

# 5 THE NATIONAL PROSECUTING AUTHORITY

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## INTRODUCTION

After response to a crime, managing the crime scene, and investigation, most of the work of the police is completed. The next phase is prosecution. The National Prosecuting Authority (NPA) becomes involved in a case at the point that the police hand over the docket to a prosecutor. The NPA has the responsibility of deciding whether the police have adequately investigated the case and presented enough evidence for the case to be heard to a court. The NPA, in the person of a prosecutor, will also consult with the victim (if there is a victim), and present the case to the court if it goes to trial.

This chapter presents the role and function of the National Prosecuting Authority. It considers the untenable caseload that individual prosecutors face and

the way they deal with cases. As is the case for most prosecuting authorities worldwide, the NPA tends to play a primarily 'reactive' role in relation to crime. However there has been an attempt, primarily in the form of a three-year community prosecution pilot study, to extend this role beyond the conduct of trial, in the direction of crime prevention. This chapter also presents the findings of an evaluation of the community prosecution pilot project, undertaken by the Independent Project Trust in 2007.

## THE NPA

Section 179 of South Africa's 1996 Constitution provided for a single prosecuting authority. This was followed by the National Prosecuting Authority Act (32 of 1998) which provided the legal basis for the establishment of the National Prosecuting Authority.<sup>1</sup> The NPA is headed by the Office of the National Director of Public Prosecutions (NDPP). The first two directors, Bulelani Ngcuka and Vusi Pikoli both left under controversial circumstances, suggesting the politicised nature of the position. At the time of writing (May 2009) there was still only an Acting National Director, Mokotedi Mpshe. In a young organisation involved in massive transformation processes, the turnover in chief officials has had serious implications. The discontinuities have resulted in uncertainty, low morale and constantly changing allegiances.

Four Deputy National Directors and several Special Directors report to the National Director of Public Prosecutions. The NPA is divided into seven core business units, all supported by a Corporate Services unit. The business units are:

- National Prosecutions Service (NPS)
- Integrity Management Unit (IMU)
- Asset Forfeiture Unit (AFU)
- Sexual Offences and Community Affairs (SOCA)
- Specialised Commercial Crime Unit (SCCU)
- Witness Protection Unit (WPU)
- Priority Crimes Litigation Unit (PCLU)

Of these, the National Prosecutions Service, managed by a Deputy National Director (currently acting) and nine provincial Directors of Public Prosecutions (DPP), is responsible for prosecutions in both the high and lower courts of South Africa.

The Constitution and the NPA Act provide the prosecuting authority with the power to institute criminal proceedings on behalf of the state and to do anything necessary related to this function.<sup>2</sup> This includes supporting the investigation of a case, or discontinuing criminal proceedings where necessary. Unlike many other countries in which there is an obligation to prosecute once a case has been made, in South Africa the NPA has enormous discretionary power to decide whether or not prosecute.

According to the National Prosecuting Authority's policy manual the prosecutor's primary function is to assist the court in arriving at a just verdict and, in the event of a conviction, to deliver a fair sentence based upon the evidence presented. At the same time the prosecutor represents the community in criminal trials.<sup>3</sup>

Since its establishment, the NPA has promoted itself as 'lawyers for the people'. This was emphasized in a 2000 speech in which Nelson Mandela urged the modern prosecutor:

to build an effective relationship with the community and to ensure that the rights of victims are protected. It is your duty to prosecute fairly and effectively according to the rule of law; and to act in a principled way without fear, favour or prejudice.<sup>4</sup>

In the same speech Mandela told prosecutors 'it is your duty to build a prosecution service that is an effective deterrent to crime and is known to demonstrate great compassion and sensitivity to the people it serves.'<sup>5</sup> A similar vision is repeated in the NPA's mission statement that describes its purpose as being to 'ensure justice for the victims of crime by prosecuting without fear, favour and prejudice and by working with our partners and the public to solve and prevent crime.'

While this sounds laudable, in practice the notion of 'being lawyers for the people' is often undermined by a strong focus to meet the needs of the state, which are often quite different from the needs of communities. In the 10 years since its inception, the NPA has been trying to balance these needs, with varying degrees of success.

Despite the difficulties, it must be acknowledged that the National Prosecuting Authority's mission statement is groundbreaking. Most countries view the prosecutor's role as limited to reacting to and solving crimes through the trial process. The South African NPA is the first prosecuting authority known to include crime prevention within its mandate. This extension of its mandate is often challenged by prosecutors used to the more traditional approach.

Since 2004 the NPA has been refining a strategy of improving court processes and proactively contributing to crime prevention through initiatives such as restorative justice and community prosecution. Advocate Mzinyathi, acting head of the National Prosecutions Service, has said:

it is our vision that we will increasingly add a new dimension to our traditional role; we will become an advocate of proactive and alternate justice solutions and “a lawyer for the people” that extends its role beyond that of pure prosecution, to that of caretaker, resolver and preventer of victimization.

