

“The NPA that we want” – Summary report on consultations with civil society stakeholders

Commissioned by ACJR

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ACJR engages in high-quality research, teaching and advocacy on criminal justice reform and human rights in Africa. Our work supports targeted evidence-based advocacy and policy development promoting good governance and human rights in criminal justice systems. Our work is anchored in international, regional and domestic law. We promote policy, law and practice reform based on evidence. We have a particular focus on effective oversight over the criminal justice system, especially in relation to the deprivation of liberty.

Key aspects of our work include:

- Our explicit human rights focus. International and regional human rights law informs and guides all of our work and we partner with organisations with similar approaches. This distinguishes us from security-focused organisations.
- Our partnerships with local organisations. Partnerships ensure mutual learning and growth. Wherever possible we seek to support reform processes in partnership with government and civil society stakeholders across the continent, to ensure local ownership of reform processes and the transfer of skills.
- Our expertise in both social science research and legal research. We carry out empirical social science research to inform policy and processes, in addition to legal analysis and research.
- Our ability to engage in multiple languages. We have researchers fluent in English, French, Portuguese and Afrikaans, ensuring that we are able to engage with most countries in Africa.
- Our ability to translate law and research into plain language and multi-media. Where appropriate, our work is transformed for particular audiences.
- Our academic rigour.

We are based at the Dullah Omar Institute which is in turn part of the University of the Western Cape. We regularly publish in academic journals.

Foreword

Much of the focus on the National Prosecuting Authority (NPA) in recent years has been on high-level cases, especially in light of the work and findings of the Zondo Commission, and that of investigative journalists. Our own research has tended to focus, on the legal framework, overall performance of the NPA and on high-level systemic issues. Given this, we identified a need to look at the experiences and expectations of ordinary people of the NPA, especially in district and regional courts. This we sought to solicit by consulting relevant civil society and community-based organisations under the broad topic “The NPA that we want”.

To this end we commissioned a consultant (*Southern Hemisphere*) to host three workshops in Cape Town, Durban and Johannesburg to engage these organisations on their expectations of the NPA. The decision to commission a consultant was taken deliberately to avoid a situation where we may influence discussions, or even sway views. The information presented in the pages to follow is what the consultant collected from the workshop participants presented in summary form.

Identifying relevant stakeholders for participation in the consultation workshops turned out to be easier said than done. While most South Africans are acutely aware of crime and hold views on the performance of the criminal justice system, this does not necessarily mean that they are well-informed about the prosecution service, and thus we selected for experience or knowledge of the criminal justice system. Yet for many workshop participants, the criminal justice process remains an amorphous one in which the roles and responsibilities of different role players are not necessarily clearly discernible. This is itself an important finding as it is reflective of how the system communicates with the public as well as public understanding and insight into the criminal justice process. It also has implications for the reputation of the NPA if other actors in the system are not performing well.

Despite this limitation, the findings presented in the following pages confirm in many ways trends observable in other data. The problems facing the NPA are well-documented and the purpose is not to criticise the NPA as an institution, but rather to use the information collected to describe and define the problem more accurately in order to design and support interventions that would restore trust and confidence in the criminal justice system more broadly and the NPA specifically.

We are aware that under new leadership the NPA has undertaken a number of initiatives to address problem areas and the impact of these intervention may as yet not be visible to the public and that historical perceptions may also be enduring. Ultimately, the findings presented here should be a basis for dialogue between the NPA and the public in order to foster understanding and trust.

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1. Introduction and background

Africa Criminal Justice Reform (ACJR) is a project of the Dullah Omar Institute in the Faculty of Law at the University of the Western Cape (UWC). The ACJR focuses on legal research, teaching, and advocacy in criminal justice and human rights, with a view to supporting policy, law and practice reform for the promotion of good governance and human rights in criminal justice systems across Africa.

The overall **purpose of these stakeholder consultations** was to collect and document the views and expectations of civil society stakeholders in relation to the National Prosecuting Authority (NPA), under the broad theme **“The NPA that we want”**. The engagements focused on experiences, perspectives, and expectations of the NPA.

The information gathered via the consultation process will be used by ACJR in further research, analysis, and advocacy. It will also serve as a foundation for further engagement with civil society actors and decision-makers, and with the NPA itself.

1.1. Overview of the consultation process and participants

Three stakeholder consultation workshops were held in June 2022 in Cape Town, Durban, and Johannesburg. The workshops were attended by participants from various stakeholder groups including civil society organisations (legal advice agencies and community offices, academic institutions, not-for-profit organisations (NPOs)) and government departments.

The participant attendance per consultation workshop, and according to stakeholder group, is outlined in the table below.

Table 1: Participant attendance by sector

	Cape Town	Durban	Johannesburg	Total
Academic	2	0	0	2
Civil Society Organization	9	5	7	21
Government	4	0	0	4
Grand Total	15	5	7	27

1.2. Overview of the consultation workshops

The workshops were facilitated in a participatory manner to encourage people to share their experiences and expectations of the NPA. Discussions centred on real scenarios of engagement with the NPA, which were suggested by the participants.

All participants had some engagement with the legal process and had experiences interacting with the NPA within their official and personal capacities. They expressed strong opinions on the NPA and legal processes, as well as the functions of the police. Many participants indicated that they had come to the workshops to learn more about the NPA. This indicates that even though several the participants had first-hand experiences of the NPA, they still lack a clear understanding of the authorities’ role and functioning.

Overall, the participants expressed a high degree of frustration regarding NPA processes. 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 in being knowledgeable of the law (especially in areas where specialist knowledge is required, such as sexual offences), unhelpful, uncooperative and, at times, dismissive. Several participants noted that the NPA is 'hollowed out' institution, with high levels of staff turn-over, limited budget and poor human resource management. Another challenge noted during workshop discussions is the lack of incentives to motivate prosecutors to prosecute serious crimes.

Other key challenges reported in dealing with the NPA include the following:

- 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;
- 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;
- Prosecutors are over-worked and over-stretched;
- There is a lack of trust between prosecutors and members of the public
- Members of the public often experience discrimination, disrespect and dismissive treatment from prosecutors and the police;
- Language barriers exacerbate poor communication between prosecutors, victims of crime and witnesses.

These challenges were clearly outlined in the individual workshop reports and are reflected in the emerging themes discussed in section below.

2. Expectations of respondents around the core values of the NPA

Several themes have emerged from the consultations. These are depicted according to the values of the NPA in the sections below.

The key themes identified are:

- **Knowledge:** Community members and Civil Society Organisations (CSOs) have limited knowledge regarding the legal process.
- **Capacity and skills:** Police and prosecutors lack the capacity and skills to effectively investigate and prosecute cases. People often feel that the NPA is not doing enough to cooperate with the police in investigating serious crime. They are also not applying alternative dispute resolution and diversion when appropriate. They are also not knowledgeable about specialised areas of the law such as migration or sexual offences.
- **Transparency / communication:** There is insufficient communication between the police / investigating officers (IOs), prosecutors and their clients.
- **Incentives and motivation of the NPA:** Participants perceive that the NPA only prosecutes if there is enough evidence to prosecute and as a result go after ‘easy’ cases (such as drug users), rather than serious criminals (such as drug dealers). Participants perceive this to be because the NPA is ‘chasing stats’ such as the indicator on conviction rates.
- **The criminal justice system (CJS):** There is a lack of clarity regarding the criminal justice process. It is also viewed as being inefficient and drawn out, and to favour the wealthy. This contributes towards injustice along racial and socio-economic lines. It seems as though people are willing to accept the outcomes of cases as long as there is a perception of procedural fairness. However, the majority of the reported experiences speak to procedures that are not fair. A number of workshop participants reported perceptions and experiences that, if you are rich, you can ‘buy’ a judgement in your favour (as a result of having better lawyers, better communication from NPA, and being able to cope better financially with delays as the financial impact is not as high).
- **Fairness and human rights:** There is an expectation that the CJS will have the best interests of individuals, families and communities in mind – that criminalisation of young or petty offenders can be avoided if necessary in the interests of their future and of their families; and that serious offenders will be prosecuted and taken out of communities and rehabilitated.

2.1. Professionalism

This section presents the expectations that relate to the professionalism of the NPA and will also show how these expectations are shaped by the participants’ experiences. These experiences and expectations are categorised according to the following three levels: individual, community and state/Institutional (where relevant).

Note, we have reported experiences and expectations which people associate with the NPA, even if this may not be accurate.

