

## CHAPTER 13

### THE CRIMINAL JUSTICE SYSTEM AND THE PROTECTION OF FARMERS

#### INTRODUCTION

It is impossible to evaluate the protection that the farming community receive from the criminal justice system without looking at the efficacy of the criminal justice system as a whole. South Africa's criminal justice system is not performing optimally. Overall fewer than half of all recorded crimes are detected, and on average fewer than one out of ten cases recorded by the police result in the conviction of the perpetrators. In respect of serious farm attack cases, however, the detection rate appears to be higher.

Once criminal cases are successfully processed through most of the criminal justice system, with the suspects ending up in the accused box in court, their chances of being convicted are high. There is persuasive anecdotal evidence to conclude that the success rate for the prosecution of farm attack cases is significantly above the average. It supports the claims made by the police service that farm attack investigations are usually undertaken by senior and experienced detectives, and are then allocated to experienced regional court prosecutors or state advocates in the high court.

An important reason for the low detection rate in South Africa is that, compared to the mid-1990s, there were fewer functional police officers dealing with higher levels of crime at the end of 2002. Detectives are overloaded with cases with the result that many cases are not dealt with expeditiously. Police officers in the country's rural areas are thinly spread and many rural communities do not see a uniformed police officer for weeks and even months at a time. This is being addressed, however, through the recruitment of an additional 30,000 entry-level police constables by early 2006.

In late 1997 the Rural Protection Plan was launched. The object of the Plan is to encourage all role players in rural safety to work together in a coordinated manner, and engage in joint planning, action and monitoring to combat crime in the country's rural areas. During the four years after the launch of the Plan the number of recorded farm and smallholding attacks increased (albeit primarily in respect of attacks on smallholdings). The number of recorded murders associated with farm attacks initially declined after the launch of the Plan, and stabilised in 2000 and 2001. The Plan's success appears to vary from one geographic area to the next.

A key component of the Rural Protection Plan – the commandos – are to be phased out by the end of the decade. The police service intends launching two initiatives in respect of rural safety which are intended to replace the commandos: Area Crime Combating Units and Sector Policing.

The proposed sector policing strategy may be able to overcome some of the police's problems in respect of policing rural communities. With dedicated police officers or police reservists for geographically defined areas, and greater community interaction with sector police personnel, the police will be in a better position to collect crime intelligence and encourage public cooperation in the detection of crime. However, given the size,

geographic isolation and dispersion of many rural areas, a policing strategy based on a consistent visible police presence in the form of sector police personnel will be very difficult to sustain to the point where it succeeds in curbing crime.

Thus, if policing in the deep rural areas, for practical reasons, is primarily reactive in nature, then the proactive functions of the SAPS should be structured in the form of support to upgrade the detective and investigative capacities of the rural police stations and the specialised units that operate in the vicinity. Proactive functions at these police stations should focus on enhancing information and intelligence gathering to support the detective functions and guide the operational deployment of station personnel and specialised units. This is crucial as one of the police service's most glaring weaknesses – especially in respect of rural safety and farm attacks – is in its intelligence and detection capabilities. Too few farm and smallholding attacks are prevented because the security forces rarely obtain advance warning of such attacks. Moreover, once the perpetrators of an attack have disappeared the detective service frequently lacks the resources and capacity to arrest the culprits.

## OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM

It is the purpose of the criminal justice system to combat, prevent and reduce crime. It seeks to do this by preventing and detecting crime, by processing cases and trying offenders speedily and effectively, and by handing down appropriate sentences to those convicted of an offence.

South Africa's criminal justice system is not succeeding in this task. In 2000, some 2.6 million crimes were recorded by the police. Of these approximately 610,000 (24%) were referred to court, and the prosecution service took 271,000 (11%) cases to trial. These resulted in slightly more than 211,000 (8%) convictions.<sup>1</sup> Thus, out of the initial 2.6 million cases recorded, 8% resulted in the conviction of the perpetrators.<sup>2</sup> (At the time of writing 2000 is the last calendar year for which the aforementioned statistics were released.)

From the limited available evidence it would appear that the proportion of recorded farm attack cases resulting in a conviction is higher than the national average for all serious crimes. In a survey undertaken by the police's Crime Information Analysis Centre (CIAC) of farm attack cases that occurred in the Eastern Cape during 1999 and 2000, it was

<sup>1</sup> For a detailed description of the categories covered see Schönreich M. *Assessing the crime fighter: The ability of the criminal justice system to solve and prosecute crime* (Institute for Security Studies, Pretoria, 1999) p 6-10.

<sup>2</sup> Caution needs to be exercised when comparing the annual number of cases recorded with the annual number of cases withdrawn, sent to court, and prosecuted and convicted (also called the 'yearly-review' method). Cases recorded during one year, are often investigated and prosecuted during the following year. For example, the investigation of a complicated murder case reported in December 1999 might be finalised in mid-2000. The prosecution of the case may occur only in 2001. Rates based on the yearly-review method are premised on the assumption that the statistics are stable from year to year and that there is no growth or decline in backlogs. The advantage of the yearly-review method is that it is quick to collect data for an entire population. The yearly-review method is widely used both in South Africa and internationally. A study which tracked the outcome of individual cases (also called the individual case tracking method) came to similar results as the yearly-review method. See Paschke R *Conviction rates and other outcomes of crimes reported in eight South African police areas* (Research paper 18, Project 82, South African Law Commission, Pretoria, undated).

established that almost 43% resulted in a conviction. In comparison, in the CIAC's sample only just over 6% of recorded urban 'house robberies' resulted in a conviction.<sup>3</sup>

The CIAC has also made a comparative study between 'house robberies' on farms and those in urban areas in respect of the four provinces with the highest proportion of house robberies on farms, viz. Free State, Limpopo, Mpumalanga and North West. The Committee has some reservations about the validity of the data because of the relatively small sample of farm attacks in some provinces. According to this four provinces study, 17.3% of recorded 'house robbery' cases on farms resulted in a conviction, compared to 7.1% of recorded 'house robberies' in urban areas.

The poor performance of the criminal justice system should not be interpreted as a cause – or the primary cause – of crime. Crime occurs because individuals make a decision to engage in activities which are against the law. Such individuals are motivated by, inter alia, hatred, revenge, greed, envy, peer pressure or malice. These motives come about through a myriad of influences on people's lives, such as the behaviour of significant others, childhood upbringing, substance abuse, or levels of poverty and inequality in society. The criminal justice system, irrespective of its performance, neither causes such motives nor the factors that lead to their existence.

Nevertheless, how well the criminal justice system functions is important for several reasons. First, a relatively small proportion of offenders are believed to commit the majority of serious crimes, and especially organised crime. If these perpetrators are apprehended and convicted timeously, certain crimes can be reduced. Secondly, a functional system helps to deter some potential offenders from committing a crime. Thirdly, an effective and efficient justice system inspires confidence among victims and witnesses and encourages them to participate in the criminal justice process, thereby leading to the arrest and conviction of offenders. Finally, criminal justice successes – especially if well publicised – are essential for boosting public confidence in the Government's ability to reduce crime and make people feel safer.<sup>4</sup>

The converse to the above is that if a criminal justice system is not seen to be dealing with crime and criminals, members of the public may take the law into their own hands. As van den Haag puts it: 'When legal retribution is not imposed for what is felt to be wrong, or when retribution is felt to be less than deserved... public control falters, and the "passion for revenge" tends to be gratified privately.'<sup>5</sup> The popularity of vigilante groupings such as Mapogo-a-Mathamaga<sup>6</sup> is an apt example of members of the public taking the law into their own hands, with all the problems inherent in such a course of action.

It needs to be pointed out that the second point above – that deterrence in a criminal justice context works – is a tenuous one. The behavioural premise of deterrence is based on that of responsible and predominantly rational, calculating individuals – a premise that many criminologists call into question. Satisfactory empirical evidence of the effect of deterrence

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<sup>3</sup> See p 351.

<sup>4</sup> Schönreich M. 'Security' in Kane-Berman J (ed) *South Africa Survey 2001/2002* (South African Institute of Race Relations, Johannesburg, 2001) p 105.

<sup>5</sup> See Nathanson S. *An Eye for an Eye?* (1987) p 11

<sup>6</sup> See p 323.

is difficult to obtain.<sup>7</sup> However, crimes primarily motivated by greed and involving a certain level of premeditation on the part of the offender, can be reduced through an effective criminal justice system. Offenders who attack farms, rob banks, hijack motor vehicles or commit fraud usually have to plan their nefarious deeds. This places them in a position to consider the consequences of their actions and weigh up the expected gains of their crimes with the likely punishment should they be arrested and convicted.

