



Africa Criminal Justice Reform
Organisation pour la Réforme de la Justice Pénale en Afrique
Organização para a Reforma da Justiça Criminal em África



In search of strategy

Issue Paper 1

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Introduction

- Problematises the strategy environment of the NPA and raises questions about how strategy is developed, the priorities set and how performance is measured.
- Overall impression is of a situation where strategy priorities and objectives emanate from different sources, but that the most measurable is what drives performance at operational level and not necessarily the most needed or most important to make the country safer and build trust in the state.
- Def. Strategy: “a detailed plan for achieving success in situations such as war, politics, business, industry, or sport, or the skill of planning for such situations”.
- The four most commonly accepted components of a strategy are:
 - Visioning
 - Objective setting
 - Resource allocation
 - **Prioritization or strategic trade-offs.**
- Investigation by the police and prosecution by the NPA - a distinction too rigid?

The strategy environment of the NPA

- The NPA is a programme of the Dept of Justice and Constitutional Development (DoJCD) for budgetary purposes; is part of the Justice, Crime Prevention and Security cluster (JCPS); highly dependent on the police for investigations and on the functioning of the courts as administered by the DoJCD.
- There are a number of high-level documents providing guidance to government departments and entities.
 - high-level and rather abstract goals and objectives are described in increasingly precise and operationally measurable targets against indicators as one moves closer to ground-level.
 - one ought to be able to read the relationship between these documents in both directions: from the abstract and general to the precise and measurable, and then in the other direction to clearly see how detail actions contribute to larger objectives and goals.
 - Ought to be some degree of coherence and consistency in order to produce results that are supportive of high-level outcomes.
- Strategy relevant documents
 - National Development Plan
 - Medium Term Strategic Framework (MTSF)
 - ENE & Budget Vote DoJCD
 - Prosecution Policy
 - Prosecution Policy Directives
 - NPA Strategic Plan 2020-25
 - NPA Annual Performance Plan
 - NPA Annual Reports.

The strategy environment of the NPA

NDP - a high level 17-year vision document, DPME

MTSF - a 5-year strategic framework, reviewed, DPME 2019-2024

ENE & BV – a 3-year financial plan approved annually

NPA strategic Plan, 2020-2025

NPA Annual Performance Plan

NPA Annual Report

Prosecution policy, a once-off policy, 2014; not subject to review

Prosecution Directives, a confidential document, 2014

The strategy environment of the NPA

- There is a significant level of inconsistency in the use and categorisation of information setting outcomes, indicators, targets and so forth, across these documents. Trying to find a logical path cascading from high level frameworks to operational plans (and back again) is thus not easy, if indeed possible, at all. This may very well be the result of the position of the drafters of a particular document (e.g., Department of Monitoring and Evaluation compared to National Treasury) and what the priorities are at that particular level of state functioning. There may also be other more practical and mundane reasons.
- The NDP was published in 2012 whilst other documents are produced once-off, or more regularly in five-year or annual cycles, and regularly updated.
- The high-level planning documents such as the NDP and MTSF, although highly relevant, give limited clear guidance on what the NPA should do. (e.g. revival of the 7-point plan for the reform of the CJS). The MTSF gives surprisingly little information on the NPA and seems to shift most of the criminal justice workload to SAPS. This may be symptomatic of a particular understanding of crime and what constitutes an effective response.
- The ENE and budget vote set the clearest and most tangible targets for the NPA, but this does not mean that they link these to the NDP and MTSF.
- The ENE and budget vote is also the basis for the annual audit (AGSA) – more effort to report on these targets and indicators regardless of their merits, and overlap with NDP and MTSF targets appear to be more coincidental than planned. The ENE functions in a three-year cycle and very much binds a department to a particular set of outcomes and indicators for a term.
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- The NPA Strategic Plan (2020-25) introduces three new high-level outcomes and it is not clear how these should or could link up with the budget vote and ENE. This is not to argue the merits of these outcomes, but rather that their links with the ENE are not clear. And this may have implications for their support at operational level and ultimately achievement.
- The more recent annual reports (after 2018/19) do not present the outcomes, targets and indicators in an accessible tabular format, but rather in a text narrative often linked to case studies. This does not assist in gaining a systemic understanding of challenges and achievements.
- The annual report (2018/19) lists detailed targets derived from the ENE and emphasise conviction rates.
- The Prosecution Policy and Prosecution Policy Directives are largely focussed on the procedural guidelines for making the decision to prosecute or not, and other options available to prosecutors (such as alternative dispute resolution mechanisms), as opposed to setting substantive strategic priorities, such as corruption or gender-based violence. The Prosecution Policy Directives also sets an additional requirement for the prosecution of certain government officials, namely that permission is required from the Director: Public Prosecutions.

The strategy environment of the NPA

- While the planning at macro-level (i.e., NDP and MTSF) encourages an open-minded and inclusive approach, planning at the other end of the spectrum (i.e., departmental and programme levels) is preserving and conservative in nature; remaining close to, if not locked into, the indicators and targets articulated in the ENE to ensure compliance presumably in anticipation of the AGSA's audit.
- Tension between the aspirations of the high-level analysis and recommendations of the NDP and the practical realities of changing strategic direction bound by the confines of the five-year cycle and the tightly defined numerical targets articulated in the ENE and annual report. This tension may indeed be debilitating, especially when new leadership have *bona fide* intentions to steer the ship in a new direction.