Thus there are two clear roles for the NPA, one where it resolves victimization through prosecution and various justice solutions, and another where seeks to prevent victimization.<sup>6</sup>

## THE COURT PROCESS

Despite a commitment to crime prevention, the prosecution of crimes through the courts remains the primary focus of the National Prosecuting Authority. Prosecutors have a unique position in the criminal justice system in that they are the only people who regularly come into contact with every other part of the criminal justice system. The NPA is the link between the South African Police Service (the government department with whom crime victims may first make contact), the Department of Social Development (probation and assessment services) and the Department of Correctional Services (the holding place for offenders and those awaiting trial detainees).<sup>7</sup> This means prosecutors potentially have a significant influence over the administration of justice in a community.

### Trial preparation

The prosecutor becomes involved in a case when presented with a crime docket by the SAPS, normally an investigating officer or, in larger courts, a Police Services liaison officer. By this time the police should have investigated the crime sufficiently to link a perpetrator to the offence. If the perpetrator has been arrested and is in custody, the SAPS has a legal obligation to present the docket to the prosecutor within 48 hours of the arrest.<sup>8</sup>

In most fair-sized courts a Control Prosecutor has first sight of the docket. When the Control Prosecutor receives the docket s/he acknowledges receipt in the Official's Register and registers the case documents in a NPA docket register.

The Control Prosecutor is generally an experienced prosecutor who has some managerial control and liaises between the prosecutors and Senior Public Prosecutors.

The docket will include the evidence the police have gathered, usually in the form of affidavits from witnesses, but it may include other evidence, such as the outcome of an identity parade or forensic evidence. An investigation checklist should also be included in the docket and the Investigating Officer (IO) should indicate against the checklist what evidence has already been obtained. Depending on the type of crime, a number of documents may have to be completed — for example in an assault case a J88 form would be required to record medical evidence (in support of the allegations of assault) that may be needed to obtain a conviction.

In medium to large courts with a high daily intake of cases there is usually an office where a number of prosecutors sort case documents (dockets) according to whether the case will be heard in a district, regional, high or specialised court. The dockets are also screened to ensure that there is sufficient evidence to support the accusations against the accused; that is, to ensure a *prima facie* case exists. Only cases with sufficient evidence are taken to trial. While the NPA has a well-established policy of ‘no case, no enrolment’ the general criteria for enrolment of a case is documentary evidence under oath in the docket that a crime has been committed and that the accused is linked to the crime.

In recent years the prosecution service has placed emphasis on this function of screening dockets on entry into the system and at later stages during the investigation process to ensure the correct enrolment of cases and the elimination of unnecessary cases which burden the heavy court rolls. Senior, experienced prosecutors — often Control Prosecutors or Senior Public Prosecutors themselves — are given this task.

After considering the information in the docket, the prosecutor responsible for screening the case has two options: they can decline to enrol the case in the absence of sufficient evidence (which is referred to as *nolle prosequi*) and give reasons for this decision in the docket; or they can draft a charge sheet and enrol the case. If the case is to be enrolled the docket and charge sheet are handed to a prosecutor with directives as to whether a plea can be taken immediately or whether the case should be postponed to allow for further investigation to be conducted.

There may of course be cases where the police open a crime docket and do not detain anyone for the offence (for any number of reasons). In such instances the

prosecutors receive the dockets as decision dockets and either give directives to the police about what further investigation is needed or, if they are satisfied that the evidence is sufficient to prove the case in court, arrange for a summons, warning notice or warrant of arrest for the offender to appear in court.

If further investigation is required, the prosecutor provides written directives to the police in the investigation diary portion of the docket. The directives are intended to assist the investigating officer to collect the information required for the case to go to court. Once the additional investigation has been completed, the investigating officer returns the docket to the prosecutor. In situations where the case was previously enrolled and postponed, dockets are required to be returned to the prosecutors at least three days before the next court date.

The prosecutors doing the screening need to have enough experience of the court environment to spot what may be missing from the docket. They also need to have sufficient time to screen the dockets properly, and they have to know how to instruct the SAPS investigating officers. Notwithstanding efforts to improve this area of work, these conditions are not always met as the NPA has a high staff turnover and many prosecutors lack sufficient experience.

There is also subtle pressure on prosecutors to enrol cases that are not adequately prepared, since for a detective an enrolled case is a positive performance indicator. In addition, the SAPS usually only regard cases as successfully concluded if there is a finding in court, irrespective of whether this is a conviction or an acquittal. This means that for the police there is a disincentive to support the diversion of cases out of the criminal justice system, for example by following a restorative justice approach. These are thus instances in which the requirements of the two elements of the criminal justice system potentially clash, and which can negatively affect co-operation and the outcome of a case for victim and perpetrator (i.e. end-users of the system).

