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Key issues in the NPA

Effectiveness and Efficiency

Issue Paper 3

by

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1. Introduction

On most measures, criminal justice system performance and outcomes have deteriorated since 2010 in South Africa. Feelings of safety of South Africans have declined by one-seventh, over only four years from 2013/2014 to 2017/18.¹ Violent crime, as indicated by the number of murders, increased by 37 percent over the decade from 2011 to 2021, far outpacing population growth.²

In relation to the National Prosecuting Authority (NPA), trust in the NPA declined by almost a fifth between 2006 and 2015.³ Meanwhile, real expenditure on the NPA (that is, inflation adjusted expenditure) increased almost six-fold between 2000 and 2018.⁴

On these outcomes measures, the criminal justice system and the NPA within that system are not achieving the desired outcomes, despite significant investment. This suggests the NPA is not operating effectively or efficiently. Yet, the measurement of effectiveness and efficiency of the NPA in official reporting has neither noticed this state of affairs, nor encouraged moves to greater effectiveness and efficiency.

This paradox suggests that perverse incentives may be operating to undermine the desired outcomes. The issue this paper therefore seeks to explore is the measurement of the effectiveness, efficiency (and cost-effectiveness) in the NPA, how it has operated in the recent past, and what may be done to improve the situation. The paper addresses the following questions:

- How are effectiveness and efficiency defined?
- How are NPA effectiveness and efficiency currently measured?
- How should the effectiveness and efficiency of the NPA be measured?
- Is the NPA effective, efficient, and cost-effective?

Answering these questions will assist with guiding the NPA toward a greater contribution to improved criminal justice system performance and the outcome of greater safety in South Africa.

¹ From 59 percent feeling “very safe” during the day, to 51 percent, as measured in the Statistics South Africa Victims of Crime Surveys in the relevant years.

² For the number of murders, see the South African Police Service Annual Crime Statistics series available on <https://www.saps.gov.za/services/crimestats.php> accessed 16 February 2022. For the population estimates series, see Statistics South Africa Population Estimates available on <http://www.statssa.gov.za/> accessed 16 February 2022.

³ From 65 percent to 55 percent, as measured in the relevant Afrobarometer Surveys available at <https://afrobarometer.org/> accessed 14 February 2022.

⁴ ACJR. “Fact Sheet 8: The Performance of South Africa’s National Prosecuting Authority.” Factsheet. Bellville: Dullah Omar Institute, n.d. <https://acjr.org.za/resource-centre/npa-performance-nov-2018.pdf/view>. Accessed 14 February 2022.

2. Defining effectiveness, efficiency and cost-effectiveness

2.1. Effectiveness

Effectiveness is the degree to which something is successful in producing a desired result. Effectiveness refers only to whether the programme or department has achieved the desired objective, without reference to the costs or inputs. A programme may be effective but not efficient or cost effective. For example, it may be an effective measure to hire silks (Senior Counsel) to prosecute all cases, but this will not necessarily be an *efficient* or *cost-effective* measure – a cost benefit analysis will need to be done in order to determine this.

2.2. Efficiency

The World Bank explains that an assessment of efficiency relates the results or outputs of a programme to its costs; efficiency is the extent to which a programme has “converted its resources or inputs (such as funds, expertise, time, etc.) *economically* into results in order to achieve the maximum possible outputs, outcomes, and impacts with the inputs”.⁵ Ideally, a monetary value is placed on the benefits arising from the activities of the programme, and this is compared with the actual costs of the programme. But in most cases, a monetary quantification of a programme’s outputs and outcomes is problematic and would be based on potentially controversial assumptions. In these cases, the assessment of efficiency focuses on ratios such as, for example, the number of lives saved, the number of children vaccinated, or the number of additional households served with electricity per thousand or million Rand invested.

2.3. Cost-effectiveness

An assessment of *cost-effectiveness* takes the benefits arising as a given and asks whether these could have been produced at a lower cost compared with alternatives. Cost-effectiveness is the extent to which a programme has “achieved results at a lower cost compared with alternatives ...

⁵ World Bank ‘Sourcebook for Evaluating Global and Regional Partnership and Programs: Indicative Principles and Standards’ 2009 available at http://siteresources.worldbank.org/EXTGLOREGPARPROG/Resources/grpp_sourcebook_chap11.pdf

Shortcomings in cost-effectiveness occur when the programme is not the least-cost alternative or approach to achieving the same or similar outputs and outcomes.”⁶

3. Current measures of effectiveness and efficiency in the NPA

3.1. Outcomes currently measured

To measure both effectiveness and efficiency, the desired results or outcomes must be determined. The Budget Vote documents provide us with the outcomes expected of the NPA by Treasury, associated with the funding provided to the NPA.

