



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

# National Prosecuting Authority

## Performance

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## Introduction

The National Prosecuting Authority of South Africa (NPA) was created by legislation which came into effect in August 1998, and became a stand-alone entity in 2002/3, whereas previously it was more closely embedded in the Department of Justice. Although spending and employment on prosecutions have increased markedly since inception, commensurate returns on that investment have not been apparent from official data.<sup>1</sup>

## Increase in expenditure on the NPA

The 2000 National Expenditure Survey (NES) records that actual expenditure in relation to NPA functions in 1996/1997 amounted to R170.3 million<sup>2</sup>

The Budget Vote for the NPA in March 2018 was for R3.648 billion of which 81% was for general prosecutions, 11% for support services, 4.2% for Witness Protection and 3.6% for the Asset Forfeiture Unit.<sup>3</sup> In inflation-adjusted terms, this is an almost 6-fold increase.

## Increase in NPA personnel

The increase in expenditure has been associated with an increase in the number of employees and the number of prosecutors. The 1998/99 Department of Justice and Constitutional Development (DoJCD) Annual Report (which reported on the NPA before 2002/3) recorded 1,933

prosecutors employed at inception of the NPA. This increased by 67% to 3,232 prosecutors and 4,841 employees with a post establishment of 5,683 recorded in the 2016/17 NPA Annual Report, while In 2017/18, there were 3626 prosecutor posts of which 3084 were filled and a total post establishment of 5591. The number of prosecutors in service has increased by 60% even taking into account the dip in 2017/18, and a large number of support personnel are also employed. Consequently over 21 years, the potential capacity to prosecute should have increased significantly.

Similarly in 1995 the newly formed South African Police Service (SAPS) had total personnel of 141,389 which increased by 41% to 199,345 in 2011/12, dropping back to 193 297 in 2017/18, according to the respective SAPS Annual Reports. Capacity to arrest and investigate should consequently also have increased.

## Increase in conviction rate

South Africa does not have a compulsory prosecution regime. Prosecutors have some discretion whether or not to prosecute cases, based on “reasonable prospects of success” and the lack of any public interest reason not to prosecute.

The NPA has since 2002/3 reported on conviction rates in its Annual Reports. NPA conviction rates are not calculated on the number of cases reported, but on the number prosecuted. In other words, cases which the NPA decides to withdraw, do not form part of the conviction rate calculation.

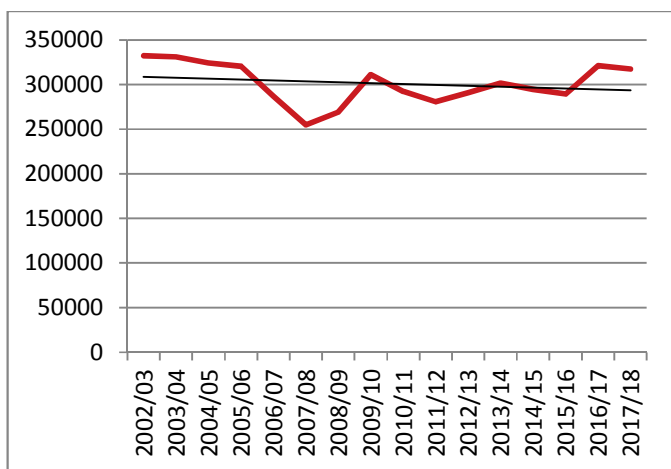
In 2002/3 the NPA reported an 82% conviction rate. This has steadily increased year-on-year such that in 2017/18 the NPA Annual Report recorded a 95% conviction rate. This means only 5% of cases finalised with a verdict resulted in a not-guilty verdict. This high rate is largely determined by the 96% conviction rate in the District Courts, which heard 90% of cases in 2017/18. The conviction rate was 81% in the regional courts (9% of cases) and 92% in the High Courts (less than 1% of cases).

The high conviction rate reported by the NPA would be more impressive if it had also been associated with an increase in the number of convictions obtained, and if serious violent crime comprised the majority of convictions. Unfortunately, this is not the case.

### Decrease in number of convictions

Unfortunately convictions reported by the NPA dropped dramatically from 332,544 in 2002/3 to a low in 2007/8 of 254,828. Although there has been an increase subsequently, the number of convictions has not yet recovered to 2002/3 levels.

