



Africa Criminal Justice Reform
Organisation pour la Réforme de la Justice Pénale en Afrique
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Key issues in the NPA

Knowledge, skills and human resources

Issue Paper 2

by

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Contents

1. Introduction	5
2. Reporting on human resource management	5
3. Overall vacancies 2019/20	6
4. Prosecutors' vacancies	7
5. Job satisfaction	8
6. Skills, qualities and qualification requirements for prosecutors.....	9

1. Introduction

The capacity, knowledge, skills and experience of an organisation's workforce will determine largely the extent to which it is able to fulfil its mandate. The aim in this issue paper is to problematise this particular issue in a succinct manner with the view to build consensus on understanding the problem properly in order to develop effective short to medium term responses. Human resource management, especially its effective and efficient utilisation, is a complex issue and there are many exceptions when we attempt to generalise, but the focus is here on the overall problem, or the problem most frequently encountered.

2. Reporting on human resource management

Whilst the National Prosecuting Authority (NPA) is required to submit a report annually to Parliament that should cover, amongst others, the 'personnel position' of the NPA¹ the scope and depth of such reporting leaves much to be desired and more accurate data is gleaned from the annual reports of the Dept of Justice and Constitutional Development (DoJCD). The most recent NPA annual report has no information on the staff composition, staff establishment, number of vacancies and so forth. These matters are reported on in the DoJCD annual reports as part of that department and thus not receiving the requisite attention and analysis if the NPA produced its own fully fledged annual report as per the Treasury-approved template. Inconsistent, superficial and incomplete reporting on human resources is not assisting the situation. The NPA needs to produce an annual report on human resource according to the Treasury-approved template

¹ 'National Prosecuting Authority Act', Pub. L. No. Act 32 (1998), sec. 22(4)(g)(ii).

3. Overall vacancies 2019/20

The employment and vacancies for all positions (i.e., prosecutors, support staff, investigators, etc.) in the NPA for 2019/20 is presented in Table 1.² The overall vacancy rate was nearly 26% and in seven of the offices/divisions the vacancy rate was more than 30% and at the Asset Forfeiture Unit (AFU), nearly one out of two posts were vacant.

Table 1

Office/Division	Filled	Vacant	Total	Vacancy rate %
DPP: E-Cape	322	90	412	21.8
DPP: Free State	235	57	292	19.5
DPP: KZ-Natal	564	170	734	23.2
DPP: Limpopo	253	86	339	25.4
DPP: Mpumalanga	186	81	267	30.3
DPP: Mthatha	139	67	206	32.5
DPP: N Gauteng	335	103	438	23.5
DPP: North West	162	41	203	20.2
DPP: N-Cape	382	43	<u>425</u>	10.1
DPP: S Gauteng	427	118	545	21.7
DPP: W-Cape	494	148	642	23.1
Admin Support H/O	283	198	481	41.2
National Office (NDPP, NPS, LAD, PCLU)	66	36	102	35.3
Asset Forfeiture Unit (AFU)	114	96	210	45.7
Sexual Offences and Community Affairs (SOCA)	156	97	253	38.3
Specialised Commercial Crime Unit (SCCU)	154	77	231	33.3
Office for Witness Protection (OWP)	141	23	164	14.0
TOTAL	4413	1531	5944	25.8