As Programme 4 of the Department of Justice and Constitutional Development Vote, the NPA must contribute to the overall Departmental aims, which are to: “Uphold and protect the Constitution and the rule of law, and render accessible, fair, speedy and cost-effective administration of justice in the interests of a safer and more secure South Africa.”⁷ These are the general outcomes expected of the Department of Justice and Constitutional Development.

The funds appropriated to the NPA, as Programme 4 specifically, are intended to “Provide a coordinated prosecuting service that ensures that justice is delivered to victims of crime through general and specialised prosecutions. Remove profit from crime. Protect certain witnesses.”⁸

From this can be distilled the following outcomes which are sought, both generally and specifically:

- Uphold the Constitution
- Protect the rule of law
- Accessible, fair, speedy, cost-effective administration of justice
- Contribute to safer and more secure South Africa

⁶ World Bank ‘Sourcebook for Evaluating Global and Regional Partnership and Programs: Indicative Principles and Standards’ 2009 available at

http://siteresources.worldbank.org/EXTGLOREGPARPROG/Resources/grpp_sourcebook_chap11.pdf

⁷ National Treasury, Estimates of National Expenditure Budget Vote 25, Programme 4, Department of Justice and Constitutional Development 2021/22, p435, available at

<http://www.treasury.gov.za/documents/National%20Budget/2021/ene/Vote%2025%20Justice%20and%20Constitutional%20Development.pdf> accessed 16 February 2022.

⁸ National Treasury, Estimates of National Expenditure Budget Vote 25, Programme 4, Department of Justice and Constitutional Development 2021/22, p435, available at

<http://www.treasury.gov.za/documents/National%20Budget/2021/ene/Vote%2025%20Justice%20and%20Constitutional%20Development.pdf> accessed 16 February 2022.

- Co-ordinated prosecution
- Justice to victims
- Remove profit from crime
- Protect witnesses.

To summarise, then, currently the NPA is required to prosecute in line with the Constitution and rule of law, accessibly, fairly, speedily and cost-effectively, in a co-ordinated manner, to provide justice for victims and remove profit from crime, while protecting witnesses, and in so doing, contribute to a safer and more secure South Africa.

As indicated in the Introduction, South Africa is in fact becoming less safe and secure. What then is going wrong in the measurement of effectiveness and efficiency, as prompts toward greater effectiveness and efficiency?

3.2. Indicators currently used and their problems

Unfortunately, the indicators chosen in Budget Vote documents do not adequately speak to the outcomes expected of the NPA. The Budget Vote 2019/2020 lists the following indicators for the expected outcomes, and their associated targets for the DOJCD which relate directly to the NPA:

- Maintaining conviction rates
 - (87 per cent in the high courts, 74 per cent in regional courts, and 88 per cent in district courts.
- Total number of Thuthuzela Care Centres
 - (Increasing the number of operational TCCs from 58 in 2020/21 to 61 in 2023/24)
- Conviction rate in sexual offences
 - No target
- Number convicted of corruption in the private sector in the year
 - (Increasing the number from 150 in 2020/21 to 174 in 2023/24)
- Number of government officials convicted on corruption/related offences in the year
 - No target
- Value of freezing orders obtained for corruption in the previous year
 - (R2.4 billion)
- Value of recoveries relating to corruption or related offences
 - (1.4 billion).⁹
- No witnesses and related persons in the witness protection programme are threatened, harmed or killed.

The suitability of these indicators will be discussed below.

⁹ National Treasury, Estimates of National Expenditure 2019/2020, Table 25.1 read with page 435.

3.2.1. Conviction rate targets have perverse outcomes

What is evident from the above is that the NPA “conviction rate” still remains the primary indicator preferred by both Treasury and the NPA. Unfortunately, this indicator in fact measures only success in relation to the cases actually prosecuted to conclusion, and not success in cases which are reported to the police (or other agencies) and then referred to the NPA for prosecution. The equation for the NPA conviction rate appears below:

$$\frac{\text{Number of convictions}}{\text{Number of verdicts}} = \text{NPA Conviction rate}$$

(‘guilty’ plus not ‘guilty’)

The conviction rate currently used by the NPA, has the denominator (the number below the line), being the number of cases prosecuted to verdict (which is the same as the number of verdicts). The numerator, the number above the line, is the number of convictions obtained. The denominator does not include cases withdrawn or stopped after prosecution has commenced; it only includes cases prosecuted to verdict. This measure encourages a “selecting-for-success” approach: a higher conviction rate can be obtained by choosing to prosecute only cases likely to be successful.

