

CHAPTER 7

PERFORMANCE

The question is asked constantly: how good are the Scorpions? Do they really have a high success rate? Do they have an actual impact, rather than just a perceived impact? How should their performance be measured? How do they compare with other entities?

Absolute Performance

The table below (see *Table 1*) illustrates a number of quantitative measures relating to the DSO's performance in the most recent year for which such data was kept, 2002/2003. Alone, this quantitative data about the DSO does not tell us much, but there are a few things which can be gleaned from *Table 1*.

On average, 90% of cases prosecuted result in convictions. In one region of the DSO, the rate is even higher, at 97%. This suggests that the DSO is astute in choosing to prosecute only those cases likely to be successful in court. The data also suggests that the DSO is unlikely to make a frivolous arrest: the ratio of envisaged and finalised prosecutions to arrests is 92%, suggesting that almost all arrests lead to prosecutions.

The DSO also appears to have been somewhat restrained in carrying out searches: only 166 searches were conducted, which works out to about one per finalised investigation. Again, this suggests that searches are conducted only where necessary, thereby not squandering resources.

The asset forfeiture potential figures suggest that the DSO also has the potential to pay for itself; however, potential is very different from actual amounts forfeited and it remains to be seen if these amounts will be realised; furthermore, this is reliant on the Asset Forfeiture Unit.

It is very difficult to judge whether the overall number of cases finalised, and the length of time taken to complete an investigation, reflects well or poorly on the DSO. On the face of it, the numbers seem small and the period over which investigations are carried out seems long. However, the DSO is not in

Table 1: Directorate of Special Operations Performance	
Quantitative Measure	2002/2003
Number of pending investigations	169
Number of finalised investigations	167
Number of persons arrested	318
Number of searches conducted	166
Number of finalised prosecutions	117
Number of convictions	104
Number of pending prosecutions	177
<i>Convictions as % of finalised prosecutions</i>	90%
<i>Pending and finalised prosecutions as % of arrests</i>	92%
Average time from declaration to end date of last prosecution	23 months & 3 weeks
Average number of court days per prosecution	11.7 days
Asset forfeiture potential (pending and finalised investigations)	R317.93m
DSO budgeted expenditure	R267m
Number of DSO employees	531

Source: DSO Annual Report 2003 Draft 2; summarised version of key activities

the business of chasing *numbers* of convictions; one difficult case resulting in an important conviction can be far more important than a large number of convictions that would have less of an impact- consider the difficulty and impact of one conviction in the arms deal matter.

However, until the details of a finalised conviction are made public, we cannot know whether it was a difficult or easy prosecution, or a prosecution with impact or not, and whether it warranted a 24 month or longer investigation. In other words, quantitative measures of DSO performance are of little use, except to compare the DSO with itself on a yearly or bi-yearly basis.

In essence, the numbers alone can hide both good and bad actual performance. For example, a sudden increase in cases convicted might indicate the DSO is taking on easy matters and ignoring the more difficult. The only way

accurately to measure DSO performance, is in a qualitative manner, on a case by case basis. Given the limited number of cases, this should not be difficult for those with access to the appropriate information to do.

The crime environment in which the DSO has worked over the period assessed should be taken into account. For example, consider what might have occurred had the DSO in the Western Cape ignored the problem of the numerous bombs exploding over Cape Town during the 1998-2000 period, but chosen instead to prosecute 200 fraudsters rather than 20 bombers?

On the other hand, should the crime environment be such that, for example, numerous cases of low level corruption are endemic and debilitating to a region, should the DSO “wait around” for a “big” matter which might not appear, or should the DSO seek to dispose of as many of these smaller matters as possible, given their cumulative negative impact? Many argue that taking on less complicated matters is a waste of DSO resources; others counter-argue that it is exactly these less difficult cases in which less experienced investigators could be allowed to gain experience; at the same time, it is important for the DSO to be doing something rather than being under-utilised.

