of Local Govt in Eastern Cape** – R6m (17 people)

Growth of SIU

✳ 5 years ago, the SIU set itself the goal to build sufficient capacity in the state to deal with corruption effectively

✳ With a budget of R22 million and just 67 staff it seemed an almost impossible dream

✳ today, we are probably half way there

	Aug 2001	Apr 2007	Apr 2009
Budget (Treasury)	R 22 m	R 56 m	R 150 m
Funding from Depts	R 0 m	R 89 m	R 120 m
Staff	67	550	1 000

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Achievements: 2001/02 – 2005/06

- **R79 million** in cash recoveries (money to be paid back)
- **R852 million** in savings (saved within the financial year)
- **R6.7 billion** in prevention of future loss
  - Mainly from DSD grants and DCS medical aid fund
- Evidence prepared for use in:
  - civil proceedings: 3 461
  - criminal proceedings: 2 524
  - disciplinary proceedings: 987
  - other remedial action: 46 499 (mainly licenses, grants)

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Preventions of future loss

* Preventions of future loss are calculated according to a formula agreed with Auditor-General
    * It is the present value of recurring payments saved
    * It calculates the saving when, eg, a grant of R1 000 pa is stopped
    * The formula assumes that the grant would have been paid for another 9 years (on average)
    * It calculates the present value of those future payments at a 4% real interest rate
    * In this case, the present value is about R7 500

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Dept of Social Development: Govt officials receiving grants

- 43 705 public servants identified on Socpen database
- 22 117 entitled to social grants
- 21 588 irregular beneficiaries
  - 18 829 public servants removed from SocPen
  - Balance in process of removal
- Yearly value of cancelled pensions: **R70m**
- Present value of future pensions: **R379m**
- 13 920 possible prosecutions
  - 2 848 prosecutions to Nov 06
  - 2 009 convictions to date

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DSD: savings from deterence

- A key objective is to deter fraud and to:
    - Increase voluntary cancellations
    - Reduce future fraudulent applications
- In 05/06 voluntary lapses increased by 95 535
    - from 108 812 (04/05) to 204 437 (05/06)
    - For 2006, increase is 13 603 to Oct
    - **Total increase lapses = 109 138**
- Value of increase in lapses
    - R363m (05/06) + R82m (to Oct 06) = **R445m**
- **Present value of future savings: R3.4 billion**

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DSD: Private Beneficiaries

- Identified **510 396** private individuals who may be benefiting illegally
- 47 individuals prosecuted
- 4 syndicates prosecuted
- Joint investigation with SAPS in Western Cape result in arrest of suspect for selling 25 false medical reports – Groote Schuur Hospital stamp

Province	Number
Eastern Cape	56 855
Free State	30 168
Gauteng	83 019
KwaZulu-Natal	114 606
Mpumalanga	40 209
Northern Cape	11 175
Limpopo	56 117
Northwest	38 689
Western Cape	79 558

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DCS: Medical Aid fund

- Joint investigation with SAPS and DSO and DCS
- Recovered R22 million to date
- Reduced claims from medical aid by over R500 million pa
  - Actual is about R600 million
  - Should have been about R1,1 billion pa with normal medical inflation
- Prevented future losses of R3.6 billion

- 26 medical practitioners criminally charged
- 10 DCS officials internally charged

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Department of Transport

* **26 873** invalid licences identified, incl foreign conversions
  * Overall trend pattern show less than 10% invalid rate
* 11 359 cancellations recommended already
  * **1 202** cancelled to date

* **3 157** criminal cases under investigation
  * **659** arrested (**64** officials and **595** private individuals)
  * **376** convictions
* **149** disciplinary cases under investigation
  * **92** officials referred for internal disciplinary enquiries
  * 25 finalised

Using civil forfeiture vs corruption

- Convictions difficult to obtain in corruption cases
- Civil forfeiture is important weapon – no conviction needed
- As in other civil proceedings, it is only necessary to prove facts on the balance of probabilities
- Can act even when evidence is not strong enough for a conviction
- Prove the property "guilty" of being proceeds of crime
- Also important where the perpetrator cannot be tried because they have died or fled the country
- Perpetrators often do not contest since they have to make statements under oath that may be used against them in a criminal case

Case study

- Alamieyeseigha - governor of a state in Nigeria
- Arrested in UK but escape back to Nigeria
  - where enjoyed immunity as state governor
- Freeze SA property through civil forfeiture in Dec 2005
  - Even though at time he had immunity in Nigeria
  - On basis of evidence from UK and Nigeria that property was proceeds of corruption
- Obtain final forfeiture in July 2006 – not contested
  - Court recognised the Nigerian federal government as the true innocent owner
  - Assets sold for R12m and will be returned shortly

Conclusion

- ☀ SA has made much progress over last few years in dealing effectively with corruption
  - ☀ SAPS and NPA Specialised Commercial crime Courts
  - ☀ SIU, AFU, Scorpions, new Act
- ☀ The building of much larger capacity to deal with corruption is a big step forward
- ☀ But much more needs to be done before we can say we are winning the war against corruption