

## CHAPTER 9

# INTERNATIONAL COMPARISON

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South Africa's DSO is often likened to the United States' Federal Bureau of Investigation (FBI). In the public imagination, the FBI is the FBI that is portrayed in countless feature films and television shows; and the "Scorpions" are South Africa's version of the FBI. This impression was cemented when the first batch of DSO trainees were sent to the FBI's Quantico for training. But is the analogy strictly correct? And what are the implications of the differences between the FBI in the United States, and the DSO in South Africa? How does the legal nature and environment of the DSO compare to other countries' special national investigative agencies, other than the FBI?

### **The United States of America<sup>145</sup>**

The FBI is the principal investigative arm of the United States (US) Department of Justice. It is not a national police force; rather it is one of 32 federal agencies with federal law enforcement responsibilities. For example, the Drug Enforcement Administration is another federal agency tasked with the enforcement of drug law, while the Bureau for Alcohol, Tobacco and Firearms (ATF) has as its primary investigative responsibility the enforcement of federal firearms statutes and the investigation of arsons and bombings that are not in furtherance of terrorism.

The important word here is "federal". A federal government was created by the Constitution of the United States of America in 1776. The US has 50 state governments plus the government of the District of Columbia.<sup>146</sup> In general, matters that lie entirely within state borders are the exclusive concern of state governments. These include regulations relating to property, and the state criminal code. The federal government requires that state governments be democratic in form and that they adopt no laws which contradict or violate the federal constitution, or the laws and treaties of the US, including criminal provisions.

The Attorney-General serves as head of the Department of Justice and as chief law enforcement officer of the federal government, and must supervise the

administration of the law enforcement operations of the Department of Justice including the FBI, and represent the US in legal matters generally.<sup>147</sup>

The US has no national police force as such; it has state and local police agencies that have a high degree of autonomy, and jurisdiction that is largely territorially determined. The FBI's investigative mandate is only over *federal* crimes; that is, crimes which are a violation of federal rather than state or local law.

The FBI's mandate is the broadest of all US federal investigative agencies: it investigates all federal criminal violations that have not been specifically assigned by the US Congress to another federal agency, such as the DEA or ATF. The FBI's federal investigative functions fall into the following categories: civil rights; counter terrorism; foreign counterintelligence; organised crime and drugs; violent crimes and major offenders; and financial crime.

Crimes that involve a violation of local, state and federal laws will often be investigated by task forces composed of both FBI agents and local and state agencies. All of this is related to the US' structure as a federal nation, composed of states with high degree of autonomy, including the ability to impose income taxes and create criminal law.

South Africa, by contrast, does not have a federal structure. Although South Africa has nine provinces, these do not have a high degree of autonomy; nor do they raise their own income taxes; and they have a limited legislative competence and an even more limited exclusive legislative competence.<sup>148</sup> Hence the law of the land in South Africa is largely national law. There also exists a national police force, the South African Police Service (SAPS), which has jurisdiction over the whole of South Africa, and which has the power to investigate all crimes committed in South Africa.<sup>149</sup> Although South Africa now also has a number of municipal police forces, these have no investigative powers; they engage only in visible policing and patrols. South Africa already therefore has an investigative body that has jurisdiction to investigate crime with links across the country: the SAPS.

The FBI, by contrast, investigate crimes across states in the US which state and local police cannot, that is, crimes involving "interstate commerce", as well as crimes which the US Congress has determined are federal in nature. However, both the FBI and the DSO are similarly positioned: the FBI in the US Department of Department of Justice, and the DSO within South Africa's single prosecuting authority, which falls under the responsibility of the Minister of Justice and Constitutional Development.

When the FBI was established in the US in 1908, it was not taken for granted, as it is today, that the US needed a federal investigative service. During the 1800s Americans tended to look to cities, counties and states to fulfil most government responsibilities, including the investigation of crime. This is the opposite of the position in South Africa immediately prior to the creation of the DSO: South Africa has a highly centralised government, and South Africans tend to look to the central government to fulfil most government responsibilities, although many responsibilities are devolved, particularly to local government level.

National government in the US in the 1800s only had jurisdiction over matters that crossed over boundaries, such as interstate commerce and foreign affairs. However, by the 1900s increased transport and communication links between states encouraged a climate more favourable to the establishment of a strong investigative tradition within the federal government.

