

LIST OF FIGURES AND TABLES

| | |
|--|----|
| FIGURE 1 | 13 |
| Number of crimes recorded, 1994/95–2001/02 | |
| FIGURE 2 | 15 |
| Percentage change in selected crimes recorded, 2000/01–2001/02 | |
| FIGURE 3 | 16 |
| Crime rate in the provinces, 2001/02 | |
| FIGURE 4 | 17 |
| Proportion of national expenditure devoted to the criminal justice system, 1990/91–2002/03 | |
| FIGURE 5 | 18 |
| 2002/03 expenditure allocation for criminal justice departments | |
| FIGURE 6 | 25 |
| Police rank distribution: England and Wales vs South Africa | |
| FIGURE 7 | 25 |
| Changing numbers of SAPS officers and civilian personnel, 1996–2002 | |
| FIGURE 8 | 28 |
| Annual percentage change in number of recorded crimes, 1995/96–2001/02 | |
| FIGURE 9 | 32 |
| Number of cases referred to court per detective in 2000, by province | |
| FIGURE 10 | 33 |
| Number of cases referred to court, 1996–2002 | |
| FIGURE 11 | 34 |
| Deaths as a result of police action and in police custody, 1997/98–2001/02 | |

| | |
|--|----|
| FIGURE 12 | 42 |
| Cases processed by the prosecution service, 1996–2002 | |
| FIGURE 13 | 43 |
| Number of cases finalised with a verdict in district and regional magistrates' courts, 1999–2002 | |
| FIGURE 14 | 44 |
| Number of lower court cases outstanding at end of year, 1999–2002 | |
| FIGURE 15 | 46 |
| Average number of days unsentenced prisoners incarcerated, 1999–2001 | |
| FIGURE 16 | 47 |
| Answer to question: How good a job do you think the prosecution service generally is doing? | |
| FIGURE 17 | 55 |
| Number of prisoners, cell accommodation and corrections staff, 1994–2002 | |
| FIGURE 18 | 56 |
| Average number of unsentenced prisoners in custody, 1995–2002 | |
| TABLE 1 | 21 |
| Safety and Security outputs and indicators, 2002/03 | |
| TABLE 2 | 29 |
| SAPS operations, 2001/02 | |
| TABLE 3 | 30 |
| SAPS arrests, seizures and recovery of stolen goods, 2001/02 and 2000/01 | |
| TABLE 4 | 39 |
| NPA outputs and indicators, 2002/03 | |
| TABLE 5 | 53 |
| Correctional Services outputs and indicators, 2002/03 | |
| TABLE 6 | 57 |
| Number of assaults in prison, 1999–2002 | |

AUTHORS

Ted Leggett works as a senior researcher at the ISS' Crime and Justice Programme. His professional background includes police work, prosecution, and social work. He holds the degrees of Juris Doctor from New York University School of Law and Masters of Social Science in Development Studies from the University of Natal-Durban.

Antoinette Louw works part time for the ISS providing research and publications support to the Crime and Justice Programme. She has been with the ISS since late 1997, first as a senior researcher and then as head of the Crime and Justice Programme. Antoinette has been researching crime, violence and criminal justice in South Africa since 1991. Her work in the policy field has covered victimisation surveys, crime prevention policy and practice, policing, and violence against women. She has a Masters degree in political studies from the University of Natal, Durban.

Martin Schönteich joined the ISS in 1999 as a senior researcher in the Crime and Justice Programme. He is an Advocate of the High Court of South Africa, and has worked as a prosecutor for the Department of Justice. He holds a Bachelor of Law degree from the University of Natal, Durban, and a post-graduate degree in political science from the University of South Africa.

Makubetse Sekhonyane joined the ISS in 2000 as a senior researcher in the Crime and Justice Programme. Prior to joining the ISS, he worked for the Human Rights Committee of South Africa as a researcher focusing on human rights violations and the state's protection mechanisms. He holds a Bachelor of Social Science degree from the University of Natal, Durban, and completed the Human Rights Advocacy Programme at Columbia University in New York in 1999.

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EXECUTIVE SUMMARY

In 2001 the Institute for Security Studies (ISS) established a criminal justice monitoring service to assist government and non-government organisations, the media and researchers to access information relevant to monitoring, evaluating and improving the performance of the criminal justice system in South Africa. Given South Africa's high crime rate, and the response of the state to this, an independent and comprehensive monitoring, analysis and evaluation capacity supports those operating inside and outside of government to contribute meaningfully to the reduction of the high levels of crime and violence in the country.

This monograph evaluates the performance of each of the three core criminal justice system departments: Safety and Security, Justice and Constitutional Development, and Correctional Services. This is done for the period 2001/2002 (i.e. January 2001 to December 2002). The performance of every department is evaluated separately focusing on what the department's senior policy makers promised, appropriate departmental performance measurements, and the workload and resources of the department.

Chapter one analyses the latest available official crime statistics at the time of writing. During the 2001/02 financial year 2.5 million crimes were recorded in South Africa, some 25% more than in 1994/95. While recorded crime increased rapidly in the late 1990s, a less than 1% increase during 2001/02 may indicate that crime levels are beginning to stabilise. Nevertheless, levels of recorded violent crime remain extremely high. For example, during the 12-month period of the 2001/02 financial year, some 21,500 murders were recorded—an average of almost 60 a day or one murder every 25 minutes.

Measured on a per capita basis, the crime rate during 2001/02 was highest in the Western Cape, followed by Gauteng and the Northern Cape. The average resident of the Western Cape stood an almost 10% chance of becoming a victim of a recorded crime in 2001/02; in Limpopo it was a low 2.5%.

The budget allocation of the criminal justice system departments is analysed in chapter two. The share of the national budget apportioned to the criminal

justice system has remained fairly constant since 1994, ranging between 9% and 11% of gross national expenditure. In the 2002/03 budget year R30.4 billion was allocated to the three core criminal justice departments, with the largest share going to Safety and Security (63%), followed by Correctional Services (23%) and Justice and Constitutional Development (14%).

Chapter three focuses on the performance of the Department of Safety and Security. Evaluating the performance of the South African Police Service (SAPS) is complicated by the fact that the goals of the police service are often vague, and information about police performance is not always made public. Any variation in the number of crimes recorded cannot be ascribed primarily to police action.

During the period under review (January 2001–December 2002) the police's work was made more onerous as the number of functional police members declined to its lowest level since 1994. Nevertheless, SAPS operations resulted in an impressive number of arrests and the seizure of contraband, while the number of investigated cases referred to court reached a post-1994 high during 2002.

The performance of the Department of Justice and Constitutional Development (which encompasses the National Prosecuting Authority) is evaluated in chapter four. While the performance of the prosecution service was blemished during 2001 by the high number of case withdrawals, the situation improved in 2002.

At the end of 2002 there was a backlog of almost 200,000 cases in the country's criminal courts—an increase of 10% compared to 2001. Such a high backlog of cases has a negative impact on the average case cycle time which, in turn, undermines the prosecutions' chances of obtaining convictions and infringes the rights of incarcerated awaiting trial accused. The case backlog was a consequence both of the low productivity of the average magistrates' court during 2001/02, and the massive increase in cases referred to court during 2002.

Chapter five deals with the performance of the Department of Correctional Services. During the period under review the department's workload (the number of prisoners) increased faster than its resources (wardens and available cell accommodation). At the end of 2002 the country's prisons were holding some 185,000 inmates in a system built to house 111,000. Remarkably, given the level of overcrowding, escapes during 2001/02 were at a post-1994 low.

Partly due to the efforts to reduce overcrowding by the Department of Correctional Services and the Judicial Inspectorate of Prisons, the increase in the number of unsentenced prisoners was reversed during 2001 and remained stable during 2002. Between 2001 and 2002, unsentenced prisoner numbers increased by only 2%, while the number of sentenced prisoners rose by 19%.

In the concluding chapter it is argued that the three criminal justice system departments performed satisfactorily during the period under review. However, sustained improvements in performance are hampered by capacity constraints. Without changing some of the policies that inform the decisions of senior criminal justice managers and engendering a more holistic decision-making approach that take the interests of the system as a whole into account, more prosecutors, magistrates, court rooms and prisons are required to significantly boost the system's performance. As money is in short supply, inexpensive alternatives to more personnel and buildings need to be explored.

As a result of its central position in the criminal justice process, the performance of the prosecution service is crucial to the smooth running of the whole system. On a strategic level policy makers may be well advised to choose to divert any additional spending on corrections to the prosecution service so as to lower the case backlog in the courts and reduce the number of awaiting trial prisoners.

LIST OF ACRONYMS

| | |
|-------|--|
| AFIS | Automated Fingerprint Information System |
| AFU | Asset Forfeiture Unit |
| APOPS | Asset Procurement, Maintenance and Operating Partnerships Programme |
| CIAC | Crime Information Analysis Centre |
| DSO | Directorate of Special Operations |
| FCS | Firearm Control System |
| ISS | Institute for Security Studies |
| ICD | Independent Complaints Directorate |
| KZN | KwaZulu-Natal |
| NCCS | National Crime Combating Strategy |
| NICRO | National Institute for Crime Prevention and the Reintegration of Offenders |
| NPA | National Prosecuting Authority |
| PFMA | Public Finance Management Act |
| SAPS | South African Police Service |
| SOCA | Sexual Offences and Community Affairs Unit |

INTRODUCTION

The provision of information about crime in South Africa remains a controversial and challenging business. Crime statistics the world over are a source of much debate. In South Africa the issue receives special prominence because of the violent nature of many criminal acts. The defensiveness of the police on the issue and their reluctance to release information fuel the national obsession with crime statistics.

Notably, the year long moratorium on the release of crime statistics imposed by the then Minister of Safety and Security, Steve Tshwete, in July 2000 aroused public suspicions, and achieved little more than diverting attention away from the questions that really matter. Why is South Africa so violent? What are the police doing to fight crime—and are they succeeding? Are the courts assisting, in a fair and efficient manner, those who register their case with the justice system? Should an accused, who cannot afford to pay bail of R500, spend five months in a cell designed to hold 54 people but which is instead crammed with over 300? And if convicted to a prison term, does punishment under these conditions make prisoners less likely to offend again?

Despite increased government spending on the police, courts and prisons, and the creation of many new laws and policies, public feelings of safety are not improving and the criminal justice system struggles to perform effectively. This being the case, South Africans—in government and civil society—should worry less about the crime statistics, and more about what can be done about the problem.

These are the types of issues that the Institute for Security Studies' (ISS) criminal justice monitoring service covers. The service is an independent source of information for both the public and government on crime, the whole of the criminal justice system, and public opinion. It aims to:

- provide easy access to, and understanding of, crime information;
- look beyond crime statistics to the performance of the criminal justice system as a *whole*;

- consider the performance of the police, courts, and prisons taking into account their budgets, capacity and workload—in other words, what they actually do; and
- assist in improving operations, strategy and policy.

A key objective of the criminal justice monitoring service is to assist in improving the functioning and performance of the police, courts and prisons. The focus on performance stems from a shift in attention generally in the country from policy development to delivery.

Various pieces of legislation aim to help departments to do this: the Public Service Regulations (1999) and the Public Finance Management Act of 2000 (PFMA) require each department to assess the impact of policy, strategy and legislation. The PFMA and accompanying Treasury Regulations also require that each department present to parliament a strategic plan, including goals and targets, against which the budget will be decided and performance measured. To meet these goals and targets, departments must produce service delivery programmes which set out standards for the level and quality of services to be provided. The provision of these services should be regularly measured.

Apart from the legal requirement, measuring performance is important for accountability—it is the only way that taxpayers and the general public can be sure that the criminal justice system is delivering on its promises. Tracking performance also enables senior managers to continuously improve the effectiveness of their officials.

Performance measurement must however be approached with caution. Decisions about what to measure should be based on a sound understanding of, first, what the police, courts and prisons *actually* do, and second, what they *should* be doing. Gung-ho approaches can result in unrealistic or simply incorrect targets being set. And because the indicators selected inevitably dictate performance, the end result can be officials actively pursuing the wrong objectives. The key is to avoid setting perverse incentives by being clear on what exactly a department hopes to achieve, and what specific activities will ensure that these outcomes are achieved. All this must be considered against the backdrop of the capacity and workload facing the department.

This monograph touches on all these issues. It begins with a review of the latest crime trends and statistics. These figures set the scene for considering the performance of the criminal justice system. Indeed, the number of recorded

crimes most accurately represents the workload of the police. The monograph then systematically covers, for the police, courts and prisons, several factors pertinent to a discussion of performance in 2001/2002:

- what was promised by the leadership;
- actual and possible indicators for measuring performance;
- the workload and resources available;
- how the department performed; and
- future issues to watch.

The ISS' criminal justice monitoring service aims to provide an annual update of this information, in the form of a 'year in review' seminar and monograph such as this one. Government departments release performance-related data at different times of the year. Some departments released relevant information up to the end of 2001 only well into 2002, while data for the complete 12-month period covering 2002 had not been released by all the departments at the time of writing. Official figures and statistics used in this monograph are the latest available ones at the time of writing.

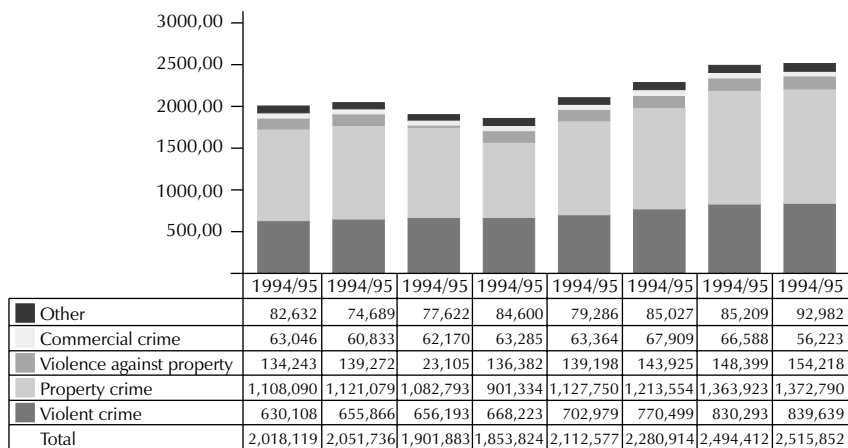
CHAPTER 1

WHAT THE CRIME STATISTICS SAY

In early October 2002 the South African Police Service (SAPS) released its annual report for 2001/02. The report contains recorded crime information by financial year, that is, from 1 April to 31 March the following year. When analysing the crime statistics that follow below, it is important to remember that recorded crime levels undercount the real levels of crime, as they do not reflect unrecorded and unreported crimes. For crime to make it onto the official police records two things need to happen. First, victims or witnesses must report it to the police. Second, the police must record the crime in their records.

According to the SAPS, 2.02 million crimes were recorded in the 1994/95 financial year. During the 2001/02 financial year 2.52 million crimes were recorded—an increase of 25% over an eight year period (Figure 1). Measured

Figure 1: Number of crimes recorded, 1994/95 – 2001/02



Source: SAPS Crime Information Analysis Centre

on a per capita basis this is an increase in real terms. The country's population increased by an estimated 10% over the same eight-year period.

While recorded crime has been increasing for some time, the rate of increase is slowing down. In 1998/99 recorded crime increased by 5.7%, followed by 7% (1999/00) and 6% (2000/01). During 2001/02 recorded crime increased by 0.9%—the lowest year-on-year increase since 1996/97.