Table 2

Category	Experiences	Expectations
Individual	Families are not offered any support for their trauma.	Provision of psychosocial support for victims, families, and communities (CJS)
	The fact that a person is a repeat offender does not seem to be noted by the criminal justice	Repeat offenders should be tagged by the system and be prosecuted more vigorously. (CJS)

Category	Experiences	Expectations
	<p>system – neither by the prosecution or the magistrate.</p> <p>Victims, families, and organisations who represent them, are treated with disdain by the officials in the process, including prosecutors. They experience this as racist.</p> <p>Participants expressed that it feels as if the prosecutors are doing you, as a member of the public, a favour. Working as a prosecutor is seen as “just a job”; clients are not really people; they are just a number.</p> <p>People turn up to court but trials are postponed due to a lack of evidence even though the defence lawyer, judge, and witness are all present.</p> <p>Clients are not told basic information like the time for court appearances. They are given a date, but not a time. So, then they have to sit and wait at the court all day. They may do this only to hear that their case has been postponed. Many cases cannot proceed because witnesses do not stay / cannot wait all day to appear in court.</p> <p>Delays, postponements and confusion about the process are a major cause of frustration.</p>	<p>Victims and families should be treated with respect and dignity. (Transparency and communication)</p> <p>People expect better communication about why there are delays and postponements, as well as better procedural efficiency and fairness. (Transparency and communication)</p> <p>People expect to have been information about the court process and to understand how it works. (Knowledge)</p> <p>They want matters resolved in good time. They want better case management and transparency in relation to decisions and judgements that are made. (Skills/capacity)</p>
	<p>There is no guidance or preparation of the client for their appearance in court (what to expect, what to do, etc). Witnesses are also not informed of court proceedings and how to conduct themselves when providing testimony.</p>	<p>Better court preparation of victims and their families, as well as witnesses. (Knowledge)</p>
Community	<p>Substance abusers and youth offenders are given harsher</p>	<p>Communities would like to see the justice system working to</p>

Category	Experiences	Expectations
	<p>sentences than drug dealers – the perception is that these crimes are easier to prosecute so it helps the NPA to meet their performance targets.</p> <p>Participants experience that the NPA goes after the “low hanging fruits” of petty crime with a heavy hand, without much appetite or proactive strategy development and implementation demonstrated for prosecutions of those responsible for violent crimes (petty criminals defined as being drug offences, sex workers, refugees and immigrants).</p> <p>Application of alternative dispute resolution is hampered by poor communication. There are no opportunities for discussion with prosecutors regarding the application of ADR. Also, ADR is often neglected because the prosecutors are overwhelmed by the volume of work that they have. They have little time to really apply their minds to this. People have also experienced the introduction of ADR without informing the parties.</p>	<p>keep them safer, rather than prosecuting petty criminals. (For the sake of families and communities, participants would like to see the implementation of diversion programmes, especially for substance abusers and youth offenders. Criminalisation should be avoided in these instances. (Fairness and human rights) While at the same time, they would like to see drug dealers and known criminals (such as gangsters) prosecuted for their crimes.</p> <p>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. (Fairness and human rights) Improve / implement alternative dispute resolution mechanisms, and inform people if you intend to use them. (Skills/capacity) Well-capacitated magistrates and prosecutors consider cases carefully, have the necessary knowledge and expertise, and may even be specialists in certain fields.</p> <p>Prosecutors take the time to communicate with victims’ families and communities about possible alternatives to trial, such as alternative dispute resolution or mediation.</p>
State/Institution	Participants have experienced a disconnect between the South African Police Services (SAPS) and the NPA. The roles and responsibilities of SAPS and the	A collaborative and integrated justice system. (Incentives/motivation and CJS)

Category	Experiences	Expectations
	<p>NPA are not clear to organisations, or individuals.</p> <p>Participants also experience that the SAPS, the NPA and other legal bodies don't work together effectively. This can cause a delay in prosecuting cases.</p>	
	<p>Challenges with the process are numerous, including (a) lack of proper handover / debrief between IOs of case dockets; (b) poor communication between IOs and prosecutors; (c) corruption – IOs being paid off to make dockets “disappear”; (d) often witnesses aren't interviewed by the police or prosecutors. If they are, it is right before the trial; (e) in one scenario respondents mentioned that the police did not investigate the scene of the crime or take witness statements into account.</p> <p>There are high rates of acquittals and dismissals due to a lack of evidence.</p>	<p>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. (Incentives/motivation and CJS)</p>
	<p>Prosecutors aren't trained in all aspects of the law, which makes it difficult for them to properly prosecute criminals.</p>	<p>Prosecutors are effectively trained to handle cases, investigations, and evidence. (Skills/capacity)</p>
		<p>Prosecutors provide clear guidelines to IO regarding evidence requirements and what is required (in the docket) to ensure that cases cannot just be dismissed (skills/ capacity)</p>

2.2. Independence

In this section we will present the expectations that relate to the independence of the NPA. We will also show how these expectations are shaped by experiences.

Table 3

Category	Experiences	Expectations
Individual	A victim's family experiences injustice because the court is seen to favour the gangster who is represented by an expensive criminal lawyer. The gangster can afford the lawyer. The NPA is no match for a private lawyer.	Citizens enjoy equal and fair access to justice. (Fairness and human rights)
Community	Prosecutors and the police often receive bribes from criminals and gangs.	Prosecutors and the police should be vetted to ensure that they are not tied to known criminals and gangs. (CJS)
State/Institution	The criminal justice system is corruptible.	The system should be above corruption. (CJS/ Fairness and human rights)

2.3. Accountability

In this section we will present the expectations that relate to the accountability of the NPA. We will also show how these expectations are shaped by their experiences.

Table 4

Category	Experiences	Expectations
Individual	There is a lack of effective communication from prosecutors and the police.	Clear communication from prosecutors regarding the legal process and current status of case proceedings. (Transparency and communication)
Community	There are many NPOs, such as legal advice offices, who are there to support communities. Even they do not experience cooperation from the NPA and are treated with the same disrespect as the individuals they serve. There is a great willingness to cooperate with the criminal justice system to support people and communities.	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. (Knowledge)

Category	Experiences	Expectations
State/Institution	There are courts that have high rates of acquittals of serious, violent crimes. ¹	The NPA needs to implement a monitoring and evaluation system to maintain accountability. (Incentives / motivation)

2.4. Credibility

We recognise that credibility is a result of the other three core values. However, there are some themes that appear to fit under this value specifically.

Table 5

Category	Experiences	Expectations
Individual	Witnesses are often left unprotected which could put their lives in danger, especially in cases of gender-based violence and violent crimes.	Witnesses should be protected. (CJS)
Community	Communities, and criminal justice organisations lack knowledge about legal processes. Legal documents are also inaccessible due to the complex jargon used.	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. (Knowledge)
State/Institution	The NPA and SAPS show biases with regards to race and gender.	The NPA and SAPS should be unbiased, treat everyone equally and fairly, and with respect. (Fairness and human rights)
	People experience that more leniency is given to drug dealers, but harsher sentences are given for petty crimes such as drug use.	The NPA should apply the law in a consistent manner. (Fairness and human rights)
	Often, violent crimes are acquitted or dropped due to lack of evidence.	Violent crimes need to be given priority. (Fairness and human rights)
	Key skills are often missing amongst prosecutors; for example, knowledge of the law pertaining to migration and asylum, the Refugee Act and sexual	Prosecutors should know the law, including specialised areas that affect the most vulnerable people such as immigrants and

¹ This was verified with the participant, it is acquittals and not withdrawals that they were referring to, and it was at the [Name of Court].

Category	Experiences	Expectations
	offences. This was noted particularly at district and regional court level. This affects the credibility of the NPA prosecutors.	victims of GBV and sexual offences.

3. Recommendations

Key recommendations from stakeholders include:

- There is a need for civic education around the criminal justice system and processes. The NPA could partner with organisations working in or with communities to implement civic education regarding 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:
 - Overall assessment of the NPA should be the crime rate – high levels of crime in SA; also organised crime is increasing
 - 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
 - Implement systems to track cases from start to finish and use this as a means of assessing performance – for example to see how many cases are withdrawn and not prosecuted, rather than just focusing on the conviction rate.
- 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. Respondents are suggesting that there be someone in the criminal justice system who represents the interests of the community and who understands the nuances of the case given the context. Some people experienced the community court assessors as playing this role. Another suggestion was to set up an “ombudsman” to assess performance and consistency thereof within the NPA.

4. Appendix 1: Durban workshop

The “NPA that we want” Stakeholder Consultation Workshop: Durban

21 June 2022

4.1. General notes and observations

Despite the low turnout the discussion was lively and the participants had examples and insights to share. Sue Pillay and Fiona Kaplan also provided details regarding possible attendees for the Cape Town community consultation process – and indicated that their willingness to participate in further discussion following the consultation workshop, should this be required.