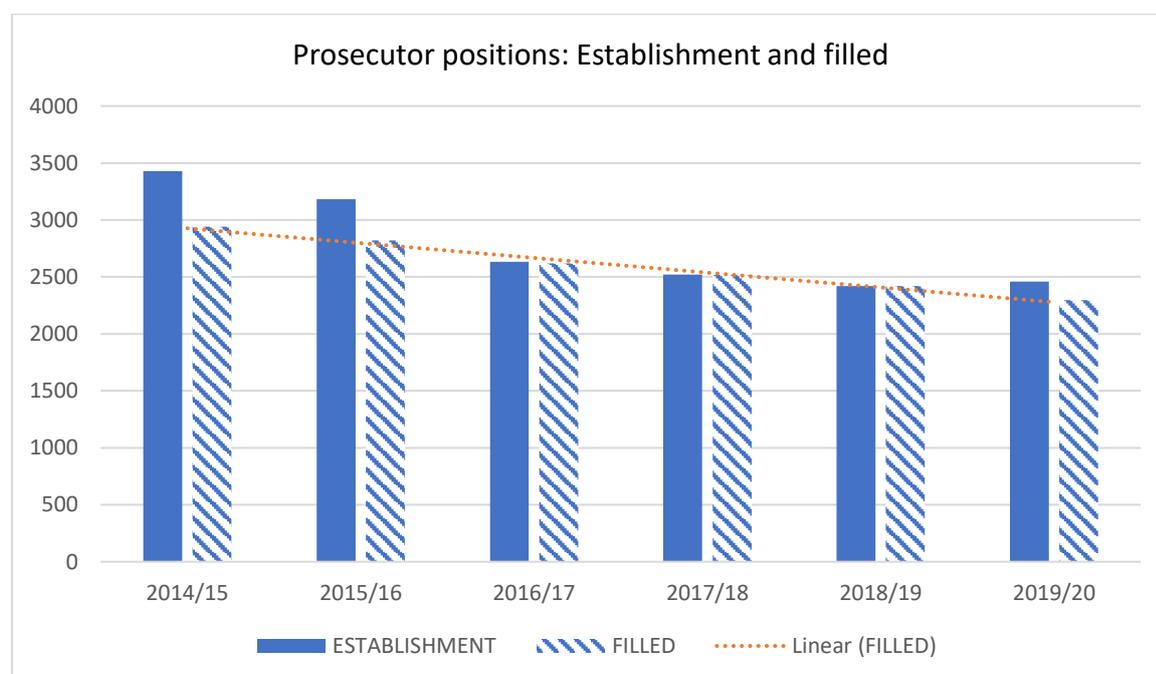
Given the demand for criminal prosecutions and related services, the overall high vacancy rate needs to be addressed as a matter of urgency.

² National Prosecuting Authority, 'Annual Report 2019/20', 2020, 140–41.

4. Prosecutors' vacancies

Data from 2014/15 to 2019/20 indicate that the number of prosecutors employed declined by some 22%, or nearly a quarter, as shown in Figure 1.³ The available data is not broken down to the particular level of court, but even if this was spread evenly, it would indicate a significant decline in human resources. It seems that there is an attempt from management to massage the vacancy rate by adjusting the staff establishment in line with the number of positions filled, which is, of course, misleading. If the number of positions filled in 2019/20 is compared to the staff establishment of 2014/15, it would give a vacancy rate of 33%. All efforts must be made to address the high vacancy rate in prosecutor positions.