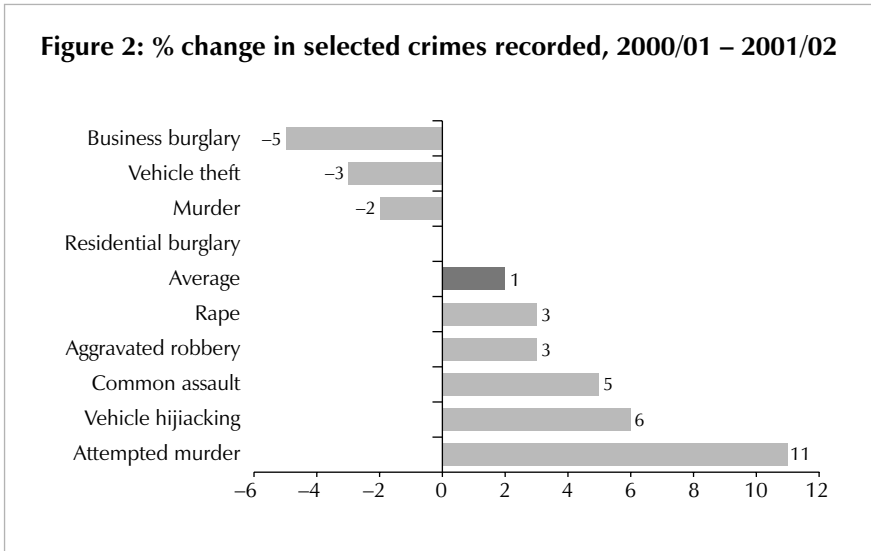
While the 2001/02 figures indicate a slowing down in the rate of increase of recorded crime, it needs to be remembered that this is occurring at a point where recorded levels of violent crime are extraordinarily high. Thus, during the 12-month period during 2001/02, almost 21,500 murders, 54,000 rapes, 118,000 aggravated robberies and 265,000 serious assaults were recorded. The time period is too short, moreover, to draw a firm conclusion whether the trend will continue to the extent that recorded crime levels will enter a sustained period of decline.

Since 1994 violent crime, as a proportion of all recorded crime, increased from 31% to 33%. That is, during 2001/02 one in three crimes recorded involved violence or the threat of violence. All other crime categories experienced a slight decline as a proportion of the overall number of recorded crimes. Property crimes such as theft and burglary make up the largest proportion of recorded crimes—approximately 55% of the total.

Between 1994 and 2002 violent crime increased by 33%, more than the average increase in crime (25%) or the increase in property crime (24%). Encouragingly, recorded violent crime increased by only 1% between 2000/01 and 2001/02, about the same as the increase in all crimes recorded over this period. Recorded commercial crime (primarily fraud) decreased by 16% over the same period. Drunk driving offences, and drug and firearm related offences—categorised as 'other' in Figure 1—increased by 9%.

Not all crimes increased or decreased at the same rate between 2000/01 and 2001/02. Attempted murder and vehicle hijacking experienced the greatest increase of 11% and 6% respectively (Figure 2). Aggravated robbery is robbery involving a dangerous weapon, including bank robberies and cash-in-transit heists.

Recorded murders decreased by 2% between 2000/01 and 2001/02. This is a continuation of a trend whereby the yearly number of murders has been declining since 1994. Vehicle theft declined by 3% over the same period. This



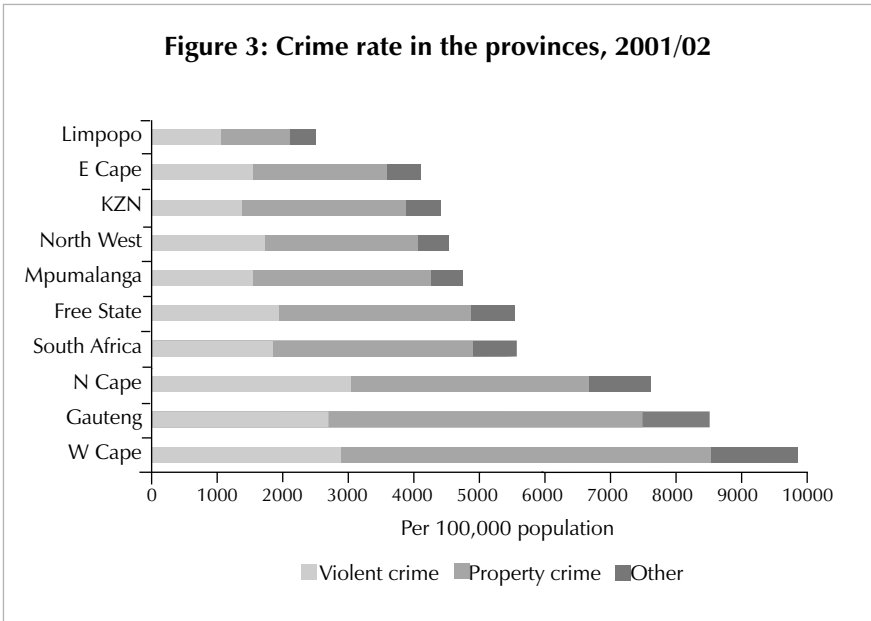
Source: SAPS Crime Information Analysis Centre

could be an indication that vehicle owners are improving the protection of their vehicles. As a result vehicle thieves might be more inclined to rob owners of their vehicles once the vehicles have been opened and the motor started—hence the increase in vehicle hijackings (+6%).

Measured on a per capita basis, the crime rate for the 2001/02 period was highest in the Western Cape with 9,878 recorded crimes for every 100,000 people residents in the province. In other words the average resident of the Western Cape stood a 9.8% chance of becoming a victim of a recorded crime during the 12-month period in 2001/02. The Western Cape was followed by Gauteng (8,537) and the Northern Cape (7,625).

It is clear that recorded crime is spread unevenly across the country’s provinces. In Limpopo province the crime rate was 2,497 per 100,000 of the population. Residents of the Western Cape, Gauteng and the Northern Cape, for example, were over three times as likely of becoming a victim of a recorded crime during 2001/02, than Limpopo residents (Figure 3).

In respect of recorded violent crime only, the rate during 2001/02 was highest in the Northern Cape (3,016 violent crimes per 100,000 of the population), followed by the Western Cape (2,878) and Gauteng (2,726).

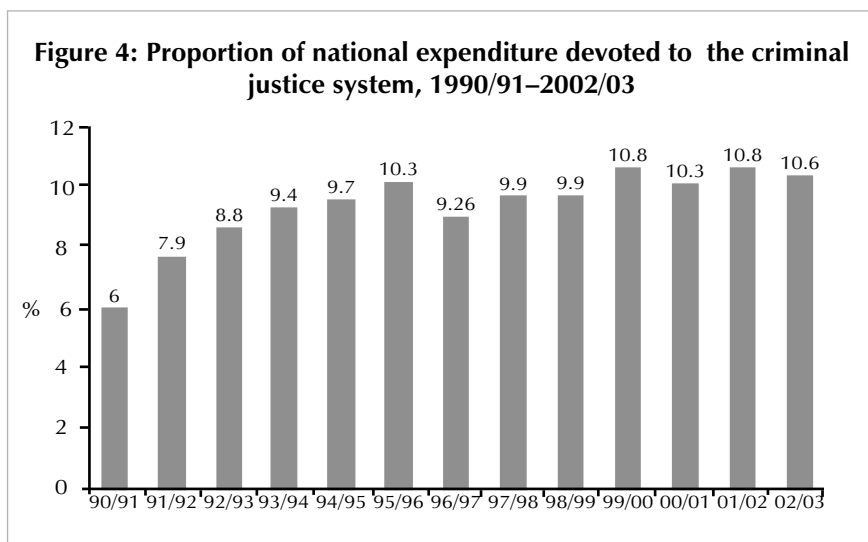


Source: SAPS Crime Information Analysis Centre

CHAPTER 2

CRIMINAL JUSTICE SYSTEM BUDGET

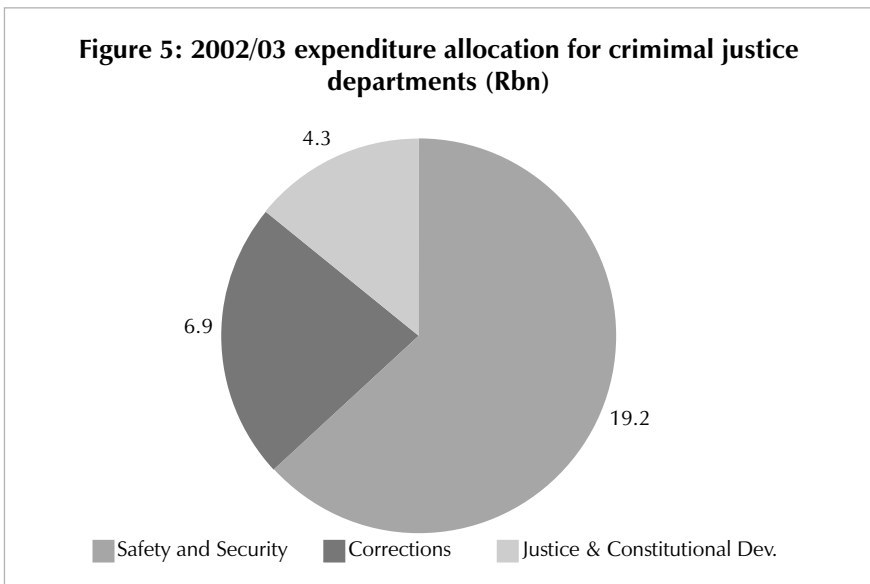
The share of the national budget claimed by the criminal justice system (i.e. the Departments of Safety and Security, Justice and Constitutional Development, and Correctional Services) has remained fairly constant in recent years, following a dramatic increase at the end of the apartheid era. This increase was due in part to the reassignment of responsibilities from the military to the police. Since 1994, however, the criminal justice system has consistently garnered between 9% and 11% of gross national state expenditure (Figure 4).



Source: National Treasury

1 While every effort was made to provide information for the complete period under review (i.e. January 2001 to December 2002), when it comes to budget years, emphasis is given to the 2002/03 budget year. That is, the period 1 April 2002 to 31 March 2003. While this includes part of 2003, which is not within the ambit of this monograph, it does cover the bulk of 2002. The 2001/02 budget year would cover the first quarter of 2002 only, which would be dated for a monograph published in early 2003.

The relative share of the pie enjoyed by the three components of the criminal justice system has not changed significantly over the last two budget years (2001/02 and 2002/03).¹ In the 2002/03 budget year R30.4 billion was allocated to the three core criminal justice departments.¹ The largest proportion was allocated to the Department of Safety and Security with 63% of the criminal justice system's budget, followed by 23% for the Department of Correctional Services, and 14% for the Department of Justice and Constitutional Development (Figure 5).² This distribution between the three criminal justice components is similar to that of other Commonwealth countries. For example, it is nearly identical to that found in Australia.³



Source: National Treasury, 2002

CHAPTER 3

SAFETY AND SECURITY

The broad objectives of the South African Police Service (SAPS) are to:

- prevent, combat and investigate crime;
- maintain public order;
- protect and secure the inhabitants of South Africa and their property, and;
- uphold and enforce the law.⁴

In order to achieve these outcomes, the South African government employs one of the single largest policing bodies in the world, with a strong central concentration of authority under a single National Commissioner. Beneath this Commissioner is a hierarchy of supervisory structures descending from the national level to the nine provinces, 42 'policing areas', and about 1,200 stations. While the Commissioner reports directly to the President, the Department of Safety and Security oversees SAPS operations and includes the civilian Secretariat for Safety and Security, which provides advice to the minister in the exercise of his functions.⁵

According to its 2001/02 annual report, the values held by the SAPS are to:

- protect everyone's rights, and to be impartial, respectful, open and accountable to the community;
- provide a responsible, effective and high quality service;
- evaluate its service continuously and make every effort to improve on it;
- use SAPS resources in the best possible way, and;
- co-operate with the community, all levels of government and other role players.⁶

This broad mission and these rather vague aspirations need to be tied down to some specific performance indicators, but defining what the police do in numeric terms has confounded police departments around the world.

What was promised?

This question is not as straightforward as it may seem, as the police, like other government departments, has at least two distinct constituencies: the general public on the one hand, and monitoring agencies, both inside and outside government, on the other.

For the public, the issue is crime—they want less of it. Given that “to prevent crime” is at the head of the SAPS’ constitutional mandate, and is not mentioned in the mandates of any of the other government agency, it is not surprising that many of the public pronouncements by the police leadership involve reducing crime levels. These statements cite the crime statistics of the SAPS as though these are true reflections of the real crime situation, which, as discussed above, is a highly problematic assumption. In the end, this means the primary pledge of the SAPS to the public has been to reduce the number of crimes it records.⁷

For monitoring agencies, the situation is more complex. While recorded crime is noted, also important are more detailed indicators of performance. In the process of acquiring funds from parliament, the Department of Safety and Security promised to monitor and report on the indicators of performance listed in Table 1.

How did the SAPS intend on achieving the goal of reducing recorded crime while maximising performance in terms of their budget vote indicators? In April 2000, the Department of Safety and Security launched a three-year plan, the National Crime Combating Strategy (NCCS). The NCCS is “a multi-disciplinary approach that focuses managerial, human and logistical resources on ‘hot spot’ areas where crime is disproportionately high”.⁹ The department identified some 145 stations (about one station out of ten), which account for more than 50% of serious crime recorded by the police.

Evaluating the NCCS is difficult, given that no public document has been issued describing the strategy in any detail.¹⁰ It can be gleaned from other documents, however, that the NCCS identifies four key strategic priorities.¹¹

| Table 1: Safety and Security outputs and indicators, 2002/03⁸ | | |
|---|--|---|
| Sub-programme | Outputs | Service delivery indicators |
| Visible policing | <ul style="list-style-type: none"> • Levels of safety and security. • Control firearms. • Efficient detention management. • Police visibility. | <ul style="list-style-type: none"> • Crime levels per capita. • Crime prevention operations in high crime areas. • Reduced level of firearm crime. • Holding arrestees securely. • Implementation of sector policing. • Multi-disciplinary initiatives to combat crimes against women and children. |
| Border policing | <ul style="list-style-type: none"> • Arrests & seizures at border posts. | <ul style="list-style-type: none"> • Arrests for possessing narcotics, illegal firearms & stolen goods. • Seizure of stolen goods and contraband. |
| Public order policing | <ul style="list-style-type: none"> • Crowds managed appropriately. | <ul style="list-style-type: none"> • No. of persons arrested for public disorder incidents. |
| General investigations | <ul style="list-style-type: none"> • Investigation of general crime. | <ul style="list-style-type: none"> • No. of cases to court in relation to reported crimes. |
| Organised crime | <ul style="list-style-type: none"> • Policing of criminal organisations. | <ul style="list-style-type: none"> • No. of cases related to organised crime syndicates in relation to cases investigated. |
| Commercial crime | <ul style="list-style-type: none"> • Investigation of commercial crime activities. | <ul style="list-style-type: none"> • No. of cases to court for fraud and forgeries in relation to cases investigated. |
| Criminal Record Centre | <ul style="list-style-type: none"> • Criminal record reports. | <ul style="list-style-type: none"> • Automation of Criminal Record Centre. |
| Forensic science laboratory | <ul style="list-style-type: none"> • Evidence provided. | <ul style="list-style-type: none"> • Turnaround time of requests for evidence. |
| Crime intelligence | <ul style="list-style-type: none"> • Analyses of crime patterns, threats, profiles & linkages. | <ul style="list-style-type: none"> • No. of intelligence products. • No. of National Crime Threat Analyses reports compiled. |

Source: National Treasury, 2002

First, the strategy prioritises the combating of organised crime, focusing on crimes relating to drugs, firearms trafficking, vehicle theft and hijacking, corrupt public officials and organised commercial crime.