The participants highlighted the following **key challenges** affecting the functioning of the NPA:

- NPA very **under-staffed, lack human resources** to provide services to the public.
- Both SAPS and prosecutors are **under-resourced and overstretched**. For example, SAPS do not have enough investigating officers (IOs). Prosecutors are often having to deal with 30 – 40 cases at a time. So everything is rushed and there is limited time to give due attention to cases / to really think things through and apply their minds.
- This creates a number of challenges in the criminal justice system. For example, there is **poor communication and information-sharing** between the IO and the prosecutor and then poor communication and information-sharing between the prosecutors and their clients.
- For example, clients are not told basic information like time for court appearances – they are given a date, but not a time. So, then they have to sit and wait at the court all day. May do this only to hear that the case has been postponed. Many cases cannot proceed because witnesses do not stay / cannot wait all day to appear in court.
- Being under-resourced and over-worked also leads to a lack of patience amongst the prosecutors; they are **unkind, dismissive**, do not treat people humanely. It is as though they have lost the capacity to deal with people and engage with them with respect. Participants expressed that it feels as if the prosecutors are doing you, as a member of the public, a favour. Working as a prosecutor is seen as “just a job”; clients are not really people; they are just a number.

Other observations made during discussion:

- Language is a barrier for many victims – if you do not speak a language well or if you cannot read or speak English, then you are “left behind” in the criminal justice system. SAPS often do not capture the victim’s statement properly (possibly due to language barriers on part of person laying a charge and/or SAPS officials themselves) and then there are gaps when the docket gets handed over to the prosecutor. These cases don’t even make it to court; are dismissed because of insufficient evidence or a mess up with the statement and gathering of evidence by SAPS.

- SAPS are often rushed and so do not ask or record salient details to take the matter forward. Sometimes this seems to be intentional – too time-consuming for the police to sit in court or wait for a whole day to appear to give evidence. So, the matter is then dismissed.
- Translators are generally available in court, but they too may not provide an accurate translation and so this too counts against the victim and his/her testimony.
- Prosecutor has to deal with these challenges – evidence that is passed on from SAPS often faulty / insufficient. If you have high workload, you are not going to have the time to address these gaps.
 - **Response from another participant:** Yes, prosecutor relies on input from SAPS as it is not an investigative body itself, but when the evidence is poor, NPA does not seem to address this – for example, doesn't go back to SAPS to ask for more detail, etc. Constant complaint of insufficient evidence and cases are “dismissed” on this basis, but this issue never seems to be addressed or remedied by the NPA. Big challenges is the lack of communication and information sharing between prosecutor and SAPS / IO / detective.
 - Guidance of the IO and SAPS required – NPA should be clear about what level of detail is required for successful prosecution to happen - and why.

4.2. Scenarios

Scenario 1: Biased prosecutor

One of my clients was a heroin user and he stole a TV from his neighbour. He had started the OEC/methadone programme and was going through recovery. He was arrested and asked for a diversion. His lawyer asked for this. However, the prosecutor showed no compassion or leniency; didn't make any allowances. He said “he is a drug user, so no,” even though the TV was later found / recovered and the complainant wanted to drop the charges. The prosecutor flatly denied the request for a diversion and there was no discussion with my client or his lawyer as to why this decision was made (other than the remark).

Experiences:

- We supported the diversion. Our client should have gone to NICRO (to avoid a criminal record) and this would have been sufficient “punishment”. However, we feel that the prosecutor was biased; did not display impartiality but let his own views on drug users influence his decision-making.
- Demonstrated a lack of knowledge of “grey areas” – a case is not always a matter of black or white; each case should be looked at carefully and viewed on its own merit.
- Seems to be a lack of training of prosecutors on alternatives to sentencing – like diversion. There is also no way for people to engage with the NPA regarding this.
- Recommendations made by lawyers with regard to diversion are not taken into account.
- Lack of communication regarding alternatives for the offender.

Another participant noted the following:

- Yes, in our experience, prosecutors seem to lack knowledge of / insight into alternative dispute resolution (ADR) mechanisms. Process does exist – there is a checklist and prosecutors have to indicate if ADR was considered by making a tick in the appropriate box, but this is not a compulsory consideration.
- So experience is that sometimes ADR is used and sometimes not – there seems to be a lack of consistency in how and when this is applied. Appears to be no clear guideline in place regarding this.
- This is also hampered by poor communication – no opportunities for discussion with prosecutors regarding the application of ADR. Also, ADR is often neglected because the prosecutors are overwhelmed by the volume of work that they have. Little time to really apply their minds to this.
- Prosecution of cases like drug abuse, theft, youth committing petty crime – these are pursued because it is like low hanging fruit. Looks good on the records (are managing to successfully prosecute high number of crimes). Certain crimes are addressed but not the really violent crimes.

Expectations

- Should be clear guidelines on how and when to use diversion, ADR and mediation; for example, first time offenders, prosecutor should consider ADR. If the accused shows remorse, then mediation should come into play. For youth, diversion is better option. These guidelines should not only be in place, they should be applied consistently in a fair and balanced manner.
- NPA is able and willing to refer victims and accused to ADR – informs them regarding this option and that they might request this.
- Mediation should be considered as a viable alternative, as opposed to going to trial. Prosecutors should therefore be trained on ADR and mediation so that they see this as a viable option and suggest and pursue it.
- Will help to avoid backlog of cases; that is, lot of cases would not even have to proceed to court if the mediation route is followed. Could possibly help with long, drawn-out trials.
- The law should operate free of bias; it should be fair and transparent. Prosecutors should not act on the basis of their own personal viewpoints and biases.

Scenario 2: Gender-based violence case

A community advice officer was approached by a GBV victim for help; she was being abused by her husband (domestic violence). She also wanted to prevent her husband from seeing the children and requested a protection order. Court date was set and, on the day, the victim's husband appeared in court with an attorney. The victim was not represented and she was extremely vulnerable. As a result, her husband won the case and she was forced to sign an agreement which was prejudicial to her interests. There was a clear imbalance of power. The victim was also not well-prepared or informed prior to appearing in court and so was afraid. Participants described the court process and experiences as alienating, intimidating and confusing which results in these fearful feelings. She was not provided with any form of counselling or support. She was later forced to move out of her house.

Experiences

- Success of a case depends on evidence and your access to representation on the day.
- Power / wealth imbalances affect justice system based on who has access to resources –well-paid and well-prepared attorney representing the husband made all the difference.
- Victim insufficiently prepared for court appearance; did not know what was going on and received very little communication or guidance.
- Justice system often seems to be harsher on the victim than the perpetrator – victim should have had some form of representation and also support. Was she even aware of her rights?
- Victim applied for legal aid, but this was a waste of time – legal aid system also overburdened, too many cases and too little time to deal with them all. Find that clients are transferred from one lawyer to another and they do not share information with one another – so victim experiences even more trauma having to repeat the story over and over again.
 - One participant noted: Had a client that approached Legal Aid. He was a high school student that got caught doing a silly prank. Minor offence. He could not get hold of his lawyer – lawyer refused to share his contact number and even his email address with this boy. I suppose that this is because they have too many cases to deal with and often get hounded by their clients for information. Not a very well-functioning system! Boy never got any feedback, minimal communication – so they are not much better than the overwhelmed prosecutors.
 - Is it fair to ask that prosecutors follow up on their referrals to Legal Aid? Would be ideal but they seem to lack capacity for this or interest in doing this.
- Paralegals also do not know how the system functions including the role of the NPA. Could serve as a valuable means of communication with their surrounding communities and with victims of crimes to inform them regarding how justice system functions, their rights and how to approach SAPS, how to deal with prosecutors and courts, but there is no collaboration or information-sharing with paralegals and community resource centres. This is a missed opportunity.
- One of the paralegals recounts how a man was released from prison after the community assumed he had been found guilty. The community believed that the man was guilty and so expected that his appearance in court was for trial, sentencing and imprisonment. The paralegal pointed out that the community where she works does not understand how bail works and so were shocked when the man was released on bail. They thought that this was because the justice system was not functioning properly and that a guilty person was simply released back on to the streets. The paralegal indicated that this is related to a lack of understanding amongst some community members of bail and how this system operates. She also noted the threat of community members’ deciding to deliver justice of their own due to the lack of knowledge about the court system and bail procedures. This, she said, is linked to the limited level of current communication and information-sharing with communities by the NPA.
- Another participant notes that the NPA operates under a shroud of mystery and that she suspects this is deliberate. Sets them apart and makes them the “professionals” / the only ones well-versed in the law. Case of “they know what they are talking about, but we don’t”. (power dynamics)

Expectations

- People should be well-prepared for court appearances to ensure that they feel confident and are able to testify clearly and well.
- Social worker / counsellor should be on hand to support victims of violence and crime – particularly important in cases of sexual assault or GBV.
- NPA should work with communities – increase their visibility in communities and share knowledge; work with community structures like Community Advice Offices (CAOs) and paralegals; make sure that people on the street know how the law / courts function.