Figure 1

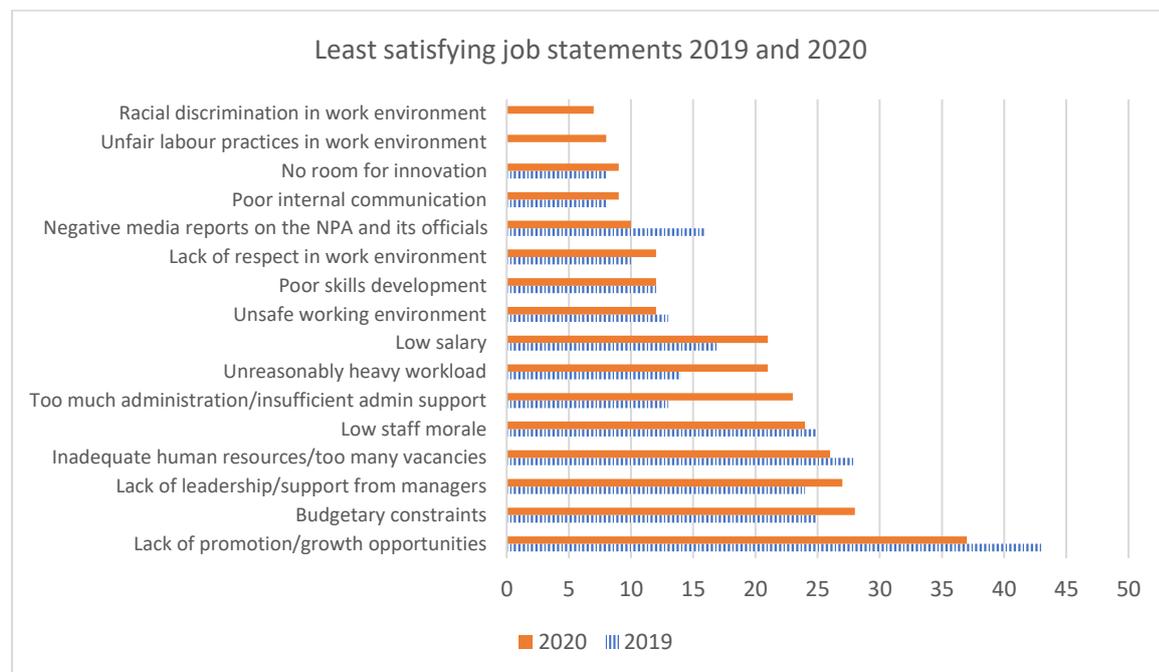


³ Department of Justice and Constitutional Development, 'Annual Report 2014/15' (Pretoria, 2015), 249; Department of Justice and Constitutional Development, 'Annual Report 2017/18' (Pretoria, 2018), 251; Department of Justice and Constitutional Development, 'Annual Report 2018/19' (Pretoria, 2019), 289; Department of Justice and Constitutional Development, 'Annual Report 2019/20' (Pretoria, 2020), 170; Department of Justice and Constitutional Development, 'Annual Report 2015/16' (Pretoria, 2016); Department of Justice and Constitutional Development, 'Annual Report 2016/17' (Pretoria, 2017).

5. Job satisfaction

In 2019 and 2020 the NPA conducted two staff surveys to solicit the views of employees on a range of issues relating to job satisfaction. In 2020 it was reported that more than a third of respondents (37%, down from 43% in 2019) stated that the lack of promotion or career growth opportunities was the most dissatisfying aspect of their job.⁴ The improvement can be ascribed to the filling of some vacancies. In both surveys the respondents listed a broad range of issues negatively affecting job satisfaction as shown in Figure 2 below.⁵

Figure 2



The top five ranking statements are:

- Lack of promotion/growth opportunities
- Inadequate human resources/too many vacancies
- Budgetary constraints
- Lack of leadership/support from managers

⁴ L Lancaster and M Roberts, 'NPA Staff Survey Report 2020' (Pretoria, 2020), 6; L Lancaster, M Roberts, and S Mbanyele, 'NPA Staff Survey Report 2019' (Pretoria, 2019).

⁵ Lancaster and Roberts, 'NPA Staff Survey Report 2020', 19.

- Low staff morale.

Low staff morale should be regarded as a consequence of other variables. Whilst budgetary constraints place important limitations on an organisation, it is also evident that poor management and leadership as well as managing staff in a manner where they see a career for themselves in the organisation is lacking. If one is to focus on which variable can change the current situation, an obvious choice will be more resources. However, throwing more resources into an unreceptive environment may indeed only result in a well- or better-resourced problem. Regardless of the level of resourcing, the management of the organisation must provide the necessary leadership and support, and must be held accountable for its performance.

6. Skills, qualities and qualification requirements for prosecutors

The NPA Act requires that the NDPP must possess the necessary legal qualifications, and must “be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned.”⁶ The NPA also has a Code of Conduct⁷ and a Code of Ethics.⁸ There is also a growing body of jurisprudence on ethics, professionalism, independence and accountability in the state and in particular the criminal justice system.⁹ The Ginwala and Mokgoro Commissions also dealt with ethical and

⁶ ‘National Prosecuting Authority Act 32 of 1998’ (n.d.), sec. 9(1)(b).

⁷ National Director of Public Prosecutions, ‘Code of Conduct for Members of the National Prosecuting Authority Under Section 22(6) of the National Prosecuting Authority Act, 1998.’ (Government Gazette, No.33907, No. R. 1257, 29 December 2010).

⁸ National Director of Public Prosecutions, ‘Code of Ethics (Revised)’, 2015, <https://www.npa.gov.za/sites/default/files/resources/Revised%20NPA%20Code%20of%20Ethics%20Booklet.pdf>.