Second, it focuses on reducing the country's "unacceptably high levels of *serious and violent crimes*".¹² Toward this goal, strategies have been designed to:

- counter the proliferation of firearms, which fuel high levels of violent crime;
- improve safety and security in high-crime areas;
- combat specific crime generators, such as taxi and gang violence, and faction fighting; and
- maintain security at major public events.

Third, the development of strategies to reduce the incidence of "crimes against women and children" is prioritised, and the department also intends to improve the investigation of those crimes that do occur. While crimes against women and children are nowhere defined, they would appear to involve crimes in which women and children are uniquely or disproportionately involved as victims, such as the present legal construction of rape, sexual offences against minors, and perhaps domestic abuse.

Fourth, the strategy prioritises improving service delivery at police stations. This most likely involves conforming to the ideals of the *Batho Pele* White Paper on Public Service Delivery, which seeks to establish a sense of public accountability within the civil service. This priority is very different in kind to the other three, and difficult to quantify.

The heart of the NCCS, and the facet by which it is best known, is its operational strategy. This strategy adopts a "geographic approach" whereby Crime Combating Task Groups were established to target serious and violent crime in identified high-crime zones. Task groups conduct intelligence-driven operational interventions according to the specific crime threat analysis of each zone.¹³ This is done in addition to the usual policing activities in the affected area. The operational strategy consists of:

- high intensity operations in priority station areas aimed at reducing recorded crime levels (often referred to as Operation Crackdown);

- *ad hoc* high intensity operations aimed at targeting specific crimes, such as taxi violence or farm attacks; and
- stabilising high intensity operations in 'hot spots' that emerge, regardless of station area.

The second operational element of the NCCS is an "organised crime approach", whereby organised crime syndicates are investigated in intelligence-driven operations carried out by task teams under the command of experienced detectives.¹⁴

Available resources

In order to achieve its stated objectives, the Department of Safety and Security receives the largest share of the criminal justice budget. In the 2002/03 budget year, R19.2 billion, or 7% of the non-debt budget, was allocated to the department. This share has been decreasing in recent years, however, and is presently increasing below the rate of inflation. About 28% of the department's budget was spent on administration, of which just above 68% was spent on personnel (about R3.7 billion).¹⁵ Slightly over three-quarters (77%) of the police budget is spent on personnel generally, which compares favourably with other police departments internationally.

At the end of 2002, the SAPS employed almost 130,000 people, of which about 62% were uniformed members, 17% detectives and 21% civilians. South Africa's police staff member (functional personnel and civilian staff) to public ratio is comparable with that of many developed and Commonwealth countries.¹⁶ However, compared to more developed countries, South Africa's police officer to civilian ratio is strained by a number of factors:

- South Africa has a high crime rate, especially in respect of serious and violent crime. According to International Criminal Police Organisation (Interpol) statistics, South Africa has very high per capita rates of murder, rape, robbery and serious assault. Because of high levels of recorded crime, South Africa has a relatively low police officer to crime ratio. Thus, while South Africa has an average of only six police officers per recorded murder a year, Zambia has 12, Egypt has 93 and Malaysia 249.
- There is a strong relationship between age and crime. South African conviction figures show that young males are considerably more at risk of

being convicted for a wide range of crimes than older males, or females of any age group.¹⁷ South Africa has a relatively youthful population. According to the 1996 national census almost half of the South African population was under the age of 20 years.

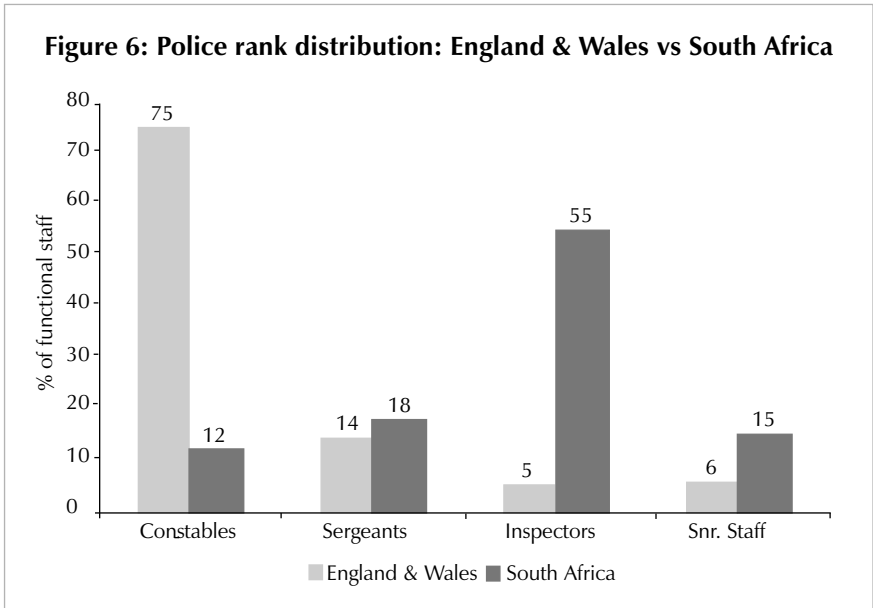
- South Africa is geographically large with the result that police resources are thinly spread in the country's rural areas. For example, the Northern Cape has an average of one police officer for every 133 square kilometres.
- It is a world-wide phenomenon that crime rates are higher in cities than in rural areas, with the rate generally increasing according to city size. Population density, for example, is thought to be associated with crime, in that greater concentrations of people lead to competition for limited resources, greater stress and increased conflict. South Africa has a rapidly urbanising population. Rapidly expanding cities, and the unstructured terrain of the growing number of informal settlements, makes effective policing difficult.

Moreover, the issue is not only about the number of police personnel, but also about issues of deployment, supervision, and capacity of the personnel. For example, in England and Wales there is approximately one functional (i.e. uniformed officer and detective) police member for every 409 citizens, compared to one functional police member for every 450 South Africans.¹⁸ While the ratios are not significantly different for either country, there are sharp differences when comparing the rank distribution of English and Welsh, and South African functional members (Figure 6).

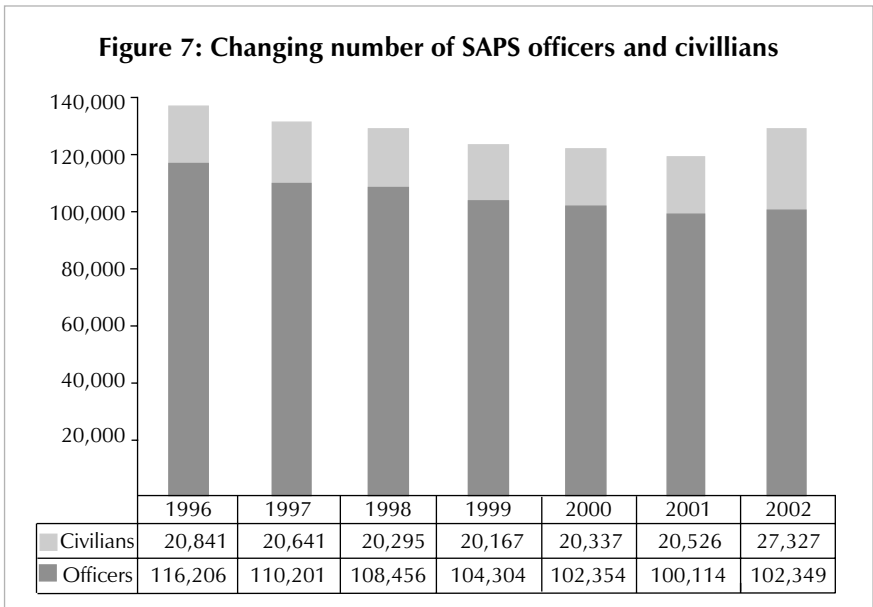
The English and Welsh force is comprised of 97,337 constables (75%), 18,608 sergeants (14%), 6,035 inspectors (5%), and 7,716 senior staff (6%). At the end of 2002, the SAPS, in contrast, was comprised of 12,191 constables (12%) 18,072 sergeants (18%), 56,930 inspectors (55%), and 15,156 senior staff (15%).

The number of functional SAPS members declined significantly after 1995. Between 1996 and the end of 2002 the number of SAPS officers declined by some 7,400 (or 5%), notwithstanding the fact that the number of SAPS officers increased by over 9,000 during 2002. Moreover, between 1996 and late 2002, the number of civilians employed by the SAPS increased by almost 6,500 (Figure 7).

At the end of 2001 the SAPS had a fleet of 26,908 vehicles, up marginally from 26,857 in 2000, but down from 28,432 in 1999 and 37,094 in 1995.¹⁹



Sources: British Home Office; SAPS Management Services



Source: SAPS Management Services

In other words, the size of the police's vehicle fleet declined by 28% between 1995 and 2001. Of the vehicles in operation at the end of 2001, 36% had covered distances of more than 160,000 kilometres. In theory, four-fifths of the SAPS vehicle fleet is utilised for operational policing, functional crime prevention and reactive policing, while the other 20% are used for administrative purposes, support services and management.²⁰

Workload

Whatever one thinks about recorded crime as a reliable estimate of real crime, it does provide the best single indicator of the SAPS' workload. About 2.5 million crimes were recorded by the police during the 2001/02 financial year. This represents about 31 crimes for every uniformed member per year, or one crime every eight working days. If all uniformed police members were assigned to street duty, this ratio would seem very light indeed, but this is not the case.

Turning to detectives, all of who deal with real crime, the ratio is 115 crimes per detective per year, or one every other working day.²¹ A significant proportion of crimes receive no, or very little, detective follow up due to lack of evidence or leads, but some require far more than two days' work.

Looking again at the British example, the police in England and Wales recorded 5.5 million crimes during the 2001/02 financial year: a 45% larger workload for a force just 25% bigger than South Africa's. However, most (82%) of the crimes recorded in England and Wales were against property.²² Serious violent crimes, some of which may demand more police attention if properly investigated, occur at a higher rate in South Africa, comprising about a third of total recorded crime in the country.

Actual performance

Recorded crime

Although recorded crime can serve as an indicator of the workload experienced by the police, there are serious problems with using it as a police performance indicator, including the following:

- The police do not control crime levels, and numerous international studies have found little evidence to suggest that anything the police do in the normal course of their duties significantly reduces crime.²³

- South Africans report only a fraction of the crime they experience to the police, and increases in reported crime could be seen as indicative of increased public trust in, and access to, the police.²⁴

Changes in legislation and policy can also affect the rates at which certain crimes are recorded. For example, many crimes are only detected by affirmative police activity, such as crimes involving drugs, illegal guns, and undocumented immigrants. These are precisely the types of arrests that are likely to be made during Operation Crackdown-type strategies. Another example is the Domestic Violence Act, which is likely to dramatically increase the number of assault complaints recorded. If this result is not seen, it calls into question whether the police are taking the legislation seriously.

Despite these obvious problems with using recorded crime as a performance indicator for the police, a substantial portion of the speeches and documents released to the public by the Department of Safety and Security focus on recorded crime, and the present operational strategy has been justified and expanded based on these statistics.

In mid-2001 the moratorium on crime statistics that had imposed in July 2000, was lifted. In a press conference in February 2002, then Minister of Safety and Security, Steve Tshwete, declared that the police had achieved the objective of stabilising crime in half the time allocated by the NCCS.²⁵ This statement refers to the objective articulated in the strategic planning documents of the NCCS that crime in the priority station areas would be stabilised by 2004. While stabilisation is not defined in public documents, the commonsense meaning of this term is that recorded crime levels across offence categories do not get worse over an extended period of time.

In support of this claim, the SAPS' Crime Information Analysis Centre (CIAC) issued a report entitled *The Reported Serious Crime Situation in South Africa for the period January–September 2001*.²⁶ This report states that, on a national level, 17 of 20 priority crimes had stabilised between 2000 and 2001. There are several problems with this analysis:

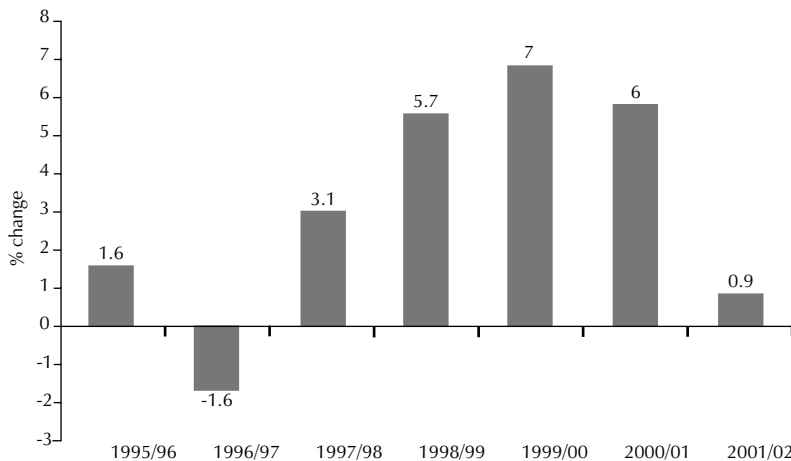
- The report compares old, 'unreliable', pre-moratorium statistics with the new statistics, which, it is assumed, were collected in a way different enough to justify the extended statistical moratorium.
- National stabilisation levels are determined by crime rates, which posit a (debatable) standard population increase per annum, while the raw numbers of total recorded crimes continue to show an increase.

- The agglomeration of national figures disguises local crime trends, with some areas (such as the Western Cape) showing significant crime increases.
- By the SAPS own reckoning, only two-thirds of the priority stations showed “stabilisation”, meaning that in one-third of the cases, crime actually got worse after the intensive Operation Crackdown operations.

While the number of crimes recorded increased between 2000/01 and 2001/02, the rate of increase slowed down. The 12-month period covered by the 2001/02 financial year experienced a 0.9% increase in recorded crime, compared to the previous 12 months—the lowest year-on-year increase since the actual decline in recorded crime in 1996/97 (Figure 8).

In speeches associated with the release of the SAPS’ 2001/02 annual report, Minister of Safety and Security, Charles Nqakula, asserted the success of the NCCS in stabilising crime. He claimed that, as of March 2002, another eight of the 145 priority station areas had been “stabilised” by Operation Tsipa, an intensified version of Operation Crackdown aimed at the third of the stations that had not shown statistical stabilisation despite high density operations.²⁷

Figure 8: Annual percentage change in number of recorded crimes, 1995/96–2001/02



Source: SAPS Crime Information Analysis Centre

Thus, according to the SAPS, the high-density operations it has adopted since April 2000 have stopped the rise in crime. It is likely, however, that this rise was itself a product of increased reporting rather than increased incidence, and the alleged stabilisation is most likely a product of changes in recording practices rather than changes in the real crime situation. In the end, the root causes of crime are not impacted by unsustainable high-density police presence in high crime areas, and any suppression effect may be reversed when these operations are withdrawn.

Arrests and seizures

In line with some of the indicators promised in the 2001/02 and 2002/03 budget votes (see Table 1 above), the SAPS' 2001/02 annual report lists an impressive number of operations, arrests, and seizures that have resulted from the present operational strategy (Tables 2 and 3).²⁸ These figures represent the removal from society of dangerous individuals and contraband, the impact of which should not be trivialised. By removing criminals (many of who are likely recidivists) and the instrumentalities of their offences (such as guns and stolen vehicles) from society, the police performs the crime prevention function most appropriate for its skills. Moreover, the comparison of arrests made between the 2001/02 financial year and the previous one indicates a positive trend toward more serious arrests.