The FBI began as a force of Special Agents created in 1908 by Attorney General Charles Bonaparte, during Theodore Roosevelt's presidency. Prior to that, the US Department of Justice had no investigators of its own except for a few special agents who carried out specific assignments for the Attorney General, and a force of Examiners (trained as accountants) who reviewed the financial transactions of the federal courts. The Department of Justice also used funds appropriated to investigate federal crimes, to hire private detectives, and also investigators from other federal agencies.

By 1907, it became clear that the Department of Justice most frequently called upon Secret Service "operatives" to conduct investigations. These operatives were good at their job, but expensive. Furthermore, they reported to the Chief of the US Secret Service, and not to the US Attorney General. Not only did this situation frustrate Bonaparte, but the US Congress in 1908 also passed a law preventing the Department of Justice from hiring Secret Service operatives.

Soon thereafter, Bonaparte appointed a force of special agents within the Department of Justice. Ten former Secret Service employees and a number of Department of Justice investigators became special agents of the Department of Justice. Bonaparte ordered them to report to Chief Examiner Stanley W. Finch. This is generally seen as the beginning of the FBI, although the force was only named the FBI in 1909 when the title of Chief Examiner was also changed to Chief of the Bureau of Investigation. When the Bureau was established, there were few federal crimes. The Bureau of Investigation primarily

investigated violations of laws involving national banking, bankruptcy, naturalisation, antitrust, and land fraud.

In 2002, the FBI consisted of 11 000 Special Agents and 16 000 professional support personnel. The FBI has its headquarters in Washington, DC, as well as 56 field offices, 400 satellite offices, 40 foreign liaison posts (known as legal attaches) and four specialised field installations. The FBI's authority to investigate specific criminal violations, and the FBI's powers is conferred by a number of laws passed by the US Congress.<sup>150</sup>

The Committee on the Judiciary of the US Senate exerts oversight over the Department of Justice, of which the FBI is part. The US Office of Investigative Agency Policies was established to co-ordinate selected policies and activities of law enforcement entities within the Department of Justice. In 2001, the US Office for Law Enforcement Co-ordination was created, responsible for improving FBI co-ordination and information sharing with state and local law enforcement and public safety agencies.

South Africa's DSO is therefore similar to the US' FBI in that it forms part of the NPA, just as the FBI is a part of the US Department of Justice. The DSO's powers are contained in the NPA Act. Similarly, it is the Minister of Justice and the Justice Committee of Parliament, rather than the Safety and Security Committee, which exerts oversight over the DSO, due to the DSO's positioning within the NPA.

In its method of operation, the FBI is also similar to the DSO in that its members have legal knowledge and conduct investigations with an emphasis on obtaining evidence for ultimate prosecution. However, in the FBI all professional persons are "special agents", while the DSO makes a distinction between "prosecutors" and "special investigators" and makes use of "prosecution-lead" team investigations.

However, the main *raison d'être* of the FBI – the need for a federal investigative agency – does not exist in South Africa for the DSO. This does not mean that the DSO does not have its own reasons for being, which are specific and peculiar to South Africa.

The FBI and the DSO are also not the only national special investigative agencies that exist worldwide; we will consider the position of a further six countries. The characteristics of those countries and their law enforcement agencies are summarised in the table below (see *Table 3a* and *Table 3b*).

| <b>Table 3a: Countries' Characteristics (general)</b> |                      |                      |                               |                                  |   |                                   |                                |
|---|----------------------|----------------------|-------------------------------|----------------------------------|---|-----------------------------------|--------------------------------|
| <b>Country</b>  | <b>Federal State</b> | <b>Central State</b> | <b>Large country (top 30)</b> | <b>Large population (top 30)</b> | <b>High crime rate (murder &gt;5 per 100 000)</b> | <b>National criminal law only</b> | <b>State criminal law also</b> |
| Australia   | *                    |                      | *                             |                                  |   |                                   | *                              |
| Canada  | *                    |                      | *                             |                                  |   | *                                 |                                |
| Nigeria   | *                    |                      | *                             | *                                | *?  |                                   | *                              |
| USA   | *                    |                      | *                             | *                                | *   |                                   | *                              |
| Botswana  |                      | *                    |                               |                                  | *   | *                                 |                                |
| NZ  |                      | *                    |                               |                                  |   | *                                 |                                |
| RSA   |                      | *                    | *                             | *                                | *   | *                                 |                                |
| UK  |                      | *                    |                               | *                                |   | *                                 |                                |