⁹ Democratic Alliance v President of the Republic of South Africa and Others, No. (263/11) [2011] ZASCA 241 (Supreme Court of Appeal 1 December 2011); Democratic Alliance v President of South Africa and Others (CC), No. (CCT 122/11) [2012] ZACC 24 (Constitutional Court 5 October 2012); Glenister v President of the Republic of South Africa (Glenister II), No. [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC) (Constitutional Court of South Africa 17 March 2011); Sonke Gender Justice NPC v President of the Republic of South Africa and Others, No. CCT307/19) [2020] ZACC 26 (Constitutional Court 4 December 2020).

professional standards within the NPA, emphasising the importance of maintaining a high level of compliance with ethical and professional standards. The Mokgoro Commission noted:

1146. [. . .] When dealing with the Courts, prosecutors are personally accountable for their cases, may not mislead the Court or suppress evidence and should assist the Court in arriving at a just verdict – refraining from violating the decorum of the Court.

1147. Citizens are right to expect this of the NPA and its members. In turn, the NPA must ensure that it communicates effectively with the public – for it is the public interest which the NPA must act in the name of. This must not be understood to mean that members of the NPA should play to the whims of popular opinion, but rather that they have a duty to perform their work with integrity, conscientiousness and accountability. Clandestine decision-making and impunity characterised the pre-democratic period, but has absolutely no place rearing its ugly head in this constitutional democracy.¹⁰

There is indeed no shortage on guidance pertaining to the values and norms applicable to the NPA. The shortfalls concern (a) holding prosecutors to account for unethical and criminal conduct (b) the technical skills and experience required for effective prosecutions.

There is at present no independent body with which a member of the public can lodge a complaint against a prosecutor for unethical conduct. Such complaints can, however, be lodged internally with the NPA's Office for Complaints and Ethics which is in the process of being established.¹¹ Criminal complaints can be lodged with SAPS which may not be an appropriate channel, especially concerning sensitive matters. The restrictions in the Prosecution Policy Directives concerning the prosecution of NPA staff also requires review and may indeed require some form of dedicated and specialised prosecution structure.

As with regards to the technical skills and experience of prosecutors, current performance indicates a number of worrying trends, such as:

¹⁰ Y. Mokgoro, 'Enquiry in Terms of Section 12(6) of the National Prosecuting Authority Act 32 of 1998 – Unabridged Version' (Pretoria, 2019), paras 1146–1147, <http://www.thepresidency.gov.za/sites/default/files/Section%2012%286%29%20Enquiry%20report%20-%20unabridged%20version.pdf>.

¹¹ National Prosecuting Authority, 'Annual Report 2020/21' (Pretoria: National Prosecuting Authority, 2021), 16.

- a decline in overall throughput;¹²
- a decline, if not near absence (bar a few exceptions, such as some commercial crimes courts), in complex but potentially high impact cases being prosecuted;
- a reliance on guilty pleas;¹³
- a reliance on minor offences to 'beef up the numbers';¹⁴
- large numbers of cases processed through Alternative Dispute Resolution Mechanisms (ADRM) which is unregulated.¹⁵

The COVID-19 pandemic seems to have had a devastating impact on the training output of the NPA and the number of prosecutors receiving any form of training dropped from 2100 in 2019/20 to 561 in 2020/1.¹⁶ It is also noted that in the 2020/21 year that the Investigating Directorate was not able to appoint the scarce skills it required due to a protracted procurement process and it was further noted that related "to the dearth of specialist skills and historic experience to deal with matters of grand corruption, is the need for an appropriate methodology for investigating and prosecuting complex economic crime."¹⁷ The challenge do not only lie in prosecuting the complex high-level corruption cases, but also the day-to-day cases moving through the district and regional courts dealing with violent crime as well as commercial crime and lower-level corruption.

Over a period of years, the NPA did not only lose a significant number of prosecutors, and did not fill these vacancies, but scarce skills and valuable experience were also lost. To change the situation around, and see the more effective functioning of the prosecution service, it would require not only filling of vacancies, but also the rapid skilling of prosecutors.

* * *

¹² L Muntingh, K Petersen, and J Redpath, 'An Assessment of the National Prosecuting Authority - A Controversial Past and Recommendations for the Future', ACJR Research Report (Bellville: Dullah Omar Institute, 2017), 29.

¹³ Muntingh, Petersen, and Redpath, 30.

¹⁴ Muntingh, Petersen, and Redpath, 31.

¹⁵ Muntingh, Petersen, and Redpath, 32–33.

¹⁶ National Prosecuting Authority, 'Annual Report 2019/20', 150–52; National Prosecuting Authority, 'Annual Report 2020/21', 28.

¹⁷ National Prosecuting Authority, 'Annual Report 2020/21', 30.

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