Yet, this form of conviction rate was not always used. In the early years post-1994 the Department of Justice measured the conviction rate as a proportion of cases opened by the SAPS, not, as is currently the case, as a proportion of cases prosecuted. The equation was as follows:

$$\frac{\text{Number of convictions}}{\text{Number of cases reported}} = \text{Conviction throughput rate}$$

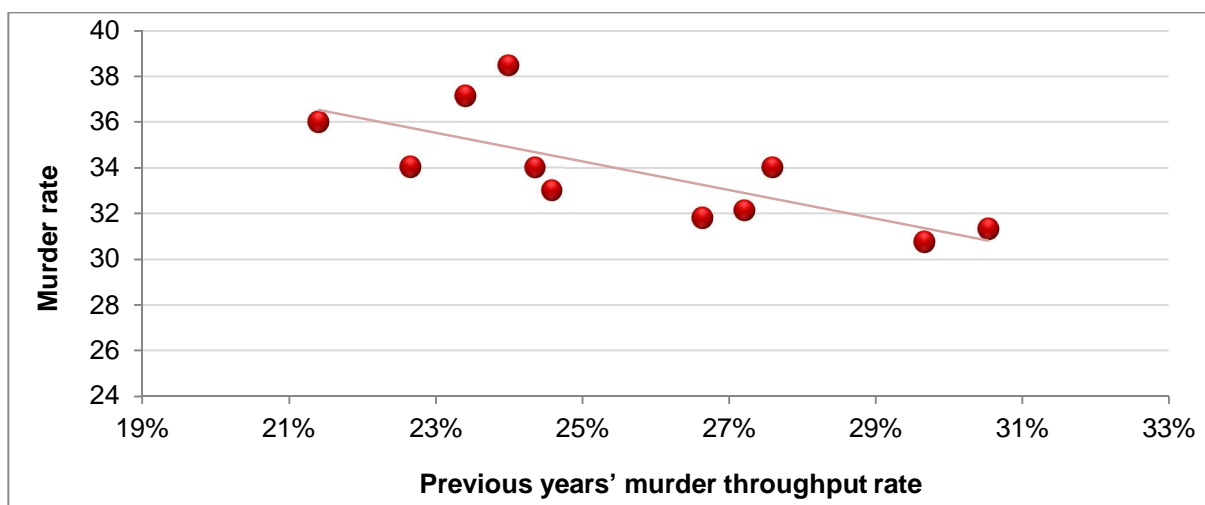
The number above the line, the numerator, is the total convictions obtained, while the number below the line, the denominator, is the number of cases reported. Here, this is referred to as the “Conviction throughput rate” to distinguish it from the NPA Conviction rate, although at the time it was referred to as simply “the conviction rate”.

It is understood that the measure was ultimately changed because it was argued that it was more of a measure of police performance than of prosecution performance. While this may be true, the indicator certainly reflects the ability of the NPA to translate cases into convictions.

3.2.2. Conviction throughput is associated with safer outcomes

In South Africa, the empirical evidence is that conviction throughput has a relationship with improved broader outcomes such as safety – which are desired outcomes for the system as a whole. In particular, murder conviction throughput in an earlier year, is strongly correlated with a reduction in the murder rate achieved in the next year (see Figure 1 below). In other words, conviction throughput is a better measure of the contribution of the NPA to the outcome of safety.

Figure 1: Relationship between murder rate and murder conviction throughput



Source: SAPS Annual Reports

Since the murder rate is a good proxy indicator for violent crime in general (it is less subject to reporting rates), and the murder conviction rate a good proxy for performance of the system in identifying and convicting those guilty of murder, this strongly suggests that it is possible that there is a causal relationship – in other words, that a better criminal justice functioning system leads to more safety. Of course, it is true that if the criminal justice system is improving, it is likely that other important safety factors are improving too. Nevertheless, it suggests the importance of throughput.

3.2.3. NPA Conviction rate measures efficiency, not effectiveness

What, then, is the utility of the NPA Conviction Rate? Should it be dismissed entirely? The NPA Conviction rate is probably a better measure of **efficiency** than of effectiveness – it is obviously less efficient to prosecute more cases in which there are no convictions, assuming the total convictions remain the same.

However, efficiency is an inquiry which must be separate from the prior inquiry into effectiveness.

An intervention may be effective but not efficient, or efficient but not effective.