## **POLICING: PREVENTION AND DETECTION OF CRIME**

South Africa has one centralised police service, the South African Police Service (SAPS). The SAPS is responsible for preventing, combating and investigating crime, maintaining public order, protecting the inhabitants of the country and their property, and upholding and enforcing the law.<sup>8</sup>

### **Detected cases**

The majority of cases recorded by the police are not detected. There are two types of undetected cases. The first consists of cases where the suspect is unknown, and where there is insufficient evidence to enable the police to identify a suspect. In other words, these are cases which are not solved. The second type of undetected case is where a suspect has been identified and a warrant for his arrest has been issued, but the person's whereabouts are unknown.

In 2000, as a proportion of recorded cases, only 43% were detected. (See Figure ??) During that year less than a quarter of recorded car theft, aggravated robbery, and residential housebreaking cases were detected. (2000 is the last year for which case detection rates were released at the time of writing.)

The detection rate is low for cases where the perpetrator is likely to be unknown to the victim, and where there are no eyewitnesses to the crime. To solve such cases the police have to rely primarily on either forensic evidence (such as fingerprint marks), or circumstantial evidence (such as linking a suspect to a series of housebreakings that all show a similar *modus operandi*). The fact that the detection rate for these kinds of crimes is low, tends to indicate that the police's forensic and criminal investigation capabilities are weak.<sup>9</sup>

From information supplied to the Committee by investigating officers who investigate farm attacks, it appears that the detection rate in respect of farm attack cases – especially cases involving a serious and violent offence or offences – is relatively high.<sup>10</sup> This is, however, largely based on anecdotal evidence and the general perceptions of investigating

<sup>7</sup> Ashworth A. 'Sentencing' in Maguire M. et al (ed.'s) *The Oxford Handbook of Criminology* (Oxford University Press, New York, 1997) p 1098.

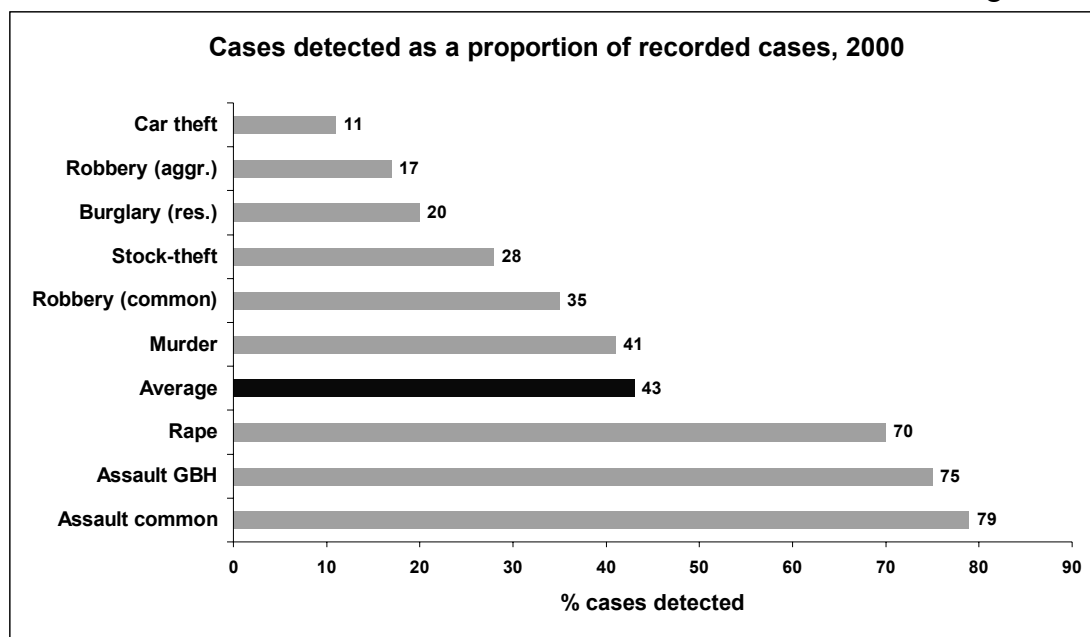
<sup>8</sup> Section 205(3) of the Constitution of the Republic of South Africa, Act no108 of 1996.

<sup>9</sup> During the 1980s the police's criminal investigation capabilities were neglected. During the apartheid era, only 1 in 10 members of the SAP were engaged in detecting and investigating crime. See Shaw M. and Camerer L. *Policing the transformation: New issues in South Africa's crime debate* (IDP Monograph Series 3, April 1996) p13.

<sup>10</sup> See p 172.

officers. Moreover, while no specific evidence is available, it would seem that the success rate of investigators vary from area to area. Especially in some part of KwaZulu-Natal, it would appear that the detection rate is below the national average.

Figure 6



Source

ce: SAPS Crime Information Analysis Centre

Reasons offered by investigating officers why the detection rate for farm attacks tends to be above average include the following:<sup>11</sup>

There usually is a relatively quick response by the police and the commandos, often resulting in speedy arrests.

- Usually a number of perpetrators are involved per attack. Consequently, once one perpetrator is caught, enough information can be obtained from the arrested perpetrator to identify and trace the other suspects.
- Many perpetrators of farm attacks tend to be young and inexperienced criminals. They often make mistakes such as leaving incriminating evidence behind at the crime scene.
- Perpetrators of farm attacks usually rob their victims of something. The more the perpetrators take, the greater the likelihood that they will try and sell their loot. This allows the police to trace such loot back to the farm attackers.
- Farm attacks are regarded as a priority crimes and are thoroughly investigated.

The CIAC office in the Eastern Cape undertook a survey of farm attack case dockets opened during 1999 and 2000. Of the 172 dockets investigated 46.8% had been detected. By comparison, only 7.6% of 'house robbery' cases (in urban areas) finalised in 2001 and dating mostly from 2000 and 2001, were detected. A different CIAC investigation of farm attack cases in the Free State, Limpopo, Mpumalanga and North West (also of dockets finalised in 2001) revealed a detection rate of 22.7%, whereas urban house robberies had a detection rate of 11.7%. It needs to be borne in mind, however, that the sample of farm

<sup>11</sup> Focus group interview of Mpumalanga investigating officers, conducted by Committee member, on 14 June 2002, at Middelburg.

attacks investigated in the latter study was relatively small – only 77 cases were looked at.<sup>12</sup>

### **Investigated cases referred to court**

Cases are referred to court by the police only after a suspect has been formally charged (and, in the case of a serious offence, arrested) by the police. In essence, cases are referred to court only if there is fairly substantial evidence against a suspect to warrant the person being charged with an offence.

The number of cases referred to court, as a proportion of the total number of cases recorded by the police, differ between crime types. On average just under a quarter (24%) of all cases recorded by the police are referred to court. In the Eastern Cape and four-provinces CIAC farm attack studies referred to above, respectively 47% and 23% of farm attack cases were referred to court. (As mentioned above, the latter figure may be somewhat unreliable because of the small sample on which it was based.)

The overall ability of the police to refer cases to court is high in respect of crimes where the perpetrators are likely to be known to their victims, or those that are often committed in the presence of eyewitnesses.<sup>13</sup> An above average number of murder, rape, and assault cases are consequently referred to court. However, crimes where the perpetrators are likely to be unknown to their victims, such as burglary, robbery and vehicle theft are less likely to be solved by the police and referred to court. While the South African case referral rate appears to be low, it has been reported that the police in the United Kingdom also fail to clear up about three-quarters of all offences.<sup>14</sup>

### **Evaluation and reasons for poor performance**

#### *Personnel numbers*

In 1995, the newly amalgamated SAPS employed approximately 140,000 people (functional police officers and civilians). Thereafter many police officers resigned and left the service. Only a few new recruits were employed because of a hiring moratorium over much of this period. In January 2003 the SAPS was left with 129,700 employees, of which 27,300 were civilians and approximately 21,000 detectives. Between late 1996 and early 2003 the number of functional police officers (uniformed personnel and detectives) declined by 12%. Over a similar period, recorded serious violent crimes increased by some 21%, and less serious violent crimes by some 32%.<sup>15</sup>

The medium-term expenditure framework for 2002/03–2005/06 provides for the appointment of an additional 30,200 entry-level police constables and 15,360 civilians over

<sup>12</sup> See p 351..

<sup>13</sup> According to a 1997 Institute for Security Studies victims survey conducted in Johannesburg, the majority of assault, rape, and murder victims (or members of the victim's household in the case of murder) knew the offender by name or by sight. See Louw A. et al *Crime in Johannesburg. Results of a City Victim Survey* (ISS Monograph Series 18, February 1998) p 23-24.

<sup>14</sup> 'Criminal Justice: Guilty as charged' *The Economist*, 9 March 2002, p 40.