Source: CIA World Fact Book

| <b>Table 3b: Countries' Characteristics (law enforcement)</b> |                             |                               |                                      |   |   |                              |
|---|-----------------------------|-------------------------------|--------------------------------------|---|---|------------------------------|
| <b>Country</b>  | <b>National police only</b> | <b>State and local police</b> | <b>Special national crime agency</b> | <b>Special agency also a police force</b> | <b>Special agency run by A-G office</b> | <b>Special agency recent</b> |
| Australia   |                             | *                             | AFP                                  | *   |   |                              |
| Canada  |                             | *                             | RCMP                                 | *   |   |                              |
| Nigeria   | *                           |                               | NDLEA?                               |   |   |                              |
| USA   |                             | *                             | FBI                                  |   | *                                       |                              |
| Botswana  | *                           |                               |                                      |   |   |                              |
| NZ  | *                           |                               |                                      |   |   |                              |
| RSA   | *                           |                               | DSO                                  |   | *                                       | *                            |
| UK  |                             | *                             | NCS                                  | *   |   | *                            |

Source: Derived from text

## The United Kingdom<sup>151</sup>

Police chiefs in the United Kingdom (UK) have been debating the idea of a “British FBI” since the late 1980s. On retiring, Sir Kenneth Newman, former Metropolitan Police commissioner, spoke of the need for a UK national detective agency to combat organised criminals who did not recognise geographical boundaries.<sup>152</sup>

More recently, in July 2003 British Prime Minister Tony Blair told an international criminal justice conference in London that the UK government was looking at the idea of a new agency to tackle organised crime “which could share intelligence, expertise and investigative talent”<sup>153</sup>.

This is despite the fact that since the 1980s the UK has seen the creation of the National Criminal Intelligence Service (NCIS), with a staff of 1200, supplying police forces with intelligence and analysis of organised crime; and the National Crime Squad (NCS), which includes 1330 detectives and 420 support staff conducting operations predominantly concentrated on drug traffickers.<sup>154</sup>

The new “UK FBI” is proposed to be a merger of the NCIS, the NCS, as well as part of customs and excise, which has 350 officers in its national intelligence division and 1,500 operational officers in the investigation service.<sup>155</sup> A review of these agencies, sparked by claims that the fight against serious and organised crime was being damaged by inefficiency and rivalry between overlapping agencies, found evidence that the agencies did not always share information and that a merger could improve crime fighting and be cheaper in the long term.<sup>156</sup>

However, some commentators believe Blair is merely using the threat of a merger to force the separate agencies to co-operate more closely.<sup>157</sup> Others feel a merger would not solve these problems, and cite a recent UK audit commission report on local authorities which showed that merging departments often did not improve collaboration (separate fiefdoms continued) and found that the council which achieved the greatest collaboration had not merged its departments. Nevertheless, a cabinet committee under the chairmanship of Blair has been appointed and is likely to make its recommendation before the end of 2003.<sup>158</sup>

The UK agency most similar to South Africa’s DSO at the time of writing, then, is the NCS, as the NCIS focuses on criminal intelligence, rather than on the investigation and prosecution of crime. The establishment of the NCS in April 1998 represented a significant milestone in the 170-year history of British

policing. British policing has always been of a local nature, with local police authorities being responsible for policing throughout the United Kingdom. Indeed, there are 44 local police authorities in the UK.<sup>159</sup> This proliferation of police forces in the UK lead to the establishment of the Association of Chief Police Officers (ACPO) in the 1950s so that policing policies could be developed on behalf of the Police Service as a whole, rather than in 44 forces separately.<sup>160</sup>

However, it is only more recently in UK policing history that the need for regional and national special investigative agencies became apparent, largely as a result of the changing nature of crime in the UK, particularly the rise of organised crime. A need for national *criminal* intelligence (as opposed to national security or foreign intelligence) also became apparent in the UK.

The National Crime Squad is said to have been created directly as a result of a July 1995 report by the UK Parliament's Home Affairs Select Committee on the threat of organised crime and its impact on the UK. The report said:

"If the response to serious and organised crime is to be sharpened and made more effective, the present structure of separate Regional Crime Squads ... needs to be replaced by a more nationally co-ordinated structure."