While the NCCS does seem to have resulted in a net increase in arrests and convictions, it is not clear how many of these arrests would have been made in the

| Type of operation | Number of operations |
|--------------------------|-----------------------------|
| Roadblocks | 50,424 |
| Cordon and search | 47,694 |
| Vehicles searched | 1,735,053 |
| Premises searched | 230,346 |
| Persons searched | 3,795,533 |
| Vehicle patrols | 268,001 |
| Foot patrols | 186,950 |

Source: SAPS 2001/02 Annual Report

Table 3: SAPS arrests, seizures and recovery of stolen goods, 2001/02 and 2000/01

| Type of operation | Quantity | |
|--------------------------------------|-------------------|---------|
| | 2001/02 | 2000/01 |
| Arrests: serious crimes | 188,931 | 176,235 |
| Arrests: less serious crimes | 202,141 | 309,316 |
| Vehicles recovered | 8,176 | 15,804 |
| Firearms seized | 23,303 | 18,402 |
| Stolen electronic property recovered | 32,830 | 31,049 |
| Cannabis | 495,927,905 kg | N.A. |
| Mandrax | 4,202,835 tablets | N.A. |
| Cocaine | 2,842 kg | N.A. |
| Heroin | 85 kg | N.A. |

Source: SAPS 2001/02 Annual Report

absence of the strategy. The 600,000 operational arrests claimed in Table 3 are roughly equal to 80% of all cases referred to court in 2001. It seems likely, therefore, that the lines have become blurred between 'operational' arrests and those that occur in the normal course of police business. Comparing 1999 (the last year in which the NCCS was not functional) with 2001, the rate of cases referred to court has increased by 28%, but the rate of withdrawals has increased by 44%. Nonetheless, convictions are up by 30% between 1999 and 2001, which represents a net increase in enforcement productivity.

Seizures represent a mixed indicator of performance, because the presence of contraband in society in the first place can ultimately be blamed on lax law enforcement. In the future, it is hoped that such large seizures will be impossible, because the contraband will no longer be present.

Investigations

An internationally accepted performance indicator for detectives is the rate at which cases are referred to court, also known as the 'arrest rate', 'detection rate' or 'clearance rate'. This rate is never 100%, because some cases are

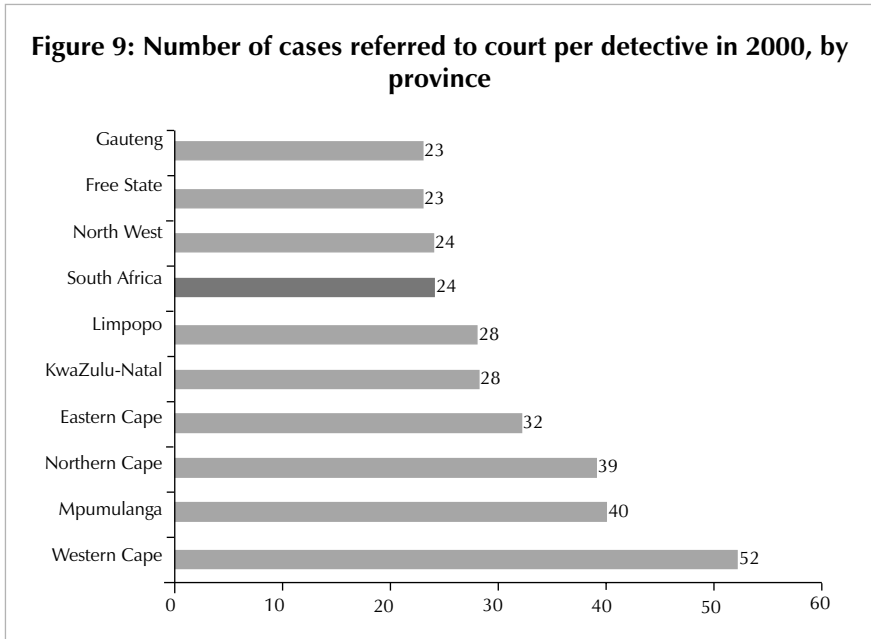
affirmatively determined as unfounded, either because the original claim is fraudulent or because further investigation reveals that the facts of the case do not represent a crime.

In addition, some cases have to be withdrawn by the police because witnesses refuse to cooperate and a case cannot be made without them. This number can be minimised by good detective work, however, and ultimately this should count against detective performance. Finally, a certain share of cases will remain 'undetected' because, although it is clear that a crime was committed, there is simply not enough evidence to make out a case against any individual. While a sizeable share of cases are always lost in this way, it is again incumbent on detectives to minimise this number. Detectives cannot be allowed to close cases at will without this reflecting on their personal performance.

Since all detectives internationally encounter the same problems of unfounded cases, uncooperative witnesses, and undetectable crimes, referral rates could, in theory, be compared between countries. However, different countries have different definitions of crime detection. In the United Kingdom, for example, to be counted as a 'detected crime', there must be: 'sufficient evidence to charge', an interview of the offender (not including convicted prisoners), and notification of the victim—a far stricter standard than that found in South Africa. The SAPS pushes the standard lower still, including in its 2001/02 annual report definition of 'detection rate' both 'unfounded' and 'withdrawn' cases. Further, details on each of these respective categories have not yet been released to the public. This makes it impossible to make even the broadest comparisons between national standards for the 2001/02 financial year.

While the referral rate in South Africa varies between provinces, so do provincial workloads. While the data for the 2001/02 financial year have not been released, looking at the number of cases referred to court per detective in 2000 gives some indicator of relative detective performance between provinces (Figure 9).²⁹

The number of cases referred to court has increased significantly since 1996, from 529,000 cases in that year to 782,000 in 2001, and 1.1 million in 2002—an increase of 110% between 1996 and 2002 (Figure 10).³⁰ The significant increase in the number of cases referred to court from 2000 onwards is partly a consequence of the large number of arrests resulting from the high-density operations of the National Crime Combating Strategy.



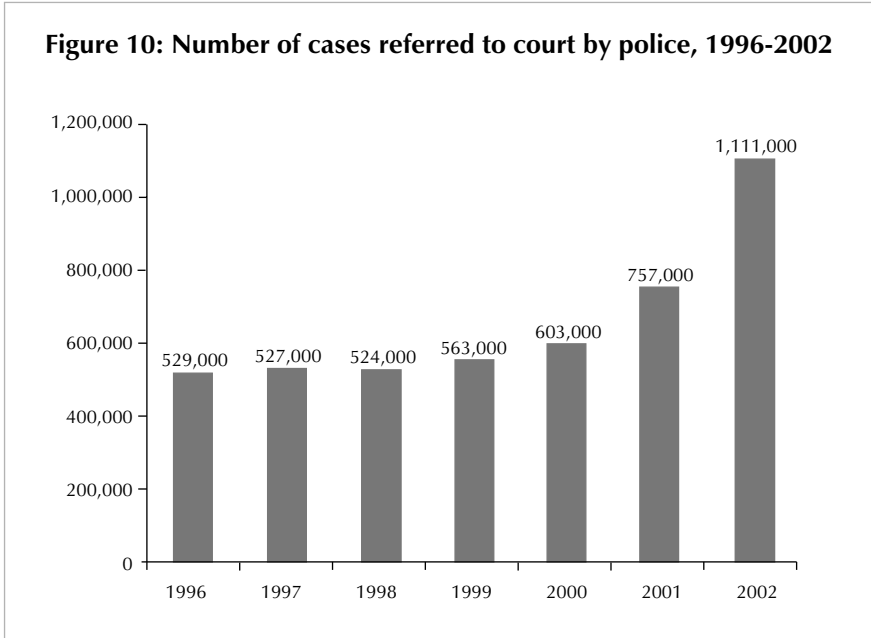
Source: SAPS Crime Information Analysis Centre

Negative indicators of performance

There are also readily available negative indicators, such as complaints against the police, especially allegations of corruption and abuse, and deaths in custody. Complaints against the police have risen dramatically from 1,999 in 1997/98 to 5,675 in 2001/02, an increase of 184%.³¹ This increase is to be expected, however, as more members of the public gain confidence in their ability to challenge police action successfully. In a sense, a high level of complaints at this stage in the country's history may even be a positive indicator.

In addition, other negative indicators may suggest improvements in police behaviour. Deaths in custody and as a result of police action were lower in the period April 2001 to March 2002, compared to the same period for the previous year. In 2001/02, 585 people died in police custody or as a result of police action, compared to 687 in 2000/01, a decline of 15%.³²

According to the Independent Complaints Directorate or ICD (a statutory body with the responsibility of investigating police conduct and offences



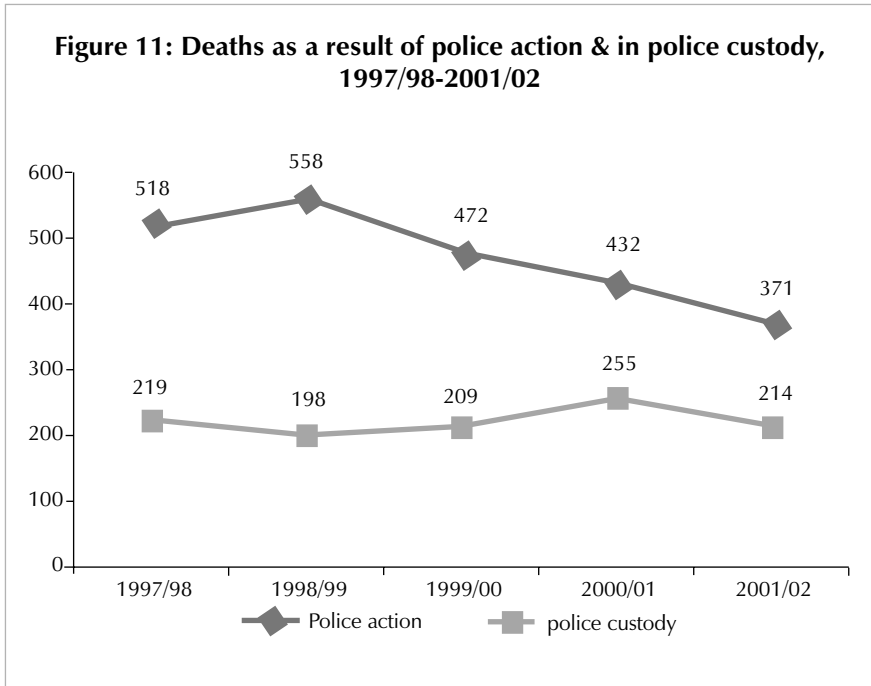
Sources: SAPS Crime Information Analysis Centre, National Prosecuting Authority

committed by members of the police service), of the 214 people who died in police custody in 2001/02, 76 died as a result of suicide, 75 from natural causes, 28 from injuries sustained prior to custody, 25 from injuries sustained in custody, and ten as a result of possible police negligence (Figure 11).³³

During 2001/02 the ICD investigated a further 371 deaths as a result of police action. Deaths as a result of police action during the course of an arrest declined from 168 in 2000/01 to 160 in 2001/02. Deaths as a result of police action committed while the victims were allegedly perpetrating a crime declined from 117 in 2000/01 to 80 in 2001/02—a decline of 32%. During 2001, 592 SAPS officers were charged with corruption (down from 1,048 in 2000), and 138 officers were convicted of a crime (down from 193 in 2000).³⁴

Issues to watch

- *Boosting police numbers.* The medium-term expenditure framework for 2002/03–2005/06 provides for the appointment of an additional 30,200



Source: Independent Complaints Directorate

entry level police constables and 15,360 civilians over a three year period. The budget also provides for the replacement of posts which should become vacant over this period. By early 2006, the SAPS should have 155,260 employees. Moreover, because of stringent hiring requirements, the average education level of police officers should be higher in 2006. However, such an ambitious recruitment programme could pose serious challenges to the SAPS' training capacity, particularly in the area of field supervision. Every effort needs to be made to avoid sacrificing quality in the interest of boosting numbers.

- Crime stabilisation target.* During the first three months of 2002, almost a quarter (26%) of the 145 Crackdown stations which deal with more than half of the country's recorded crime experienced an increase in "policeable crimes".³⁵ The first stage of the NCCS will have ended in March 2003. By then crimes recorded in all Crackdown stations should have "stabilised". Whether these intensive efforts will have long-term effects on the nature of crime in the target areas remains to be seen.

- *Firearm control.* With the promulgation of parts of the Firearms Control Act of 2000, a Firearm Control System (FCS) will replace the Firearms Register System. The FCS will set up Firearm Registration Centres in the country's urban areas. Once fully promulgated the Act limits private firearm ownership for the purposes of self defence to one firearm (handgun or shotgun) per person. The capacity of the police to register South Africa's 4.2 million legal firearms and enforce the law is questionable.
- *Consolidation of detective units.* The SAPS is in the final stages of consolidating about 500 specialised investigative units into four specialised components that focus on organised crime, serious and violent crime, commercial crime, and crimes involving domestic violence, rape and child abuse. The consolidation process should be finalised in 2003/04. Whether this will enhance effectiveness in terms of referred cases will need to be monitored.
- *Automated fingerprint searches.* An Automated Fingerprint Information System (AFIS), whereby fingerprint searches are done electronically, came into operation in mid- 2001. AFIS should enable the police to identify repeat offenders more rapidly. This should represent a major breakthrough over the manual system, but how well it works in practice will only be known once the system is in use nationwide.

Summary

It is difficult to evaluate police performance. The goals of the SAPS are often vague and information about police performance is not always made public. Claims that crime levels have stabilised do not withstand careful scrutiny. Any variation in the number of crimes recorded cannot be ascribed primarily to police action. Obsessing about the level of recorded crime does not serve the ultimate aim of the SAPS: to provide an effective, efficient, and equitable law enforcement service.

It is therefore imperative that the police and the public refrain from using recorded crime as a primary performance indicator for the SAPS. It creates perverse incentives for the police to under-record crime or to structure operations in a way that serves only to provide cosmetic statistics. The police require performance indicators that measure what they actually do, and which are simple, inexpensive to gather, and do not provide perverse incentives. They need indicators that are in their control and for which they can be held exclusively accountable.

Until this information is available, it is impossible to gauge whether the claims of politicians reflect the reality of performance. The public will continue to see the proclamations issued from parliamentary podiums as empty rhetoric, inconsistent with their own experience. There is a need for real performance measurement, both to account to the public and for the police to assure continuous improvement. The rise in convictions and decline in police killings in recent years suggests that there is good news to tell.

CHAPTER 4

JUSTICE AND CONSTITUTIONAL DEVELOPMENT

The judicial authority in South Africa is vested in the courts. The courts are independent, impartial and subject only to the constitution and the law, which they must apply impartially without fear, favour or prejudice.³⁶ The administration of justice is a function of the national government which must ensure a uniform system of justice granting equal protection to all.

The Department of Justice and Constitutional Development is responsible for the administration of the courts. The department performs this function in conjunction with the country's judges, magistrates and the National Prosecuting Authority (NPA).³⁷ It is the responsibility of the department to ensure that the court system receives adequate resources to enable it to work fairly and efficiently.³⁸

The NPA is responsible for instituting criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings.³⁹ The NPA aims to provide a prosecution service which is prompt, vigorous and fearless, and in the public interest, where all are treated with humanity and sensitivity.⁴⁰

What was promised?

