



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



“The NPA that we want”

Summary report on civil society consultations

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Introduction

- Much of the focus on the NPA concerns the high-level cases (e.g. from Zondo, SIU, Hawks and investigative journalists)
- Our research has also largely focus on systemic issues (e.g. performance) and the legal framework (e.g. appointments).
- Question: How do ordinary people experience the NPA (esp. district and regional courts) and what are their expectations?
What does the NPA look like that they want?
- The high-level cases will continue and there may be varying degrees of success. We must then ask: What do we want the criminal justice system (esp. district and regional courts) to look like 10 or 20 years from now?
- It is common knowledge that the NPA is busy with a number of change interventions to address shortcomings and challenges. The impact of these may have as yet not have filtered through to ground-level and the views expressed in the report by participants are based on what they know and have experienced. It is not to say that reforms undertaken by the NPA are not happening or are missing the mark.
- Many of the problems concerning the NPA found in these consultations have also been reported elsewhere. The purpose is not to criticise the NPA, but rather to come to a more accurate description of the problem.

Approach

- Approach:
 - The more clearly the problem is identified and defined
 - The more clearly the needs are assessed
 - The more appropriately the programme is designed to address the needs
 - The more effectively the programme is delivered and implemented
 - The more the short term or medium-term outcomes are achieved
 - The greater the long-term impact will be.

Louw, J. (2000) Improving practice through evaluation IN Donald, D., Dawes, A. and Louw J. (eds) Addressing childhood adversity.

Method

- Three workshops in June 2022 involving 27 participants: 2 = academic, 21 = CSO; 4 = government supported programme
- ACJR commissioned a consultant so we were not able to influence or sway views
 - Identifying the 'right' participants easier said than done.
 - The NPA (prosecutors) are not that easily identifiable to ordinary people and the roles are not always that clearly discernible to the lay person.
- Focussed on the 4 core values of the NPA from strategic plan: professionalism, independence, accountability and credibility.
- These were unpacked with reference to (a) experiences and (b) expectations
- To assist in this process actual scenarios were described by participants and then discussed with reference to (a) the 4 core values (b) experiences and expectations (c) where appropriate, the experiences and expectations were categorised with reference to the individual, community and state institution observations and implications.
- The report consists of three workshops reports as appendices and the summary report; the latter will be the focus here.
- The appendices provide substantially more detail and people's actual experiences; these are valuable as they give insight into a view from below. It is these experiences that shape people's perceptions of the state.

Overview of concerns

- People had strong views about the NPA: Perceptions are that the NPA is inefficient, unreliable and, in some cases, biased or unfair. Some participants reported perceptions that the NPA is racist and is thus perpetuating racial and socio-economic inequality.
- Participants were often unclear on the division of functions between the police, prosecutors, and magistrates.
- When it came to prosecutors specifically, many of the workshop participants perceived them as over-worked, inexperienced, lacking knowledge of the law (especially in areas where specialist knowledge is required, e.g. sexual offences), unhelpful, uncooperative and, at times, dismissive.
- Several participants noted that the NPA is a 'hollowed out' institution, with high levels of staff turn-over, limited budget and poor human resource management; there is a lack of incentives to motivate prosecutors to prosecute serious crimes.
- The legal process is confusing and, at times, even appears to be chaotic to members of the public;
- Reasons for cases being prosecuted or withdrawn are not clear to people and the NPA's decision-making in this regard is perceived as being opaque;
- Legal proceedings are often drawn out, which makes the process unreliable (witnesses are no longer available or may even forget their testimony, making it unreliable);
- Drawn out proceedings are also costly for people who have to take time off work or travel distances to appear in court or to support their family members;

Overview of concerns

- There is a perception that the justice system is skewed towards serving the interests of the wealthy or those that have the resources to pay for legal representation;
- There is a general lack of clarity amongst the public and organisations who are supporting victims of crime regarding legal proceedings;
- Language barriers exacerbate poor communication between prosecutors, victims of crime and witnesses.

In the following section the expectations are presented: They do not always fit neatly under one of the core values but overlap and are frequently mutually reinforcing, e.g. good & effective communication has many positive consequences.

Expectations: Professionalism

Support to families & victims

- Provision of psychosocial support for victims, families, and communities
- Victims and families should be treated with respect and dignity.
- Better court preparation of victims and their families, as well as witnesses.