Scenario 3: Abused daughter

A daughter was beaten by her father after asking him not to bring his girlfriends to the house (her mother had passed away a while before). The incident was recorded on video and shared via social media. The daughter reported the assault to the police. The matter was referred to court. The father's defence was that he was disciplining his daughter and that she was mentally unstable. The paralegal recounting the example claims that the daughter was not given the opportunity to speak and that the case against the father was dismissed without any explanation as to why this decision was made.

Experiences:

- There are power imbalances in the justice system – bias against those with mental health issues.
- Decisions made in our courts are flawed, appear to be open to manipulation – often go against the victim and for the perpetrator of a crime / in favour of those with good representation and the power / influence and money to afford this.
- Another participant noted the following:
 - Heard about a case of a Metro police officer who laid a charge against a member of the public for assault. The accused also laid a charge of assault against the Metro police officer but for some reason, this was not followed up by the prosecutor. When the case was presented in the court, the accused noted that he had also laid a charge of assault against the Metro police officer and the magistrate then asked for details regarding this – and asked why this had not been brought to his attention in addition to the Metro police officer's case.
 - Feel that the system is biased – SAPS and NPA are seen as biased, protect one another and so lack credibility. People often do not trust the criminal justice system – do not see why they should take matters there because of this. Not seen as acting impartially.
 - This bias filters down from NPA leadership – they are not being held accountable for their limited progress in addressing crime in SA, so the lower levels of the NPA also do not feel that they need to be accountable.

- Prosecutors lack necessary training and are often ill-equipped and ill-prepared to represent their clients (particularly in the case where there is well-resourced legal representation on the part of the defendant).
- Handling of cases not seen as being reliable – there is no transparency re how decisions are made and why certain decisions are made, like in the case of the daughter and her father.
- Lack of professionalism; in magistrates courts matters are rushed, have prosecutors that are not as experienced or professional as those operating in the high court; they are inexperienced and lack the necessary skills and capacity.
- Feel like the NPA functions differently at high court level compared to magistrate courts, where there are high volumes of cases; more inexperienced prosecutors, who are often overwhelmed and under-resourced.
- At high court one sees fairer decisions, more measured consideration of cases. Could be that they function better as they are more subject to scrutiny, are better resourced and have more skilled prosecutors (this is also because they handle higher profile cases); not dealing with the same volumes that one sees at the magistrates' courts.

Expectations

- Prosecutors should be knowledgeable and well-capacitated to handle cases, even those operating in the regional and district courts.
- They should also be more client-focused – this is the language that the NPA presents on its website, regarding how it operates, but they do not live by this.
- Cases should be handled without bias, in a fair and transparent manner.
- Want the magistrate courts to function as efficiently and effectively as the higher profile courts – time and care given to cases, issues really being heard and cases not being rushed.

4.3. Expectations and the NPA core values

Accountability

- NPA communicates regularly with witnesses, victim and accused regarding process and progress of case. There is transparency regarding decisions that are taken and regular feedback is provided to those involved in each case
- NPA prepares and shares information regarding what to do in court and how to prepare for a court appearance. NPA also shares information and guidance regarding one's rights; that is, it makes the working of the criminal justice system accessible to – and so less intimidating for – the public
- NPA collaborates with SAPS and there is accountability for actions and decisions taken by both parties

Independence

- NPA / prosecutors and magistrates operate without fear or favour, with impartiality. There is no indication of bias or favour; all cases are dealt with fairly and in the same way (Same applies to SAPS – also lacking here)

Credibility / legitimacy

- NPA recognizes paralegals and NPOs as key stakeholders and partners in the criminal justice system
- NPA establishes mechanisms (like dialogues) and linkages with communities to ensure that they understand the justice system and their rights; contribute towards building up of trust in the NPA and that they are seen as legitimate and credible
- NPA sets up system to engage with paralegals and organisations like CAOSA (Community Advice Offices South Africa) to ensure that paralegals are knowledgeable of the criminal justice system and can provide well-informed guidance and support to the NPA and to the public / their communities
- Prosecutors are able to ensure that victims are adequately represented / supported to ensure that justice is delivered

Professionalism

- Regional and district courts are as respected as high court – but need to demand respect through professionalism, demonstrating knowledge and skills; must not be rude and dismissive but treat people with respect
- NPA has clear guidelines and procedures in place regarding ADR and people (accused and victims / complainants) receive information and guidance from the NPA regarding ADR as an option and what it involves
- Prosecutors provide clear guidelines to IO regarding evidence requirements and what is required (in the docket) to ensure that cases cannot just be dismissed
- NPA deals with cases with due diligence, care and consideration – irrespective of whether it is the high court or magistrate's courts
- NPA operates more efficiently; for example, despite the high volume of cases, there are set dates and times for court hearings, better case management systems (including time deadlines e.g., by when investigations need to be completed) and outcomes, etc

4.4. Recommendations for improvement

- The NPA must think about how to establish itself / change perceptions of itself as an institution that operates for the public good and provides a service to the SA public. NPA should therefore think about implementing a system of internal checks and balances to limit bias and poor

decision-making – role of leadership also important in establishing an ethos of fairness, impartiality and independence.

- Need a specific / special department dealing with representations to the Senior Public Prosecutor, including those grey areas that need to be properly considered (e.g., first offenders, youth).
- Possibility of trauma units being established at the magistrates' courts to assist and support victims, especially those that have experienced violent crime, GBV; but who would be responsible for this? Department of Justice (DoJ) or the NPA? Probably more the DoJ.
- NPA formulates, shares and follows guidelines on ADR and diversion; e.g., consider ADR for first time offenders; mediation process cannot continue indefinitely, etc – provide clear parameters. Another suggestion is to establish ADR offices at SAPS stations – can refer matters to ADR before even opening a case; also:
 - Community Advice Offices can also play a key role with ADR; good to have a community leader as mediator that is respected and known in the community;
 - Could also look into hiring specialists / independent mediators to assist SAPS and prosecutors
- NPA should improve on its communications / demystify itself; could also conduct outreach – education in schools, colleges, training institutions – be more “visible” to the public.
- May be good idea to provide community outreach and engagement to range of stakeholders, including children (e.g., host programmes in schools that educate children about the NPA and what it does and how; community dialogues, “what to expect in court” summaries and flowcharts, etc)
- Work closely with Community Advice Offices and paralegals to ensure that communication materials reach the community. Can provide training to paralegals so that they can share information with their communities.
- NPA should roll out regular training plus offer mentoring to its officials (e.g. on human rights, GBV) – to equip all staff with skills necessary to engage with public with respect, empathy, and dignity.

4.5. Summary of key emerging themes

The following key themes emerged in the course of the discussions in Durban.

Lack of communication and transparency

- There is a lack of communication between the IO / SAPS and the prosecutors, which is impacting negatively on the number of cases that proceed to trial
- There is also a lack of communication between prosecutors and their clients - about the status of cases, court processes, dates, etc
- This makes the criminal justice system appear “inaccessible” to those interacting with it
- It also means that people trying to access the system find it difficult to understand and navigate
- Participants noted that the justice system is therefore often perceived as being hostile and disempowering

- Limited information-sharing and lack of communication means that decisions regarding cases and judgements are viewed with suspicion and are often not viewed as being fair or impartial
- There are limited attempts to address this by, for example, working closely with or sharing information with community structures like community advice offices and paralegals

Discrimination and bias

- Participants noted incidents of bias and discrimination (drug users, those suffering from mental illnesses, those laying charges against members of the police force)
- There were also numerous mentions of the impact of wealth (those with money and the ability to pay for lawyers often have judgements in their favour)
- Prosecutors are described as treating victims with disrespect, impatience or merely “as a number”

Capacity/ skills

- Numerous mentions were made that prosecutors, particularly those in magistrate’s courts, are inexperienced and lack an appropriate level of knowledge of the law and of ADR processes and options
- Prosecutors at the district and regional courts are also perceived as not being able / prepared to “apply their minds” to cases and to give them the proper level of consideration and thought – processes were repeatedly described as “rushed” and “unprofessional”

5. Appendix 2: Johannesburg workshop

The “NPA that we want” Stakeholder Consultation Workshop: Johannesburg

Date: 20 June 2022

5.1. General notes and observations

Of the seven participants, three noted that they did not know much about the NPA but were attending the consultation to find out more about it. One participant arrived late, while a second had to leave the workshop on a number of occasions as her organisation was hosting a workshop on the same day, at the same time. All of the participants indicated that they could not provide specific scenarios of their interaction with the NPA, but noted that they could comment on it more broadly.