<sup>15</sup> Serious violent crime: murder, attempted murder, rape, aggravated robbery, assault with the intent to inflict grievous bodily harm. Less serious violent crime: common robbery and common assault.

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.

In October 2002 there was an average of one functional police member for every 450 residents in South Africa. The ratio compares well with developing countries but poorly with many developed countries. For example, according to 1999 Interpol data, the number of residents per functional police officer were 225 in Portugal, 329 in Brazil, 492 in Namibia and 654 in Zimbabwe. Compared to more developed countries, South Africa's relatively low civilian to police officer ratio is exacerbated 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.<sup>16</sup> South Africa has a relatively youthful population. According to the 1996 national census a third of the South African population was under the age of 15 years, and 44% 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. Nationally there is, on average, one police officer for every 12 square kilometres.
- It is a worldwide 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.

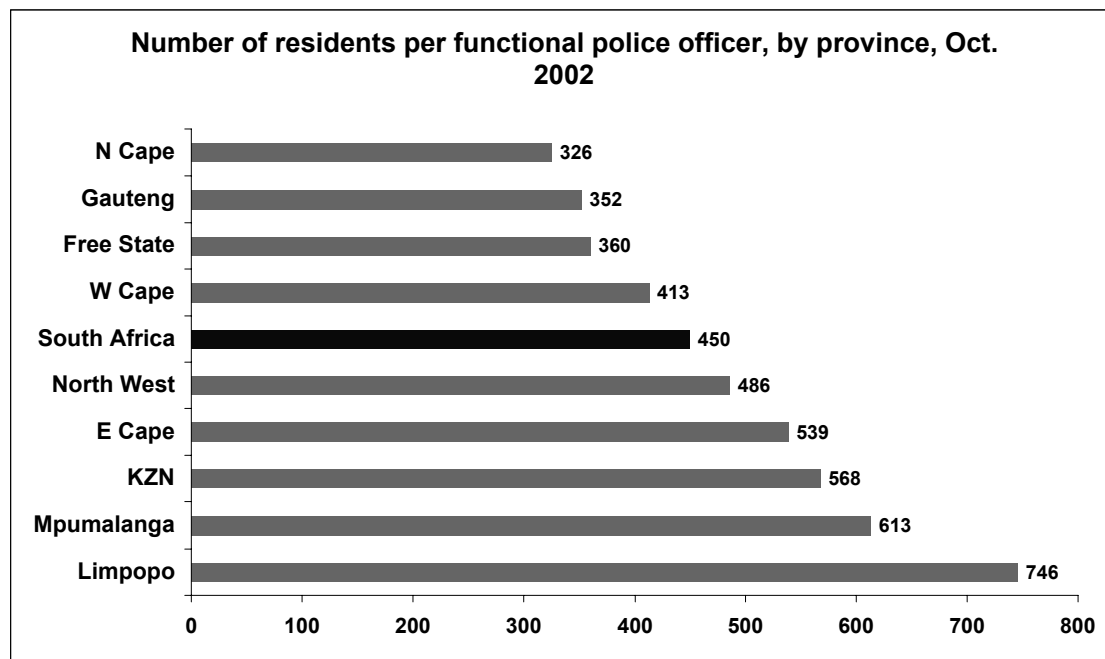
South Africa's police personnel are not deployed equally across the country.<sup>17</sup> For example, while there were 450 residents for every functional officer in South Africa as a whole in late 2002, the provincial ratios ranged from 1: 746 in Limpopo to 1:326 in the Northern Cape. (See Figure 7.) Regarding farm attacks, it is interesting to note that Mpumalanga and KwaZulu-Natal are usually among the top three provinces in respect of the highest number of recorded incidences. Purely from a farm attack perspective it is therefore unfortunate that these two provinces have one of the highest police officer to resident ratios (i.e. are significantly under-policed, even by South African standards).

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<sup>16</sup> Schönreich M. 'The dangers of youth? Linking offenders, victims and age' in *Nedcor ISS Crime Index 3(5)* (Institute for Security Studies, Pretoria 1999) p 22-28).

<sup>17</sup> Schönreich M. 'The thin blue line: Police resources in the provinces' in *ISS Nedbank Crime Index 4(2)* (Institute for Security Studies, Pretoria, 2000) p 15-20.

Figure 7



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Source: SAPS Efficiency Services

In a 1998 survey of black rural residents in six of South Africa's predominantly rural provinces, respondents were asked what Government should do to make rural areas safer. The most frequent response was that Government should improve the accessibility of the police (50%) by deploying more police, building more police stations, making police available 24 hours a day and equipping the police with more vehicles and phones. This response was followed by creating more jobs (23%), and heavier penalties for offenders (17%).<sup>18</sup>

The survey also asked respondents how often they see a police officer on duty in their area. A third (34%) responded that they "never see a police officer", followed by those who said they saw a police officer: less than once a month (32%), more than once a month (18%), at least once a week (10%) and every day (7%).<sup>19</sup>

#### *Top-heavy personnel structure*

Partly to meet ambitious affirmative action targets, and to increase the proportion of officers in higher rank-related salary categories, police personnel numbers at middle and higher management level are unhealthily high. There is almost one commissioned officer (of the rank of captain and higher) for every six non-commissioned officers in the police service. Out of 102,349 functional police officers employed by the SAPS in January 2003, only 12,191 (or 12%) were constables.

The SAPS has nearly five times more inspectors and one-and-a-half times as many sergeants as constables. Such a misdistribution of ranks is illogical in terms of functional

<sup>18</sup> Pelser E., Louw A. and Ntuli S. *Poor safety: Crime and policing in South Africa's rural areas* (ISS Monograph Series 47, May 2000) p 48.

<sup>19</sup> Pelser E., Louw A. and Ntuli S. *op cit* 61.

responsibilities.<sup>20</sup> The South African distribution appears to be the opposite of international policing norms. While the ratio of sergeants to constables is 1.5 to 1 in South Africa, it is 1 to 4.5 in Australia, 1 to 5 in Britain and 1 to 6.4 in the United States. Sergeants and constables comprise over 90% of all members in Australia and Britain. In South Africa they comprise under a third (30%) of total staff (excluding civilian personnel).<sup>21</sup> The result is that there is no real differentiation of function between non-commissioned officers. The virtue of a military-type structure, with every incident having a clear line of responsibility associated with it, is blurred in the SAPS.

As a consequence of the relatively small number of junior ranked officers, the SAPS has become an over-managed organisation, where the higher management echelons devour personnel-related resources at the expense of junior officers responsible for station and street-level policing work. However, the low proportion of constables in the SAPS will be alleviated significantly by the recruitment of the additional 30,200 entry-level constables by early 2006.

### *Criminal investigations*

The general quality of the police's detective work appears to have declined in the post-1994 period. This was partly to be expected. Before 1994, the South African Police (SAP) used authoritarian policing methods and tough law enforcement strategies to combat crime. Using a confession based approach to solving crime, some SAP detectives were more concerned about getting crime suspects convicted than upholding the law and conducting investigations in a legally correct manner.<sup>22</sup> Changing from a confession based to an evidence based manner of collecting evidence, required a significant change in the way many experienced detectives performed their work.

Detectives are overloaded with cases – as much the result of mismanagement than of vast numbers of cases alone. Instead of teaming up to tackle cases on a case by case basis, each detective gets an unmanageable load to tackle on his own.<sup>23</sup>

Detectives argue that, at the most, they can properly deal with ten serious cases at any one time. Officially, the ideal number of dockets per detective is 18.<sup>24</sup> However, even detectives from specialised units often have to handle 50 or 60 matters at any one time. The consequence of such overloading is that the investigation is administered rather than the case solved. Investigated cases become so old that they are eventually dropped as the complainant, witnesses, and other persons involved lose interest. Alternatively, evidence may be lost and witnesses' memories may fail them. Withdrawals of charges, and prosecutors declining to prosecute are often the result.

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<sup>20</sup> Leggett T. 'Everyone's an inspector: the crisis of rank inflation and the decline of visible policing' in *SA Crime Quarterly 1* (Institute for Security Studies, Pretoria, 2002) p 23)

<sup>21</sup> Ibid.

<sup>22</sup> See Albeker A. *Solving crime. The state of the SAPS detective service* (Institute for Security Studies, Pretoria, 1998) p 49, where the point is made that a confession driven investigative approach did not dominate all SAP detective units. Many units – especially those dealing with less serious crimes - relied less on confessions and complied more closely with the law.

<sup>23</sup> Redpath J. *Leaner and meaner? Restructuring the SAPS detective service* (Institute for Security Studies, Pretoria, 2002)

<sup>24</sup> S. V. Tshwete, Minister of Safety and Security, written reply to parliamentary question no. 1111, National Assembly, 15 June 2001.