Enrolled cases are placed on specific court rolls and remain there until finalised. But this does not mean that a single prosecutor will have responsibility for the case from beginning to end (as was clear in the Anna Juries case study). Prosecutors are regularly transferred between units; they are moved between regional and district courts; they are promoted and are used to fill in where there are staff shortages or high levels of absenteeism. Thus there are often incomplete cases left behind, most of them without a proper handover procedure. This is the source of consternation and confusion for many a victim who is left wondering who is dealing with their case, whether they interested, or whether they care? In many

ways this discontinuity amounts to ‘re-victimisation’. The Anna Juries case study showed this very clearly, and demonstrated the negative effect that such changes have on a victim’s perception of the effectiveness of the criminal justice system.

In fact almost every action in a case up to the point of enrolment happens without the knowledge or involvement of the victim, who will usually have had contact only with the investigating officer. Unless the victim is needed to provide evidence or testify in court, there may indeed be no contact with the prosecutor. During this process, as Anna Juries experienced, the victim will not know what is happening to their case, and may doubt that anything is happening at all, undermining their faith in the ability of the system to deliver justice.

Upon enrolment of a case, the prosecutor has to determine how best the case should be resolved to ensure a speedy and effective justice outcome. Proceeding to trial — the outcome usually expected by the public — is only one option. Other options available to the prosecutor are: making provision for an admission of guilt fine, plea bargaining, utilising alternative dispute resolutions — including diversions and mediation between victims and offenders, referring child offenders to special children’s courts, and requesting accused persons to be referred for psychological observation in appropriate cases.

Ideally the prosecutor is expected to consult with the victim before deciding on a course of action, to ensure that the victim’s needs are taken into account. However, the reality is that in a demanding environment, with limited capacity, time constraints and pressure to reduce the number of cases on the court roll, many prosecutors make decisions without consultation or with only minimal consultation with the victim.

If the case goes to trial, the prosecutor must prepare for this by evaluating the evidence, consulting, researching, and securing the attendance of state witnesses (including expert witnesses and the SAPS Investigating Officer). Prosecutors may also be involved in ensuring that interpreters, intermediaries and other role players who may also be required for the hearing, are arranged.

The attendance of a witness at a trial should be secured by a subpoena. Improper subpoena processes result in high numbers of complainants and other witnesses not attending court because they were either not subpoenaed at all, or were asked telephonically to attend court at very short notice (often the day before the trial date).<sup>9</sup> In the case study, the subpoena process went horribly wrong. Not only did Anna Juries simply not receive a subpoena to appear in court for what amounted to the third hearing, but a confusion by the clerk of the court

resulted in a warrant for her arrest being issued, rather than for the accused, once again contributing to the trauma she experienced.

The prosecutor should also request information regarding the accused person's criminal record (the SAPS 69) and, if the accused is under 18, a report from the probation officer which can assist in assessing whether the case is suitable for diversion (see Chapter 7: *Policy Issues in Child Justice*), again this does not seem to have happened in the Juries case. Consultation with the investigating officer, victim and other witnesses is crucial in order to ensure that the statements and the allegations they contain are correct, and to inform and guide the victim in respect the process to be followed.

For a prosecutor, these are the steps necessary to prepare for trial:

- Evaluating the evidence in the case docket received from SAPS
- Consultation with the investigating officer regarding the evidence, investigation, availability of witnesses and possible exhibitory evidence
- Consultation with the victim, witnesses and others who may be required to testify in court
- Drafting a charge sheet
- Researching the law, reported case precedents and other material necessary to support the case
- Preparing documentary evidence — documents, reports, files, photos, statements, and the like — which may have to be presented during the hearing
- Arranging and managing processes to ensure that witnesses are subpoenaed for the hearing
- Enquiring into, and examining, any previous criminal conduct of the accused person — normally through the SAPS 69 record provided by the police
- Securing exhibits for hearing dates
- Consulting with the defence about possible pleas in terms of Section 105(a) of the Criminal Procedure Act, or possible admissions in terms of Section 220 of the same Act, in an effort to expedite the trial
- Prepare an address or argument to present to court at the conclusion of evidence
- Prepare an address to assist the court in deciding on an appropriate sentence following convictions — this may be enjoined by further witnesses the prosecutor decides to call to support his/her address

All these requirements are time consuming and demand attention to detail, especially since a procedural error may result in an offender being acquitted, or the case postponed. In reality, there is no such time. Prosecutors at larger metropolitan courts handle between 100 and 300 dockets at a time and most receive case dockets less than two days before the date set for trial.

In addition to the normal pressure of case preparation, prosecutors also contend with constant pressure to reduce the high caseloads by targeting so-called backlogs. These are cases which have been on the court rolls for lengthy periods (six months in the case of district courts and nine months in the case of regional courts). These targets are then measured against performance indicators. Special project courts are created from time to time to cater for this focussed attention.