The aim of the Department of Justice and Constitutional Development is to give effect to the constitutionally mandated requirement that South Africans have a fair, equitable and accessible system of justice. According to parliament's 2001 and 2002 budget votes—which includes state expenditure on the NPA—the department's key objectives are to:⁴¹

- maintain, improve and streamline a system of courts in which legal proceedings are processed efficiently and effectively;
- investigate certain crimes and prosecute all offenders;

- research, draft and promote legislation;
- ensure fair and equitable justice for all; and
- develop and maintain a justice system which contributes to improving the safety and security of people by creating a deterrent and building respect for the law.

The ‘administration of courts programme’ provides the core function of the department: the establishment and operation of courts in the exercise of justice. The programme’s key output in relation to criminal courts is the “adjudication of persons in accessible courts where processes are speedy and fair”.⁴² For 2001/02 the department developed the following service delivery indicators for the programme:

- number of cases finalised;
- size of the case backlog;
- average length of trials;
- number of court hours worked;
- customer satisfaction surveys;
- number of cases; and
- duration of cases.

The NPA—a key component of the department in respect of criminal courts—set itself outputs and service delivery indicators for the 2002/03 budget year as outlined in Table 4:⁴³

Available resources

For the 2002/03 budget year the Department of Justice and Constitutional Development was allocated R4.3 billion. Of this 33% was allocated to the administration of courts programme. Some 22% or R942 million was allocated to the NPA (up from 11% or R415 million in the 2001/02 budget year). The remainder was allocated to auxiliary and associated services (29%), administration (8%), and state legal services (5%).⁴⁴

| Table 4: NPA outputs and indicators, 2002/03 | | |
|---|---|---|
| Sub-programme | Outputs | Output measure/ indicator |
| Public Prosecutions | <ul style="list-style-type: none"> • Effective and efficient prosecutions. | <ul style="list-style-type: none"> • Reduction in case backlog/outstanding court rolls. • Customer satisfaction. • Conviction rate. • Reduction in number of decision dockets. • Reduction in court disposal time. |
| Witness Protection Programme | <ul style="list-style-type: none"> • Confident and safe witnesses appearing in court. | <ul style="list-style-type: none"> • No. of incidents threatening witness safety. |
| Special Operations | <ul style="list-style-type: none"> • Investigation, prosecution and disruption of organised crime. | <ul style="list-style-type: none"> • No. of completed asset forfeiture cases. • No. of forfeitures initiated. • Value of assets seized and forfeited. • DSO conviction rate. • Financial crime cases finalised. |

Source: National Treasury, 2002

The budget allocation to the department grew by 26% between the 2000/01 and 2001/02 budget years, and by 17% between 2001/02 and 2002/03. The NPA's budget grew by 19% and 31% over the respective same two periods, largely owing to the growth of one of the NPA's subcomponents, the Directorate of Special Operations (the Scorpions) which was established in 1999.

Personnel related expenditure decreased from 55% of the department's 2000/01 budget, to 50% of both the 2001/02 and 2002/03 budgets. This was achieved by not filling numerous positions that had become vacant through natural attrition. The decline in personnel related expenditure was matched by increased spending on capital, reflecting the department's emphasis on upgrading and extending its physical and information technology infrastructure.⁴⁵

During the 2002/03 financial year the department budgeted to employ 15,446 people (exactly the same as in 2001/02), of which some 2,500 were prosecutors, just fewer than 1,700 magistrates and about 360 permanent and acting judges.⁴⁶

Workload

Between 2000 and 2001 the number of new cases referred to court increased by a substantial 26%.⁴⁷ Between 2001 and 2002 the number of new cases increased by a massive 47%. The 2000/01 increase was the likely result of the police's National Crime Combating Strategy (NCCS), also known as Operation Crackdown (see chapter three). The Operation is a high density, zero tolerance type police and army operations taking place in high crime areas since April 2000. Some 462,000 arrests were made during first 12 months of the three year operation.⁴⁸

According to the NPA, 756,801 new criminal cases entered the magistrates' or lower court system during 2001.⁴⁹ During 2002 the number of new cases rose to 1.1 million.⁵⁰ No figures are given for the high courts, but less than 5% of all criminal cases end up there.⁵¹

Of the new cases for 2001, 55,178 (or 7%) went to the regional courts where most serious crimes are tried, and 701,623 (93%) went to the district courts where less serious offences are prosecuted. The ratio of new cases going to the regional and district courts during 2002 was the same as in 2001.

Actual performance

Cases withdrawn

During 2001, 423,890 cases were withdrawn by the prosecution service.⁵⁴ Of the withdrawn cases, 92% were withdrawn at district court level, and 8% at regional court level. During 2002, slightly fewer cases were withdrawn (420,124): 94% at district and 6% at regional court level.

The steady increase in the number of cases withdrawn by the prosecution service was halted during 2002 (Figure 12). The marked increase in the number of withdrawn cases during 2000 and 2001 was partly the result of an initiative started in mid-2000 by the NPA, to encourage prosecutors to withdraw

District, regional and high courts

Over 95% of all criminal trials take place in the magistrates' courts (also known as the lower courts). There are two types of magistrate's courts: regional courts and district courts.

Only the most serious crimes such as brutal murders, particularly violent rapes, robbery with aggravating circumstances where someone is seriously injured or killed, and fraud involving large amounts of money are usually prosecuted in the high court by state advocates.

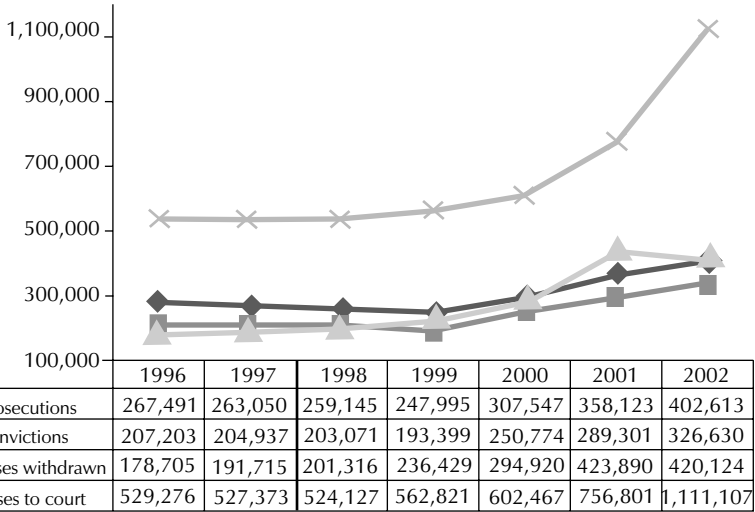
The vast majority of murders, rapes and robberies, and crimes such as attempted murder, child abuse, kidnapping, sexual offences, house-breaking where the intention is not only to trespass, fraud and theft where the loss exceeds R40,000, and car theft are prosecuted in the regional court.⁵² Unless legislation provides otherwise, regional courts have the jurisdiction to impose a maximum period of imprisonment of 15 years (and a fine of up to R300,000).

More minor offences such as assault, most forms of theft and fraud, malicious injury to property, most drug related offences, drunk driving offences, and other driving related offences are prosecuted in the district court. Unless legislation provides otherwise, district courts have the jurisdiction to impose a maximum period of imprisonment of three years (and a fine of R60,000).⁵³

cases which were flawed in some way and were not ready to proceed to a successful prosecution.⁵⁵

In 2001, 358,123 cases were finalised with a verdict: 81% resulted in a conviction and 19% in an acquittal or not guilty finding. Of the cases finalised with a verdict about nine-tenths (88%) were finalised in the district courts and 12% in the regional courts. The conviction rate was higher in the district courts (83%), compared to the regional courts (66%).⁵⁶ During 2002, 402,613 cases were finalised with a verdict—an increase of 12% compared to 2001. The conviction rate in 2002 did not differ significantly from that in 2001.

Thus, of all the cases dealt with by the prosecution service during 2001, just over half (54%) were withdrawn. A further 37% resulted in a conviction and 9% in an

Figure 12: Cases processed by the prosecution service, 1996-2002

Sources: SAPS CIAC, NPA Court Management Unit

acquittal. In 2002 the proportions were as follows: 51% withdrawn; 40% convicted; and 9% acquitted.⁵⁷ It is encouraging that the proportion of withdrawn cases decreased during 2002. However, with every second case that is referred to court being withdrawn, it would appear that police resources are being wasted in the investigation of cases which do not make it to the trial stage of proceedings.

Prosecutions and convictions

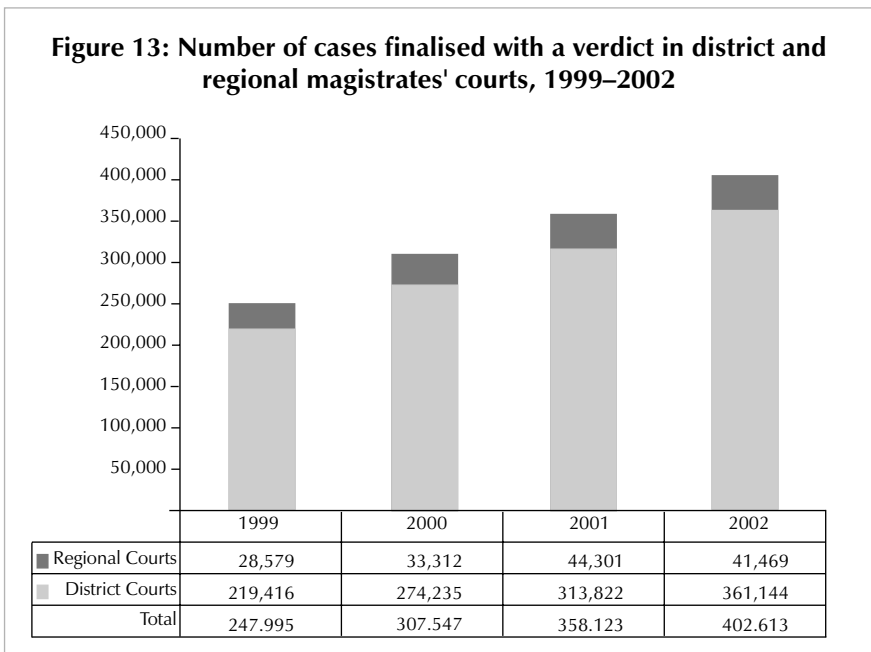
The high number of case withdrawals during 2001 limited the impact Operation Crackdown had on prosecutions and convictions. While the number of cases referred to court increased by 30% during 2001, over the same period the number of case withdrawals increased by 44%. The number of prosecutions and convictions increased by, respectively, only 16% and 15% in 2001. During 2002 the performance of the prosecution service improved, however. Comparing 2002 with 2001, the number of cases referred to court increased by 5%, withdrawals decreased by 1%, while the number of prosecutions and convictions increased by, respectively, 12% and 13%.

The number of prosecutions increased by 16% between 2000 and 2001, and 12% between 2001 and 2002. Between 2001 and 2002, the number of regional court prosecutions decreased by 6%, while the number of district court prosecutions increased by 15% (Figure 13).

Outstanding cases

Compared to 2000, the number of outstanding cases decreased by 1% during 2001—a significant achievement given that the number of new cases referred to court increased by 26% over the same period. This decline in outstanding cases was achieved by a 20% reduction in outstanding regional court cases. (Outstanding district court cases actually increased by 6%). However, compared to 2001, the number of outstanding cases at the end of 2002 increased by 10% (but the number of new cases rose by 46% in that year).

At the end of 2001, 181,638 lower court cases were outstanding or had not been finalised. This represents the backlog of cases the courts had to contend



Source: NPA Court Management Unit

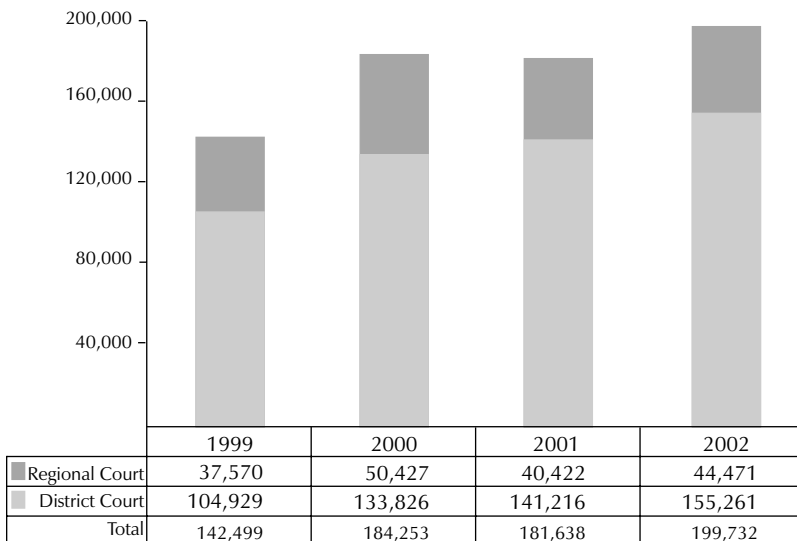
with at the beginning of 2002. At the end of 2002, 199,732 lower court cases were outstanding or had not been finalised (Figure 14). The increase in the backlog of outstanding cases is worrying as the backlog is high, given that the number of outstanding cases at the end of 2002 was equal to almost half of all cases prosecuted during that year.

In October 2000 the National Director of Public Prosecutions, Bulelani Ngcuka, pointed out that the 180,000 criminal cases outstanding in the country's courts at the time, would take prosecutors two years to deal with, excluding any new cases.⁵⁸

Productivity of courts

The productivity of the average magistrates' court declined during the period under review. During 2002, the average district court secured 273 convictions;

Figure 14: Number of lower court cases outstanding at the end of year, 1999–2002



Source: NPA Court Management Unit

the average regional court 64 convictions. Given that district courts mainly deal with minor offences, 273 convictions per average court per year—or a conviction about every working day—is low. While some regional court trials can take a long time to finalise, an average of one conviction per court every fourth working day is low.

During 2002 the average district court sat for four hours and ten minutes, and the average regional court for four hours (excluding periodical courts). Compared to 2001, the average district court figures improved by 16 minutes and the regional courts' by five minutes.⁵⁹

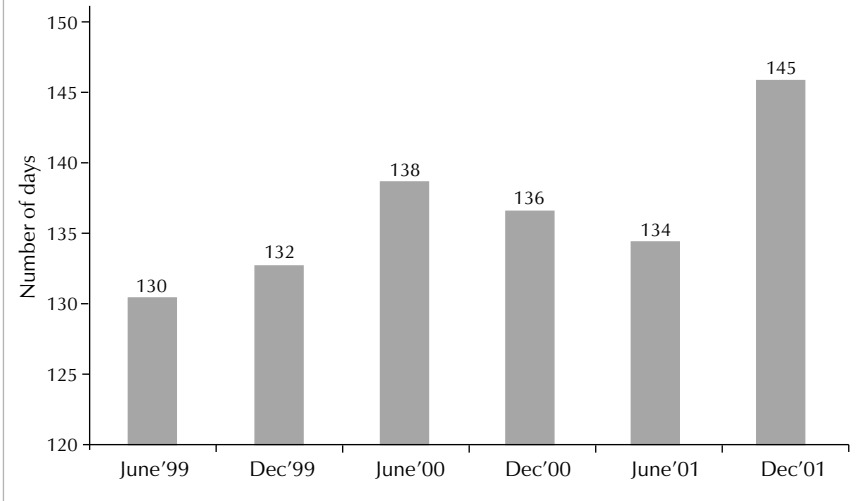
Some accused are incarcerated while they await the outcome of their trial. This is because the courts refuse to grant them bail, or because bail is set at an amount which is unaffordable to the accused. There are a number of factors which determine the length of time an accused spends in prison awaiting the finalisation of his trial. The speed with which the police finalise the investigation, the length of the trial, and the number of postponements the accused requests during the trial are all factors which lengthen the awaiting trial period of an accused, and over which the prosecution has little or no control. However, in many cases there are delays in the finalisation of trials because the courts' rolls are badly managed or the courts do not operate effectively.