The UK government and Parliament, together with the police service represented by the Association of Chief Police Officers, supported this proposal and the Police Act 1997, Chapter 2, gave effect to the NCS, as well as the NCIS.<sup>161</sup> The function of the NCS is defined in the Act as follows:

*The function of the National Crime Squad shall be to prevent and detect serious crime which is of relevance to more than one police area in England and Wales.*<sup>162</sup>

*The National Crime Squad may also –*

- (a) *at the request of a chief officer of police of a police force in England and Wales, act in support of the activities of his force in the prevention and detection of serious crime;*
- (b) *at the request of the Director General of National Criminal Intelligence Service (NCIS), act in support of the activities of NCIS;*
- (c) *institute criminal proceedings;*
- (d) *co-operate with other police forces in the United Kingdom in the prevention and detection of serious crime;*

- (e) *act in support of other law enforcement agencies in the prevention and detection of serious crime.*<sup>163</sup>

This echoes the ostensible reasons for and legislative focus of the DSO. The DSO was created in 1999, at the same time as organised crime in South Africa was beginning to become problematic. The legislation creating the DSO was an amendment to the NPA Act, and the preamble to this act makes it clear that crimes committed in an “organised fashion” were to be the focus of the DSO. Furthermore, in terms of s7 (1)(a) of the NPA Act, the DSO can investigate, analyse and keep information, and “institute criminal proceedings” relating to offences committed in an organised fashion, or any offences proclaimed by the President in the Government Gazette.

However, an important difference from the DSO, is that save where crime is of relevance to more than one police area, matters are referred to the NCS by other Chiefs of Police, or the NCS acts in support of other agencies. In other words, the NCS does not take on matters of its own accord unless they straddle geographical boundaries.

UK Regional Crime Squads, which were the precursors of the National Crime Squad, were first created in the UK in 1964 as a result of concern about the frequency with which criminals were committing crime across police force borders and the fact that local officers were ill-equipped effectively to deal with the trend.

These regional squads were originally formed into nine regions covering England and Wales. They were comprised of detective officers seconded from police forces within the region for up to five years. Each regional squad was commanded by a Detective Chief Superintendent selected by and accountable to a Committee of the constituent forces Chief Constables and funded through a collaboration agreement between the constituent forces under the supervision of a regional Police Authority.

This echoes to some degree what happened in South Africa’s DSO, albeit over a much shorter time frame: the transformation of more regional organisations, consisting of seconded staff, transforming into a larger national organisation. The Office for Serious Economic Offences (OSEO) was created by the OSEO Act<sup>164</sup> in 1991. This became an “Investigating Directorate” when the NPA Act was passed in 1998. The NPA Act created “Investigating Directorates” which were regionally based within the NPA to deal with certain particular types of intractable crime, and so for a brief time we had the Investigating Directorate

for Serious Economic Offences (IDSEO) and the Investigating Directorate for Organised Crime and Public Safety (IDOC). These directorates consisted largely of investigators seconded from the SAPS and other government agencies, as well as prosecutors in the NPA. It was these directorates, which operated as the DSO at the launch of the organisation in September 1999, and their members formed the DSO with the passing of the NPA Amendment Act<sup>165</sup>. Of course, the major difference is that the DSO is located in the NPA, rather than forming an independent police organisation.

Over the years, UK Regional Crime Squads grew to attempt to match the criminals they were mandated to target. Unlike police forces, they were meant proactively to target those responsible for serious criminal offences regionally, nationally and internationally, rather than simply investigating crimes in a reactive manner. This again has an echo with one of the ideas behind of the DSO: to proactively target known criminals, rather than react to crimes.

In 1993 the UK Regional Crime Squads were amalgamated into six regions covering England and Wales. They were based at 44 locations throughout the country, mainly in secret premises within areas of significant criminality and close to main arterial roads. The regions were broadly similarly equipped and trained and worked to similar policy and procedures. Due to their nature, their priorities tended to reflect a regional rather than a national agenda. But they reportedly did achieve successes against major criminals operating on a national and international scale. In South Africa, IDOC also at first concentrated on regional crime phenomena, such as the Richmond murders in KwaZulu-Natal and gangs in the Western Cape, showing some success.

On 1 April 1998 the NCS was established through the amalgamation of these six Regional Crime Squads, inheriting their staff, premises, equipment and workload. The National Squad is commanded by a Director General, assisted by a Deputy Director General, a Director of Business Support, and two Assistant Chief Constables operating from a headquarters in London. For operational purposes, the NCS is divided geographically into Eastern, Northern, and Western operational units each directed by a Detective Chief Superintendent Chief Constable based in London, Wakefield and Bristol respectively. This is similar to the DSO's four regional offices, in Cape Town, Durban, East London and Pretoria, headed by Deputy Directors of the NPA, known as Regional Heads.