In 2001 the court backlogs were regarded as being so severe that justice officials at Pretoria Magistrate's Court began a six-week stint of working over weekends to address the huge number of delayed cases facing their courts. This was followed by a national project known as the 'Saturday Courts' to try and eliminate backlogs. It was estimated in 2001 that it would take the courts two years to clear the backlog — provided that no new cases came before them in that time.<sup>10</sup> In reality though new cases still came on a daily basis. In the seven-year period between 2001 and 2008, the reduction of backlogs was a major focus of the criminal justice system. In late 2008 the situation remained unresolved, even though R98 million was allocated to a special project aimed at reducing case backlogs. In March 2008 the number of case backlogs 'stood at 13 per cent<sup>11</sup> in the high courts, 15 per cent in the district courts and 34 per cent in the regional courts.'<sup>12</sup> Or put differently — at the end of December 2008, 44 per cent of South Africa's 50 284 awaiting trial prisoners had been in custody for three months or longer.<sup>13</sup> In the Anna Juries case, one accused was held in custody awaiting trial for over a year.

There is little doubt that additional court sessions have contributed to the finalisation of a greater number of cases than would have been had the projects not been implemented. However, the sheer volume of court rolls, including backlog cases, combined with new incoming work — at a steady rate of around 1 000 000 a year nationally<sup>14</sup> — means that the pressure on the courts is relentless, with no end in sight. This underlines the importance of focusing on crime reduction through social interventions, even if the effect of such projects on the criminal justice system will be delayed.

## The trial

Once a trial begins, a formal process is followed. The trial begins with the presentation of the charges and the accused being requested to plead. The prosecutor then calls the state's witnesses and leads their evidence. During this time any exhibits (evidence) are handed to the court for consideration. The defence then has an opportunity to cross-examine witnesses, and the prosecutor to re-examine witnesses. The magistrate may also ask for clarifications, if necessary. Once the prosecutor has finished questioning the state witnesses they are excused by the court and the prosecution's case is closed. The process is then repeated for the accused. Once the prosecutor and defence have presented their cases and argued for a conviction or an acquittal, the magistrate pronounces judgment.

Strictly speaking the duty of the prosecutor is not to secure a conviction, but to ensure that all available relevant evidence is placed before the court. However in annual reports and other performance reports, the National Prosecuting Authority and the Department of Justice & Constitutional Development both emphasise conviction rates as a sign of success. For example, the Department's 2007/8 annual report notes that 'the Regional Courts have also exceeded their target of 70 per cent by achieving a conviction rate of 73 per cent (conviction of a total of 25 338 cases in comparison to 26 619 cases convicted in 2006/07).'<sup>15</sup>

The tendency to measure prosecutors' performance by their conviction rates means that very few prosecutors want to take on a case they are not likely to win. For the victim, however, winning the case may not necessarily be the most important aspect of the justice process. Victims need access to justice and fair treatment, information, assistance and services. They also need restitution, redress and apology. They need acknowledgment and they need to be given a voice. Few of these needs are high on the average prosecutor's agenda (see Chapter 6 for a more detailed discussion of the needs of victims and the responsibilities of the National Prosecuting Authority).

## Delays in the process

The National Prosecuting Authority has set a target of six months for the finalisation of a case in the district court and nine months for a case in the regional court. As mentioned above, the performance of prosecutors in relation to this target is measured. In 2007/8 around 34 per cent of regional court cases were on the roll for longer than nine months and 12 per cent of district court cases were taking

longer than six months.<sup>16</sup> In December 2008 there were 1754 people in custody who had been awaiting trial for more than two years.<sup>17</sup> Among the factors causing delays are:

- Incomplete and outstanding investigations
- Dockets being unavailable
- Unavailability of forensic laboratory and pathology reports
- The unavailability of legal aid (for an accused who cannot afford a lawyer)
- Interpreters not being available
- Witnesses, complainants and even the accused not being present. In the case of the accused this may be because they absconded when on bail or because they arrived late from detention facilities due to police transport being unavailable.

Delays are so commonplace that it has been noted within the South African Case Flow Management guidelines that ‘a management style has developed which is more adapted to dealing with adjournments than trials.’<sup>18</sup>

Because so many people and departments are involved, the problem of delays requires a cohesive and coordinated response from the entire criminal justice system. The *Practical Guide to Court and Case Flow Management* for South African lower courts was published in October 2005 in order to ‘address issues pertinent to improving and maintaining the effective and efficient operation of criminal courts.’<sup>19</sup> This guide, which was being revised at the time of writing, attempts to address the issue of coordination. It emphasises the need for all participants to be accountable for their own role in the system, since most of the postponements are acknowledged to stem from poor management and a lack of accountability.

The shift towards measurement of case flow management, and away from measuring court hours and case cycle times (time from enrolment of case to finalisation), has helped prosecutors to some degree. The removal of performance indicators such as number of court hours is a result of a recognition that the achievements of prosecutors may depend on factors outside their own control. These factors include the performance of magistrates, SAPS investigators, witnesses, interpreters and clerks. Time spent in court is therefore not a reliable indicator of a prosecutor’s effectiveness. What is needed are performance indicators that operate across the entire system and promote cooperation.