Despite the abovementioned challenges, the participants were highly engaged and interactive and all noted the importance of having workshops and discussions of this nature.

Due to the lack of concrete examples or scenarios, the facilitator decided to do a round of initial comments where each of the participants was invited to speak and share their perceptions of the NPA. The so-called “touch points” or points of engagement and interaction with the NPA were then put up on the wall to provide a framework; that is, key points were captured according to these. This step seemed to work fairly well, although some of the participants still preferred to speak more broadly and in general terms about the NPA, its structure and challenges impacting on its functioning.

The discussion then turned to the four, core values of the NPA and the participants’ expectations of the NPA within the framework of the key values. This discussion was followed by a brainstorming session on recommendations for the NPA, based on the captured expectations.

5.2. Initial round of observations

The following key themes emerged in the course of the initial round of discussions:

5.2.1. Perceptions of NPA

NOTE: Even though the focus of these consultations was not on corruption, this is what people had experience and interest in, and we are thus including it in the notes.

- Two participants noted their interest in the findings on state capture – Zondo Commission – and the pressure that this was placing on the NPA to be seen to “do something”
- However, participants noted that the NPA faces a number of challenges:
 - **Capacity** within the NPA is seen as lacking: there are limited skills and experience due to the hollowing out of the institution (as well as SAPS) during years of state capture / Zuma

administration. This means that there is limited capacity to make full use of the evidence that the Commission's findings have provided.

- One participant noted that many of the State Capture Commission's recommendations on who to investigate are not "new" knowledge – many of the cases were reported to SAPS up to four years ago. However, there has been limited progress because a) dockets keep on being transferred from one unit to another, incomplete and ill-prepared evidence means that prosecutor cannot work with what is being provided by the SIU; b) workloads are high and prosecutors are under-resourced, as are SIU and SAPS.
- Capacity challenges are seen as ongoing in the absence of any substantial budget increase for the NPA. As a result, they are losing staff / prosecutors including those with wealth of experience and know-how.
- Currently finding that key skills are missing amongst prosecutors – e.g., **knowledge of the law pertaining to migration, asylum, Refugee Act**. This was noted particularly at district and regional court level. This affects their credibility.
- Participants also noted **racism, bias and prejudice** amongst prosecutors and magistrates – and the fact that people are treated as "files" only. Stakeholders are concerned that the NPA prosecutors do not show enough empathy or respect to those involved in cases.
- **Lack of credibility and legitimacy** is another challenge faced by the NPA. While perceptions of its "independence" from state capture are improving, two participants noted that its credibility and legitimacy were questionable, despite efforts by the NPA to regain the public's trust through elaborate public relations exercises.
- **NPA's centralised system** - Perceptions are that the NPA cannot be fully independent or free of political influence, but that this would be an important step to take to make it a more effective prosecuting authority. As noted by one participant "The only independence that the NPA really has is to choose to prosecute from a docket." Stakeholders suggested that a remedy for this is to make the NPA independent from the DoJ (Two participants recommended a restructuring of the criminal justice system)
 - Top level appointments are made by the state. The decision-making on who to appoint then devolves down to the other levels of the NPA and appointments are made at the discretion of those in higher positions. So ultimately, appointments are still being made by / influenced by the state – civil society and public has very little say in who is / is not appointed to serve in the NPA.
- **NPA does not have investigative capacity of its own** – it can only rely on other parties to do investigations, which means that it is highly reliant on the efficiency of the SIU, SAPS and its investigating officers (IO's). However, challenges with investigations done by SAPS are numerous, including a) lack of proper handover / debrief between Investigating Officers (IOs) of case dockets; b) poor communication between IOs and prosecutors; and c) corruption – IOs being paid off to make dockets "disappear"
- **The NPA's apparent inability to go after the "real" criminals** – seems stuck in going after the "low hanging fruits" of petty crime, without much appetite or proactive strategy development and implementation demonstrated for prosecutions of those responsible for violent crimes (petty criminals defined as being drug offences, sex workers, refugees and immigrants).

- Over-policing of these petty crimes and heavy-handed sentencing that often appears **disproportionate to the crime** was noted. This is leading to overcrowded jails. There appears to be no consideration of diversion for youth or other avenues of justice, like restorative justice, in current system.
- **NPA is chasing stats** – there is a poor monitoring and evaluation system in place that tracks number of closed dockets, convictions of those that actually get to trial. This skews results – while it may look good on paper it is actually hiding high levels of ineffectiveness behind these indicators of “success”. Stakeholder expressed the need to do away with this type of incentive system – i.e., trying to meet numbers to advance careers. One participant noted that the false results are also “used as electioneering politicking tool”. Stakeholders lamented poor monitoring and evaluation and ineffective gathering and use of evidence for planning results in a compromised criminal system. Suggestions from participants were:
 - Overall assessment of the NPA should be the crime rate – high levels of crime in SA; also organised crime is increasing
 - 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
- **Lack of integration** – need a far more integrated criminal justice system, that speaks to different role players with a common goal and synergy. There is a need for greater cooperation between the police, NPA and DoJ.
- **Communication:** One participant noted that her experience of the NPA via Community Advice Offices indicates that there is little to **no communication with clients**
 - The client is generally left to figure things out on their own, with limited guidance and feedback;
 - There is no communication regarding when the case is transferred to the relevant prosecutor by SAPS,
 - There is no guidance or preparation of the client for their appearance in court (what to expect, what to do, etc)
 - Witnesses are also not informed of court proceedings and how to conduct themselves when providing testimony

5.3. Touch points

The table below summarises the discussion related to the different touch points;

Touch point	General discussion on experiences / challenges	Expectations and recommendations
Investigation (SAPS)	<ul style="list-style-type: none"> ● Communication is very poor, between IOs and also between SAPS and clients – limited access to information, no follow up ● Challenge – lack of skills and capacity of investigators 	<ul style="list-style-type: none"> ● Expect that the NPA has the right skills to do the job. Stakeholders are concerned about loss of experience and expertise and there is no effective hand-over process of the knowledge or the key

Touch point	General discussion on experiences / challenges	Expectations and recommendations
	<ul style="list-style-type: none"> • Training of SAPS is poor. Don't know how to handle crime scenes; Lack of skills amongst SAPS • Influence of prosecutors by the IOs – they tend to pass on their biases • IOs carry too many dockets and as a result they choose those that are easiest to close and neglect the others • Investigation is rushed, cases are not dealt with in a measured and considered way • Sharing of information, the police and the NPA is poor • Bribery of SAPS officials to make dockets disappear 	<p>skills. This needs to be addressed to stop the outward flow of capacity and skills.</p> <ul style="list-style-type: none"> • Regular capacity building for SAPS and NPA • Improved communication and handover between the IOs
Police docket compiled and assigned to prosecutor	<ul style="list-style-type: none"> • IOs and prosecutors do not meet to discuss cases • Bottlenecks during investigation include incomplete dockets; limited capacity (IO and prosecutors) • Lack of communication with the complainant, witnesses – even with the accused, so do not know what is going on • Transfers of prosecutors – apply for other posts, lots of movement as seek better opportunities – then limited hand-over, case details start to fall between the cracks • Dereliction of duty often blamed in SAPS and case gets dropped but nothing is done to address the gaps in SAPS' preparation of evidence, nothing proactive to sort this out 	<ul style="list-style-type: none"> • Good communication between the IOs and prosecutors, and then also communication back to complainant as well, to enhance (perceptions of) transparency • Information must be made accessible, regular information exchange with the complainant and witnesses to keep them informed regarding what is going on • Skills transfer and ongoing capacity development and mentoring provided to ensure professional and efficient public service • Proper handover of cases and debrief between IOs and prosecutors
Decision made to prosecute or not prosecute	<ul style="list-style-type: none"> • KPI driven decision-making amongst prosecutors (e.g.: number of convictions), which impacts on the decisions they make about what to / not to prosecute • Overwhelmed with high workloads = low morale amongst prosecutors • No prioritization of crime – look at how quickly the case can be resolved so this skews attention towards petty crime and so-called “low hanging fruit” 	<ul style="list-style-type: none"> • Need prosecutors who are knowledgeable, experienced, ethical, and seen as possessing integrity • An NPA that acts in a fair, impartial way – no bias or prejudice • Private prosecution process? Could this be an option? To address backlogs and high workloads