Detectives' workload varies from one province to the next. In 2000, the national average was one detective for every 118 serious crimes recorded by the SAPS. Overburdened were detectives in the Western Cape (1 detective for every 211 recorded crimes), Mpumalanga (1:135), and Gauteng (1:134). By contrast, some provinces had one detective for fewer than 100 recorded crimes in 2000: Limpopo (1:94), Eastern Cape (1:96), and Free State (1:98).

### *Shortage of skills*

The shortage of police personnel is exacerbated by inadequately trained officers in the service. At the end of 1999, the outgoing National Commissioner of Police, George Fivaz, conceded that close to a quarter of SAPS members were "functionally illiterate".<sup>25</sup> According to the late Safety and Security Minister, Steve Tshwete, in 2000 almost 35,000 police officers had a standard eight qualification or lower.<sup>26</sup> The low educational levels of many police officers make it difficult, and even impossible, for them to write down complaints, fill out dockets, give articulate testimony in court, and fulfil any but the most basic policing duties.

Many competent detectives leave the detective service for employment with private companies, such as forensic auditing companies and private investigation firms, for posts at academic institutions, and for posts with the Directorate of Special Operations ('the Scorpions'). It is not only white police officers who have left the police service because of the perceived reverse discrimination of affirmative action. There are documented cases of experienced black detectives leaving the SAPS after 1994 because their expectations, that they would receive due recognition under the new dispensation, failed to materialise.<sup>27</sup>

The skills drain is a further problem with which detectives who remain in the SAPS have to contend. The loss of skills means fewer mentors for new detectives, fewer possibilities for teamwork and greater loads on experienced detectives. The restructuring of the detective service is meant to respond to many of the aforementioned problems. However, the skills drain could worsen should the restructuring process be handled badly and further demoralise the country's detectives – as has happened with some of the specialised units that have been closed down.<sup>28</sup>

### **Rural Protection Plan**

In the mid-1990s, the apparent increase in the incidence of farm attacks started receiving widespread publicity. In response organised agriculture approached the Government for something be done to prevent attacks on the farming community. Organised agriculture felt that the security structures existing at the time were not functioning effectively; specifically, that follow-up actions by security force personnel after farm attacks were

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<sup>25</sup> Hadland A. *Many cops 'illiterate'* ( in 'Natal Mercury', 24 September 1999)

<sup>26</sup> S. V. Tshwete, Minister for Safety and Security, written reply to parliamentary question, 10 March 2000, question no. 309, National Assembly.

<sup>27</sup> De Haas M. *The more things change... Policing in the new South Africa* (1999)

<sup>28</sup> See Redpath J. *Leaner and meaner? Restructuring the SAPS detective service* (Institute for Security Studies, Pretoria, 2002.)

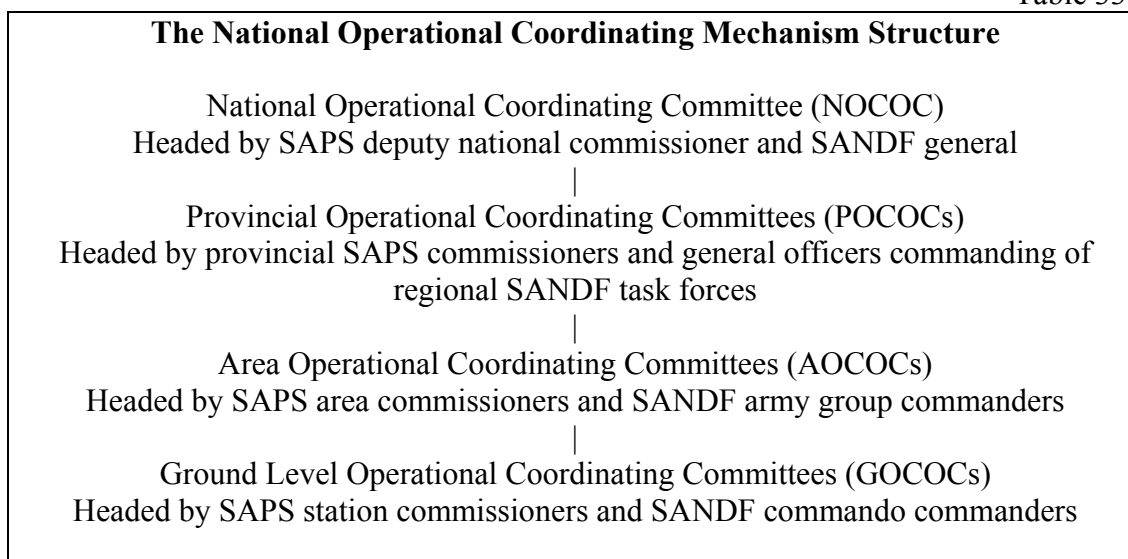
largely uncoordinated, which hampered the arrest of suspects.<sup>29</sup> In October 1997 the 'Rural Protection Plan' was initiated at the request of the then president, Nelson Mandela.<sup>30</sup>

The object of the Rural Protection Plan is to encourage all role players in rural safety to work together in a coordinated manner, and engage in joint planning, action and monitoring to combat crime in the country's rural areas.<sup>31</sup> The structure – from national to local level – of the National Operational Coordinating Mechanism, within which the Rural Protection Plan is coordinated, is shown in Table 33.

With the establishment of the Justice, Crime Prevention and Security Cluster (JCPS) in 2000, the membership of NOCOC was broadened to include about twelve Government departments (including the National Intelligence Coordinating Committee, or NICOC) which are part of the JCPS.

Every committee (NOCOC, POCOC, AOCOC and GOCOC) has its own priority committees, including a Priority Committee for Rural Safety. The priority committees are responsible for the operational planning and implementation for the Rural Protection Plan.<sup>32</sup> That is, the Rural Protection Plan seeks to effectively coordinate the operational activities of all relevant role players within the Priority Committees for Rural Safety.

Table 33



Source: NOCOC

Priority Committees are inter-departmental committees, mainly supported by the SAPS and the South African National Defence Force (SANDF), and to a lesser degree the Departments of Justice and Constitutional Development, Correctional Services, and Welfare and Social Development. Also included are organised agriculture, provincial and

<sup>29</sup> Visser J.M.J. 'Violent attacks on farmers in South Africa' in *ISSUP Bulletin* 3/1998 (Institute for Strategic Studies) p 11-12.

<sup>30</sup> Interview with Lt. Col. H. J. Boshoff, National Operational Coordinating Committee, Pretoria, 20 April 1999.

<sup>31</sup> Visser J.M.J. *op cit* p 12.

<sup>32</sup> Interview with Lt. Col. H. J. Boshoff, National Operational Coordinating Committee, Pretoria, 17 February 2000.

local government and any other person, group or organisation which can play an active role in, or support, the Rural Protection Plan.<sup>33</sup> Other functions of the Priority Committees for Rural Safety include: coordinating all security related actions relating to rural protection; identifying factors that have a negative influence on the safety of the farming community; distributing relevant information; and providing feedback on the Rural Protection Plan to all relevant role players.<sup>34</sup>

The available statistics on farm and smallholding attacks indicate that over the four years after the launch of the Rural Protection Plan in late 1998 the number of recorded incidents increased (albeit to a greater extent in respect of attacks on smallholdings). During the same period, however, the number of recorded murders associated with farm attacks stabilised at between 140 and 150 per year, which means that, relatively speaking, the murder rate declined.<sup>35</sup> It needs to be borne in mind, however, that the number of murders recorded in South Africa as a whole has been declining since 1994.

The point has been made that the Rural Protection Plan's success varies from one geographic area to the next.<sup>36</sup> Generally the SAPS and the SANDF (as well as the police reservist structures and the SANDF's Commandos) cooperate and assist each other. However, civilian participation – especially among farm workers – is inadequate. The state security forces are too thin on the ground in the country's rural areas to prevent farm and smallholding attacks in any meaningful way. More extensive civilian participation is consequently crucial if the plan is to succeed.

### **The Commandos**

The commandos (officially called the 'Territorial Reserve Force System') play an integral part in the Rural Protection Plan. Members of the public can belong to one of three types of Commando structures:

*Area bound reaction force commandos:* These are generally staffed by people who live in urban areas. In an emergency the local commando to which they belong can call them up for duty. Having been called, such commando members are issued with a rifle and uniform, which they have to return once they are booked off duty. These commando members are paid for the hours they work. Area bound reaction force commando members are trained jointly with police reservists to conduct patrols, roadblocks, follow-up operations, cordon and search operations, and farm visits.<sup>37</sup>

*Home and hearth protection reaction force commandos:* These are staffed by farmers and smallholders, and their workers. Members of this type of commando are responsible for assisting other farmers and smallholders in their district only if a farm or smallholding attack has occurred. Such commando groups then go into action (for example, setting up

<sup>33</sup> Interview with Lt. Col. H.J. Boshoff, National Operational Coordinating Committee, Pretoria, 20 April 1999.