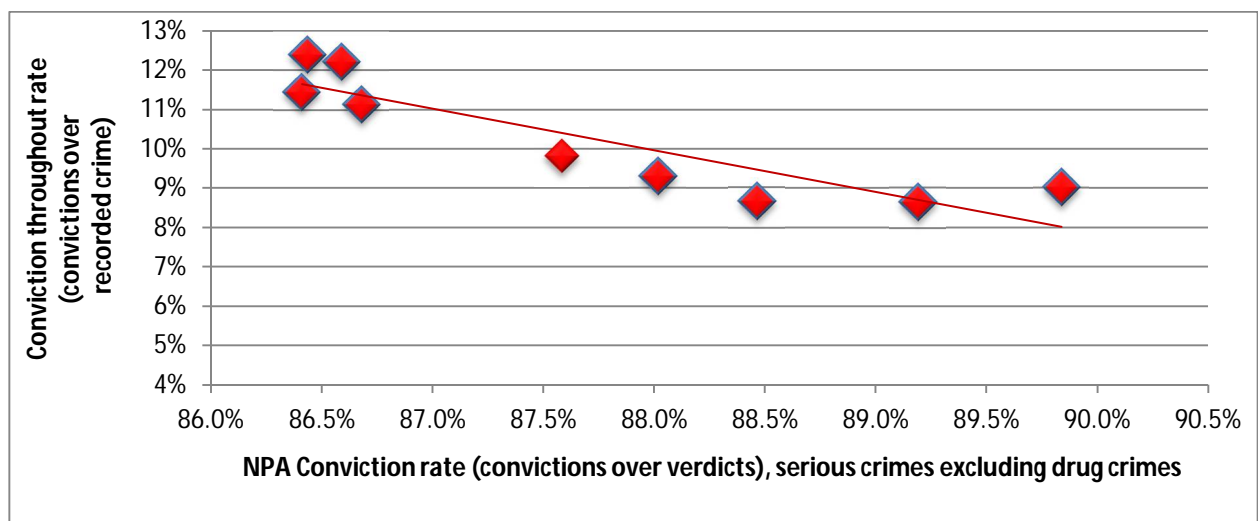
The NPA conviction rates tend routinely to exceed the Budget Vote target conviction rates, which would suggest effectiveness, if this was an appropriate indicator of effectiveness. Unfortunately, it is not a good measure of effectiveness.

Indeed, the high NPA conviction rates are in practice associated with (1) fewer convictions of serious crime and (2) a lower proportion of reported serious crimes convicted, as will be shown below.

3.2.4. High NPA conviction rates are associated with lower conviction throughput

There is clear evidence that in practice maintaining the high NPA conviction rates, comes at the cost of lower conviction throughput. Overall conviction rates are closely and *negatively* correlated with conviction throughput in serious offences (see Figure 2 below). In other words, as conviction rates go up, conviction throughput decreases.

Figure 2: The relationship between conviction rate and conviction throughput rate, serious offences



Source: SAPS Annual Reports

Given that conviction throughput is associated with greater safety, high NPA conviction rates run counter to the outcome of safety and thus **effectiveness** on the broader Department of Justice outcomes of upholding the Constitution and the rule of law, contributing to a safer and more secure South Africa, and ensuring justice for victims.

The above relationship suggests that the rule of law will not be upheld in a greater proportion of cases if higher conviction rates are targeted, so that fewer serious criminals will be incapacitated by imprisonment, fewer crimes will be deterred as it is observed that people are not convicted, and greater proportion of victims will not have their crimes addressed in court. Fewer alleged criminals being targeted enables and indeed encourages repeat offending.

It is important to note that the above relationship is an empirical one which has been observed in the South African context over the last decade during a time when the emphasis was placed on conviction rates, when conviction rates were already relatively high. It is highly likely that the relationship may look different at lower conviction rates.

3.2.5. Conviction throughput is a better measure of effectiveness

It is argued that a better measure of **effectiveness** is the conviction throughput rate, in terms of which the number of convictions in relation to reported serious crime is maximised. Indeed, as noted above, in the late 1990s the Department of Justice reported on these conviction rates (when the NPA did not report separately), and it is only in the 2000s that the practice of “conviction rates” being calculated with the denominator of prosecuted crimes (“verdicts”) rather than reported crimes began. The latter, as noted above, is an appropriate indicator of **efficiency**.

The ideal situation would be one in which conviction throughput and conviction rate are both increasing, in relation to serious, prioritised crimes.

3.2.6. Prioritise prolific offenders for impact cost-effectiveness

A further measure of effectiveness is the extent to which convictions are prioritised to target the most prolific offenders, thus bringing down the number of such crimes committed by incapacitating future crimes. Successfully prosecuting prolific offenders is more **effective** in terms of impact than convicting persons who have only committed a single offence, even if they are only convicted of a single offence.

Similarly, convicting the masterminds of criminal organisations is more effective (in terms of having an impact) than convicting the foot-soldiers (who will simply be replaced) – although likely far more difficult.

Similarly, convicting highly influential persons in public office who still have the power to pervert public funds for the purposes of corruption is more effective than convicting those lower down the chain of corruption, but may be more difficult to achieve.

In all such instances, convictions obtained via guilty plea, or plea and sentence agreement, will be far more **cost-effective**, than cases in which the accused pleads not-guilty.

In the South African context there is evidence to suggest that serial offenders account for a disproportionate number of crimes, but it is not clear whether or not these disproportionate offenders are prioritised for prosecution, as most indicators track only the number of convictions, and not the number of crimes with which they are associated. The summary data of the Annual Reports of both the SAPS and the NPA do not provide any insight on this.