Touch point	General discussion on experiences / challenges	Expectations and recommendations
	<ul style="list-style-type: none"> • No communication regarding why certain cases are pursued and others not; lack of transparency re decisions • Lack of knowledge amongst prosecutors regarding asylum seeking processes, policy, law; particularly at district and regional court level • Prejudice / bias – refugee and migrant community, sex workers, drug users, LGBTQI • Familiarity with the prosecutor helps! 	<ul style="list-style-type: none"> • Regular communication and updates with complainant and witnesses – feedback on decisions and why these were taken (transparency) • Job specialization to allow for creation of pool of specialists in certain areas of the law (e.g. immigration/ asylum law)
The accused pleads guilty or not guilty	<ul style="list-style-type: none"> • Lack of / poor implementation – where policy is in place, prosecutors don't know the law • Lip service on commitment to dealing with crime, no active crime prevention - more reactive crime prevention • Post mortems are not done on implementation practices, to see if they are effective and if not, where to improve • No sharing of information with the public i.e., rights/parameters/ laws that should apply to their case • Cases take so long that the victim forgets key points, feels overwhelmed, may even contradict previous statement to police • Victims are not well-prepared for court appearances by prosecutor; no updates are received on case 	<ul style="list-style-type: none"> • Prosecutors are well-versed in the law • May even have specialist knowledge and ability to apply this (e.g. immigration/ asylum law)
Bail hearing is held	<ul style="list-style-type: none"> • Backlogs in the system – cases drag on indefinitely, loss of witnesses, loss of details / knowledge • The public has no understanding of bail system – how this works (e.g. appears to be limited knowledge of cashless bail system) 	<ul style="list-style-type: none"> • There is good communication with the public and regular outreach to make sure that they are well informed of the law and their rights and of how the legal system operates • Alternative methods are considered when dealing with first time offenders and juveniles • Prosecutors / magistrates consider the nature of each case and make decisions accordingly
Trial is held / evidence is presented at court	<ul style="list-style-type: none"> • Large numbers of people waiting for trial – stay in detention longer than what their actual sentence may be • Use fact that you can detain someone for 48 hours before they appear before the magistrate 	<ul style="list-style-type: none"> • Consideration of alternative dispute mechanisms and more use of diversion • Regular client engagement to ensure that they are well-prepared for appearance in

Touch point	General discussion on experiences / challenges	Expectations and recommendations
	<ul style="list-style-type: none"> • No thought given to other, alternative methods – diversion, ADR • Prosecutors / magistrates not applying their minds to case at hand; also often not aware of recent case law • No client engagement /discussion by prosecutors prior to court appearance to help them to prepare • No clear training in presenting and evaluating the case they are required to present • Prosecutor’s poor remuneration impacts the quality of work / level of skill; preparation for hearing • Court dates are communicated but not times – long waits, witnesses may be required to go back to court repeatedly, eventually they no longer want to appear in court 	<p>court – do not find it intimidating</p> <ul style="list-style-type: none"> • Careful and due consideration of each case • Prosecutors are mentored and supported by more senior staff members to build confidence and capacity • There is oversight of the cases being prosecuted; some form of quality assurance and checks to ensure that the criminal justice system is just and fair
Sentencing occurs	<ul style="list-style-type: none"> • Incompetent and biased magistrates • Sentencing often done haphazardly; depends on the mood of the magistrate • Heavy-handed sentencing that is often not in line with the crime • Magistrate not applying recent case law • No oversight / correction of how cases are being dealt with, sentencing decisions 	<ul style="list-style-type: none"> • Well-capacitated magistrate and prosecutor consider case carefully; have the necessary knowledge and expertise – may even be specialists in certain fields • Consideration of alternative dispute mechanisms and – where necessary – diversion • Set up of “ombudsman” to assess performance and consistency thereof within NPA

5.4. Expectations and the NPA core values

Professionalism

- Training of SAPS and prosecutors has been neglected and is needed; e.g., how to collect evidence or handle evidence at the crime scene
- Should also possibly revisit appointment process – what selection criteria are currently being used when hiring prosecutors?
- IOs and prosecutors must meet to discuss cases; better hand over of cases and briefing systems to be put in place for improved cooperation or collaboration between SAPS and prosecution
- Clearer interrogation of cases, especially at bail hearings and charging – doing due diligence by SAPS and NPA; really applying their minds to the cases and not just rushing through them
- Must be better / more frequent considerations of alternatives to detention by both SAPS and the NPA

- Skills transfer system is not in place for the transfer of knowledge, experience and skills within SAPS and NPA – this needs to be addressed
- Specialisation of prosecutor’s skills e.g., knowledge of immigration law, to be considered for more effective and professional practice

Independence

- NPA is **not** independent
 - Accountable to DoJ
 - Higher appointments are made by the state – then have trickle-down effect from this
 - Need to revisit appointment process, e.g. increase civil society input – ask relevant NPOs for recommendations for NPA appointments
 - May require a re-think and re-structuring of the criminal justice system

Accountability

- Legislative and policy reform reimagining of laws and policies that speak to each other for a more integrated criminal justice system where different departments are able to collaborate and share a common goal and strategy = more synergy
- Work more closely with civil society for accountability purposes and ensure that information is shared with the public

Credibility and legitimacy

- Our criminal justice system is jaded and overworked – needs support on many levels (trauma counselling should be provided to SAPS and prosecutors; improve income / salaries offered to prosecutors; make these comparable to private lawyers) to ensure that it can function properly and regain its legitimacy and credibility
- Expect the NPA to prosecute violent crime more seriously. Clear priorities should guide the IO and the NPA in terms of improving public safety
- Prosecutors should be experts in a particular field of law to ensure that they can do their jobs effectively
- Prosecutors should be well-informed and sufficiently capacitated to consider alternatives to trial and detention
- Prioritise cases that will have bigger impact - not because they are easy to convict
- Regain trust of the community/ as well as SA public trust and belief in justice system
- Open and accessible stakeholder engagement and consultation; information sharing with public important step in becoming more transparent and accountable

5.5. Recommendations for improvement

- Less operational restrictions for prosecutors
- Transparent and independent recruitment of NPA staff; without political interference
- SIU should be able to collaborate with SAPS; can refer directly to SAPS without going via NPA – requires legislative review and change to law and policy to increase speed of process and address the current bottlenecks

- Independently review the JCPS cluster (Justice, Crime Prevention and Security) approach to planning
- Improve the overall monitoring and evaluation system by including better indicators and key performance indicators (KPIs) that ensure good evidence; not skewed evidence; also propose a move from output to outcome indicators of performance; provision of evidence and use of evidence in planning and decision-making
- Implement systems to track cases from start to finish and use this as a means of assessing performance
- NPA should be open to supporting private prosecutions for justice to be served – nolle prosequi certificate option to be explored more
- Process and systems for identifying serious crimes and habitual offenders and allocating resources to address this should be put in place; more proactive crime prevention strategies; systems for prioritising offences to be prosecuted
- Systems to be put in place for checking, monitoring of decisions about the case and sentencing

5.6. Summary of key emerging themes

The following key themes emerged in the course of the discussions.

Lack of communication and transparency

- There is a lack of communication between the IO / SAPS and the prosecutors, which is impacting negatively on the number of cases that proceed to trial
- There is also a lack of communication between prosecutors and their clients - about the status of cases, court processes, dates, etc
- Limited information-sharing and lack of communication with CS and broader public means that decisions regarding cases and judgements are viewed with suspicion and are often not viewed as being fair or impartial; there is also a lack of knowledge of the criminal justice system amongst members of the public. There are limited attempts by the NPA to address these knowledge gaps and to “demystify” the criminal justice system and their role in it.

Discrimination and bias

- Participants noted incidents of bias and discrimination (refugees and immigrants)
- There is a strong need for an NPA that is perceived as being independent, fair and impartial
- Also, skills development is needed to build knowledge and implementation of alternative dispute resolution, diversion mechanisms and “alternative forms of justice”

Skills and capacity

- Numerous mentions were made that prosecutors, particularly those in magistrate’s courts, are inexperienced and lack an appropriate level of knowledge of the law
- Prosecutors at the district and regional courts are also perceived as not being able / prepared to “apply their minds” to cases and to give them the proper level of consideration and thought

- Participants noted that the establishment of some kind of internal oversight mechanism would help to address skills gaps as well as patterns of poor decision-making by certain magistrates and prosecutors

Monitoring and evaluation

- There was a lot of discussion about the need to improve the monitoring and evaluation system of the NPA and to shift the focus from outputs to outcomes; that is, what real difference is being made in relation to crime?
- There is a perception that the monitoring and evaluation system and current KPIs are contributing to poor decision-making re which cases to carry forward and which to dismiss
- This is linked to the perception that SAPS and the NPA are pursuing the “low-hanging fruit” or petty criminals as opposed to going after those responsible for violent crime

6. Appendix 3: Cape Town Workshop

The “NPA that we want” Stakeholder Consultation Workshop: Cape Town

23 June 2022

6.1. General notes and observations

The group was mixed comprising government officials, NGO or CBOs, an international foundation, an academic (who was a former prosecutor in the NPA) and a former Judge. Most of the participants initially said that they had come to learn about the NPA, but it became apparent that they, all had some engagement with the legal process and it seemed they were curious to find out if attending the workshop could help them with their cases. The one government official also worked as a volunteer at a community advice office. The participants all had strong feelings and opinions about their experiences with the legal system, and were able to share these and their expectations for improvement.