<sup>34</sup> *National Operational Coordinating Committee crime prevention and response service*, National Operational Coordinating Committee document, Ref. NOCOC/3/9, 29 September 1998, p 5.

<sup>35</sup> See p 23.

<sup>36</sup> Schönreich M. and Steinberg J. *Attacks on farms and smallholdings. An evaluation of the Rural Protection Plan* (Institute for Security Studies, Pretoria, 2000) p 87.

<sup>37</sup> *National Operational Coordinating Committee crime prevention and response service*, National Operational Coordinating Committee document, 29 September 1998, Ref. NOCOC/3/9, p 6.

road blocks or searching an area) until the area bound reaction force commando members arrive on the scene and take over.

*House and hearth protection commandos*: These are also staffed by farmers and smallholders, and their workers. Members of this type of commando are not called up, but are responsible for protecting themselves and their own farm or smallholding if under attack. Such commando members are issued with a military rifle only if they do not possess their own rifle.

The commando system relies on various forms of radio-communication to ensure quick response times in emergencies. Participating farmers are issued with short-wave radios, such as the so-called Marnet system, to give them direct access to the commando unit(s) active in their area, which would normally be the home and hearth reaction force commando. Because many members of the commando are usually within the immediate vicinity of an incident, they are able to respond much faster than the police, and they would take the type of action described above. The responsible commando member would nevertheless immediately alert the police.

It should be noted, however, that the commandos can never and should never take over the task of the police. They cannot investigate crime and can only carry out a citizen's arrest. The commando system has been criticised by certain persons and institutions, sometimes with justification. It has been said that some commando members act as a law unto themselves, and act in a racially prejudiced manner.<sup>38</sup> It has also been said that it is wrong in principle for the SANDF, in the form of commandos, to become involved in the combating of crime, which should be the function of the police service alone.

There can be little doubt, however, that the commando system has often filled a vacuum that the police are unable to fill. There are many cases that the Committee has come across where the commandos have saved the lives of victims of farm attacks, or where they have apprehended the perpetrators before they could escape, where there was no possibility that the police could have done so.

### **Phasing out the Commandos**

In the late 1990s Parliament approved the inclusion of the commandos within the force design of the SANDF. This was because of the importance of a viable part-time component within the structure of the SANDF to support the national defence posture and the efficiencies inherent in part-time forces during peace time. However, both the Defence Review and the Defence White Paper emphasise the need to disengage the SANDF from its support role to the SAPS. Moreover, that it is inappropriate to use the country's armed forces in a policing role on a permanent or even semi-permanent basis.<sup>39</sup>

In February 2003 President Thabo Mbeki announced that the commandos would be disbanded. According to the SANDF this will be done in a phased and controlled manner

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<sup>38</sup> Human Rights Watch *Unequal protection: The State response to violent crime on South African farms* (2001) p 231-233.

<sup>39</sup> Statement by Vice Admiral H.J.M. Trainer, Chief of Corporate Staff of the SANDF, at a roundtable discussion held on the phasing out of the Commando system at the Institute for Security Studies, Pretoria, 5 March 2003.

in close cooperation with the SAPS over a six year period. In terms of the withdrawal process the commandos will withdraw first from the country's urban areas, followed by the rural areas. At the time of writing an inter-departmental task team (including the SANDF and SAPS) had been established to plan the phasing out of the commandos and design the structures which will replace the commandos – especially in the rural areas.<sup>40</sup>

In terms of the SAPS' planning at the time of writing, the police intends launching two initiatives in respect of rural safety which are intended to replace the commandos:

*Area Crime Combating Units.*

The intention is that one Crime Combating Unit should be established in each of the 43 police areas in the country. The basis of the Units will be the present Public Order Police Units, strengthened by other relevant SAPS units such as the police air-wing. The Crime Combating Units will primarily be reactive in nature, by having a rapid response capability and the capacity to conduct follow-up operations *after* an incident (such as a farm attack) has happened.<sup>41</sup> One of the aims of the Crime Combating Units will be to ensure the rapid stabilisation of an area. Thereafter other role players, such as visible police officers, police patrols, and officers tasked with developing crime prevention initiatives, are supposed to put the necessary plans in place for longer-term stabilisation and normalisation of the crime situation.

*Sector Policing.*

Sector policing entails the division of a police station area into manageable geographic areas or sectors, ideally numbering between five and eight. Police personnel are allocated to every sector on a dedicated basis to enable them to become familiar with the terrain of 'their' sector and the people who live and work there.

In a rural context sector police personnel are responsible for mobilising and organising the rural communities in 'their' sectors. Sector police officers are further supposed to create 'sector crime forums' where such officers in conjunction with community members can discuss security related issues affecting their area and identify solutions to local security related problems. These will be similar to the existing Community Policing Forums. Communities will be able to hold sector police officers accountable via their sector crime forums.

Sector policing takes a preventative approach to crime, as opposed to the reactive approach of the aforementioned Crime Combating Units. Through the close interaction with the public, sector police officers are expected to identify the underlying causes of crime in their sectors. In this way some crimes should be preventable *before* they occur. Where necessary, sector police officers will be able to call on their station to provide assistance with, for example, a high visibility police operation.

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<sup>40</sup> Statement by Vice Admiral H.J.M. Trainer, Chief of Corporate Staff of the SANDF, at a roundtable discussion held on the phasing out of the Commando system at the Institute for Security Studies, Pretoria, 5 March 2003.

<sup>41</sup> Statement by Assistant Commissioner F.J. Burger, Head of Operational Coordination of the SAPS, at a roundtable discussion held on the phasing out of the Commando system at the Institute for Security Studies, Pretoria, 5 March 2003.

Ideally, each sector should have a 'sector manager' and an 'assistant' (i.e. two full-time police officers per sector). An additional R4.9 billion over a three-year period (2003/4 - 2006/7) has been allocated to implement and expand the sector policing strategy.<sup>42</sup> Notwithstanding these additional monies, because of SAPS personnel constraints it will not be possible to place permanent police officers in all sectors in a station's area. Consequently the SAPS has proposed that use will be made of police reservists. There may even be sectors where all sector policing officers will be reservists. With this in mind, the SAPS intends creating a new category of reservist, the 'Rural and Urban Sector Policing Reservist'. Such reservists will not need a standard 10 qualification (12 years of schooling) so as not to disqualify a large part of the rural population which lacks a high level of formal education.<sup>43</sup>

In his submissions to the Committee on 17 October 2001 Assistant Commissioner Johan Burger, Chairman of the NOCOC Priority Committee on Rural Safety, expressed the view that the sector policing system will be able to serve the farming community better than the present rural security structures.<sup>44</sup>

### **Non-state forms of rural security**

According to the Security Industry Regulatory Authority (SIRA), there were 5,600 private security businesses and 210,000 active security officers registered in South Africa in 2002.

Where appropriate the farming community makes use of the private security industry to protect them and their families and workers. This is more often the case in respect of smallholdings which are closer to urban areas and which are situated fairly closely together, and farms on the outskirts of cities and towns. Farms in the deep rural areas or in places where individual farms are far apart are generally not easily protected by private security companies.

A 1999 study of farm safety in the KwaZulu-Natal Midlands found that farmers responded to the lack of police capacity by hiring private security firms which offered guarding, patrol and reaction services. At the time it was estimated that there were as many as 40 private security firms operating in the farming districts of the Midlands area.<sup>45</sup>

An example from the late 1990s, where farmers made use of private initiatives to secure their farms and lives, was the Ixopo Farm Watch in the Midlands. The Farm Watch was a so-called non-profit section 21 company that, in 1999, employed ten full-time employees, six of them professional security personnel. The Farm Watch was a civilian initiative that took the lead in crucial spheres of policing work, from intelligence gathering to proactive policing and rapid response, and to an extent, investigation. The Farm Watch had a board of directors, a central committee and four action committees, one for each of the area's four districts. Each action committee employed one co-ordinator, a full-time position funded by the Farm Watch. The central committee met once a month to exchange

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<sup>42</sup> Barnard B. 'R2.7bn to stamp out crime' in *Union Post* 8(3), April 2003.,

<sup>43</sup> Statement by Assistant Commissioner F.J. Burger, Head of Operational Coordination of the SAPS, at a roundtable discussion held on the phasing out of the Commando system at the Institute for Security Studies, Pretoria, 5 March 2003.

<sup>44</sup> See p 190.