To measure this, convictions of accused persons linked (but not necessarily convicted of) multiple crimes could be counted. This would require a re-orientation of the systems towards persons, not charges and case. Such an indicator which is not currently kept by any institution of the criminal justice system. Furthermore, the extent to which it is possible to identify serial and multiple offenders of crimes of physical violence is currently affected by the lack of operation of the centralised DNA system, through which it would be possible to link offenders to other crimes, should their DNA be stored in the database.

This is highly relevant to violent crime but less relevant to economic crimes, including corruption, where DNA evidence is highly likely to be involved due to the nature of the crimes.

3.2.7. Referrals from state institutions require a denominator

Crimes in which the institutions of state are victims, such as corruption, need a measure of success which is not simply related to number of convictions, as it is possible to convict minor offenders and meet the treasury target yet have no impact on the broad trends, that is, have no real effectiveness. The bald number targets do not provide any indication of the extent to which a problem is being addressed.

By 2022 there are a number of sources of referrals for corruption prosecutions. These referrals have been made by entities such as the Specialised Commercial Crime Units (SCCU), Zondo Commission

and the Special Investigating Unit (SIU), and Independent Policing Investigative Directorate (IPID). These reports specifically identify people for prosecution; it is a relatively simple matter to list these persons and to track the extent to which they are prosecuted.

It is also possible also to identify accused persons likely to have been guilty of multiple offences. A single conviction of such an accused should be considered to be highly efficient and indeed more cost-effective than attempting to convict the accused of all the offences in which he or she is implicated.

Consequently, the number convicted in the public or private sector of corruption, currently used by Treasury, is also not an adequate measure, but rather what should be measured is the conviction of offenders as a proportion of persons (rather than cases, as the same person may be implicated in multiple cases) referred for prosecution.

3.2.8. Asset forfeiture targets should be measured against losses

While the Treasury indicator of the value of freezing order and recoveries seem both on the face of it to be sensible targets for asset forfeiture, a wrongly obtained freezing order or one which is not ultimately realisable is just as disruptive to the rule of law as a failure to obtain a freezing order. Here one would like a measure of the extent to which freezing orders are converted into realisable amounts, to be an additional measure of both effectiveness and efficiency. Further, the value of the orders measured against the estimated losses occasioned by the associated crimes, would also be a more realistic indicator.

3.2.9. Witness protection should include witnesses not on programme

In relation to witnesses, it is deeply problematic that only the safety of witnesses on the witness protection programme is considered relevant to success of the Office for Witness Protection (OWP). Surely, it should be incumbent on the OWP to identify who is at risk in a broader sense, rather than only those currently testifying before court and explicitly on the programme, and offer or make arrangements for their protection? While it may not always be possible for such persons to change identity, as is frequently required on the witness protection programme, protection should be arranged. If any witnesses or whistle-blowers are harmed, even those not on the programme, this should be a negative measure of effectiveness of the OWP. This would require a far more proactive strategy than is currently the case for the OWP.

3.3. How should upholding the Constitution and the rule of law be measured?

Ideally, the contribution of the NPA toward upholding the Constitution and the rule of law should be measured. How should upholding the Constitution and the rule of law be measured? To answer this question, it is first necessary to delineate what the 'rule of law' is. The World Justice Project points to four components which comprise the rule of law:

1. The government as well as private actors are accountable under the law.
2. The law is clear, publicized, stable and applied evenly. Human rights, property rights and procedural rights are upheld.
3. The processes by which laws are adopted, administered, adjudicated and enforced are accessible, fair, and efficient.
4. Justice is delivered timeously by competent, ethical, and independent representatives and neutrals that are accessible, have adequate resources, and reflect the makeup of the communities they serve.¹⁰

3.3.1. The NPA should contribute to accountability and justice

The operation of the NPA is particularly relevant to (1) accountability and (2) justice. In relation to (1), the NPA must prioritise at least serious violent crime and corruption, through which both private and state actors are held to account. In relation to (2), it is clear that if politically-connected persons escape prosecution, then the law is not being evenly applied. Even application of the law is required for the rule of law to be measured. Both of these components affect constitutional rights.

To measure the accountability component of the rule of law, the extent to which reported violent crime (including human rights crimes by state officials) is prosecuted must be measured, as must the extent to which corruption is prosecuted. The numerator is the number of guilty verdicts and the denominator is the number of recorded crimes of that type – or, in the case of violations by the police, the number recommended for prosecution by IPID.

To distinguish this from the NPA Conviction rate to which the NPA usually refers in its Annual Report, reference can be made to the "Conviction throughput rate" referred to above, which ideally, should be disaggregated both by crime type and by geographical area.