The NCS is staffed by officers seconded from police forces in England and Wales with support staff employed by the NCS Service Authority and has up

to 1330 police officers and 420 support staff at more than 30 locations around the UK. In this the squad is different from the DSO in that the DSO no longer relies solely on seconded police officers but appoints special investigators and prosecutors on a permanent basis. The DSO also does not have such a favourable ratio of support staff, and indeed has about a third the total staff complement of the NCS.

The NCS national headquarters includes operational and administrative support functions such as human resources, finance, information technology and business development, but many aspects of these and other functions are devolved to local level and carried out by specialist support staff. In the DSO, the NPA head office carries out most such functions and there are very few support personnel in the regional offices of the DSO.

The NCS targets criminal organisations committing serious and organised crime which transcends national and international boundaries, typically drug trafficking, immigration crime, illegal arms trafficking, money laundering, counterfeit currency, kidnap and extortion. This is broadly similar to the DSO.

The NCS has 30 branch offices situated in semi-secret locations, most of them away from other police sites. A typical branch is managed by a detective chief inspector, with one, two or three groups of officers, consisting of a detective inspector, and teams of detective sergeants and constables. All officers are trained in static and mobile surveillance and related skills, many are also trained in financial investigation, use of firearms, informant handling, undercover techniques, intelligence analysis and other specialist areas. The principal focus is on the criminals rather than the crimes. Operations take many months, and even years, to come to fruition in terms of arrests and disruption of criminal activity. In comparison, the DSO does not have small branch offices within the regions, but instead five to 15 groups of about five to 10 members consisting of prosecutors, investigators and analysts all operate from the regional office. However, the kind of operation conducted is broadly similar.

The National Crime Squad Authority has a statutory responsibility to ensure that the National Crime Squad is efficient and effective.<sup>166</sup> The Authority comprises 11 people in all:

- five independent members (including the Chairman) appointed by the Home Secretary;

- two elected members from local police authorities nominated by the Association of Police Authorities;
- two Chief Constables nominated by the Association of Chief Police officers;
- a representative of HM Customs and Excise; and
- one Home Office official to represent the Home Secretary, making 11 in all.

Objectives and performance targets for the NCS are set by the Home Secretary and the NCS Service Authority who publish them in an Annual Service Plan. The Director General has an obligation to publish a report on the performance of the NCS against those objectives and targets at the end of each year. The NCS Service Authority, after consultation with the Director General, is also obliged to inform the Home Secretary of the annual budgetary requirements of the NCS on which he makes a determination following a period of consultation. The budget is then collected from each police force of England and Wales through a levy process. In comparison, funding of the DSO is contained in the Budget Vote of the Department of Justice, as a sub-programme of the NPA.

A series of objectives and planning targets, which determine in more detail how the resources of the NCS are directed, is set within the terms of the Police Act 1997 by the Home Secretary and the Service Authority. The authority publishes an annual service plan, setting out the objectives. The Director-General in his Annual Report subsequently reports upon success against those objectives. Both are public documents incorporated in one document.

In comparison, the DSO is supposed to be complemented by a Ministerial Committee created in terms of s31 of the NPA Act, which is supposed to determine policy, procedure and the responsibility of the DSO in respect of certain matters. However, to date this committee has never met for this purpose. The Committee is also composed only of members of Ministers in Cabinet, unlike the NCS Service Authority, which consists of persons at a lower level and only has one person representing the Home Office. The DSO Audit and Review Report 2001 of the DSO was a confidential document not widely available.

## Nigeria

Like South Africa, Nigeria has a national police force, yet unlike South Africa, Nigeria is a federal state, and each state may make its own criminal law. Nigeria's Federal Investigation and Intelligence Bureau (FIIB), is part of the Nigeria Police Force, and is responsible for the investigation of crimes generally. Another Agency, the National Drug Law Enforcement Agency (NDLEA) appears to fall outside the NPF and is responsible for enforcing drug laws only.

South Africa is about 30% larger than Nigeria, but Nigeria has a population three times as large as South Africa. The Federal Republic of Nigeria consists of 36 states and one territory.<sup>167</sup> The legal system is based on English common law, but incorporates aspects of Islamic and tribal law. Both federal and state governments may make criminal law<sup>168</sup>, but where state law is in conflict with national law, national law prevails.<sup>169</sup> Some states have recently introduced *Sharia* (Muslim law).<sup>170</sup>

The Nigeria Police Force (NPF) is designated by s214 of the 1999 Nigerian Constitution as Nigeria's national police with exclusive jurisdiction throughout the country.