<sup>45</sup> Schönteich M. and Steinberg J. *op cit* p 61-68.

information and to plan proactive crime-prevention measures. The managing director met with the police's crime intelligence, the serious and violent crime unit, and the stock theft unit every day. Virtually all commercial farms in the area belonged to the Farm Watch and paid annual fees. Every member of the Farm Watch was organised into a security cell and had a two-way radio. All cell members were within eight minutes driving distance from each other.

The nerve centre of the Farm Watch was an operations room. In the event of a distress call both the local security cell and the operations room were activated. The former raced to the scene of reported farm attacks. The operations room did two things. First, it contacted the appropriate district's co-ordinator as well as the appropriate police unit. The co-ordinator and the police arrived on the scene together. Thereafter, the co-ordinator remained intricately involved in the police investigation. Second, the operations room alerted other co-ordinators who, depending on the nature and location of the crime, moved into the area's key access points. (This function was crucial because most armed robberies in the area appeared to emanate from Durban and perpetrators fled on a regional arterial road stretching between Richmond and Durban.)

The Farm Watch's four co-ordinators constituted the pivot of its operation. They played every imaginable policing role, from information collecting, to intelligence-gathering, to mediation, to response, to investigation. They spent eight to ten hours a day in their respective districts and had an intimate knowledge of their respective jurisdictions.

For a variety of reasons, including managerial problems, the Ixopo Farm Watch is no longer in operation. The Ixopo Farm Watch is an example of the problems such operations can generate in rural communities.<sup>46</sup> However, what is still working successfully in the Ixopo area at the time of writing, is a cell system to which farmers belong, and use to keep in regular contact with each other. Farmers in the area conduct regular radio checks with each other (usually every evening) and, if there is a lack of response from a farmer, a neighbour is contacted to go and physically check that everything is in order with the non responding farmer.

Like the commando system, private security companies have (as indicated above) also been criticised, usually for the heavy-handed manner in which they often perform their task and the way in which the rights of citizens are sometimes infringed upon.

In desperation some rural communities, including farmers, have turned to vigilantes to fight crime and criminals. A Markinor poll amongst commercial farmers in early 2001 found that almost two-thirds of respondents would 'take the law into their own hands' if farm violence was not stopped.<sup>47</sup>

Mapogo-a-Mathamaga, for example, which openly advocates corporal punishment for suspected criminals, claims to have 70,000 fee paying members.<sup>48</sup> Notwithstanding the fact that some of Mapogo's leaders are facing charges of murder, assault and kidnapping, the organisation enjoys wide-spread support among middle class suburbanites and commercial farmers alike. In fact, Mapogo is probably unique among South African vigilante

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<sup>46</sup>See Human Rights Watch *Unequal Protection* (2001) p 220

<sup>47</sup>Thompson C. *Militant farmers' myth* in *The Citizen*, 2 April 2001

<sup>48</sup>Sekhonyane M and Louw L. *Violent justice. Vigilantism and the state's response* (Institute for Security Studies, Pretoria, 2002) p 36.

organisations, in that it has support across race and class lines in both urban and rural areas in at least five of the nine provinces. Mapogo has the support of white farmers and business people, black business people, the rural poor, pensioners, teachers, and right-wing political supporters. ‘This support is based on the belief that Mapogo will deliver swift and harsh punishment and thus deter crime... In essence Mapogo presents an affordable and appealing alternative to the ailing criminal justice system and the continued high levels of crime.’<sup>49</sup>

The leader of Mapogo, Montle Magolego, admits that his organisation is willing to assist farmers in their efforts to combat crime on their farms: ‘When a farmer beats up a black person it is called racism. We in Mapogo have invited farmers to join and Mapogo will do the beating on their behalf.’<sup>50</sup>

## PROSECUTION PERFORMANCE

Contrary to popular belief, the decision by the prosecution service whether to prosecute in a particular case or not, is not taken on the basis that there must be a *prima facie* case. The test is rather whether there is a reasonable prospect of a successful prosecution. This may well mean that some cases, where there is *prima facie* evidence, are not prosecuted because the prosecution is of the opinion, for example, that the evidence of the complainant will not be accepted by the court or that the confession made by the suspect will be found by the court to be inadmissible. This is sometimes the reason why farmers may complain that ‘everybody knows who the guilty person is, but he is not arrested and brought to trial’.

### Conviction rate

Of the 358,123 cases the prosecution service took on in 2001 (i.e. that were prosecuted), 81% resulted in a conviction and 19% in an acquittal or not guilty finding. (See Figure 8.)

This means that, once cases are successfully processed through most of the criminal justice system, with the suspects ending up in the accused box in court, their chances of being convicted are high. Unlike the police, however, prosecutors have the luxury of being able to decide which cases to take on. As mentioned above, the prosecution service elects to proceed in the prosecution of a suspect, only where ‘there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution’.<sup>51</sup>

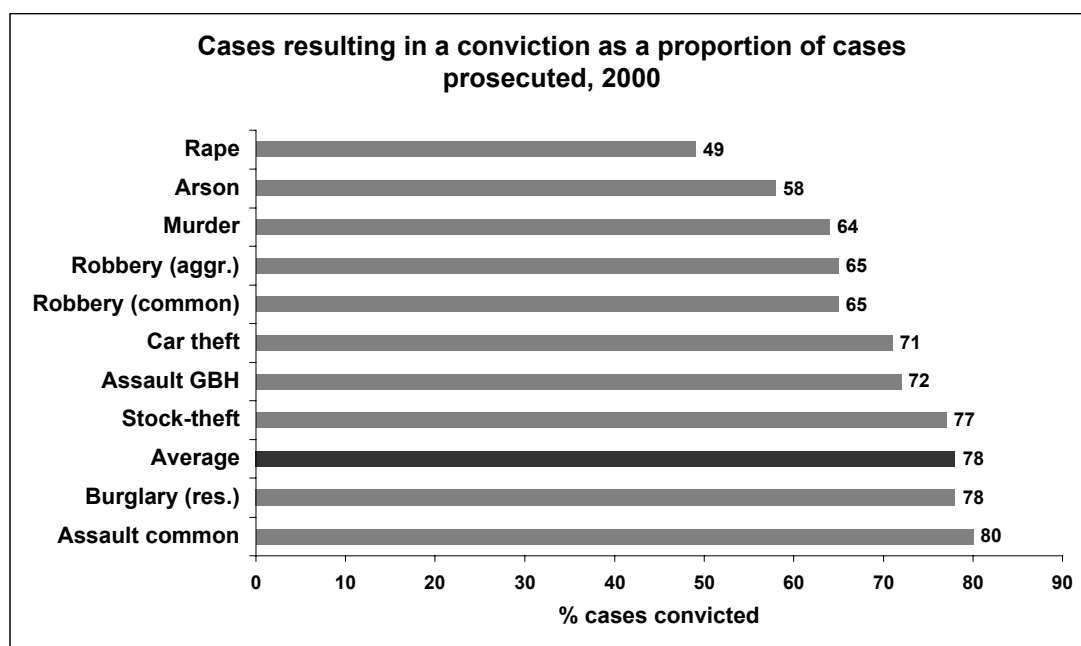
There is a considerable variation in the conviction rate between crime types. During 2000, over three-quarters of assault common, residential housebreaking and stock-theft prosecutions resulted in a conviction, while conviction rates for arson and rape were below 60%. (2000 is the last year for which case detection rates were released at the time of writing.)

<sup>49</sup> Sekhonyane M. and Louw, A. *op cit* p 3.

<sup>50</sup> Cited in: Sekhonyane M. and Louw A. *op cit* p 42.

<sup>51</sup> This is the test prosecutors are supposed to use when deciding whether to institute a prosecution against a suspect. See National Prosecuting Authority of South Africa Policy Manual, October 1999, Pretoria, p. A.3.

Figure 8



Source: SAPS CIAC

In the Eastern Cape study of farm attacks, it was found that of the 36 cases that were tried during 1999 and 2000, no fewer than 33 (92%) resulted in a conviction. The success rate for urban house robberies finalised in the Eastern Cape during 2001 was 80%. This is also relatively high, but it should be remembered that the sample was very small, with the results of only five cases being considered. One case could therefore make a big difference. In the four-provinces CIAC study mentioned above the success rate for the prosecutions of house robberies on farms was 77%, whereas the success rate in urban house robbery cases was 60%. Generally there is persuasive anecdotal evidence to conclude that the success rate for the prosecution of farm attack cases is significantly above the average. It supports the claims made by the police service that farm attack investigations are usually undertaken by senior and experienced detectives, and are then allocated to experienced regional court prosecutors or state advocates.