Figure 1: Number of convictions 2002/3 to 2017/18



Source: NPA Annual Reports

Consequently with far more resources fewer convictions are being obtained. This is not the result of a drop in referrals by the police as the trend is toward an increase in cases referred by the police, associated with an increase in arrests. The SAPS has vastly increased the number of arrests. According to SAPS Annual Reports, serious crime arrests in 2002/3 were 444,738 compared to 1,123,968 in 2017/18. This has not resulted in more convictions. Fewer convictions could be viewed positively if they involved a more serious convictions. On this the evidence is mixed – see below.

### Change in profile of convictions

The NPA does not report systematically on the nature of the convictions obtained. However, the SAPS has reported on convictions in relation to serious crimes in its Annual Reports, since 2006/7.

Comparing 2006/7 to 2017/18, the SAPS Annual Report data shows that only three serious crime types have increased in number of convictions, with the largest increase being in drug convictions, with the result that non-drug convictions have decreased by a quarter.

Drug-related convictions numbered only 65,948 in 2006/7 and only 22,864 in 1997.<sup>4</sup> Drug-related convictions increased by 565% to 152,074 convictions in 2016/17, dropping slightly to 151,061 in 2017/18. This number equates to almost half (48%) of the case convictions recorded by the NPA in its Annual Report and 51% of the serious crime charge convictions recorded by SAPS in 2017/18. There are slightly fewer cases than charges because some cases involve multiple charges. Many drug convictions, especially possession, result in a fine only. Such convictions are relatively easy to obtain as there is no complainant-witness and verdict is often by way of guilty plea. Drug offence convictions expressed as a percentage of reported crime<sup>5</sup> were 47% in 2017/18 (56% in 2016/17), which is the highest ratio reported for all serious crime types. The massive increase in drug convictions recorded by SAPS means the number of non-drug convictions was only 146,924 in 2017/18 and compared to 221,096 in 2006/7, a reduction of 33% in number of non-drug convictions over eleven years. Only two serious crime types have recorded an increase: aggravated robbery and sexual offences.

The number of aggravated robbery convictions (including hijacking and home invasions) increased by 84% over ten years to 5,403 convictions in 2016/17 but dropping slightly to 5,119 in 2017/18. Sexual offence convictions also increased by 30% over ten years to 6,990 in 2016/17, also dropping slightly in 2017/18 to 6,631. There has been a great deal of investment in increasing the number of sexual offence convictions through specialised courts, prosecutors, and detectives. This is reflected in the fact that sexual offence convictions expressed as percentage of reported crime increased to 15% in 2016/17 compared to 9% in 2006/7 and 8% in 1996/7 (dropping to 13% in 2017/18).

These increases are positive because the perpetrators of aggravated robbery and sexual offences are often multiple offenders. Consequently such convictions are highly likely to have a crime-prevention impact. Such convictions are also extremely difficult and time-consuming to obtain and thus are likely to represent more effort than a drug conviction.

All other serious crime categories show a decrease in the number of convictions, with common assault, assault with intent to commit grievous bodily harm, and malicious damage to property showing the largest reductions in number of convictions (66%, 63% and 58% respectively) over 10 years, despite recorded crime not having dropped a similar percentage (reductions in reported crime over 10 years for these offences were of 21%, 16% and 15% respectively).

The number of murder convictions dropped by 10% in one year from 2016/17 to 2017/18, to only 4,016. Murder convictions expressed as a percentage of reported murders were at 23% in 2016/17, which is similar to the 24% recorded in 2006/7– nevertheless an improvement on the 17% recorded in 1996/7. In 2017/18 this worsened to 20%.

## Increase in informal mediation

Part of the reason for the drop in convictions is the increase in informal mediation. Informal mediation is a process by which a prosecutor negotiates with a complainant and the accused, leading to the withdrawal of the case. The court is not involved in the negotiations and the accused does not receive a criminal record, and nor is there a central database of informal mediations to establish if a person has previously benefitted from informal mediation.

Minister of Justice Masutha has raised concerns about ensuring the probity of informal mediation. Informal mediation as reported on in the NPA Annual Reports has increased exponentially. While formal mediations such as those in terms of the Child Justice Act have remained at around 45 000 per year, total ‘alternative dispute resolution mechanisms’ (ADRM) (formal and informal mediation) have, according to the NPA, increased by 1144% from 14,808 in 2002/3 to 184,314 in 2014/15, decreasing to 159 654 in 2017/18.