Many interviewees inside and outside of the DSO spoke of the need to measure the DSO’s performance in more pragmatic terms – has the DSO disrupted or ended the particular criminal activity or organisation targeted? – rather than by convictions only. Such an honest, qualitative measurement can only be taken by those with considerable expertise and access to crime intelligence, and who have thorough access to DSO matters on a case by case basis. Ordinarily, such detail can only be released once a matter has been finalised, to avoid jeopardising the DSO’s work.

While the public has a high approval rating for the DSO, and informed external interviewees also reported a high rating, they admitted they had little real knowledge about the DSO and based their ratings on media reports. DSO members were far more circumspect when rating their own performance, and that of the DSO, and expressed some discomfort at inflated expectations that had been created by media coverage of the DSO.

Case Studies

During interviews, DSO members were asked to name some completed cases, or cases having impact, in which they felt the DSO had performed well,

or which demonstrated the value of the DSO's method of operation or particular skills. These "case studies" will be considered here.⁸⁶ While only successful cases will be canvassed, it is suggested that the DSO should report to the Ministerial Committee or some other independent body, on cases which have been unsuccessful, in order that such a body might arrive at a qualitative assessment of performance and come up with an accurate performance rating for the DSO.

Hout Bay Fishing Industries

This matter, declared in June 2001, was an investigation into offences allegedly committed in respect of the harvesting and exporting of South African lobster by Hout Bay Fishing Industries (Pty) Ltd (HBFI) and its affiliated companies, as well as officials of the Department of Environmental Affairs (DEAT), and Customs and Excise.

This is the first occasion that the extensive powers contained in the Marine Living Resources Act were invoked in full. The investigation was conducted by a multi-disciplinary task team comprising the DSO, DEAT, the South African Revenue Service and the Asset Forfeiture Unit, and spanned a number of continents.

On 30 April 2002, following a ten-month investigation, Arnold Maurice Bengis, chairman of HBFI, pleaded guilty to 28 charges of contravening the Marine Living Resources Act. He admitted that between 1999 and 2001 the company had knowingly and intentionally participated in the over fishing of Rock Lobster *Jasus lalandii* and Hake *Merluccias capensis*.

A director of the company, Colin van Schalkwyk, pleaded guilty to 301 charges of corruption relating to the bribing of fisheries inspectors. Under the terms of a plea bargain, HBFI forfeited the fishing vessel Sandalene. The total penalty imposed on HBFI amounted to R40 million, including R750 000 for legal costs. Van Schalkwyk received a sentence of R1 million, or five years' imprisonment, and a five-year suspended sentence.

A group of independent fishermen (in collaboration with HBF) were convicted for contravening the Marine Living Resources Act, and for corruption, and sentenced to fines ranging between R50 000 to R100 000, with imprisonment terms in the alternative. Ten officials attached to the Department of Marine and Coastal Management (MCM) were convicted of corruption, for having

received bribes from HBF, and were sentenced to a fine of R50 000 or two years imprisonment.

SA Hake (Pty) Ltd was uncovered as having entered into a joint venture with HBF in respect of over-harvested hake to the value of R12 million. The Asset Forfeiture Unit finally attached the boat, Eagle Star, used in this venture, which has now been forfeited and will be used by DEAT to protect South Africa's marine resources. SA Hake and its director were convicted and fined R150 000 and R100 000 respectively.

While this matter was seen as an extremely successful, some commentators felt that the DSO should have capitalised on the expertise gathered in this case, and the team work with other agencies, to target the fishing industry generally in the Western Cape, which is widely believed to have elements of corruption throughout. Nevertheless, the case does demonstrate how the DSO is able to work on joint task teams with a number of organisations, harnessing their various skills, as well as to put to good use the relevant legislation. The forfeitures effected demonstrates the potential for DSO cases to "pay for themselves". The guilty pleas obtained also suggest that watertight DSO cases may save considerable expense and court time, by persuading the accused to plead guilty.