### Case withdrawals

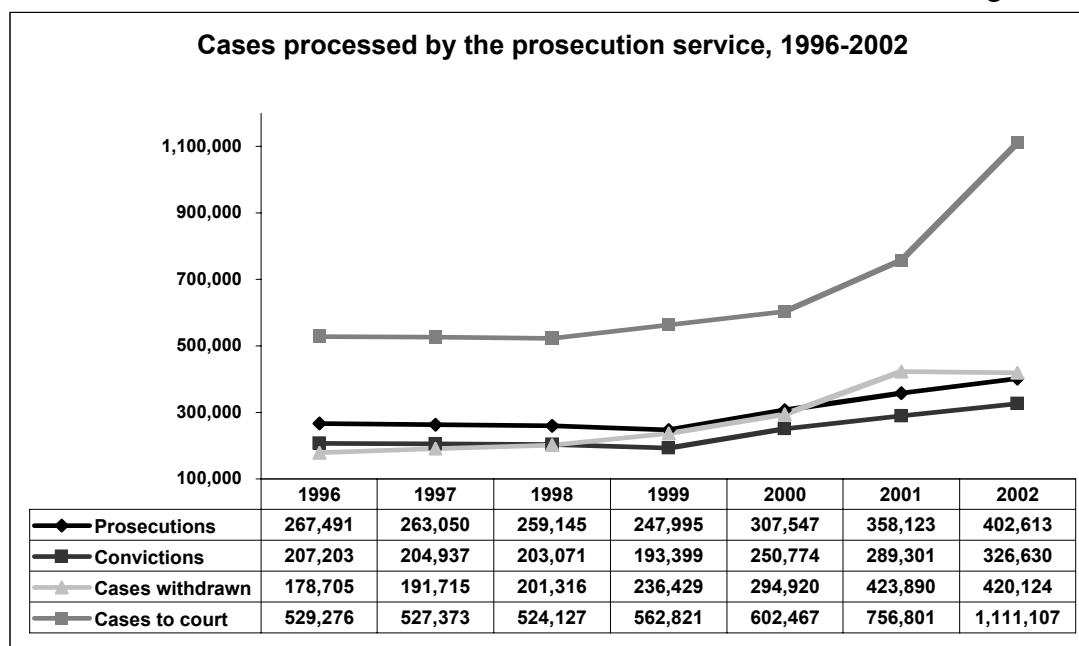
Between 2000 and 2001 the number of new cases referred to court increased by a substantial 26%.<sup>52</sup> Between 2001 and 2002 the number of new cases increased by a massive 47%. The 2000/01 increase was the likely result of the police's National Crime Combating Strategy (NCCS), also known as 'Operation Crackdown'. The Operation is high density, zero tolerance type police and army operations, taking place in high crime

<sup>52</sup> 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.

areas since April 2000. Some 462,000 arrests were made during first 12 months of the three year operation.<sup>53</sup>

According to the NPA, 756,801 new criminal cases entered the magistrates' or lower court system during 2001.<sup>54</sup> During 2002 the number of new cases rose to 1.1 million.<sup>55</sup> (See Figure 9) No figures are given for the High Courts, but less than 5% of all criminal cases end up there.<sup>56</sup>

Figure 9



Source: SAPS CIAC, NPA Court Management Unit

The steady increase in the number of cases withdrawn by the prosecution service was halted during 2002. 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 cases which are flawed in some way and not ready to proceed to a successful prosecution.<sup>57</sup>

## Evaluation and reasons for poor performance

### *High staff turnover*

<sup>53</sup> New plan to 'chop farm attacks, *Pretoria News*, 14 February 2001.

<sup>54</sup> *Annual Report 2001/2*, National Prosecuting Authority, Pretoria, 2002, annexure B.

<sup>55</sup> E-mail from Adv Marelize Potgieter, NPA Court Management Unit, 17 March 2003.

<sup>56</sup> 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 Court.

<sup>57</sup> Interview, Adv Marnus Steyn, Court Management Unit, National Prosecuting Authority, 23 October 2000, Pretoria.

Between 1994 and 1997 some 630 prosecutors resigned. Between them they had the equivalent of more than 2,000 years of work experience as prosecutors.<sup>58</sup> A rapid turnover of staff impairs the professional capacity of the prosecution service. Prosecuting is a practically orientated profession. It requires the ability to apply legal theory to the actual cases before court, to sum up the demeanour and expression of witnesses quickly and correctly, and to present various forms of evidence and witnesses to build up a convincing case. Many of these skills cannot easily be taught and are acquired and perfected through practice and experience. The high staff turnover in the prosecution service is closely related to low remuneration levels of prosecutors, although that has improved significantly over the last few years. The loss of experienced prosecutors was also one of the side-effects of affirmative action, which made the profession less attractive for especially white males.

### *Rising workload*

As a result of the lack of staff – especially senior and experienced prosecutors – the prosecution service is unable to effectively deal with all the cases referred to it by the police. Between 1987 and the end of 1999 the number of prosecutors increased by 79%. Over the same period the number of many serious crimes recorded by the police more than doubled. Serious assault rose by 112%, murder by 143%, rape by 182%, and robbery by 265%.<sup>59</sup> An improvement in the average case load per prosecutor took place in 2001 and 2002, as the rate of increase of recorded crime slowed down and more prosecutors were appointed.

### *Changing legal environment*

South Africa's post-1994 constitutional dispensation guarantees the right of every accused person to be presumed innocent.<sup>60</sup> Thus, in any criminal trial, the onus is on the state to prove its case beyond a reasonable doubt. South African common law has long recognised this right. However, before 1994, a number of laws were on the statute books which sought to assist the state in the prosecution of certain offences. These laws created presumptions in the state's favour. The presumptions placed an onus on persons accused of certain offences, which they had to rebut by proof on a balance of probabilities to be acquitted of the charges against them. After 1994 the constitutional court declared a number of such presumptions invalid and unconstitutional.

For example, the Criminal Procedure Act of 1977 provides that a free and voluntary confession by an accused is admissible in evidence against such an accused. Where such a confession is made to a magistrate and reduced to writing, the confession is “presumed, unless the contrary is proved, to have been freely and voluntarily made” by the accused.<sup>61</sup> An accused who made a confession to a magistrate bears the onus of proving that his confession was not made freely and voluntarily. In 1995 the Constitutional Court ruled that such an onus violated the right every accused person has to a fair trial, which includes the right to be presumed innocent, to remain silent and not to testify during the proceedings.<sup>62</sup>

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<sup>58</sup> Interview, Mr J. J. Swart, President of the National Union of Prosecutors of South Africa, Pretoria, 7 April 1997; Hansard [NA:Q] 6, 16 April 1998, column 874.

<sup>59</sup> This was partly due to the reincorporation of the former TBVC states into the RSA.

<sup>60</sup> Section 35(3)(h), Constitution of the Republic of South Africa Act no. 108 of 1996.

<sup>61</sup> Section 217(1)(b)(ii), Criminal Procedure Act no. 51 of 1977, as amended.

<sup>62</sup> *S vs Zuma and Others* 1995 (2) SA 642 (CC).

The Constitutional Court's ruling has had a profound effect on the work of the prosecution service. Since the ruling it is common for defence lawyers to argue that their clients' confessions were made under duress. This necessitates the holding of a trial-within-a-trial whereby the prosecution has to prove that any confession before a magistrate was made freely and voluntarily.

In spite of the problems besetting the prosecution service, however, experience has shown that the prosecutors in farm attack cases are generally competent. This is especially so in the more serious cases, which are invariably tried in the High Court, where the prosecutors are usually very experienced and competent state advocates. This was confirmed during interviews with state advocates at the offices of the Directors of Public Prosecutions in Bloemfontein, Cape Town, Kimberley, Pietermaritzburg and Pretoria. Of the more than 50 court cases that the Committee looked at in fairly great detail, there were only two cases where the prosecution should *possibly* have been handled differently.

## THE COURTS

One of the consequences of poor performance levels in the detective and prosecution service, and by the courts, is the increase in the number of unsentenced prisoners. The number of unsentenced prisoners increased from 19,571 in June 1994 to 56,459 in December 2002 – a massive increase of 189%. Over the same period the number of sentenced prisoners increased from 79,987 to 128,655 – an increase of 61%. South Africa's prisons are overcrowded. In December 2002 the country's prisons were holding some 185,000 inmates but had an approved occupancy level of only approximately 110,000.<sup>63</sup>

One reason for the increase in the number of sentenced prisoners is that longer sentences are being handed down by the country's courts. Between January 1995 and May 2002 the number of prisoners serving terms of more than ten years increased by 170%, while those serving more than 20 years increased by 284%. This latter increase is partly due to the fact that a moratorium on the execution of persons sentenced to death was put into place in 1989, and the Constitutional Court ruled the death penalty unconstitutional in 1995. Thereafter existing death sentences were substituted by long terms of imprisonment (usually life imprisonment).