No data is available in the NPA Annual Reports on the nature of cases informally mediated, but they would necessarily exclude cases which do not have a direct complainant (such as drug offences and firearm offences). Seen in the light of the trends in relation to convictions, they probably include all crime types except those which have demonstrated an increase in convictions, such as sexual offences.

## Court utilisation decrease

Given the above trends in relation to convictions it is unsurprising that the average court hours as reported on in the NPA Annual Reports have reduced steadily year-on-year from 4 hours 9 minutes in 2002/3 down to only 3 hours 6 minutes in 2017/18. The entire court infrastructure is routinely deployed

for less than half a working day. This may be related to the ADRM trends.

## Asset forfeiture fluctuates

Asset forfeiture is a procedure in terms of which assets can be forfeited if they are connected to criminal activity. Both criminal and so-called civil forfeiture are possible, with the latter based on evidence to a balance of probability (rather than the usual criminal standard of beyond reasonable doubt). The procedure was introduced by the Prevention of Organised Crime Act of 1998.

According to NPA Annual Reports, completed forfeitures since 2002/3 ranged from R115 million in 2002/3 to an unusually high R2.3 billion in 2014/15. Forfeited assets take time to be realised into deposits in the Criminal Assets Recovery Account (CARA). Amounts (inflation-adjusted) deposited into the Criminal Assets Recovery Account (CARA) from 2004/5 to 2016/17 averaged (relative to forfeitures) only R73 million, ranging from R39 million in 2005/6 to R117 million in 2008/9. However, this jumped to R217.8 million in 2017/18.

Since 2011/12, the NPA has also reported on deposits into victims’ accounts, which are in addition to CARA deposits. From 2011/12 to 2016/17 R20m less per year has gone to CARA and to victims compared to the completed forfeiture amounts. In 2017/18 this total jumped to R415.5 million.

Although the amounts recovered seem large, these must be compared to the total amounts lost to corruption and organised crime. The corrupt premium paid emerging out of the Transnet locomotive deal alone is estimated at R16 billion. In 2014/15 the NPA itself estimated the annual “criminal GDP” at R100 billion.

The large amount in 2014/15 was largely driven by single case relating to the Gauteng Health Department prior to 2009. Some R1.4bn of the total represented the forfeiture of rights under a single corruptly awarded contract. This is the largest Asset Forfeiture Unit (AFU) corruption case to date. The implicated MEC has not been prosecuted although the Special Investigating Unit (SIU), not a unit of the NPA, released a report in 2018 detailing the corrupt activities of the then MEC.

In 2017/18 the Asset Forfeiture Unit (AFU) comprised an establishment of 167 posts of which 126 were filled, reflecting a 25% overall vacancy rate. The limited impact on criminal GDP is thus partly a result of limited human resources available to the AFU.

## Conclusion

The NPA has operated under an extremely constrained political environment, which has affected its performance. While some gains have been made in relation to prosecution of two serious crime types and in forfeiture, it is apparent that the NPA is addressing only a small fraction of reported crime, and has not translated its vastly increased resources into commensurate gains. A limited impact on serious crime is therefore expected to have occurred as a result of the operation of the criminal justice system, of which the NPA is a key component. The effectiveness and efficiency of the NPA requires a critical examination in order to create better value for money.

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<sup>1</sup> All figures are obtained from the Annual Reports of the NPA and the Annual Reports of the SAPS for the respective years indicated, except where otherwise expressly stated or referenced.

<sup>2</sup> National Treasury (2000) Estimates of National Expenditure, Budget Vote 23, Table 23.1.

<sup>3</sup> National Treasury (2018) Estimates of National Expenditure, Budget Vote 21, Table 21.12.

<sup>4</sup> Data for 1997 (prior to 2006/7 when the SAPS began routinely recording conviction data in its Annual Reports) comes from a spreadsheet prepared by SAPS for the Institute for Security Studies in 2000.

<sup>5</sup> Convictions expressed as a percentage of reported crime are calculated from the number of complaints reported and the number of convictions obtained (convictions divided by complaints, expressed as a percentage).