## COMMUNITY PROSECUTION PILOT PROJECT

By 2001 it was evident that prosecution alone was not having sufficient impact on reducing crime, and the public did not view the criminal justice system as effective. In order to play its part in the National Crime Prevention Strategy (NCPS), the NPA underwent three years of managed change, from 2003 to 2005, which generated a new range of responses to crime that moved beyond the traditional role of processing cases.<sup>20</sup>

In late 2005 the NPA tested an alternative model for community prosecutions. The then National Director of Public Prosecutions, Advocate Vusi Pikoli, distinguished the role of the community prosecutor from that of the traditional prosecutor, thus:

the mission of the traditional prosecutor is to decide whether to prosecute a case; to prepare cases and try them in court; and to secure convictions by putting the truth before the court and to recommend appropriate sentencing. The community prosecutor's mission is to reduce crime; to prevent crime; to build relationships and collaborate with the community and to deliver justice.<sup>21</sup>

By May 2006, a pilot programme was underway involving nine community prosecutors,<sup>22</sup> providing a service that was responsive to community needs.

In the NPA's draft guidelines on community prosecution the new approach to prosecution was described as,

a shift from case processing to community mending. This approach entails a long-term, proactive partnership between the prosecution, law enforcement, the community, and public and private organisations with a view to solving particular community crime problems, improving public safety and enhancing the quality of life of community members.<sup>23</sup>

The draft guidelines put forward the following elements as 'inherent to community prosecution':

- A focus on problem-solving, public safety and quality-of-life issues
- Inclusion of the community's input into the criminal justice system, e.g. community impact statements that are considered during sentencing
- Partnerships with the prosecutor, law enforcement, public and private agencies, and the community
- Various methods of prevention, intervention and enforcement other than criminal prosecution to address problems

- A clearly defined targeted geographical area
- An integrated approach involving both reactive and proactive strategies<sup>24</sup>

The draft guidelines note that both traditional and community prosecutors have as their primary function the prosecution of crime, with three overarching goals common to both:

- To promote the fair, impartial and expeditious pursuit of justice
- To ensure safer communities
- To promote integrity in the prosecution profession and coordination in the criminal justice system

Community prosecutors emphasise crime prevention and assisting victims to feel safe and less apprehensive about the threat of crime. As a consequence they are expected to show a greater concern for enhancing community relations, public safety and overall quality of life for residents than would traditional prosecutors.<sup>25</sup>

Using these guidelines as a starting point, the National Prosecuting Service gave nine prosecutors two years to test and demonstrate the concept of community prosecution, with their work monitored and evaluated by an external evaluator. The key question informing the pilot project and its evaluation was: What should the South African version of community prosecutions look like, as opposed to those versions being implemented in the United States, United Kingdom and Europe? Nine pilot sites were selected using a set of the following criteria:

- The community is affected by high crime or else persistent levels of minor crime
- The potential exists to reduce crime
- The target site is clearly defined geographically
- SAPS high priority sites are included (eight out of the nine were high priority)
- Senior public prosecutors are available
- Access to the identified community is relatively easy
- Court infrastructure is available so that prosecutions that flow from the pilot can be speedily finalised
- Support structures and services are available and there are good working relationships with key partners
- The selected sites justify the costs and resources required to make the pilots a success

- There is potential for social and economic development

**Table 6: The pilot sites for community prosecutions**

Site	Area type	Province
Point (Durban)	Urban	KwaZulu-Natal
Windsor (Randburg)	Peri-Urban	Gauteng
Siyahlala (Nyanga outside of Cape town)	Peri-Urban	Cape
Mandela extension (Mamelodi outside Pretoria)	Peri-Urban	Gauteng
Phuthanang (Galeshewe near Kimberley)	Peri-Urban	Northern Cape
NU1 (Mdantsane near East London)	Peri-Urban	Eastern Cape
Ngangelizwe (Mthatha)	Peri-Urban	Eastern Cape
Bohlokong (Bethlehem)	Peri-Urban	Free State
Kudumane (Kuruman)	Rural	Northwest

The results of the study made a very strong case for community prosecution. For instance:

*'Bundu Courts' were stopped in a high crime area of Nyanga called Siyahlala. In April 2006, at the time of the baseline study, about 13 people had been murdered owing to high levels of vigilantism. However the murder rate plummeted to zero from November 2006 to the end of piloting in October 2007 after the appointed senior prosecutor helped to develop a community police forum to replace the existing vigilante committee. This action greatly improved police-community relations.*<sup>26</sup>

*Stock theft plummeted in a rural area.* Empowering community members in the law and selective prosecutions of cattle rustlers in a remote rural area overlapping the Northern Cape and North West Provinces (Kudumane) led to a huge drop in stock theft (from about 40-50 a month to 2-3 a month). It empowered an anti-stock theft organisation to the point that its membership is expanded rapidly across the northern areas of the country.<sup>27</sup>

*Unregulated taverns in peri-urban areas were regulated.* Educating tavern owners in the law at five peri-urban sites led to much better regulated taverns. Once notorious sites in Mdantsane, Bohlokong, Ngangelizwe, Mamelodi and Siyahhlala were considered much safer, and there was an overall drop in crime levels in three pilot sites (Siyahlala, Ngangelizwe and Mamelodi).<sup>28</sup>