Effective communication on cases and decisions

- People expect better communication about why there are delays and postponements, as well as better procedural efficiency and fairness.
- Prosecutors take the time to communicate with victims' families and communities about possible alternatives to trial, such as alternative dispute resolution or mediation.
- People expect to have been given information about the court process and to understand how it works.
- They want matters resolved in good time. They want better case management and transparency in relation to decisions and judgements that are made.

Expectations: Professionalism (cont)

- **Fairness**
 - Repeat offenders should be tagged by the system and be prosecuted more vigorously.
 - Communities would like to see the justice system working to keep them safer, rather than prosecuting petty criminals.
 - Community assessors are perceived as being able to help the magistrate make these kinds of decisions, and the participants expressed that they could play more of a role in the process.
 - Improve / implement alternative dispute resolution mechanisms, and inform people if you intend to use them.
 - Well-capacitated magistrates and prosecutors consider cases carefully, have the necessary knowledge and expertise, and may even be specialists in certain fields.
- **Efficient and effective**
 - Effective and thorough process from investigation through to resolution of the case. It was also recommended by some participants that the NPA develop their own investigative capacity.
 - Prosecutors are effectively trained to handle cases, investigations, and evidence.
 - Prosecutors provide clear guidelines to IO regarding evidence requirements and what is required (in the docket) to ensure that cases cannot just be dismissed
 - A collaborative and integrated justice system. (Incentives/motivation and CJS)

Expectations: Independence

- Citizens enjoy equal and fair access to justice. (Note: Independence means basing decisions on objective criteria free from bias – “free from fear favour or prejudice”)
- Prosecutors and the police should be vetted to ensure that they are not tied to known criminals and gangs.
- The system should be above corruption.

Expectations: Accountability

- Clear communication from prosecutors regarding the legal process and current status of case proceedings.
- The NPA should work in collaboration with civil society organisations that are there to help communities with legal processes, such as community advice offices, or those who are strengthening access to human rights through information and education.
- The NPA needs to implement a monitoring and evaluation system to maintain accountability.

Expectations: Credibility

- Witnesses should be protected.
- Expect the NPA to educate communities about the criminal justice system, especially organisations who interact with victims and offenders like community-based organisations or victim support organisations.
- The NPA and SAPS should be unbiased, treat everyone equally and fairly, and with respect.
- The NPA should apply the law in a consistent manner.
- Violent crimes need to be given priority.
- Prosecutors should know the law, including specialised areas that affect the most vulnerable people such as immigrants and victims of GBV and sexual offences.

Recommendations from stakeholders

- There is a need for civic education around the criminal justice system and processes. Civil society & NPA partnerships for civic education on the law and legal processes.
- A social support department should be established in the NPA to handle “grey areas” such as first-time offenders, repeat offenders, and youth offenders.
- The NPA should provide psychosocial support to families, and victims to help them deal with possible trauma, particularly in gender-based violence (GBV) cases.
- The NPA needs to have evidence and information for improved strategy design and implementation. Suggestions from participants were:
 - (a) Overall assessment of the NPA should be the crime rate – high levels of crime in SA; also organised crime is increasing (b) Need a more proactive as opposed to reactive approach to dealing with crime and also improved monitoring and evaluation system that can provide the right evidence to inform the development of effective crime prevention strategies and resource allocations e.g., allocate resources and skills appropriately where there are high levels of crime (c) Implement systems to track cases from start to finish and use this as a means of assessing performance (e.g., percentage of withdrawals, duration etc)

Recommendations from stakeholders

- There should be a stronger and more collaborative relationship between SAPS and the NPA, especially around evidence collection and communication with communities, victims and their families.
- Sentencing needs to be fair – sometimes it is too heavy handed given the crime, which reinforces perceptions of discrimination by the criminal justice system. How are community view represented? E.g., court assessors; an “ombudsman” to assess performance and consistency of NPA

Conclusion

- On the one hand people are very understanding of the problems facing the NPA, and on the other hand they are firm about wanting to see improvement, and they know what they want.
- Three issues stand out:
 - **Prosecutors must be able to do their job:** competent; be knowledgeable about the law, processes and being able to make decisions
 - **“Keep me informed of my case”**
 - **Fairness** - not being biased; good communication; understanding the context of the crime; prosecuting the right cases

Thank you