Nigerian "419" scams

This project resulted in the first three convictions of racketeering in terms of the Prevention of Organised Crime Act. Nigerian nationals used the identity of South African institutions, particularly the South African Reserve Bank, abroad, with the purpose of perpetrating "Advance Fee Fraud" (popularly known as the 419 scam, because of the relevant provision in Nigerian law passed to outlaw this conduct).

During 2002, 18 Nigerian nationals were convicted. Three of them paid fines to the amount of R700 000 in addition to the periods of imprisonment imposed, which in the case of three accused, amount to 50 years. Seventeen illegal immigrants were also deported.

This case was important because of the impact on the way in which South African institutions are viewed abroad, and also emphasising the ability of the DSO to work on matters with an international component, and to put to use the provisions contained in the Prevention of Organised Crime Act.

Road Accident Fund matter

The Road Accident Fund (RAF) pays compensation in respect of people injured or killed in road accidents through the negligent driving of a motor vehicle in South Africa. This DSO matter relates to the fraudulent transactions conducted by claimants, doctors, attorneys and touts in respect of claims made against the RAF. This is an ongoing investigation, being conducted by all the regional offices of the DSO, which was originally initiated by the Heath Unit (see *Comparative Performance*).

Due to the large volume of data involved, this investigation made good use of the skills of data capturers and analysts: dates and times of appointments, accident dates and other details are cross-referenced by the software in order to pinpoint improbabilities and therefore likely fraud which can be investigated. In the 2001/2002 year, 27 professionals were arrested on charges of fraud; at the time of writing the matter had not been concluded in court.

Again, this matter demonstrates the ability of the DSO to work with and within other agencies, in this case the RAF. As a result of the investigation, certain loopholes in claims procedure have been identified which should lead to a lower incidence of future fraud in respect of claims made against the RAF. The loopholes identified by the DSO also fed into the Satchwell Commission⁸⁷, which has made wide-ranging recommendations on reform of the RAF, demonstrating the potential for long-term impact of such investigations.

Land Bank matter

The Land and Agricultural Development Bank of South Africa (Land Bank) provides financial services in respect of farming enterprises. The Land Bank case involved fraudulent loan applications (for false purposes and fictitious clients), and the use of fraudulent supporting documents, false and inflated securities, corrupt payments and bribes by corrupt officials, and alleged members of syndicates.

The estimated amount of known fraudulent transactions at the beginning of the investigation was R3.8 million. This figure increased dramatically as the investigation progressed to a figure exceeding R100 million. In 2002, three of the accused were given prison sentences of five years, 12 years and 15 years respectively.

This case demonstrates the ability of the DSO successfully to conduct complicated financial investigations. It also demonstrates how one case can rapidly, after thorough investigation, reveal the true extent of a problem, with increasingly large amounts of money involved.

Comparative Performance

Judging relative performance is also difficult to do, since no other organisation in the law enforcement environment is quite like the DSO. Indeed, in many instances we are comparing very different things. However, some of the functions of the DSO and other agencies are the same, and we can attempt some form of basic comparison. The comparative exercise below does provide some insight, in particular, as to comparative cost of various agencies' investigations.

The National Prosecuting Service

Comparing the performance of the DSO with the National Prosecuting Service (NPS) at first seems to make the DSO's performance seem both meagre and expensive; however, looking a bit closer at the figures suggests the type of convictions obtained by the NPS are such that the DSO's convictions might be worth the cost.

The National Prosecuting Service is an entity within the NPA responsible for criminal prosecutions generally. According to a review of the NPA, in the 2001 year 358123 cases were finalised by the NPS with a verdict, with 81% resulting in a conviction and 19% in an acquittal.