*"There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof."*<sup>171</sup>

Constitutional provision also exists, however, for the establishment of separate NPF branches; one such branch is the Port Security Police:

*"The National Assembly may make provisions for branches of the Nigeria Police Force forming part of the armed forces of the Federation or for the protection of harbours, waterways, railways and air fields."*<sup>172</sup>

"Zonal Commands" were introduced to the NPF during military rule in 1986. The NPF has 37 Police Commands and 12 Zonal Commands. (The Force Headquarters operates as a Police Command). This is somewhat similar to the structure of the SAPS, which has national, provincial, area and local levels of authority. The 12 Zonal Commands are retained in the NPF today.

In 1989 a reorganisation of the NPF was announced by the then Armed Forces Ruling Council (AFRC). (The AFRC was the supreme lawmaking body

in Nigeria's political system of military federalism at the time, formerly known as the Supreme Military Council.) Under the new structure of the NPF, a Federal Investigation and Intelligence Bureau (FIIB) would be set up within the NPF as the successor to the Directorate of Intelligence and Investigation. Three directorates in the FIIB were established for operations, administration, and logistics, each headed by a deputy inspector general.

The FIIB focuses on investigations, while the non-FIIB component of the NPF focuses on visible policing, crowd control, and combating crime generally.<sup>173</sup> The FIIB is not restricted to investigating specific types of crime or offenders; there are other very small special policing agencies, much like specialised units of the SAPS, focusing on organised crime, financial crime and trafficking in people.<sup>174</sup>

FIIB personnel do not get any special treatment in the NPF; if anything, non-FIIB police may "look down" on their FIIB colleagues, as investigative work appears to be relatively under-resourced in the NPF and most cases are solved through confessions or catching offenders "in the act".<sup>175</sup> The NPF as a whole does not have a good reputation among the public in Nigeria.<sup>176</sup> The public apparently does not distinguish between FIIB police and non-FIIB police,<sup>177</sup> much as South Africans do not as a matter of course distinguish between uniform police and detectives in the SAPS.

The National Drug Law Enforcement Agency Decree 48 of 1989, established the National Drug Law Enforcement Agency (NDLEA) and gave it the sole power to enforce laws against the cultivation, processing, sale, trafficking, and use of hard drugs, and to investigate persons suspected of dealings in drugs. This decree was passed by the then military regime in response to the US "de-certification" of Nigeria. The US' annual "certification" procedure provides for economic sanctions for those who are decertified, in order to persuade nations to co-operate in the "war on drugs". Decrees are laws made under the military regime.<sup>178</sup>

The first three heads of the NDLEA were drawn from the ranks of the police. After initially doing well, the agency was thereafter dogged with corruption allegations. The fourth, NDLEA head, after another bout of "de-certification" by the US, was an army brigadier-general.<sup>179</sup> This military appointment was accompanied by the passing of a number of draconian decrees allowing for questionable powers of search along with the forfeiture powers in Decree 48,<sup>180</sup> which, it is alleged were used particularly to target the Ibo people of the south. Allegations of Ibo persecution stem from the days of the Biafran war when the

area known as Biafra in which the Ibo live, attempted to secede from Nigeria in the 1960s.<sup>181</sup> After 1999, the NDLEA head was again drawn from the ranks of the police. The NDLEA has therefore had a chequered history.

## Australia<sup>182</sup>

Unlike South Africa, Australia has a federal structure, as well as state-run police services. The police body with national jurisdiction is the Australian Federal Police (AFP), which enforces Commonwealth (federal Australian) criminal law, and protect Commonwealth and national interests from crime in Australia and in other countries. The Commonwealth of Australia is a federalist government composed of a national government and six state governments, plus two territories that have been granted self-government.<sup>183</sup>

Unlike South Africa and Canada, Australian states are primarily responsible for the development of criminal law, although the federal government does also make criminal legislation. Queensland, Western Australia, and Tasmania are described as “code” states because they have enacted criminal codes. New South Wales, Victoria, and South Australia are regarded as “common law” states because they have not attempted codification. In practice there is little difference in the elements of the criminal law between the “code” and “common law” states. The *Criminal Code Act of 1995* codifies Australian federal criminal law. Commonwealth crimes include fraud, drug importation and trafficking, people smuggling, electronic crime (e-crime), and crime against the environment.