Crime is not the same everywhere

- There are a number of broad crime types posing a serious threat to the stability and sustainability of the democracy and constitutional order: e.g.: violent and sexual crimes; corruption and maladministration; organised crime; targeted stripping of state infrastructure; politically motivated and linked crimes and violence.
- Some crime types find expression in: geographical areas (e.g., organised stock theft in the Free State ; drug trafficking in the Western Cape ; high rates of murder and violent crimes in poor and poorly policed areas compared to affluent areas ; excessive use of force and firearms by SAPS in KwaZulu-Natal); corruption in government (e.g., procurement processes at all levels); and crimes against women by repeat offenders.
- Addressing crime effectively therefore requires a targeted approach focussing on those crimes that (a) have the most adverse impact on safety and perceptions of safety (b) divert public funds from their intended purposes, and (c) undermine the very fabric of democracy and good governance (e.g., assassinations and rights violations).
- Strategic priorities therefore have to be identified, pursued, the impact of actions measured, and adjusted accordingly.
- NPA must engage locally and provincially

The conviction rate as a red herring

- Prosecution Policy and Prosecution Policy Directives give little guidance on the substantive prosecution priorities and their method of identification.
- From the list of indicators listed in the ENE and annual report of 2018/19 it is evident that much emphasis is placed on the conviction rate, which is perhaps motivated by the availability of data on this, but also because the prosecutor has the discretion to select the cases where there is a high likelihood of conviction and not pursue those where the chances are less favourable. The conviction rate is a useful figure, but it only tells part of the story.
- The conviction rate does not reflect on the scale of prosecutions over time, or the impact of sustained and focussed prosecutions on a particular problem in a specific area. (Target, track and trace)
- This indicator does not link up with higher level strategic goals, for example, the level of safety in South Africa. A high conviction rate simply does not mean that society is safe, or that the state is trusted.

Lacking harmonisation

- Vast numbers of suspects are arrested for minor crimes (e.g., possession of drugs) that do not pose a threat to public safety, whilst seemingly more serious crimes are not adequately investigated. **2020/1 arrest data a big concern**
- Arrest data from SAPS and data on enrolments from the NPA for the period 2015/16 to 2019/20:
 - There has been a steady decline in the number of arrests and number of enrolments.
 - There has been an increase in the proportion of cases withdrawn following enrolment; from 11% in 2016/17 to 15.4% in 2019/20; or almost one in six cases.
 - Between 44% and 53% of police arrests were ultimately counted as enrolled cases and not withdrawn
- A mismatch of roughly 50% (44% to 53%) between what the police regards as sufficient grounds for arrest and what the NPA regards as sufficiently supported by evidence for enrolment to prosecute.
- If there is no real intention to prosecute, the police should not arrest [*S v Jordan and Others* (SWEAT a.o. as Amici Curiae, CCT 31/01) [2002] ZACC 22]

Performance indicators

- Do the indicators support an effective response to crime? If so, are they applied to this effect?
- Strategy development and coordination is centralised in the NPA at the head office with seemingly little devolved discretion.
- No formal mechanism for input or coordination between the NPA and provincial governments or civil society structures (see CPFs by comparison). The overall impression is a one-shoe-fits-all approach, and that this one shoe is also derived from the lowest common denominator - the conviction rate.
- NPA reporting is largely done on an aggregated national basis, making it difficult to critically examine if geographical or other priorities are addressed in a targeted manner, or if successes are ad hoc and serendipitous.
 - Recent annual reports have also reflected on successful case studies and whilst these are important, they do not contribute to an analysis of how the NPA is addressing strategic priorities and if such initiatives are indeed having the desired impact.
- The results reported from the various NPA units are not contextualised and a closer examination reveals modest if not declining results.
 - the conviction of government officials for corruption has indeed declined in recent years. The value of asset recoveries in cases linked to government officials have also declined from a high of R13 million in 2015/16 to R127 000 in 2020/21. The evidence simply does not support claims of a particular focus on corruption.

Conclusion

- The current response to crime (intelligence, detection, investigation and prosecution) suffers from a number of weaknesses.
- In the case of the NPA, this largely relates to a lack of strategy and consequently lack of effective performance and results-management.
 - Symptomatic are ad hoc responses under political pressure; court rolls filled with minor cases and few serious prosecutions (such as corruption and violent or sex crimes); trial courts sitting for shorter and shorter periods, while cases take longer to finalise; numerous postponements before decisions are made; a lack of urgency in processing matters; declining numbers in prosecutions; and ultimately a worsening crime situation.
- The strategy-policy environment reflected in the various key documents reviewed is confusing as it is difficult to form a coherent understanding of what are indeed the priorities and how shorter-term targets relate to the overall goals.
- The lack of strategic priorities also adds to a decline in specialisation and expertise and consequently adds to staff turnover and skills departing the organisation.

Thank you