*Illegal establishments were shut down and fined in Point to fund the CPF.* At nearly all sites certain cases were selected to fast-track and prosecute in court, sending a warning that crime and breaking by-laws does not pay. For example, on 10 March 2007, Community Prosecutor Val Melis of Durban worked with police to shut down seven different nightclubs for breaking nuisance by-laws, holding inappropriate liquor licences and not being in compliance with the conditions of these licences (e.g. no liquor sales after 2am, and that food must be served). The Community Prosecutor directed these cases to the community court, where financial penalties were imposed. These fines were then paid over to community projects to fight crime.<sup>29</sup>

*Drug sellers were removed from the streets of Windsor.* The community prosecutor in this area worked with SAPS on proactive policing strategies. The result was that drug sellers who were highly visible and loitering on the streets at the time of the baseline study were no longer evident by the evaluation 18 months later. The streets appeared cleaner and less littered.

*A top hijacking hotspot was removed from the SAPS priority list.* In Mamelodi, the worst hotspot in the area for hijacking at the time of the baseline study was eventually dropped from the SAPS hotspot list. This happened because the prosecutor worked with a municipal councillor to see that the land was developed and better street lighting was installed.<sup>30</sup>

*Building community trust was built.* In Bohlakong, the community prosecutor teamed up with the Public Participation Officer from the Dihlabeng Municipality to offer outreach activities on crime prevention. This improved reporting levels and led to strategic partnerships to reduce crime in community-identified hotspots such as open fields where rape was common, and the closure of the most notorious tavern in the area.<sup>31</sup>

What these success stories have in common is that the community prosecutor either drove the partnerships or participated in crime prevention bodies. This stemmed from a wide range of activities:

- Selective prosecutions and fast-tracking cases (to send a message that crime does not pay).
- Educating the public, members of government departments and other targeted groups on the law (to improve reporting levels, service delivery and cooperation levels).
- Working hand-in-hand with the police, government departments and municipalities to use by-law infractions to close down crime-generating establishments such as illegal taverns or brothels.
- Developing partnership projects for crime prevention. A successful example was a vagrancy project in Durban involving several departments to find employment for those who were at high risk of turning to crime but still had a clean record.
- NPA participation in both departmental and community based-crime prevention activities (e.g. SAPS crime prevention and Community Policing Forums). The NPA's role was to offer some expertise on the law to help resolve problems in a more efficient manner, for example using by-laws to shut down illegal traders.
- Ensuring that the community's concerns were represented to various government departments and reporting back to the community on how to work with government policies and plans.

Seven of the nine target sites experienced visible reductions in crime problems based on before and after site observations by the evaluator, which included photographs and a baseline study. Over 90 per cent of research partners at eight pilot sites using round-table discussions, interviews and on questionnaires, found that the project had led to improved safety programmes.

Between the time of the May 2006 baseline study and the evaluation in late 2007, crime was reduced in four sites – Siyahlala, Mamelodi, Ngangelizwe, and Windsor. Focus group discussions, the results of questionnaires and interviews, all pointed to CMP led partnership activities as the cause of the drop in crime. Community members indicated much greater feelings of safety at six of eight sites. The only site that showed no improvements — Phuthanang in Galeshewe outside Kimberley — was one in which a community prosecutor was not placed for the whole period of the pilot due to ongoing changes in personnel.

These results were significant enough for the evaluator to recommend that the community policing project model be used for crime prevention on a larger scale. However the evaluator's recommendations came with some provisos:

- The evaluator cautioned that owing to the small size of some pilot sites, crime was sometimes displaced from one sector to the next (for example drug related activities in Windsor).
- Success depends on how SAPS and the NPA work together and enlist other partners.
- Since different types of crime can be differently distributed across policing sectors, the evaluator recommended focusing on specific crimes across policing areas rather than a separate focus per policing area.
- Further monitoring and evaluation is essential: other countries have shown that at least six years is needed to direct police activities to maximum effect.
- The targeted areas should be SAPS priority zones (which can include more than one station). This is appropriate in South Africa because the NPA and SAPS can work together from a national level. Also the priority areas are defined nationally; and human resources are limited.

Despite its promising results the community prosecution project has not received widespread support within the NPA nor has it been mainstreamed into the operations of the NPA. The pilot sites continue to operate, but without extra resources and with no long-term support. In part this is because the focus of the NPA continues to be driven by the need to report reduced court rolls and improved turnaround times rather than crime reduction. As is often the case, what gets measured determines what gets done.

## ANALYSIS AND RECOMMENDATIONS

Why is the criminal justice system so obviously inefficient? After all, the NPA has processes and protocols in place, it is committed to agreed case flow management principles, and it makes use of information management tools to provide an effective efficient criminal justice service.