The participants highlighted the following key challenges affecting their experience with the NPA:

- The NPA has a high turn-over of prosecutors and as a result prosecutors are not well prepared for cases. This results in postponements and miscarriages of justice (in the minds of community members, particularly when known offenders, such as gangsters, have cases withdrawn or are acquitted).
- The Legal Aid system is overwhelmed and under-capacitated. People experience legal aid lawyers as unmotivated.
- People in communities experience high degrees of frustration with the whole process – they do not understand proceedings, the reasons for decisions are not shared and victim’s families and support organisations are not provided with sufficient (or any) information to help them through the process. These sentiments are illustrated below:

“A lot of people do not understand the mechanisms of the law. The general Joe Public doesn’t understand what you can and can’t do. And this is all written down in law but unfortunately, the man on the street is not equipped to wade through all that legislation and legal jargon”. (Participant, Cape Town Workshop, 2022)

“There is only so much control that the NPA has over the legal process so we should keep that in mind when considering their core values. How do you show a process when it is that complex?” (Participant, Cape Town Workshop, 2022)

- There are civil society organisations who could support the NPA and act as a bridge between them and the community – they can educate and inform communities about the legal process and what to expect from the NPA. They would like to have more cooperation with the NPA.
- There is little trust in the whole system. People suspect that the prosecutors and the magistrates are not applying their minds adequately to cases (for example, not using

alternative dispute resolution or diversion where appropriate); or are looking for easy wins to increase their stats; or are in the pockets of the gangsters.

- People would like to see more active monitoring of courts, for courts to be held accountable for delays or high numbers of withdrawals/ acquittals.
- People would like to see greater cooperation between the SAPS, the NPA and the magistrates particularly around investigations and sentencing.
- People experience the system as racist and favouring the rich. They do not feel like they are treated with dignity, and in fact that the court process violates their dignity and human rights. The rich can pay for justice (lawyers) whereas the ordinary person cannot afford it.
 - People were clearly disturbed by the scale of evictions in Cape Town and how the cases were handled, which we picked up in conversation, but it never came through as an example. It seems magistrates are on the side of the landlords and not protecting the rights of the tenants. In many cases the landlord is the City of Cape Town.

6.2. Scenarios

Scenario 1: The Death of a Baby

A 9-month-old baby was placed in the care of the perpetrator by the state (foster care), under a false pretence that she was a friend of the mother of the child and the family. While in the care of the friend (perpetrator), the baby was physically abused and murdered. The perpetrator coerced her sister to engage with the abuse and to hide the body. The baby was then buried alive. The sister came to the organisation [name of organisation] to confess the crime. The police were called and the crime scene was investigated. The police then arrested the perpetrator while she attended the local day hospital. The perpetrator is being held in [name of prison], but has not yet charged. She is currently awaiting trial. The case is being dealt with at the district court.

The sister is currently living in fear for her life since the perpetrator threatened her life during the court proceedings. Despite being publicly threatened, the witness has not been offered witness protection.

However, it has been said that there is a lack of evidence.

Experiences:

- The organisation supporting the victim has shared that they are confused about the proceedings
- The organisation and the victim's mother have come to the district court 3 times but the trial keeps getting postponed due to a lack of evidence even though the defence lawyer, Judge, and Witness are all present.
- In addition to lack of evidence and information, it was also stated that the case was not for the district court but should be handled by the regional court. Therefore, the district court cannot charge or sentence the perpetrator since it should go to the regional court.
- The prosecutor at the regional court is supposed to speak to the witness for the trial.

- Witnesses and the organisation were never questioned by the police or prosecutor
- The baby's mother has no lawyer. The mother is dealing with the NPA directly.
- The perpetrator is currently in prison however, her sister (the witness) fears that she will be released and that she'll harm her because she confessed to the crime.
- In our experience, the perpetrator has more rights than the victims.
- Thus far, this has been going on for 6 months without the perpetrator being charged.

Expectations:

- From the beginning of the murder case, the state prosecutor needed to be involved in the investigation.
- SAPS must be functional and on time at the scene. A proper investigation should be conducted.
- The organisation should have been involved in the investigation from the beginning, especially since they discovered the body of the baby
- Victims should have more rights and perpetrators should have none.
- Protective custody should be available to witnesses.
- Trials should be started quickly with minimal postponements.
- Bail shouldn't be offered to violent offenders.
- A sentence should be given.

Scenario 2: Unlawful Arrests of "Protestors"

The organisation that deals with housing issues was called for a meeting at [...] Municipality in [Town]. The people attending the meeting had gathered outside the building waiting for the officials. They were told to disperse, and it seems the police believed that they were protesting. The police then dropped teargas on the group.

The group dispersed but 21 people were arrested in [Town]. Due to the presence of the Human Rights Commission, the police agreed to release the group. However, after the Human Rights Commission left, the police went back on their word and the group remained in custody overnight. Eventually the police decided to release a few people due to Covid and overcrowding. However, 9 people were charged. Those charged were released on R 250 bail each.

The nine charged are still involved in the court case.

It is not clear on what grounds these decisions were made. The case has now been ongoing to two years. The people involved are living in Cape Town and must travel between Cape Town and [Town] for court appearances despite the lack of funds.

There was live footage of the incident. However, the police arrested the camera man and deleted all the footage of pictures. There are backups of the footage, but this was never brought up in court.

Experiences:

- The whole experience was extremely shocking for people who had come to have an official meeting, and in the end experienced being arrested for no apparent reason. They felt the police were targeting them. The police arrested the camera men and deleted the videos that they took.
- Those arrested were forced to go without their medication for an extended period of time and were not treated with any dignity.
- The accused and their supporters are treated with disdain by the prosecutors and by the court and they experience it as racism. This is illustrated by the participant quote below:

“You are being spoken down to and treated as less than by prosecutors. They make you feel as though you’re the one who has committed that crime. They speak to you as though you are less of a person”. (Participant, Cape Town Workshop, 2022)

- The case has been active for more than 2 years without any clarification or explanation of the proceedings. There is a lack of communication between the NPA and the accused.
- There have been a number of postponements, including for further investigation; and because the legal aid lawyer was unwell.
- One person commented that “Defence lawyers are never available. Cases drag on for more than 2 years. Witnesses and victims don’t have money to keep going back to court “Justice is for the rich”.
- The experience of legal aid has not been positive, and the participants experienced the legal aid process as chaotic and unprofessional. They have not been able to get adequate representation. Legal Aid Lawyers change frequently and the new lawyers are not well briefed on the case.
- People are frustrated because they have to continuously go to court but don’t have money for the travel or time to take off work.
- Eventually they managed to get a lawyer sponsored by a law firm in Johannesburg, but they are also getting impatient with the delays.
- The prosecutor is not sharing the evidence with them and they are confused about the charges
- In court they speak with terms that they don’t understand.
- Some of those who were charged have lost their jobs because of the incident, and others couldn’t get jobs because they now have a criminal record (it is not clear how they can have a record if the case has not yet been heard).

Expectations:

- People have an expectation to understand the circumstances of the case - to be told the reason behind the arrest; to understand why certain people were released and others weren’t; to have their rights read to them.
- They expect that the case should run smoothly and not take too long.
- Communication

- They expect to be treated with dignity and respect.
- They expect to have their Human Rights upheld by the system
- To be told in time if the case is postponed
- To have a lawyer stick to the case instead of being changed out
- “The NPA and Police need to be educated in this South Africa, Amandla!!”

Scenario 3: The acquittal of three murder suspects

A murder case where the victim (male) was shot twelve times by three known gangsters. The victim went to the ATM with his cousin. The cousin is the only witness. They went during loadshedding. As they approached the ATM, three guys approached him.

His cousin (the witness) was walking some three meters behind him and tried to warn him about the approaching men since he saw guns being drawn. However, the men opened fire. Twelve shots were fired.

The witness reported the case twelve days after the incident and moved from [town] to [town] for their safety. A nickname was used to identify the witness, not the actual name.