The detention cycle time, or the average length of time unsentenced prisoners remain incarcerated until the finalisation of their trials, increased during the period under review from 136 custody days in December 2000 to 145 custody days in December 2001 (Figure 15). By September 2002 the national detention cycle time had decreased slightly to 143 custody days—an average of slightly less than five months.

This means that, on average, in September 2002, accused persons were imprisoned for almost five months awaiting the finalisation of their trial. Such delays in the processing of cases involving awaiting trial prisoners place a considerable financial burden on the state. In 2002, one prisoner cost the state some R95 a day. Multiplied over an average of 143 custody days, this adds up to almost R13,600 per average unsentenced prisoner.

The average detention cycle time varies significantly between the provinces. Provinces with above average detention cycle times in September 2002 were: Limpopo (218 days), Gauteng (152 days), Western Cape (151 days) and KwaZulu-Natal (139 days). The Northern Cape had the lowest detention cycle time of 99 days.

Figure 15: Average number of days unsentenced prisoners incarcerated, 1999–2002



Source: Department of Correctional Services

Asset forfeiture

During 2001, the NPA's Asset Forfeiture Unit seized assets in 86 cases to the value of R154 million (achieving a 89% success rate), and proceeded to the forfeiture stage of the process in 47 cases involving R68 million. The Unit also finalised 17 cases involving R4 million. The Unit deposited R580,000 into the Criminal Assets Recovery Account from where monies are ploughed back into the criminal justice system.⁶⁰ Between 1999 (when the Unit was established) to the end of 2002, the Unit had paid R100 million to crime victims and R16 million into the Criminal Assets Recovery Account.

Directorate of Special Operations (Scorpions)

According to the National Director of Public Prosecutions, conviction rates achieved by the Directorate of Special Operations (DSO) "exceeded 90%".⁶¹ No details were, however, given on how the conviction rate was calculated, or the period over which the conviction rate was calculated. According to the

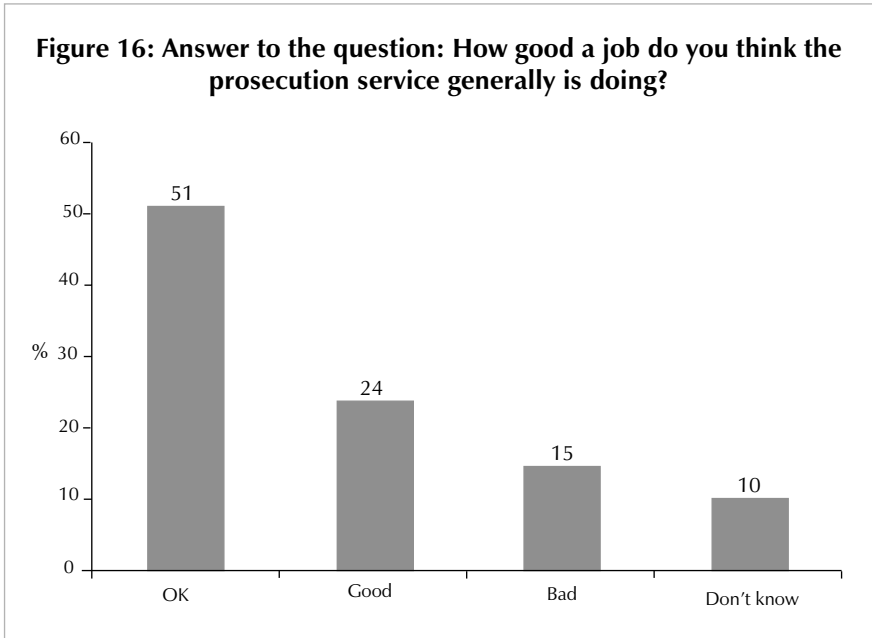
national treasury, the DSO finalised 210 prosecutions over the 18 months to September 2002 with a 93% conviction rate.⁶²

Witness protection

In February 2002, the NPA's Witness Protection Programme had 248 witnesses in the programme, plus 231 family members of witnesses, giving a total of 479 persons under protection.⁶³ No witnesses in the protection programme were assassinated during the period under review.⁶⁴

Customer satisfaction

In late 2001, the Institute for Security Studies (ISS) conducted an opinion survey to evaluate the services provided by the NPA. The survey covered the general public, as well as crime victims and state witnesses who interacted with prosecutors in 18 magistrates' courts throughout the country.



Source: ISS survey, 2001

The survey found that court users—people who have interacted with the prosecution service as state witnesses or crime victims—are more positive about the work of the NPA compared to people who have not. Of the 1,800 court users surveyed, 87% said that the prosecutor they had dealt with was willing to help them, and 86% stated that the prosecutor understood their concerns. Of the approximately 3,800 members of the general public surveyed, only 15% thought that the prosecution service generally is doing a bad job (Figure 16).

According to the survey, court users were most likely to be dissatisfied with the service provided by prosecutors because of frequent postponements, numerous delays in the court process, and a lack of information provided by prosecutors.

Issues to watch

- *Reducing case backlogs and case cycle time.* Expanding Integrated Justice System Court Centres to more courts, appointing more court managers and lower court prosecutors (as is planned) should contribute to a reduction in the case backlog and the speedier finalisation of cases.
- *More specialist sexual offences courts.* The NPA's Sexual Offences and Community Affairs (SOCA) Unit intends establishing a further ten specialist sexual offences courts during 2003.⁶⁵
- *Specialist maintenance prosecutors and investigators.* The SOCA Unit intends appointing 70 maintenance and ten senior maintenance prosecutors throughout the country during 2003. The department has made the appointment of maintenance investigators a "top priority".⁶⁶
- *Enactment of Child Justice Bill and diversion.* The Child Justice Bill is due for enactment during 2003. In terms of the Bill, children accused of less serious offences will be afforded the opportunity to be held accountable outside of the criminal justice system through a variety of diversionary options.
- *Boosting asset forfeiture.* During 2003/04 the Asset Forfeiture Unit intends completing 75 asset recovery cases, and achieving a 85% conviction rate in the cases it takes to trial.⁶⁷
- *Phasing in hub courts.* During 2002/03 the justice department's business unit: court services, intends replacing the department's regional offices

with hub courts to provide decentralised court support services for more localised court clusters.⁶⁸

- *Legal aid.* The Legal Aid Board provides legal aid to the indigent, and legal representation to those entitled to it in terms of the constitution. These services are primarily made available by attorneys and candidate attorneys employed by the Board at its Justice Centres. At the time of writing, 30 Justice Centres had been established, and a further 30 were planned by the end of 2004.⁶⁹

Summary

One of the key promises both the justice department and the NPA made at the beginning of 2001, was to contribute towards a more efficient and effective criminal justice system. Progress was made in this direction as the number of finalised cases, and thereby, the number of prosecutions and convictions, increased in 2001 and 2002.

The prosecution service's performance during 2001 was blemished by the high number of case withdrawals. This situation improved during 2002, however. Compared to 2001, the number of cases referred to court increased by 5% during 2002, withdrawals decreased by 1%, while the number of prosecutions and convictions increased by around 12%. Also encouraging is the fact that the average lower court sat for longer periods during 2002 than in 2001. This is an indication that the courts appear to be better managed and are operating with fewer interruptions than in the past.

This good news needs to be treated cautiously, however. At the end of 2002 there was a backlog of almost 200,000 cases in the system—an increase of 10% compared to 2001. Such a high backlog of cases has a negative impact on the average case cycle time which, in turn, undermines the prosecutions' chances of obtaining convictions and infringes the rights of accused who are incarcerated awaiting trial.

Part of the problem is that the productivity of the average magistrates' court declined during the period under review. During 2002 the average district court secured a conviction every second working day only, while the average regional court required almost a week per conviction.

While some performance indicators are disappointing, on the whole many indicators are showing signs of improvement—albeit not as fast as was expected. Both departments are committed to improving their performance, and have identified key focus areas requiring attention. This is a fundamental improvement considering where the criminal justice system was a short eight years ago. In 1994, court related statistics were not even collected by these two organisations. The NPA did not exist, civil asset forfeiture was an unknown concept in South African law, and customer satisfaction surveys were an outlandish notion for state institutions.

CHAPTER 5

CORRECTIONAL SERVICES

The Department of Correctional Services is headed by a National Commissioner of Correctional Services. The National Commissioner is assisted by five Chief Deputy Commissioners responsible for operational support, functional services, corporate services and finance. The department is divided into provinces headed by Provincial Commissioners, 148 management areas and 192 community corrections offices.⁷⁰

The aim of the Department of Correctional Services is to contribute to maintaining and protecting a just, peaceful and safe society by enforcing court-imposed sentences. The department also aims to detain prisoners in safe custody while ensuring their human dignity, and to promote the social responsibility and human development of prisoners and people subject to community corrections.⁷¹

The key functions of the department are to render services that contribute to community protection and the rehabilitation of offenders through:

- safe custody of prisoners under conditions consistent with human dignity;
- provision of rehabilitation and reintegration programmes to offenders; and
- effective supervision of persons under community corrections.⁷²

What was promised?

According to the Department of Correctional Services' 2001/02 budget vote, the main policy objectives of the department are to:

- keep prisoners in safe custody;
- control and supervise probationers and parolees;

- maintain control and discipline in order to ensure a safe environment in prisons;
- provide for the basic needs of prisoners and ensure humane conditions;
- provide education, training and rehabilitation programmes;
- assist prisoners with reintegration into the community; and
- deliver correctional services with maximum financial efficiency.⁷³

Key departmental policy goals for the period under review included:

- reducing overcrowding;
- focusing on rehabilitation;
- launching the restorative approach to corrections;
- introducing unit management;
- improving prison conditions;
- developing a HIV/AIDS policy; and
- combating corruption.⁷⁴

The Department of Correctional Services set itself the outputs and service delivery indicators for the 2002/03 budget year as outlined in Table 5.⁷⁵

Available resources

During the 2002/03 budget year the Department of Correctional Services was allocated R6.9 billion from the state treasury. Of this, 43% was allocated to incarceration, 30% to administration, 18% to facilities management and capital works, 5% to rehabilitation and 4% to community corrections.⁷⁶ Almost two-thirds (66%) of the department's total budget was allocated to personnel related expenditure.⁷⁷ In 2002 the department had a staff complement of some 35,300 employees. Of these the bulk (78%) were performing duties connected with the incarceration of prisoners.⁷⁸ Staff numbers are projected to increase to somewhat over 40,000 by mid-2003.⁷⁹

| Table 5: Correctional Services outputs and indicators, 2002/03 | | |
|---|---|--|
| Sub-programme | Outputs | Service delivery indicators |
| Offender control | <ul style="list-style-type: none"> • Ensure prisoners serve their sentence. • Accommodate prisoners. • Implement unit management. • Ensure a safe and secure environment for prisoners & staff. | <ul style="list-style-type: none"> • Reduce number of escapes. • 65% overcrowding in prisons. • Reduce assaults in prison. • Reduce unnatural deaths in prison. • 70% of prisons under unit management. |
| Health & physical care | <ul style="list-style-type: none"> • Render a 24-hour health care service to all offenders. • Provide offenders with 3 nutritious meals a day. | <ul style="list-style-type: none"> • 24-hour health care service in 120 prisons. • Prisoners receiving average daily minimum calories nutrition. |
| Development programmes | <ul style="list-style-type: none"> • Render education & training programmes to sentenced prisoners. • Optimise utilisation of prison labour. • Provide needy prisoners with material & financial assistance. | <ul style="list-style-type: none"> • No. of offenders involved in education (11,400) & training (10,300) programmes. • Offenders involved in building & maintenance (1,800/day), agricultural projects (7,500/day), workshops (3,700/day). • 21,000 needy prisoners assisted. |
| Correctional & parole supervision | <ul style="list-style-type: none"> • Supervision and control over offenders. • Electronic monitoring of offenders in the community. | <ul style="list-style-type: none"> • Daily average probationer & parolee population (67,200). • Number of absconders traced (7,935). • Daily average offender population under electronic monitoring. |
| Capital works projects | <ul style="list-style-type: none"> • Accommodation provided through joint ventures. • Standard provision of new accommodation. | <ul style="list-style-type: none"> • No. available prisoner places (5,952). • No. of additional prison beds (3,917). |

Source: National Treasury, 2002

In mid-2002 the department was responsible for 241 prisons:

- two APOPS prisons for sentenced men only (managed by a private consortium);ⁱⁱ
- eight facilities for women only;
- 13 for youth;
- 14 were temporarily closed for renovations;
- 72 for both men and women; and
- 132 for men only.

Workload

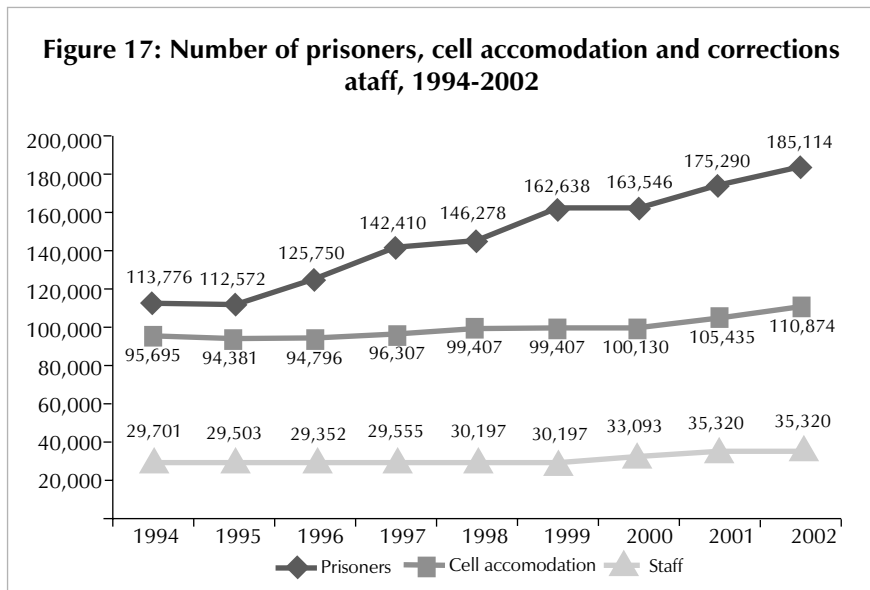
At the end of 2002 the department's prisons were accommodating 185,114 inmates even though the available prisons had been designed to hold only 110,874 prisoners. In other words, the prisons were overpopulated at the rate of 167%. During the period under review (January 2001–December 2002) the number of prisoners increased by 21,568 or 13%.

The department's workload has been increasing faster than its resources. Between 1994 and 2001 the number of prisoners increased by 63%. Over the same period the official cell accommodation increased by 16%, and the number of corrections staff by 19% (Figure 17).

At the beginning of 2002 occupancy levels in South Africa's prisons were at 166%. There were strong provincial variations in these levels, ranging from a massive 249% in Limpopo province to 131% in the Free State. Much of the overcrowding problem has to do with the increase in unsentenced prisoners since the mid-1990s. At the end of 1995 less than a quarter (24%) of all prisoners were unsentenced; at the end of 2002 almost one-third (31%) were.