Based on the 10 years during which the Independent Projects Trust (IPT) has worked within the system, we believe there are three core issues that, if tackled, would improve the performance of the South African criminal justice system. These are

- Improve the way the system is managed
- Put greater effort into crime prevention
- Take a broader and more integrated view of how to measure success in combating crime

### Management

Poor management is a key impediment to service delivery within the system. A 2002 study by the Independent Projects Trust found that

many individuals in key provincial positions lacked the basic managerial skills needed to ensure an acceptable standard of performance. Fast tracked appointments lacked on-the-job experience and skills, whilst ‘old guard’ managers, shaped by the previous system, tended to be set in their ways and their entrenched practices were no longer relevant or acceptable. Furthermore there was no culture of organizational learning and any expertise in the system was neither transferred nor shared.<sup>32</sup>

After working with the National Prosecuting Authority for five years on a criminal justice strengthening project, IPT observed that the capacity of the organisation to manage human resources was extremely low:

The inability of the NPA to address the poor performance of its corporate services unit created one of the greatest hindrances to improved performance within the courts at a provincial level.<sup>33</sup>

The IPT found that managers at provincial levels were extremely demotivated by the lack of effective support from the national level. Attempts by provincial level managers to deal with lack of performance and abuse of sick leave were stymied by the fact that a large proportion of cases remain stalled at the national level due

to limited capacity within Corporate Services.

Poor human resource management is indicated by the high level of vacant posts within the National Prosecuting Authority. In 2008 the acting head of the NPA, Adv. Mpshe, addressed Members of Parliament on the Standing Committee for Security and Constitutional Affairs in the National Council Of Provinces He explained how staff shortages affected work of the NPA:

We have a suspended national director; I'm an acting national director. We have an acting head of National Prosecuting Services and an acting CEO. We have an acting director of the witness protection unit and an acting special director as an adviser in my office.

We have an acting spokesperson of the NPA, and acting DPP in Bloemfontein, an acting regional head in Durban, and an acting regional head of the DSO in East London. We have an acting DPP in Pretoria. To sum it all up, we are on stage, we are acting. The organisation is acting.

On a serious note, if you have so many acting positions, these are at senior level. We are talking of the leadership of the organisation. How on earth can you expect the organisation to prosper and to perform as expected? You can't.<sup>34</sup>

While Adv. Mpshe was referring to a crisis at the most senior level, the situation at court level is no less serious. The Independent Projects Trust reported that in courts where it had worked, approximately a quarter of all posts were unfilled. NPA statistics give a slightly less bleak picture: statistics offered during the criminal justice review process state that unfilled posts were reduced from 24 per cent in 2007 to 17 per cent in 2008.<sup>35</sup> Posts that are advertised take nearly six months to finalise, with many prime candidates finding other positions. The lack of a cohesive national strategy on human resources generates other problems, for example prosecutors are promoted to other provinces leaving serious gaps in their wake. The absence of succession planning is another example. Human resource practices common to most large organisations seem completely absent within the NPA.

Because cases are attached to particular courts, if a prosecutor moves, the substitute prosecutor needs to be briefed from scratch. In reality the hand-over process from one prosecutor to another is often done hastily, without following thorough formal procedures. The Anna Juries case study is a good example of how a crime victim experiences the effect of staff shortages, frequent movements of staff and the absence or non-observance of procedure. It is not uncommon to hear senior NPA managers discussing problems as if the problems were completely

outside of their influence. This comes from the lack of accountability around outcomes, and the way in which statistics predominantly measure volume of activities rather than the outcomes or impact of these activities.

All these problems are compounded by a organisational culture that is focused inwards — towards meeting the requirements of your superior, rather than outwards — towards meeting the requirements of your customer. This has been attributed to ‘a history of authoritarian leadership in which individual action was discouraged, and there is a tendency to focus on what the ‘boss wants’ rather than on responding appropriately to local issues.’<sup>36</sup> This organisational culture tends to become a permanent state of crisis management mode, as local plans and priorities are disrupted by urgent requests from national levels which seem to have little relevance to real time situations in the court.

Poor management within the NPA, and in fact within the broader criminal justice system, is widely acknowledged. Despite this, there seems to be little effort to demand accountability from managers at any level. A recent criminal justice review proposes ‘drastic transformation of court process in criminal matters’. One such drastic transformation is proposed as follows:

A major change will be the screening of cases, by a newly created Screening Mechanism consisting of the prosecuting authority and detective branch, at High Court/Regional Court Level and district court level (in cities and larger towns) to ensure that only *prima facie* cases and trial-ready cases, and cases requiring incarceration pending finalization of the investigation are certified and introduced into court.<sup>37</sup>

In fact this process is already established, as described earlier in this chapter. But it does not work due to a lack of capacity, poor management and limited accountability. Unless these issues are addressed, no transformed court process is going to make any difference.

What is required is the vigorous introduction of professional human resources practices including:

- Formal succession planning
- Assessment of current deployment practices
- Assessment of current recruitment practices
- Training in management skills

## Crime prevention

Criminal justice systems in most countries today tend to have two distinct and often competing strategies to reduce crime. The first strategy, as noted by Fogle-song and Stone, is to *remove as many criminals as possible from society*. The assumption is that removing individual criminals is directly linked to a reduction of crime and violence.<sup>38</sup> In well-integrated and efficient criminal justice system, attempts to reduce crime levels would focus on maximising arrests, maximising convictions and handing down lengthy prison sentences. However in a broken or dysfunctional criminal justice system the police and/or community groups are tempted to remove the criminals themselves. In South Africa this concept has popular support, as demonstrated by the sometime violent attacks by communities on suspected criminals.