¹⁰ *World Justice Project Rule of Law Index 2021* (World Justice Project, 2021)
<<https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf>> [accessed 17 February 2022]

In relation to corruption, one would need to measure the number of corruption cases referred for prosecution to the NPA by corruption entities such as the Zondo Commission, the Special Investigating Unit (SIU), the Hawks, and the Serious Economic Offences unit of the SAPS, and perhaps also IPID corruption matters. In addition, a qualitative measure of impact of such convictions would need to be incorporated: a large number of low-level corruption matters may have little impact, if not accompanied by high-impact matters.

Given that the SAPS has stopped reporting on the number of convictions by crime type, and has never done so adequately in relation to corruption, it may be necessary to measure the number of convictions in the Regional Courts and High Courts as a proxy for the number of serious violent crime and corruption convictions, compared to the number of crimes reported.

Alternatively, Parliament could compel SAPS to reveal this data in Parliament if it refuses to do so in its Annual Report.

3.3.2. Other suitable denominators to isolate NPA performance

Ideally, to better reflect on the performance of the NPA, independent of the performance of the investigative agency preparing the docket (be it SAPS or another agency) it would be preferable to measure prosecutions as a proportion of dockets referred for prosecution; however, the way in which “trial-ready dockets” is defined by the SAPS undermines this measure.

Trial-ready dockets include cases the NPA mediates, even if the SAPS investigation is not complete, as well as a number of other categories which distort the measure.¹¹ Unless this definition is changed, the conviction throughput (convictions as a percentage of reported crime) remains a better measure of effectiveness.

Alternatively, the denominator could be all cases enrolled, including those withdrawn before plea or stopped after plea.

3.3.3. Interpretation of conviction throughput

The frequently made claim by the NPA that conviction throughput depends primarily on the performance of the relevant detectives, belies the fact that there is an obligation on prosecutors to

¹¹ *Strategic Objectives Technical Indicator Descriptions 2014/2019* (South Africa Police Services), p. 32 <https://www.saps.gov.za/about/stratframework/strategic_plan/2014_2019/saps_technical_desc_strategic_2014_2019.pdf> [accessed 16 February 2022]

guide and assist detectives in cases where dockets are initially inadequate. Furthermore, the indicator may be interpreted with the consciousness that not all crimes reported will result in a docket; what becomes important is the trend; is conviction throughput increasing or decreasing? Throughput may increase in two ways: the number of cases reported decreases, or the number of convictions increases. A reduction in cases could imply a reduction in reported crime, which may in turn be a result of better law enforcement. Even if a reduction in cases is a result of a reduced reporting rate rather than falling crime, maintaining convictions steady even as reporting rates falter would suggest an improvement in prosecutorial success.

3.3.4. Measuring past effectiveness trends with available data

Convictions were until recently reported on by both SAPS and the NPA. SAPS data counts convictions on charges, while NPA data counts cases. In terms of the output of the number of convictions, there has been a marked trend toward a reduction in convictions for serious violent crimes. The simple number of convictions, rather than rate, can be a useful relative indicator, if trends over time are available.

The table below shows the change in the number of convictions for the crimes reported on by SAPS up until the last Annual Report in which the data was available (2016/17). This shows a reduction in all convictions except drug offences. However, there is a 28 percent increase in a small number of aggravated robbery cases (a priority of the NPA as this category includes hijacking and home invasions). This is an important improvement for the NPA, amidst an otherwise concerning picture.

It is known that the number of drug convictions subsequently collapsed due to the Constitutional Court ruling, reducing the total convictions even further. Changes in drug convictions (increases or decreases) are likely to be low-impact – and not very resource-intensive. What is of concern is that there was a decrease in convictions of other types of crime, save for the small increase (1195) in the number of convictions in relation to robbery in aggravating circumstances (which includes the prioritised “trio crimes” of residential robbery, car hijacking and business robbery).

This increase of 28 percent is commendable particularly as such crimes may be more difficult to prosecute and frequently involve offenders likely to commit more than one such crime. However, the increase in number is unfortunately small in relation to the number of such reported crimes (140 956 in the 2016/17).

The number of convictions for each crime type on which SAPS previously provided data is presented in the table below.

Table 1: Change in conviction profile, 2009/10 compared to 2016/17

Crime type	2009/2010 convictions	2016/17 convictions	Change
Drugs	85026	152074	79%
Shoplifting	65124	38579	-41%
Theft Other	36746	17052	-54%
Assault Gbh	55440	16342	-71%
Drunk Driving	29960	14268	-52%
Assault Common	51062	12889	-75%
Burglary Non-Res	19176	11086	-42%
Fraud	13189	10012	-24%
Sexual Offences	10778	7704	-29%
Malicious Injury Property	14131	5848	-59%
Robbery Aggravating	4208	5403	28%
Murder	5064	4300	-15%
Burglary Res	4957	3319	-33%
Theft Out Of Mv	3439	2677	-22%
Robbery Common	6723	2461	-63%
Attempted Murder	2860	1652	-42%
Theft Stock	2139	1212	-43%
Theft Of Mv	2014	1051	-48%
Firearms	5106	368	-93%
Arson	560	196	-65%
Total Serious	417702	308493	-26%

Source: SAPS Annual Reports

More revealing, however, is the change in conviction throughput. Over a mere seven years, there was a collapse in the conviction throughput rate, for all crime types except drug crimes (see Table 1 above).