Unsentenced prisoners can be more labour-intensive for prison wardens than sentenced inmates. There is a higher turnover among unsentenced prisoners;

ii APOPS: Asset Procurement, Maintenance and Operating Partnerships Programme.

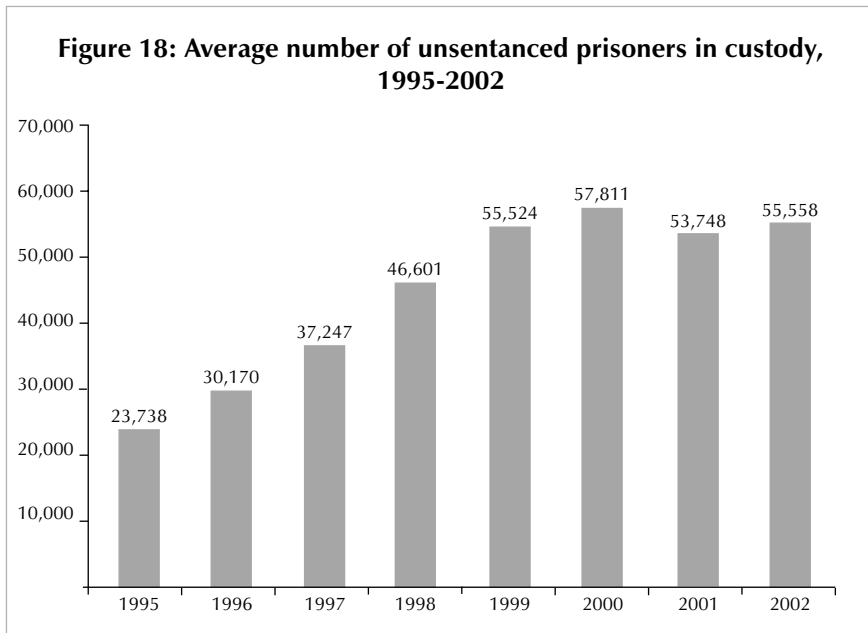


Source: Department of Correctional Services

they are not permitted to partake in vocational or educational classes; and they may not be released on community corrections or parole.

The large number of unsentenced prisoners is a result of a slow court and investigative process. However, partly due to the efforts to reduce overcrowding by the Department of Correctional Services and the Judicial Inspectorate of Prisons, the increase in the number of unsentenced prisoners was reversed during 2001 and largely stabilised during 2002. Compared to 2000, there were 7% fewer unsentenced prisoners during 2001. Sentenced prisoners increased by 9% over the same period. Between 2001 and 2002, unsentenced prisoner numbers increased by 2%, while the number of sentenced prisoners rose by 19% (Figure 18).⁸⁰

Another indicator of the department’s workload is the number of prisoners who needed ongoing medical attention—something that requires additional resources and management time. During 2001, 1,169 prisoners died as a result of natural causes—up from 1,087 during 2000 (an increase of 8%). In 1995 only 186 prisoners died from natural causes.⁸¹ Post mortems have revealed that the majority of these deaths in 2001 were linked to HIV/AIDS.⁸²



Source: Department of Correctional Services

Actual performance

Escapes

The department has been successful in reducing the number of escapes from its facilities and the escape of prisoners under its care. In the period April 2001 to March 2002, 233 prisoners escaped, down from 241 between April 2000 and March 2001. In 1999, 469 prisoners escaped, and in 1996 a massive 1,244 prisoners escaped. Although this trend is encouraging, the department's enhanced security measures may have a negative impact on rehabilitation strategies. For example, in an effort to further reduce the number of escapes, the department may restrict the prisoners who are permitted to work on farms and in industries outside of prison perimeters.

Overcrowding

The department, in partnership with the Judicial Inspectorate of Prisons, has released prisoners to reduce overcrowding. During the period under review,

at least 11,000 sentenced and unsentenced prisoners—excluding sexual and aggressive offence prisoner categories—were released. Moreover, the department has developed the following strategies:

- Providing additional prison accommodation through public-private partnerships. During 2002 two privately funded and managed prisons became fully operational in Limpopo province and the Free State. Jointly these two prisons provide accommodation for 5,952 prisoners.
- Developing and promoting alternative sentencing options to imprisonment such as electronic monitoring, correctional supervision, restorative justice process and suspension of sentences.⁸³

Assaults in prison

The number of assaults by prisoners on prisoners increased marginally by just over 1% in 2001, and 2% during 2002. The number of assaults by prison wardens on prisoners increased by 4% during 2001, and decreased by 9% in 2002 (Table 6).⁸⁴ According to the Office of the Inspecting Judge, statistics on assault are not always reliable as some inmates fear reprisals if they report an assault on them by a fellow prisoner or a warden.

Rehabilitation and restorative justice

During the 2002/03 budget year R353 million was allocated to the department with the aim of rehabilitating prisoners (up from R345 million in 2001/02, and R285 million in 2000/01). The move towards rehabilitation, as reflected in the increase in expenditure, confirms an important trend away

| | 1999 | 2000 | 2001 | 2002 |
|-----------------------------|-------------|-------------|-------------|-------------|
| Prisoner on prisoner | 2,204 | 2,354 | 2,380 | 2,429 |
| Warden on prisoner | 545 | 609 | 633 | 582 |
| Total | 2,749 | 2,963 | 3,013 | 3,011 |

Source: Department of Correctional Services

from a prison system centred on physical security and control, to one of rehabilitation and reintegration.

Greater emphasis on rehabilitation will allow offenders to improve themselves and aid their reintegration back into society as productive, well-adapted and law-abiding citizens. The National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO) estimates the rate of recidivism or repeat offending to be between 85% and 94% in South Africa.⁸⁵

During the course of 2001, the Minister of Correctional Services, Ben Skosana, initiated restorative justice programmes within the department. This further confirms that the department has undertaken a policy shift from a retributive form of justice to one based on restorative principles. An important objective of the restorative justice approach is to restore the dignity of the victim, the offender and the community by offering compensation to victims, and offenders taking responsibility for their actions.⁸⁶

Correctional supervision and parole

The daily average number of people on community corrections increased from 69,814 in 2001 to 72,813 in 2002 (an increase of 4%). During 2001, some 59% of the community corrections population was on probation, the remainder on parole.⁸⁷

Issues to watch

- *HIV/AIDS Policy.* Although the department has developed a policy on HIV/AIDS in prison in consultation with the Department of Health, a number of challenges still face the Department of Correctional Services in this area. These include the quality of condoms supplied, provision of anti-retroviral treatment to prisoners, testing inmates for sexually transmitted infections, and prevention (education) and counselling.
- *New prisons.* It is uncertain whether the government will pursue building further privately funded and managed prisons because of their expense. Such private prisons are based on the idea of unit management. The belief is that if prisoners are housed in smaller manageable units, the chances of rehabilitation are increased since it is easier to monitor and supervise the prisoners.

- *New parole policy.* The department's new parole policy has been completed. Some 58 parole boards will be established across South Africa once the relevant legislation is promulgated.⁸⁸ For the first time every parole board will include two community representatives as permanent board members. The new policy could make the granting of parole more difficult than in the past. For example, prisoners serving a minimum sentence (in terms of minimum sentencing legislation) must serve four-fifths of their sentence before they can be considered for parole.
- *Unit management.* By March 2003, one-fifth of the country's prisons are to be run on the principle of unit management. This target is set to increase to 40% of the country's prisons by March 2004.⁸⁹ Moreover, to reduce overcrowding, the department has unveiled an innovative plan to build cost-effective, low-density prisons that would cut down staffing costs and reduce prison overcrowding. The new prisons, which will start being built in 2003, are based on smaller prisoner housing units grouped together in clusters with improved security.⁹⁰
- *Electronic monitoring.* The department claims that its investment in electronic monitoring will enable it to monitor 8,850 probationers and parolees electronically by March 2003.⁹¹
- *Corruption.* In July 2001 president Thabo Mbeki appointed judge Thabani Jali to investigate allegations of escalating corruption, misadministration, violence and intimidation in the Department of Correctional Services.⁹² Following the Commission's exposé of corruption, the Department of Justice and Constitutional Development appointed a Special Investigation Unit, headed by Willie Hofmeyr of the NPA, to prosecute those involved in prison-related corruption.⁹³ The Commission is expected to release its findings during 2003.
- *Overcrowding.* The department's workload is increasing faster than its capacity. It is estimated that the prison population will have risen to 225,000 by 2004/05.⁹⁴ The proposed new prisons (see above) are unlikely to reduce overcrowding substantially given the rapid pace at which the prisoner population is increasing. For this reason, simply building more prisons does not appear to be a solution. It is important that the government's incarceration policy is matched with policies of rehabilitation and restorative justice.

Summary

The workload of the Department of Correctional Services is increasing faster than its capacity. The number of prisoners entering the system continues to increase at a faster rate than the capacity of the department to accommodate them. Given that prisons are expensive to build, that prisoners are costly to house, and that crime levels are likely to remain high for some time in South Africa, simply building an increasing number of prisons seems an unaffordable solution. To move away from an incarceration-focused approach for convicted offenders, more resources need to be allocated towards the rehabilitation of offenders and innovative restorative justice programmes. In addition, crts need to focuss on other non-custodial options such as correctional supervision.

For a variety of reasons HIV prevalence levels tend to be significantly higher inside of prison than outside. As most sentenced prisoners are eventually released back into their communities, prisons can become “architectural vectors” for the spread of HIV/AIDS.⁹⁵ For some time the lack of a clear departmental HIV/AIDS policy has threatened the health of prisoners but also posed a potential danger for society more broadly. The finalisation of the department’s HIV/AIDS policy will assist, but careful attention will need to be paid to the implementation and monitoring of the policy.

CONCLUSION

By looking at the promises made by the various criminal justice system departments, their capacity, workload and outputs it is possible to realistically and fairly consider how the departments actually performed. Departments which promise to achieve certain goals and then fail to reach these, notwithstanding that they had the capacity and resources to get the job done, failed in their responsibility and should be held to account. Departments that agree to accomplish specified deliver targets, but fail because their workload increased unexpectedly or because they lacked the capacity or resources to meet their targets, also need to account for the way in which they approach their planning processes.

To be fair, it is not an easy task to manage criminal justice system departments—especially while rates of crime remain consistently high, and the transformation of the public service generally, is taking its toll on staff morale and departmental stability. As individual criminal justice departments are part of a larger interrelated system, their performance is affected by the actions of other departments in the system. Moreover, the underlying reason for the criminal justice system's existence—crime and lawlessness—is largely caused by exogenous factors over which the criminal justice system has little influence. While these difficulties are recognised, they should not serve as an excuse for poor performance while over 20,000 South Africans are murdered a year.

On balance, the three criminal justice system departments performed satisfactorily during the period under review. Where appropriate, performance indicators were available over time, the departments tended to show improvements in their performance during 2001 and 2002. Regrettably—and this applied primarily to the SAPS—a number of potentially useful performance indicators were not collected by the departments or not released for public consumption.

Capacity constraints

What emerged clearly for all three departments was that they face significant capacity constraints. Too many extremely serious and violent crimes, such as

murder, rape and armed robbery, are not solved by the police service. Those that are solved collect dust on prosecutors' desks as the case backlog in the courts has grown and months pass between an arrest and the finalisation of a trial. This, in turn, is resulting in unprecedented overcrowding in the country's prisons.

The need for additional police officers is being addressed as the treasury has provided the funds for the recruitment of an additional 30,000 entry level constables by early 2006. It remains to be seen what difference these additional police officers can make to unsolved cases. Even with a shortage of officers, the SAPS has been able to arrest a large number of people and refer an increasing number of cases to court. The SAPS' limitation lies in the fact that many serious cases are not solved. This requires honed detective skills which are acquired through on-the-job experience—something the new recruits will acquire only with the passage of time.

If the criminal justice system continues operating the way it has, the prosecution service, the magistracy and corrections will need additional personnel, court rooms and prisons to enable them to cope with their expected workload in the years to come. While more prosecutors were employed and prisons opened during the period under review, the influx of cases and prisoners undermined this increase in human and capital resources.

Inexpensive alternatives

Larger budgets could alleviate the crisis facing the criminal justice system. The resources required to do this effectively are likely to be prohibitive, however. During the period under review the treasury was allocating a tenth of government expenditure to the criminal justice system—about the same amount as was devoted to health-related expenditure in a country with the largest HIV-positive population in the world. While young entry level constables may be affordable, prosecutors and magistrates with law degrees can demand considerably higher salaries and benefits. Prison wardens are not exceptionally well paid, but a standard prison costs hundreds of millions of rand to build and further millions to run.

There is much that can be done to improve the operational effectiveness of the criminal justice system without substantial additional resources. For example, the effective use of plea bargaining and diversion can reduce the pressure on the country's courts in an inexpensive manner. At the time of

writing the legal mechanisms for plea bargaining and diversion had been on the statute books for some time, yet only a few high profile cases had been finalised through the formal plea bargaining process, and less than 1% of cases referred to court during 2002 were diverted. Judicial officers are legally obliged to set bail at an amount which falls within the financial means of the individual accused person. Yet, at the end of 2002 some 6,500 unsentenced prisoners were awaiting trial behind bars because they were unable to afford bail amounts of R500 or less.

In 1997 the Department of Correctional Services concluded a study establishing that the electronic monitoring of offenders in community corrections is cost-effective and reduces the level of non-compliance when offenders are placed under house arrest. Electronic monitoring could consequently reduce the level of prison overcrowding by reducing the risk of releasing offenders on community corrections. Such a system also promises to be more effective and cheaper than the present system whereby departmental officials physically check on the whereabouts of parolees and persons on community corrections. Yet, at the time of writing, the electronic monitoring of offenders had not been introduced.

Further research is needed to establish why the courts are not operating more productively. While courts are sitting for longer hours, the average district court secures one conviction per working day only, while the average regional court takes almost a working week per conviction. Some courts have established court centres to channel non-trial cases to special reception and bail courts, thus allowing the remaining courts to focus on trials only.⁹⁶ This is a step in the right direction. Given the inordinate delays in the court process, and the large number of investigated cases which are withdrawn by the prosecution service, it is possible that the police tend to 'arrest first and investigate later', whereby criminal investigations begin only *after* a suspect has been arrested. It is also possible that many investigations are not done thoroughly enough for the prosecution to take the cases to trial.

Making choices

Criminal justice policy makers will have to make bold and innovative decisions to boost the performance of the criminal justice system in a cost effective way.⁹⁷ Given the present crisis, it is crucial that bottlenecks within the system, such as the case backlogs in the courts, are addressed rapidly.

As a result of its central position in the criminal justice process, the performance of the prosecution service is crucial to the smooth running of the whole system. A poorly performing prosecution service detrimentally affects the ability of the prison system to rehabilitate the prisoners in its care. If prosecutors process cases slowly, or do not apply their minds properly to accused persons' request for bail, the number of unsentenced prisoners goes up. This causes overcrowding in the country's prisons and makes it difficult for prison wardens to adequately look after sentenced prisoners and rehabilitate them. Moreover, if the prosecution service does not operate optimally, witnesses are discouraged from testifying and many guilty accused are acquitted of the charges against them. This lowers police morale, and fosters public perceptions that crime pays, creating public disillusionment in the ability of the criminal justice system to effectively fight crime, and reducing the system's deterrent effect.