In other words, the conviction rate is remarkably high; anyone being tried in a South African court has a four in five chance of being found guilty. This puts the DSO's "90% conviction rate" into some perspective; the DSO figure is a remarkable achievement, but so is the rate of 81% achieved by ordinary prosecutors.

Given the NPS's and DSO's respective budgets (see *Table 2*), this means each of their successful convictions in effect "costs" R2231 and R2.6m respectively, if one rather crudely divides convictions by the entire budgeted expenditure for each entity. To make a fairer comparison, however, one needs to add in the detective service budget also to account for the investigative compo-

ment; the “cost” is then R11 994, so that each DSO conviction is worth 214 ordinary convictions. (This crude calculation unfortunately cannot take into account the cost of assistance by other agencies to the DSO’s work, as this is difficult to quantify.)

Is this cost ratio of 214 to one an appropriate ratio? To uncover the answer, we have to attempt a qualitative assessment of the type of cases resulting in convictions; we already have a flavour of the DSO matters from the case studies presented above. Obviously, we cannot look at NPS matters on a case by case basis; however, we can consider convictions by crime type.

An analysis of prosecution figures for the year 2000 shows that no serious crime category (for example, murder, rape, aggravated robbery) other than drug crimes accounted for more than 2% of all convictions obtained. This is not just because fewer serious crimes are committed than less serious crimes. The main reason is because a low proportion of reported serious crimes result in a conviction in court. Only drug crimes (49%) and murder (18%) had more than 10% of reported crimes being matched by a conviction.

Table 2: Comparative Budgets							
R1000	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06
NPA Total⁸⁹	484 366	605 151	724 111	948 568	1020682	1090332	1155722
Public Prosecutions⁹⁰	446 874	531 797	502 189	647 398	693 423	740 721	785 134
DSO⁹¹	16 774	49 471	197 116	267 000	290 735	310 592	329 228
SIU⁹²	16 894	17 739	21 419	22 958	25 535	27 194	28 851
ICD⁹³	23 660	25 512	26 715	31 902	36 833	40 995	44 392
Detective Service Total⁹⁴	2624773	2831366	3105310	3478572	3743582	4069015	4385846
Organised Crime⁹⁵	812 107	865 158	800 068	949 013	899 341	960 028	1022931
Commercial Crime⁹⁶	122 594	137 297	140 316	151 873	137 996	147 804	157 679

Source: Estimates of National Expenditure 2003, Votes 23, 24 and 25

Clearly, a high proportion of NPS convictions must be of a less serious nature. This is confirmed by the fact that in 2001, as many as 88% of all cases finalised with a verdict were finalised in the district court as opposed to the regional court⁹⁷. The vast majority of serious crimes such as murder, rape, aggravated robbery and car theft are prosecuted in the regional courts. Less serious offences such as assault, shoplifting, malicious injury to property and driving related offences are prosecuted in the district courts.⁹⁸ In 2001, the conviction rate in the district courts was 83% while the rate was only 66% in the regional courts.⁹⁹

Furthermore, in 2001, some 423 890 cases were withdrawn by the prosecution – more than were prosecuted by the NPS. While this may be an astute move on prosecutors' part to avoid failing in court, in much the same way as the DSO is astute in choosing cases to prosecute, it is important to note that the number of cases going to court declined from 1994 (350 200) to 1999 (271 057) and has only in 2001 reached 1994 levels (358 123) again.

In other words, while the NPS has a good conviction rate, the actual number of prosecutions carried out has only recently reached 1994 levels, and the category of crime for which convictions are obtained, are in general the less serious crimes. While the convictions obtained by the DSO may seem expensive, when seen in this light, it might well be they are worth the cost, given the relative seriousness and complexity of the crimes involved.

The Detective Service

The DSO and the SAPS are obviously not easily comparable entities. The DSO consists of fewer than 600 people based at four regional offices and one head office; the SAPS consists of more than 120 000 people at more than 1000 police stations and at specialised units. Furthermore, the SAPS must both police and investigate all crime, while the DSO gets to choose which crimes it will investigate, and has the responsibility of investigating and prosecuting only, and no other police functions.