The second strategy of most criminal justice systems is to eliminate the immediate conditions that permit crime and violence to thrive: *to solve the proximate underlying causes of crime*.<sup>39</sup> In South Africa to do this successfully would require serious attention to reducing poverty, illiteracy, inequality and other negative social conditions. This is clearly not a task for criminal justice system alone. Nevertheless the NPA's pilot Community Prosecution project is an example of the how the criminal justice system can act to prevent crime. It has demonstrated powerful results in crime reduction and improved the public's perception of safety in the areas where community prosecutors were appointed.

There is a need for all departments, especially those outside of the criminal justice system to recognise their role in preventing crime since it is clear that the emphasis on policing and prosecution as the primary way to reduce crime will not solve the problem in the long term.

This challenge can be backed up with evidence. David Bayley, a leading scholar of policing who has researched several countries, says the notion that the police reduce crime levels is a myth. As he put it, 'the primary strategies adopted by modern police have been shown to have little or no effect on crime.'<sup>40</sup> Visible policing may have an impact on reducing local crime, but is more difficult in the many high crime areas where communities do not consent to be policed.<sup>41</sup>

The 34 per cent increase of resources going to the police — from R33 billion in 2006/2007 to R44 billion in 2009/2010<sup>42</sup> — needs to be assessed in relation to budgets for social services. The bulk of the Department of Social Development's budget goes towards social security, which means very little is left for social serv-

ices. South Africa has some 11 000 social workers compared to over 190 000 police officers.

Increasing in the number of personnel in SAPS may detect more crime, but it will certainly contribute to an increased burden on the justice system already not coping with the total of 1 035 111 cases received during 2007/08.<sup>43</sup> Couple this with a system of correctional services which is oversubscribed and it is not unreasonable to imagine that increased arrest rates could bring an already unstable system down on its knees.

We need to shift from a short term political vision whereby government has to been seen to 'do something' about crime to one in which we address the causal factors. Or as one researcher notes 'We need to talk less about crime and more about safety. As long as we talk about crime we expect the police to fix it. When we talk about safety we open up the arena to a whole range of other role players.'<sup>44</sup>

## Measuring achievement

Performance measures are most useful when placed in the context of goals or outcomes. Regarding crime, these outcomes should be viewed within a broader social context. Understanding outcomes such as crime, victimization and re-offending, and understanding why they happen requires information on both justice and partner system interventions — from education, social welfare and health sectors, to non-government organisations to individual, family and community influences.<sup>45</sup> Understanding outcomes and motives is particularly important in relation to some of the newer South African legislation, such as the Sexual Offences Act and the Child Justice Act.

Incident response times, investigator and prosecutor caseloads, case cycle times and adjudication times can all indicate only one aspect of performance. And simple numerical indicators can be highly misleading. Independent Projects Trust researchers have worked with many police stations that were proud of their low domestic violence and rape rates – only to find that when they spoke to community members it became clear that cases in these categories were low because were simply ignored or rejected.<sup>46</sup> In such situations targets such as 'reduce the number of rapes' simply mask the problem. A better target might be 'improve the safety of women in the area' which should motivate a different type of response.

Rather than numbers, measurement of performance is necessary. A basic first step is to ask whether people are doing the jobs they are employed to do. If in-

dividuals simply came to work on time and did the work they were supposed to do, the system would improve dramatically, even if there were no other transformative processes. Needless to say, this first step to ensuring a working system is rarely followed.

Performance measurement needs to go further. The overall performance of the CJS has to be tracked from the perspective of the victim, who is rarely included in any data collection process. At present the primary objective is to complete a case in the shortest possible time, regardless that this is done at the expense of quality, participation, support, and ultimately, justice, for victims.

Communication across departments and integrated information management are priorities in delivering justice to both victims and perpetrators — and taxpayers. Currently, the Police Services record the charges laid, the NPA records the cases opened, and the Department of Correctional Services records the people jailed. Since these records are not coordinated, there is no means to track individuals (whether perpetrators or victims) through the system. If people use aliases, and fingerprint databases are not utilised, this makes tracking even more impossible. Among other things, it means we cannot measure the efficiency of justice system processes or correlate the number of crimes committed with the number of people in prison.

The measurement system needs to enable government to properly align the elements of the criminal justice system and measure public safety and justice rather than simply collecting numbers.<sup>47</sup> The disparate elements of the criminal justice system will have to agree to aim for close alignment. These goals would require:

- Clear and precise standards/policy goals to which managers are held accountable
- Clearly articulated outcomes for the criminal justice system
- Evidence in respect of each indicator, i.e. what constitutes proof that something has happened or not happened?<sup>48</sup>
- Clear and precise standards/policy goals to which managers are held accountable
- Targets of success that citizens feel relate to their protection rather than making the law enforcers look good

## NOTES

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