Seven Australian states have their own state police services which deal with everyday crime.<sup>184</sup> State policing agencies have their own intelligence, forensic, organised crime, anti-terrorist, and hostage negotiations units. The AFP provides community policing services to the people of the Australian Capital Territory, Jervis Bay, and external territories such as Norfolk Island and Christmas Island.

The AFP is Australia’s international law enforcement and policing representative, and the chief source of advice to the Australian Government on policing issues. AFP priorities are set through ministerial direction. The AFP focus includes handling special references from Government, and combating:

- organised crime;
- transnational crime;

- money laundering;
- major fraud;
- illicit drug trafficking; and
- e-crime.

At the Federal level the Commonwealth Attorney General's Department is the key agency with responsibility for law, order and national security. There are two Ministers, the Attorney General and the Minister for Justice and Customs. The AFP falls under the Minister for Justice and Customs, and more recently has had a high profile with the mounting terrorist threat. The AFP played a significant role in tracking down the Bali bombers and in setting up a police force in the Solomon Islands<sup>185</sup>.

## **Botswana<sup>186</sup>**

Like South Africa, Botswana has a national police force with national jurisdiction, and does not have a federal political structure. Botswana is about half the size of South Africa, but its population is about 5% the size of South Africa's.<sup>187</sup>

The Botswana Police Act says that the police force must operate throughout the country to protect life and property, prevent and detect crime, repress internal disturbances, maintain security and public tranquillity, apprehend offenders, bring offenders to justice, duly enforce all written laws with which it is directly charged and generally maintain peace.<sup>188</sup> The police must also perform such military duties within Botswana as may be required of it under the authority of the President, as Commander-in-Chief of the armed forces.

The Police force is divided into three divisions, namely North, South- Central and South. The divisions are headed by a Divisional Commander. The Police Services are divided into eight branches namely; General Duties, Criminal Investigation Department, Special Support Group, Special Branch, Traffic, Telecommunications and Transport, Police College and Departmental Management. Botswana does not have another specialist police agency outside of the Botswana Police.

## **Canada<sup>189</sup>**

The Royal Canadian Mounted Police is the Canadian national police service and an agency of the Ministry of the Solicitor-General of Canada. The RCMP

is unique in the world in that it is at the same time a national, federal, provincial and municipal policing body. The RCMP enforces or polices the law throughout Canada. These are laws made by, or under, the authority of the Canadian Parliament. However, administration of justice within the provinces, including enforcement of the Criminal Code, is part of the power and duty delegated to provincial governments in Canada.

Canada's political structure can be described as a federal constitutional monarchy. Canada has three territories and 10 provinces.<sup>190</sup> It is considered to be a federal state, since the various powers are divided between the central government and the provincial governments. The powers of the territorial governments (as opposed to the provincial governments) are delegated by the federal government. The federal government is responsible for matters that concern Canada as a whole, such as inter-provincial and international trade, national defence, the banking and monetary systems, the fisheries, and, unlike the US and Australia, the criminal law.

Canadian criminal law is based on the Canadian *Criminal Code*, submitted to the Canadian Parliament and originally enacted in 1892. Over the years, numerous amendments and revisions have been made. In 1955, a revised Criminal Code came into force. The Criminal Code is derived almost exclusively from the principles of English criminal jurisprudence and is uniform across the country. Under the terms of the 1867 Constitution Act, the Canadian federal government has exclusive jurisdiction to legislate criminal law.

The RCMP's Federal Policing Service is provided across Canada, but at the same time the RCMP contracts its services out to certain provinces and municipalities. The RCMP provides police services under the terms of policing agreements to all provinces (except Ontario and Quebec, which have their own police services), and to the territories of Yukon and Northwest, and under separate municipal policing agreements to 199 municipalities.

The RCMP therefore acts on federal, provincial and local level, but other provincial and local police agencies outside of the RCMP also exist, such as the Toronto Police Service or the Ontario Provincial Police. In 1999, there were more than 55,000 police officers and 20,000 civilian personnel delivering police services under all the police agencies in Canada,<sup>191</sup> while the RCMP alone in 2002 had an actual strength of just over 21 000 people.