Should we then compare the DSO instead to the detective service of the SAPS? Again, the detective service consists of more than 20 000 people investigating everything from assault to theft out of motor vehicles to murder. The burden on the detective service is heavy. With about 22 000 detectives, they have the responsibility of investigating more than 2.5m reported crimes every year. Despite these differences, the analysis above in regard to the NPS goes

some way to attempting such a comparison on the basis of convictions and budget, by combining the NPS and the detective service.

However the detective service says it is unfair to measure their performance by looking at conviction rates (as a proportion of reported crimes) because they are not solely responsible for the success of a matter in court.¹⁰⁰ While it is understood that the detection rate, the disposal rate and the number of cases taken to court (all performance indicators used by the Detective Service) are indeed appropriate measures of performance for the detective service, the detective service should also acknowledge and indeed take credit for the role it plays in securing convictions.¹⁰¹

The SAPS Specialised Units

But what about the specialised units of the detective service? These entities are of a size and nature which make comparison with the DSO somewhat easier. The organised crime units, the serious and violent crime units and the commercial crime units have arisen out of the restructuring of the former plethora of specialised units in the detective service.¹⁰²

The SAPS has 24 serious and violent crime units with 677 detectives; 24 organised crime units with 723 detectives; 17 commercial crime units with 626 detectives; one serious economic offences unit with 24 detectives; and 46 Family Violence and Child Protection Units (FCPU) with 755 detectives.¹⁰³ The DSO, by comparison, has four regional offices and a head office, with 531 members.

The Commercial Crime Branch of the SAPS investigates fraud, forgery and uttering, and thefts of money manipulated to such an extent that the services of a chartered accountant are required; it is also responsible for policing 56 different acts, including those dealing with counterfeit currency and corruption.¹⁰⁴ The Commercial Crime sub-programme of the SAPS has a budget which is 57% of the DSO's (see *Table 2*).

The data for the year ending March 2003 shows that a total of 17 676 commercial cases were reported. During that period, 3045 arrests were made and 2660 convictions were obtained (although both these arrests and convictions may have related to crime reports in previous years).¹⁰⁵ This implies that the investigation preceding each conviction "cost" R57 095, if we repeat our crude calculation applied earlier to the DSO.

Again, the DSO seems expensive in comparison, about 45 times more expensive per conviction (although we have not taken into account the prosecution costs of these commercial cases). However, if we look closely at the type of convictions, we find that of these 2660 convictions, 428 related to stolen credit or other cards, 273 to stolen cheques, and 1466 to "other fraud". These do not on the face of it seem of a difficult or complex nature, in the absence of greater detail on the nature of cases investigated.¹⁰⁶ Apart from this rough typology, we have no insight as to the comparative complexity or difficulty of all the cases on which convictions were obtained, so it remains difficult to say whether the expense ratio of 45-to-one is appropriate or not.

The Organised Crime sub-programme of the SAPS budget covers the operation of the remaining units: the organised crime units, the serious and violent crime units, and the FCPU's.¹⁰⁷ Hence it is difficult to go through the same exercise with these units, as we do not have the further breakdown in expenditure of these separate units. The Organised Crime Sub-programme of the SAPS has a budget which is 3.5 times as large as the DSO's budget (see *Table 2*); it is interesting to note these three types of units combined employ just over four times as many detectives as there are members in the DSO.

However, we do know for the year to March 2003, the organised crime units arrested 425 syndicate leaders and 1971 syndicate members.¹⁰⁸ No conviction figures are available. With respect to FCPU crimes, there were 2143 convictions recorded. Figures relating to crimes investigated by the serious and violent crime units are unfortunately not counted separately from the general figures. Without more information on the nature and ultimate success of these arrests, it is difficult to attempt a comparison with the DSO.