The three accused were arrested. However, they were later acquitted for the murder (it is not clear if it was an acquittal or a withdrawal). The murder weapon is missing and was never found. However, one of the accused has revealed the location of the murder weapon to a detective but as far as the organisation knows, nothing was done with this information.

The accused were also never cross-examined since they had attorneys.

Detectives also ignored the fact that the victim was assaulted by the accused three days before he was murdered because he refused to join their gang. The victim’s mother produced medical reports and pictures of the assault but these documents never appeared in court.

The case was handled at [name] Regional Court.

The accused were acquitted due to a “poor” investigation, “poor public lighting” and an “unreliable witness”. The witness was slightly intoxicated when the incident occurred.

As the quote from a participant illustrates:

“One respondent had a document which detailed the outcome of a case, and commented: “I never knew that I could request the outcome of the case. But I was able to and received a document about the outcome of the case”. (Participant, Cape Town Workshop, 2022)

Experiences:

- The accused were also not cross-examined by the NPA.
- There was a lack of communication between the NPA and the family of the victim. The processes were not clear. They were not sure what was happening at each step. The family is in the dark.

- The accused had legal representation and they argued that the witness was not credible and that there was insufficient lighting for him to be sure that it was the accused.
- The participants in the workshop felt the investigation by the police was conducted poorly.
- The prosecutor was changed three times and were not well-prepared for the case.
- People do not understand bail proceedings. The one participant said that she understands that people have the right to bail, and she keeps people in the community informed in her role as a community advice officer, but in general the community needs to be informed of bail processes because they don't understand and do not approve of bail for violent offenders.
- Their experience is that cases of murder either go free or are acquitted. The magistrates are far too lenient, they always uphold the rights of the accused. They are suspicious of the [name] Regional court and believe that there are too many acquittals (or possibly withdrawals) happening at the court and that the NPA should be tracking this.
- One of the prosecutors assigned to the case was very good, but he was taken away.
- The courts won't allow the organisation to protest outside of the court.

"There seems to be a disjuncture between the NPA, the presiding judge, prosecutors, and the outcome of the court case"². (Participant, Cape Town Workshop, 2022)

Expectations:

- Communication - the victim's family should always be kept in the loop, as two people commented:

"They don't have money for an attorney (victims' family) so they expect the NPA to keep them in the loop". (Participant, Cape Town Workshop, 2022)

"The rights of the perpetrators are upheld over the rights of the victims. This is the view we have of the NPA". (Participant, Cape Town Workshop, 2022)

- Prosecutors should be consistent and shouldn't be switched out. They should follow through with the proceedings of the case until the case is closed
- Counselling should be provided for the victim's family and the survivors
- The accused should be cross-examined in court
- A thorough assessment should be done of the outcomes of murder cases which are heard in the [name] Regional Court
- Cases should not take so long because people forget.

One respondent commented on their personal experience of being involved in a case:

"The case was called in seven months after the incident, so my memory of the case was not as strong. I only spoke to the prosecutor once right before the case. I wouldn't want to have this experience again because I barely remembered the incident. I only spoke to the prosecutor once five minutes before the trial. It was a small incident but in bigger

² Direct quote from participant.

cases, if things like that happened then, especially with murder cases, it won't have a good outcome". (Participant, Cape Town Workshop, 2022)

- The NPA should work closely with the investigating officer
- Did not think that the prosecutors were very good – for example it was never raised that they accused are repeat offenders

Drug User Vs Drug Dealer: an example of possible biased sentencing

The following was described by a participant:

Drug arrests are high but the users are being arrested and not the drug dealer. When a drug dealer is caught, there needs to be forensic tests but not when it is a drug user.

I had a situation where a matriculant was sent to prison for 30 days with a R3, 000 bail because he was caught with dagga, but when a prominent drug dealer was caught, he only had bail of R500. So, the punishment is not fitting the crime.

This happened in September, he was supposed to write his exams in October. I was objecting but the Judge told me that he would send me "down" if I didn't keep quiet. By putting him in jail, he won't be able to complete his schooling. That was my argument.

We know our drug dealers and our gangsters. We know there are officials and policeman on the payroll. Sitting in court and seeing these things is frustrating.

Now, we have this youngster being charged, it is his first offence, and he is being charged while the drug dealer goes free. You are making criminals out of our children.

6.3. Expectations and the NPA Core Values

Accountability

- Expect the NPA to monitor the courts to identify where there are too many withdrawals or acquittals of cases of serious, violent crime.
- Improved communication with the victims and with the accused. All the role-players should be properly briefed by the NPA
- Expect to be informed if the prosecutor is going to recommend alternatives such as mediation
- Clear communication about what informs decisions such as the decision to prosecute or not to prosecute
- Expect recourse for victims, not aware of victim rights
- Expect cases to be resolved more quickly – within a reasonable amount of time
- The legal process should be more smooth

Credibility

"People don't feel as though the court is in favour of the victim. Courts are in favour of the perpetrator". (Participant, Cape Town Workshop, 2022)

- Trust: improve trust within the NPA; build trustful relationships within SAPS; build trustful relationships with the witness and victims
- Expect that the NPA will be unbiased and not only support the perpetrators
- Expect consistency in applying the law (e.g., people experience that more leniency is given to drug dealers but harsher sentences are given for petty crimes such as drug use.)
- Expect witnesses to be protected. The integrity of the court is at stake if it can't protect its witnesses.
- Expect the NPA to educate communities about the criminal justice system, especially organisations who interact with victims and offenders
- Expect to see court assessors to increase transparency and credibility (independence)

Independence

- Expect prosecutors not to be in the pocket of the gangs/underworld
- Expect that the professionals are properly vetted to see they don't have links to criminals (should be done on an annual basis)

Professionalism

- Better and more efficient cooperation between SAPS and the NPA around investigation of cases and should consult prosecutors early on in the investigation of cases.
- Witnesses should be questioned and prosecutors should help the police to get the evidence to prosecute.
- Expect the police to do a proper investigation and correctional services to monitor bail conditions.
- Expect that the NPA should be on top of repeat offenders.
- Expect more diversion programs in place, especially for substance abuse users.
- There should be more support for victims.
- Prosecutor should cross-examine and question the accused, and the victims' family.
- Prosecutors should be consistent or there should be sufficient hand-over of cases so that new prosecutors are informed about the case.
- Legal aid lawyers should be reliable and professional and committed.
- Expect to be treated with dignity in court. The prosecutors should not speak down to you. Do not expect to experience racism in court.

6.4. Recommendations for Improvement

- Improve the collection of evidence. For this the NPA needs to work more closely with SAPS. They can also use technology such as police body cams and street cameras. Then video footage can be used as evidence.

- Bringing back the Community Empowering Workshops and use these workshops to educate the communities and organisations working in the legal sphere
- The NPA should work closely working with SAPS investigators to prepare the dockets for court. NPA should be the leading agent in the investigation and train the police.
- Monitor the performance of courts - do a thorough assessment of courts with low conviction, acquittal and withdrawal rates.
- Hold empowering workshops in the communities to inform communities of how the Civil Justice process works.
- Use community structures for community education and outreach (Justice cluster).
- Implement community court assessors.
- Prioritise cases that tackle gangsterism and corrupt police.
- Implement alternatives to prosecution such as diversion programs, especially for drug offenders and youth.
- Bring officials together with stakeholders (NPA, prosecutors, policy makers) to improve trust and relationships.

6.5. Summary of Key Emerging Themes

Lack of clear communication and transparency

- There is a lack of communication and transparency about the status of cases and the next steps.
- People are confused and frustrated about what is happening in the whole process (acquittals, releases, bail, charges and postponements)
- People expect that that NPA would have a better attitude towards witnesses and victims and would want to keep them informed about the process.
- The prosecutor doesn't explain what is going on in court and the terms are hard to understand.

Discrimination

- Victims and families facing discrimination from prosecutors, police, and court officials
- Instances of racism and classism (court cases are for the rich)
- Issues of funding, and being able to pay for lawyers and miss work to attend court appearances (only the rich can afford)
- Victims and families aren't treated with dignity and respect

Skills / capacity

- The police and prosecutors don't have the skills and know-how on dealing with situations like protests
- Prosecutors are unprepared for cases

- Victims/organisations aren't educated about the criminal justice system

Criminal Justice Process

- There is a lack of trust in the system and people believe that the gangs are working in close cooperation with SAPS and also possibly magistrates.
- There is a high turnover of prosecutors and they are not always informed about the cases.
- The issues that affect the justice system are systematic and needs to be approached holistically – it is not the fault of the NPA alone.
- Witnesses feel unprotected.
- Cases take too long – there are too many postponements. People cannot afford to participate in long term cases, witnesses' memories fade, and being are no longer willing to be a part of the process. The families of the victims are further traumatised by the process.