Like the UK, Canada has the Canadian Association of Chiefs of Police (CACP), which was founded in Toronto on September 6, 1905. It was first known as

the “Chief Constables Association of Canada” and adopted its current name in the early 1950s.<sup>192</sup>

The RCMP itself is organised under the authority of the RCMP Act. In accordance with the Act, it is headed by the Commissioner, who, under the direction of the Solicitor-General of Canada, has the control and management of the RCMP and all matters connected with the RCMP. The Solicitor General is a minister of the Canadian cabinet appointed by the Prime Minister, and the minister’s portfolio consists of the Department of the Solicitor-General, the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service (CSIS), the Correctional Service of Canada (CSC), and the National Parole Board (NPB).

In the US, the term has a different meaning, and the principal function of the Office of the Solicitor General is to represent the federal government before the Supreme Court, and the office falls under that of the US Attorney-General.<sup>193</sup> In Canada, the Attorney-General of Canada, while being the chief law officer of the Crown (government), is at the same time the Minister of Justice and therefore a member of Cabinet. The office of Minister of Justice is concerned with questions of policy and their relation to the justice system.

The Federal Policing Service of the RCMP is responsible for organised crime law enforcement, and their aim is to:

“work with the community, clients and partners to target organised crime and provide a quality policing service through problem solving, education, prevention and enforcement of Federal Statutes and Laws of Canada in an effort to provide safe homes and communities.”<sup>194</sup>

Organised crime, is a priority for the RCMP. According to the RCMP:

“Organised crime poses a serious long-term threat to Canada’s institutions, society, economy and to the quality of life of our citizens. For 2003/2004, the RCMP organised crime strategy will focus on “Reducing the threat and impact of Organised Crime”. Critical to our success in countering the growth of these groups, and dismantling or disrupting their structures and sub-groups, is the improved co-ordination, sharing and use of criminal intelligence in support of integrated policing, law enforcement plans and strategies as well as initiatives designed to communicate the impact and scope of organised crime. Operations will provide leadership in developing and implementing intelligence-led, tactical operational plans, in partnership with other

police and law enforcement agencies. But leadership, as part of integrated policing, does not always mean that we will be the lead agency responsible for a particular tactical plan."<sup>195</sup>

## New Zealand

New Zealand Police is a national police force which is de-centralised into 12 districts.<sup>196</sup> Each district has a central station from which subsidiary and suburban stations are managed. New Zealand Police is responsible for enforcing criminal law, which is uniform across the country. New Zealand Police have about 400 police stations and 8 800 staff. There is no other criminal investigative agency in New Zealand.

New Zealand is a constitutional monarchy. The Queen of New Zealand, Queen Elizabeth II, is the Head of State. The Queen's representative is the Governor-General who has all the powers of the Queen in relation to New Zealand. Although an integral part of the process of government, the Queen and the Governor-General remain politically neutral. New Zealand has a single chamber of Parliament known as the House of Representatives. New Zealand is a country of similar size to the United Kingdom, but with a population only about 7% the size of the UK's.

The Criminal Investigation Branch (CIB) of the New Zealand Police is dedicated to investigating and solving serious crime, and targeting organised crime and recidivist criminals. Staff who work in the CIB are drawn from the Uniform Branch and then undergo an intensive period of training in law and the latest techniques in investigation. Their job is to investigate serious crimes such as homicides, aggravated violence, sexual offending, drug offences, crimes against society, and fraud. They are based across New Zealand. Detectives routinely carry out protracted investigations into organised groups or individuals who habitually commit crimes.

## Summary

Of the seven countries compared to South Africa (see *Table 3a and 3b*), South Africa's DSO appears to be most similar to the United States' FBI in terms of its position within the prosecuting arm of government, and its jurisdiction and type of work (over the whole country, specific serious crimes, particularly organised crime).

However, the DSO finds itself in a country which is, in terms of its political and policing structure, least similar to the US, which has a federal structure, state criminal law, and state and local police, and no national police force as such.

Larger, more populous countries (see charts), tend to be federal, and to have many state and local police agencies, as well as a federal policing agency. Nigeria and South Africa are the exceptions, Nigeria in that it is federal, yet has a national police force.

Most countries which are centrally rather than federally organised have national police forces, except for the United Kingdom, which has historically always had local police. Of the nations with national police, both Botswana and New Zealand have small populations less than 10% the size of South Africa's, while Nigeria has almost 10 times the population of South Africa. Other than South Africa, none of the centrally organised countries also have a special agency like the DSO with a broad investigative mandate.