The Independent Complaints Directorate

The Independent Complaints Directorate (ICD) is provided for in the South African Police Service Act¹⁰⁹ as an entity independent of the SAPS. The ICD is responsible for investigating deaths in police custody or as a result of police action, as well as other misconduct by police.¹¹⁰ In practise, while the ICD will ordinarily investigate most such deaths, less serious investigations falling under its mandate are investigated by the SAPS, with the ICD monitoring the investigation.¹¹¹ The ICD has 130 employees (although posts for 166) based in all the provinces of South Africa, and is headed by Karen Mackenzie.

During the year 2002/2003, the ICD was notified of 528 deaths in police custody or as a result of police action, all of which it investigated.¹¹² There were 1002 complaints of criminality by SAPS members, of which 106 related to corruption; all of these were investigated, but not all were finalised.¹¹³ There were 2913 complaints of misconduct, of which 453 were investigated.¹¹⁴ Unfortunately, the ICD Annual Report does not detail totals of arrests, and convictions obtained. The budget of the ICD is R31.9m (the DSO's budget is just over eight times larger) so it therefore appears as if each ICD investigation (as opposed to conviction) cost just over R16 000, if we (again, crudely) divide the budget by the number of investigations.

The Special Investigating Unit

The Special Investigating Unit's predecessor, the Heath unit under Judge Willem Heath, was created in terms of the Special Investigating Units and Special Tribunals Act¹¹⁵. One of the unit's first jobs was to try to recover millions of rands identified by the Heath Commission, established in June 1995 to investigate maladministration in the Eastern Cape.¹¹⁶ When the Heath unit began investigating personal injury (road accident) lawyers, their association took him to the Constitutional Court.

In an unanimous decision by Chaskalson JP, the Court held that the appointment of a judge to head the SIU violated the separation of powers required by the Constitution, and that the presidential proclamation authorising the investigation into Road Accident Fund matters was also invalid (for other reasons); the first order of invalidity was suspended for a year, but the second was immediate.¹¹⁷

The proclamation creating the Heath unit was therefore repealed and another proclamation was issued in July 2001 which appointed Willie Hofmeyr head of a new SIU with new terms of reference.¹¹⁸ The proclamation also provided that the cases being investigated by the Heath unit must be taken on by the SIU, and that the SIU's terms of reference should broadly be to investigate corruption or maladministration in state institutions.¹¹⁹

The SIU has had a much lower media profile since Heath's departure, and Hofmeyr has not challenged the government on the SIU's funding, as Heath did, claiming the unit was under-funded. Each investigation referred to the SIU is proclaimed in the *Government Gazette*. The SIU was excluded from investigating the arms deal matter, as the President did not proclaim the matter for the SIU.

The SIU accumulated a significant backlog of work, which may take up to three years to complete. During the 1999/2000 financial year, 82 cases were completed by the SIU through the Special Tribunal. More recent figures on the number of cases finalised were unfortunately not available. A Special Report of the Auditor General verified that the SIU saved, recovered or protected the loss of state assets and funds to the value of R1.3bn during the financial year to March 1999. Audited figures for the period 1 April 1999 to 31 March 2000 indicated that the Unit recovered, saved or prevented the loss of some R168 million, of which R112 million was in cash recoveries.¹²⁰ The budget of the DSO is almost 12 times larger than the budget of the SIU (see *Table 2*).

Conclusion

The DSO appears to have an excellent record of success in obtaining convictions in matters it chooses to prosecute, and does not waste resources with frivolous arrests or searches. However, comparison with other entities, although a problematic exercise, suggests that there is room for the DSO to take on more matters. This appeared to be confirmed by frustration expressed by some interviewees, who felt that they themselves and the DSO could be taking on more work. The number of cases taken on at present, although admittedly of a difficult and complex nature, is small, and each case is therefore effectively very costly, given the expanding budget of the DSO.