It is cheaper to address problems in the prosecution service than those in other areas of the criminal justice system. It costs millions to construct a reasonably sized prison in South Africa, and another R35,000 a year for every prisoner.⁹⁸ At the end of 2002 the country's 56,000 unsentenced prisoners were costing the state R1.9 billion a year. The cost to the state of employing one prosecutor is the same as accommodating five unsentenced prisoners.

Instead of spending money on building prisons to accommodate the ever growing number of unsentenced prisoners, such money would be better spent employing more prosecutors and building court rooms. For example, if the number of unsentenced prisoners could be halved, the expected saving would allow a doubling in expenditure on the National Prosecuting Authority. A strategic decision to divert spending from corrections to prosecutions may be necessary to lower the case backlog in the courts, reduce the number of awaiting trial prisoners and permit the courts to focus on trials instead of postponements and lengthy bail applications.

NOTES

1. For a detailed analysis of the 2001/02 criminal justice system budget see M Schönteich, *Justice the winner: The 2001/2002 criminal justice budget*, *Nedbank/ISS Crime Index* 5(1), January–February 2001, Institute for Security Studies, Pretoria, pp 25–28.
2. *2002 Estimates of National Expenditure, Safety and Security*, vote 24, National Treasury, Pretoria, 2002, p 11.
3. *Australian Crime: Facts and Figures*, Australian Institute of Criminology, 2001.
4. Section 205(3), Constitution of the Republic of South Africa Act 108 of 1996. See also preamble of the South African Police Service Act 68 of 1995.
5. *2001 Estimates of National Expenditure, Safety and Security*, Vote 23, National Treasury, Pretoria, 2001, p 479.
6. *Annual report 2000/2001*, Department of Safety and Security, Pretoria, 2001, (page unnumbered).
7. See, for example, the comment by the late Minister of Safety and Security, Steve Tshwete, during the Safety and Security and Independent Complaints Directorate Appropriation Bill Budget Votes, delivered to the National Assembly on 7 June 2001: “The cutting edge in the government’s overall strategy to bring down levels of crime in our country is the South African Police Service.” This policy has not changed with the passing of minister Tshwete, as indicated in the statement of the present Minister of Safety and Security, Charles Nqakula, to the media on 22 August 2002: “Lest we forget: our strategy talks mostly to crime prevention”.
8. *2002 Estimates of National Expenditure, Safety and Security*, vote 24, National Treasury, Pretoria, 2002, pp 533–546.
9. *2001 Estimates of National Expenditure, Safety and Security*, vote 23, National Treasury, 2001, Pretoria, p 480.
10. For a critique of the NCCS see E Pelsler, *Operation Crackdown: The new policing strategy*, *Nedbank/ISS Crime Index* 4(2), March–April 2000, Institute for Security Studies, Pretoria, pp 7–10.
11. *2001 Estimates of National Expenditure, Safety and Security*, vote 23, National Treasury, Pretoria, 2001, p 479.

12. *2001 Estimates of National Expenditure*, Safety and Security, vote 23, National Treasury, Pretoria, 2001, p 479.
13. *Annual report 2000/2001*, Department of Safety and Security, Pretoria, 2001, p 4.
14. *Annual report 2000/2001*, Department of Safety and Security, Pretoria, 2001, p 4.
15. *2002 Estimates of National Expenditure*, Safety and Security, vote 24, National Treasury, Pretoria, 2002, p 538.
16. For England and Wales, see D Povey and S Rundle, *Police Service Strength, England and Wales*, Home Office Statistical Bulletin 23/01, 30 September 2001. For Australia, see Australian Institute of Criminology, 2001, op cit. For Canada and the United States, see *Police personnel and expenditures in Canada*, Statistics Canada, 2001.
17. M Schönteich, The dangers of youth? Linking offenders, victims and age, *Nedcor/ISS Crime Index* 3(5), September–October 1999, Institute for Security Studies, Pretoria, pp 22–28.
18. Povey and Rundle, op cit; *News release: Mid-2000 population estimates for England and Wales*, National Statistics Office of the United Kingdom, 2001.
19. Fax, Divisional Commissioner (logistics) H M Hlela, 11 February 2002, Pretoria, paragraph 2.1.
20. Fax, Divisional Commissioner (logistics) H M Hlela, 11 February 2002, Pretoria, paragraph 2.1.3.
21. For detailed studies of the South African detective service, see J Redpath, *Leaner and meaner? Restructuring the detective service*, ISS Monograph Series 73, Institute for Security Studies, Pretoria, May 2002; A Altbeker, *Solving crime. The state of the SAPS detective service*, ISS Monograph Series 31, Institute for Security Studies, Pretoria, November 1998.
22. J Simmons, et al, *Crime in England and Wales 2001/2002*. Home Office Statistical Bulletin 7/02, 2001.
23. D Bayley, *Police for the Future*, Oxford University Press, Oxford, 1994.
24. See T Leggett, Improved crime reporting: Is South Africa's crime wave a statistical illusion?, *SA Crime Quarterly* 1, Institute for Security Studies, Pretoria, July 2002, pp 7–9.
25. S Tshwete, Parliamentary media briefing by the Justice, Crime Prevention, and Security Cluster, Cape Town, 11 February 2002.
26. *The reported serious crime situation in South Africa for the period January–September 2001*, <http://www.saps.org.za/8_crimeinfo/200112/report.htm> (10 October 2002).

27. C Nqakula, Budget Vote Speech by the Minister for Safety and Security, National Assembly, 13 June 2002.
28. These figures refer to Operations Crackdown, Tsipa, Lancer (aimed at terrorism in the Western Cape), Slasher (aimed at gangs in the Cape Town coloured townships), and Akanthus II (aimed at farm attacks). *Annual report of the National Commissioner of the South African Police Service 1 April 2001 to 31 March 2002*, Department of Safety and Security, Pretoria, 2002, p 124. *Annual Report 2000/2001*, Department of Safety and Security, Pretoria, 2001, pp 15–20.
29. Data supplied by the Crime Information Analysis Centre and SAPS Management Services.
30. The data for the years 1996–1999 is from the police’s Crime Information Analysis Centre, while the 2000 to 2002 data is from the NPA’s Court Management Unit.
31. Independent Complaints Directorate annual reports, <<http://www.icd.gov.za/>> (10 October 2002).
32. Independent Complaints Directorate 6th annual report, 1 April 2001–31 March 2002, <<http://www.icd.gov.za/>> (10 October 2002).
33. Independent Complaints Directorate 6th annual report, 1 April 2001–31 March 2002, p 41, <<http://www.icd.gov.za/>> (10 October 2002).
34. *Annual report of the National Commissioner of the South African Police Service 1 April 2001 to 31 March 2002*, Department of Safety and Security, Pretoria, 2002, p 60.
35. *Annual report of the National Commissioner of the South African Police Service 1 April 2001 to 31 March 2002*, Department of Safety and Security, Pretoria, 2002, p 23.
36. Section 165, Constitution of the Republic of South Africa Act 108 of 1996. For background information on the South African legal system generally see R Malherbe, The legal system and the judiciary, in: A Venter (ed), *Government and politics in the new South Africa. An introductory reader to its institutions, process and policies*, J L van Schaik, Johannesburg, 1998, pp 83–108.
37. See <<http://www.doj.gov.za/about/adminjustice.htm>>.
38. The Department of Justice and Constitutional Development’s responsibilities also include—but are not covered in this review—the provision of legislation, facilitating the delivery of services by constitutionally independent institutions (e.g. South African Human Rights Commission, Commission on Gender Equality, and the Truth and Reconciliation Commission), and the administration of civil justice.
39. Section 179(2), Constitution of the Republic of South Africa Act 108 of 1996.
40. *Annual Report 2001*, National Prosecuting Authority of South Africa, Pretoria, 2002, p 57.

41. *2002 Estimates of National Expenditure*, Justice and Constitutional Development, vote 22, National Treasury, Pretoria, 2002, p 509. *2001 Estimates of National Expenditure*, Justice and Constitutional Development, vote 22, National Treasury, Pretoria, 2001, pp 456–457.
42. *2001 Estimates of National Expenditure*, Justice and Constitutional Development, vote 22, National Treasury, Pretoria, 2001, p 463.
43. *2002 Estimates of National Expenditure*, Justice and Constitutional Development, vote 22, National Treasury, Pretoria, 2002, p 521.
44. Auxiliary and associated services includes the Judicial Services Commission, the Magistrates Commission, the South African Human Rights Commission, the Commission on Gender Equality and the Truth and Reconciliation Commission.
45. *2001 Estimates of National Expenditure*, Justice and Constitutional Development, vote 22, National Treasury, Pretoria, 2001, p 459.
46. Department of Justice and Constitutional Development, medium-term strategic framework (2000–2005), court services, <<http://www.pmg.org.za/docs/2002/appendices/020528court.htm>>.
47. The data for this Figure comes from two different sources. The data for the years 1996–1999 is from the police's Crime Information Analysis Centre, while the 2000–2002 data is from the NPA's Court Management Unit. The NPA has been collecting court-related performance statistics since mid-1999. Compared to the police, the NPA is more intimately involved with what happens in the country's courts. Consequently use is made of NPA court-related statistics whenever these are available. Readers should note, however, that the CIAC and NPA statistics do not always coincide. Thus, for 2000 the NPA recorded 307,547 prosecutions compared to the police's 271,057. No CIAC prosecution statistics for 2001 and 2002 had been released by the police at the time of writing.
48. New plan to 'chop' farm attacks, *Pretoria News*, 14 February 2001.
49. *Annual Report 2001/2*, National Prosecuting Authority, Pretoria, 2002, annexure B.
50. E-mail from Advocate Marelize Potgieter, NPA Court Management Unit, 17 March 2003.
51. Over 95% of all criminal trials take place in the magistrates' courts (also known as the lower courts). There are two types of magistrates' courts: regional courts and district courts. 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. Only the most serious crimes such as serial murders and particularly violent rapes are usually prosecuted in the high courts.

52. *National Prosecuting Authority of South Africa Policy Manual*, Pretoria, October 1999, pp B.22–B.25.
53. Section 92(1), Magistrates' Courts Act no. 32 of 1944, as amended, read with GN R1411 (Government Gazette 19435) of 30 October 1998.
54. For a discussion of the various reasons why cases are withdrawn see M Schönteich, *Lawyers for the people. The South African prosecution service*, ISS Monograph Series 53, Institute for Security Studies, Pretoria, March 2001, pp 93–94.
55. Interview, Advocate Marnus Steyn, Court Management Unit, National Prosecuting Authority, 23 October 2000, Pretoria.
56. The conviction rate being the number of cases convicted as a proportion of the number of cases prosecuted.
57. During 2002 a very small proportion of cases (0.01% or 9,990 cases) dealt with by the prosecution service were diverted.
58. G Chuenyane, *Prosecutors struggle with load*, *Sowetan*, 12 October 2000.
59. *Annual Report 2001/2*, National Prosecuting Authority, Pretoria, 2002, annexure B. The average court hours exclude district and regional periodical courts.
60. *Annual Report 2001/2*, National Prosecuting Authority, Pretoria, 2002, p 28.
61. B Ngcuka, National Director of Public Prosecutions, briefing to Portfolio Committee of Justice and Constitutional Development, Cape Town, 5 June 2002, <<http://www.pmg.org.za/viewminute.php?id=1774>>.
62. *2003 Estimates of National Expenditure*, Justice and Constitutional Development, vote 24, National Treasury, Pretoria, 2003, p 548.
63. *Annual Report 2001/2*, National Prosecuting Authority, Pretoria, 2002, p 45.
64. *2003 Estimates of National Expenditure*, Justice and Constitutional Development, vote 24, National Treasury, Pretoria, 2003, p 548.
65. *2003 Estimates of National Expenditure*, Justice and Constitutional Development, vote 24, National Treasury, Pretoria, 2003, p 548.
66. Department of Justice and Constitutional Development, medium-term strategic framework (2000–2005), court services, <<http://www.pmg.org.za/docs/2002/appendices/020528court.htm>>.
67. *2003 Estimates of National Expenditure*, Justice and Constitutional Development, vote 24, National Treasury, Pretoria, 2003, p 549.
68. Department of Justice and Constitutional Development, medium-term strategic framework (2000–2005), court services, <<http://www.pmg.org.za/docs/2002/appendices/020528court.htm>>.

69. *2003 Estimates of National Expenditure*, Justice and Constitutional Development, vote 24, National Treasury, Pretoria, 2003, p 553.
70. *Department of Correctional Services Annual Report 2001/2002*, Department of Correctional Services, Pretoria, 2002, p 57.
71. *2001 Estimates of National Expenditure*, Correctional Services, vote 19, National Treasury, Pretoria, 2001, p 397.
72. *Department of Correctional Services annual report 2000/2001*, Department of Correctional Services, Pretoria, 2001, p 15.
73. *2001 Estimates of National Expenditure*, Correctional Services, vote 19, National Treasury, Pretoria, 2001, p 397.
74. B Skosana, Minister of Correctional Services, Parliamentary Media Briefing, 12 February 2001, Cape Town. See also B Skosana, presentation to the Select Committee on Security and Constitutional Affairs, 20 February 2002, Cape Town.
75. *2002 Estimates of National Expenditure*, Correctional Services, vote 20, National Treasury, Pretoria, 2002, pp 450–456.
76. *2002 Estimates of National Expenditure*, Correctional Services, vote 20, National Treasury, Pretoria, 2002, pp 445.
77. *2002 Estimates of National Expenditure*, Correctional Services, vote 20, National Treasury, Pretoria, 2002, p 445.
78. *2002 Estimates of National Expenditure*, Correctional Services, vote 20, National Treasury, Pretoria, 2002, p 462.
79. *Department of Correctional Services Annual Report 2001/2002*, Department of Correctional Services, Pretoria, 2002, p 21.
80. *Office of the Inspecting Judge Annual Report, 2001/2, Prison & Prisoners*, Cape Town, 2002, p 9.
81. *Office of the Inspecting Judge Annual Report, 2001/2, Prison & Prisoners*, Cape Town, 2002, p19.
82. *Office of the Inspecting Judge Annual Report, 2001/2, Prison & Prisoners*, Cape Town, 2002, p 20.
83. *2002 Estimates of National Expenditure*, Correctional Services, vote 20, National Treasury, Pretoria, 2002.
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85. L Muntingh, *After Prison. The Case of Offender Reintegration*, ISS Monograph Series 52, Institute for Security Studies, Pretoria, March 2001, p 54.
86. B Skosana, Minister of Correctional Services, Parliamentary Media Briefing, 12 February 2001, Cape Town.

87. E-mails, Gideon Morris, Judicial Inspectorate of Prisons, 15 October 2002 and 4 March 2003.
88. B Skosana, Minister of Correctional Services, Parliamentary Media Briefing, 12 February 2001, Cape Town.
89. *Department of Correctional Services Annual Report 2001/2002*, Department of Correctional Services, Pretoria, 2002, p 70.
90. Media statement by B Skosana, Minister of Correctional Services, Cape Town, 19 August 2002.
91. *2001 Estimates of National Expenditure*, Correctional Services, vote 19, National Treasury, Pretoria, 2001, p 398.
92. Government Gazette, Vol.435, No. 22718, 27 September 2001, Cape Town. See also *The Mercury*, 27 July 2001.
93. <<http://iafrica.com/news/sa/140007.htm>>.
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96. See M Schönreich, *Making courts work. A review of the IJS Court Centre in Port Elizabeth*, ISS Monograph Series 75, Institute for Security Studies, Pretoria, October 2002.
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