Of deep concern is the 94 percent *reduction* in success in convicting firearms offences and 60 percent reduction in convicting drunk driving offences; both of these crime types are highly subject to policing and prosecution and do not rely on the public but on state actors

for success in obtaining convictions. Thus, the collapse in their convictions speaks volumes about changed state capacity to see cases through from reported crime to successful conviction.

Offences such as common assault and assault with intent to cause grievous bodily harm, frequently related to domestic violence, saw a 68 percent and 65 percent reduction in conviction throughput.

Violent property offences such as common robbery and malicious injury to property saw a 61 percent and 53 percent reduction respectively. Drunk driving, a category which responds to enforcement, also showed a 60 percent reduction in conviction throughput. It is unsurprising the incidence of the crime increased, as did associated trauma deaths over this time.

Arson, attempted murder, burglary at non-residential premises and “other theft”, a category which includes the copper theft decimating the infrastructure of the country, all almost halved in conviction throughput. Murder dropped by a quarter. Even sexual offences, crimes which are specifically prioritised, showed a slight reduction in conviction throughput over this time (2 percent). Only robbery in aggravating circumstances improved, in both number of convictions and conviction throughput (4 percent).

Table 2: Change in conviction throughput, 2009/10 compared to 2016/17

	2009/10 conviction throughput	2016/17 conviction throughput	Change
Firearms	35%	2%	-94%
Assault Common	26%	8%	-68%
Assault Gbh	27%	10%	-65%
Robbery Common	12%	5%	-61%
Drunk Driving	48%	19%	-60%
Malicious Injury Property	11%	5%	-53%
Theft Other	10%	5%	-48%
Arson	8%	5%	-46%
Burglary Non-Res	27%	15%	-45%

Attempted Murder	16%	9%	-45%
Theft Out Of Mv	3%	2%	-32%
Theft Stock	7%	5%	-32%
Burglary Res	2%	1%	-30%
Theft Of Mv	3%	2%	-30%
Shoplifting	73%	52%	-29%
Murder	30%	23%	-25%
Drugs	63%	52%	-18%
Fraud/ Commercial Crime	16%	14%	-12%
Sexual offences	16%	16%	-2%
Robbery aggravating	4%	4%	4%
TOTAL	20%	14%	-26%

Source: SAPS Annual Reports

What is important for the purposes of this paper is that such a collapse in convictions and in conviction throughput as indicated in Table 2 above could have occurred without comment or notice, given the totally inappropriate indicators used to measure performance. Indeed, over this time high “conviction rates” appear to have been maintained. The real performance of the NPA remained un-interrogated by Treasury, in the Annual Reports or before Parliament.

This collapse in the ability of the NPA to hold people to account for crimes was associated with a period of marked increase in the murder rate, the best indicator of violent crime, from a low of just under 30 per 100 000 in 2010 increasing to 36 per 100 000 at the time of the latest data. Further increases are expected given further rises in quarterly data reported on by SAPS.

4. Is the National Prosecuting Authority efficient and cost-effective?

When measuring efficiency and cost-effectiveness, the input resources come into play. The resources of the NPA must be seen together with the resources of the SAPS, which carry out investigations supportive of prosecutions. SAPS consumes just over 5 percent of the total

South African budget. Of the 40-line items in the national budget, only the allocation to Social Development is larger. The resources of SAPS, in particular that of the Hawks, underpins all investigations. High-level corruption investigations by the Investigating Directorate of the NPA frequently involve the use of Hawks' resources.

The resources allocated to the NPA, like those of SAPS, have also enjoyed substantial increases historically. The 2000 National Expenditure Survey (NES) records that actual expenditure in relation to NPA functions in 1996/1997 amounted to only R170.3 million.¹² At this point the Estimates of National Expenditure reported conviction throughput of only 11 percent for murder.¹³ By 2010/2011 the amount budgeted for NPA had increased to R2 439.6 million; this represents a 6-fold inflation-adjusted increase. This was associated with substantial improvements in conviction throughput for key crimes, with an almost three-fold increase in conviction throughput for murder.

Table 3: Percent convictions (conviction throughput), selected crimes

Percent convictions	1998¹⁴	2009/10¹⁵	2016/17¹⁶
Murder	11	30	23
Robbery	4	6	4
Rape	8	16	16
Serious property crime	5	-	-
Assault	11	26	9
Fraud	8	16	14

Source: SAPS Annual Reports and National Treasury Estimates of National Expenditure

The increases in funding after 2009/10 did not increase at the same prior rate, but did continue to outpace inflation; after 2010, the overall inflation-adjusted increase to 2016/17 was around 6 percent (Table 4). However, conviction throughout deteriorated substantially.

¹² 'Estimate of National Expenditure 2000, Table 23' (National Treasury, 2000)
<http://www.treasury.gov.za/documents/national%20budget/2000/ene/vote_23.pdf>

¹³ 'Estimate of National Expenditure 2000, Table 23.12' (National Treasury, 2000)
<http://www.treasury.gov.za/documents/national%20budget/2000/ene/vote_23.pdf>

¹⁴ 'Estimate of National Expenditure 2000, Table 23.12' (National Treasury, 2000)
<http://www.treasury.gov.za/documents/national%20budget/2000/ene/vote_23.pdf>

¹⁵ SAPS, *South African Police Service Annual Report 2009/2010*, 31 August 2010
<https://www.gov.za/sites/default/files/gcis_document/201409/saps-annual-report.pdf>

¹⁶ See SAPS Annual Report 2016/17.

Consequently, the deterioration in convictions and conviction throughput cannot be ascribed to a reduction in budget over this time, and suggests that the NPA became less efficient than it was in 2009/2010.

Table 4: Budget of the NPA

	2009/10 (million)	2009/10 inflation adjusted to 2016/17	2016/17 (million)	effective change
Prosecutions	R 1,708.20	R 2,342.40	R 2,621.30	12%
OWP	R 128.00	R 175.52	R 168.40	-4%
AFU	R 73.70	R 101.60	R 126.30	24%
Support	R 472.20	R 647.51	R 478.50	-26%
Total	R 2,439.60	R 3,345.34	R 3,557.50	6%

Source: National Treasury Estimates of National Expenditure

In 2020, actual expenditure was R4009m of which 80 percent was spent on prosecution services, 12 percent support services, 4.8 percent for Witness Protection and 3.2 percent for asset forfeiture.¹⁷ If it is assumed total serious crime convictions are at around 170 000 (accounting for a substantial drop in drug crimes), it can be estimated that each successful prosecution “cost” approximately R24 000 for the prosecution component only, excluding the investigation. In the 2021 budget, some 4948 posts were allocated to the NPA,¹⁸ with the number set to decrease in future years.¹⁹ If one includes the expenditure on the Detective Service of R18.867 billion, this rises to around R134 000. It is difficult to judge whether this is efficient or cost-effective; however, comparatively, given that in the past, the NPA obtained a far higher number of serious crime convictions with lesser financial allocations (even taking inflation into account), suggests lowered efficiency of the NPA over time. Such lowered efficiency may or may not be associated with less cost-effectiveness;

¹⁷ ‘Estimates of National Expenditure 2020/2021, Table 25.4.’ (National Treasury, 2020) <<http://www.treasury.gov.za/documents/National%20Budget/2020/ene/FullENE.pdf>>

¹⁸ ‘Estimates of National Expenditure 2020/2021, Table 25.4.’ (National Treasury, 2020) <<http://www.treasury.gov.za/documents/National%20Budget/2020/ene/FullENE.pdf>>

¹⁹ ‘Estimates of National Expenditure 2020 Table 25.13’ (National Treasury, 2020) <http://www.treasury.gov.za/documents/National%20Budget/2020/ene/FullENE.pdf>>

indeed, cost-effectiveness becomes something of an irrelevant question when both effectiveness and efficiency have dropped to the degree to which they have.

5. Conclusion

While the NPA increased in apparent effectiveness from the early years of democracy to 2009/10, subsequently there has been a marked deterioration, which is not adequately measured in the relevant indicators. The problem appears to be that the incorrect measurement of effectiveness is in fact undermining effectiveness. True effectiveness and efficiency are not currently being measured. Using the correct indicators show that the gains up to 2009/10 came at great cost and have not been maintained, despite increase in costs outpacing inflation.

The following recommendations are made:

- The NPA should undertake an investigation to understand the reasons for the deterioration in effectiveness and efficiency over the period 2009/10 to 2016/17.
- The NPA should obtain and publish the relevant data from SAPS to uncover whether the situation has subsequently improved or worsened.
- The NPA, Treasury and Parliament should return to the practice of using conviction throughput as an indicator, and develop an appropriate indicator of conviction per dockets.
- Data should be disaggregated by crime type and geographical area, in order to identify the location and problems of effectiveness and efficiency accurately.
- Outcome indicators, such as trust in the criminal justice system, feelings of safety, and actual safety (best represented by the murder rate) should be measured in external survey instruments, and taken into account.