Longer sentences are also a result of rising levels of serious and violent crime, and minimum sentencing legislation which came into effect in May 1998. The Criminal Law Amendment Act, No 105 of 1997, provides for minimum sentences to be imposed on persons convicted of certain offences. Judicial officers may only impose less than the prescribed minima if they are "satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence".<sup>64</sup> Moreover, judicial officers have to justify their decision by placing on record their reasons for imposing a lesser sentence than the prescribed minimum. For example, the Act mandates life imprisonment for persons convicted of murder, where it is planned or premeditated, or it involves rape or robbery with aggravating circumstances. Murder which is not premeditated and aggravated robbery also carry heavy penalties. Persons found guilty of such offences must receive a prison

<sup>63</sup> Criminal Justice Monitor, *Nedbank ISS Crime Index 5(1)* (Institute for Security Studies, Pretoria, 2001) p 3-4.

<sup>64</sup> Section 51(3)(a), Criminal Law Amendment Act no. 105 of 1997.

sentence of 15 years on a first conviction, 20 years on a second, and 25 years on a third or subsequent conviction.

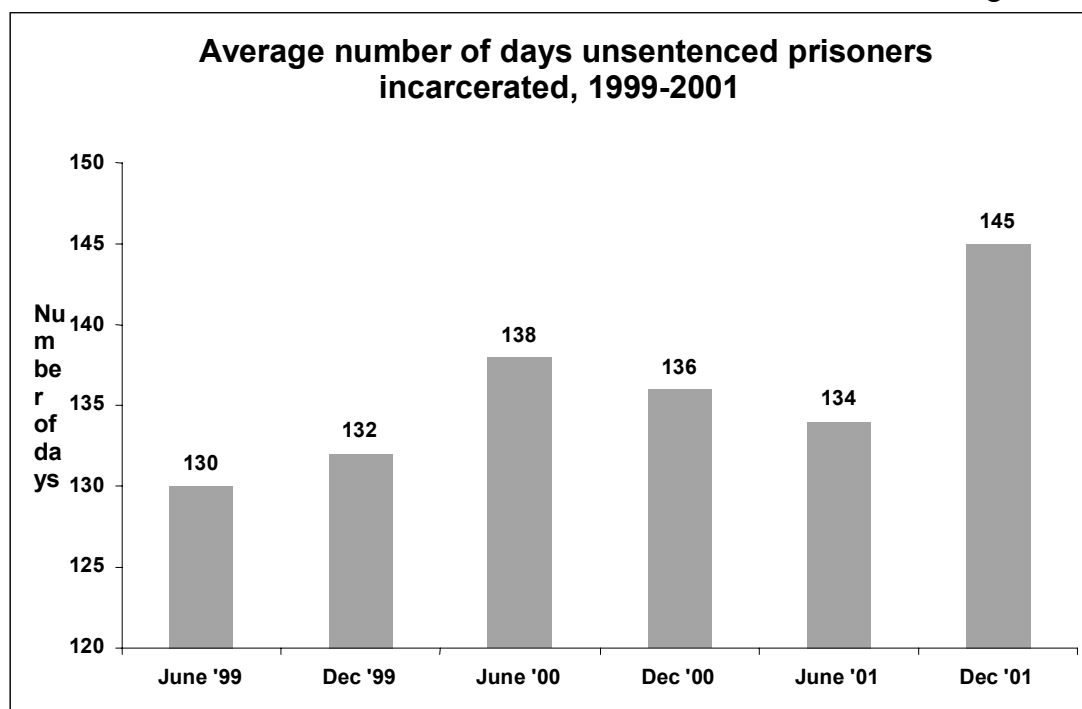
From the available evidence it appears that perpetrators of farm attacks – especially in cases involving serious violent crimes – generally receive long prison sentences.<sup>65</sup> Such cases are usually prosecuted in the High Court, where judges are not restricted in the maximum sentence they decide to impose for common law offences.

## PRISONS

### Detention cycle time

The detention cycle time, or the average length of time unsentenced prisoners remain incarcerated until the finalisation of their trials, rose considerably after 1996. In December 1996 the average unsentenced prisoner spent 77 days in custody. This steadily increased to 145 custody days in December 2001 (Figure 10). This means that, on average, accused persons are imprisoned for four-and-a-half months awaiting the finalisation of their trial. Delays in the processing of cases involving awaiting trial prisoners place a considerable financial burden on the Department of Correctional Services. In late 2001, a prisoner cost the department some R90 a day. Multiplied over an average of 145 custody days this comes to R13,050 per unsentenced prisoner.

Figure 10



Source: Department of Correctional Services

<sup>65</sup> Focus group interviews conducted by Committee members in respect of Western Cape (Paarl, 22 September 2001), Northern Cape (Kimberley, 5 October 2001) and Free State (Welkom, 16 November 2001) investigating officers, and investigating officers of the Empangeni Serious and Violent Crimes Unit (Empangeni, 15 October 2001). Similar observations were also made by Committee members in their discussions with prosecutors and state advocates who had prosecuted farm attack related cases.

There are no official statistics available on the awaiting-trial period for farm attackers. An analysis of the case studies<sup>66</sup> that the Committee undertook, however, indicates that in the 31 cases that actually went to court and where the information is known, the average period between the commission of the offence and the trial is about 23 months. However, in three cases the arrest only followed many years after the commission of the offence because, for example, the accused had to be extradited from a neighbouring country. If those exceptional cases are ignored, the average time lapse between the offence and the trial is about 18 months. In some provinces, e.g. the Free State, some cases were finalised within four or five months, whereas it took much longer in Mpumalanga. Moreover, in many of the case studies, the accused were arrested within days. The proper investigation of such cases normally takes four to six months, which means that an important reason for the long delays in finalising the cases is to be found in the over-crowded court rolls.

It should be born in mind that most of these farm attack cases involved very serious offences and were disposed of in the High Court where, generally, it takes longer for cases to be disposed of than in the regional courts. Generally, the awaiting trial periods for other types of cases in the High Court are as long as for farm attack cases, if not longer.

## CONCLUSION

South Africa's post-1994 transition brought about a restructuring of the criminal justice system, the abolition of a number of laws, policies and operating procedures and the rapid formulation of a plethora of new ones. A range of institutional and other constraints militated against the success envisaged for these interventions and programmes. Chief amongst these was the lack of assessment of the actual requirements for implementation – in short, the gap between the development of new (sometimes very ambitious) policy, and the managerial capacity, skill and resource requirements available for its implementation. This, as well as the increase in the number of cases processed in the South African criminal justice system, has resulted in the operational weakening of a number of criminal justice functions.<sup>67</sup>

A core element of policing in South Africa has been the attempt to shift policing from its prior focus on the management of specific incidents – that is, its reactive focus – towards a more proactive, participatory and preventive approach. For the SAPS this has meant focusing on improving its investigative capacity, particularly its intelligence, detective and other specialised functions, enhancing visible policing and attempting to improve the service provided to victims of crime.<sup>68</sup>

Yet, arguably the SAPS' most glaring weakness – especially in respect of rural safety and farm attacks – is in its intelligence and detection capabilities. Too few farm and smallholding attacks are prevented because the security forces rarely obtain advance warning of such attacks. Moreover, once the perpetrators of an attack have disappeared the detective service frequently lacks the resources and capacity to arrest the culprits.

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<sup>66</sup> See p 95.

<sup>67</sup> See Pelsler E., Rauch J. and Henkeman S 'Safety, security and access to justice' in *DFID review*, (Institute for Security Studies, Pretoria, 30 March 2001) p 11.

<sup>68</sup> Pelsler E., Louw A. and Ntuli S. *Poor safety: Crime and policing in South Africa's rural areas* (Institute for Security Studies, Pretoria, 2000) p 60.

The proposed sector policing strategy to be adopted in rural areas – and replace the Commando-dominated rural security structures – may be able to overcome some of these problems. With dedicated police officers or police reservists for geographically defined areas, and greater community interaction with sector police personnel, the police will be in a better position to collect crime intelligence and encourage public cooperation in the detection of crime.

However, given the size, geographic isolation and dispersion of many rural areas, a policing strategy based on a consistent visible police presence in the form of sector police personnel will be very difficult to sustain to the point where it succeeds in curbing crime – even those crimes such as farm attacks which can be combated effectively through visible policing.

Thus, if policing in the deep rural areas, for practical reasons, is primarily reactive in nature, then the proactive functions of the SAPS should be structured in the form of support to upgrade the detective and investigative capacities of the rural police stations and the specialised units that operate in the vicinity. Proactive functions at these police stations should focus on enhancing information and intelligence gathering to support the detective functions and guide the operational deployment of station personnel and specialised units. This should be done together with substantial upgrades to the information and intelligence assessment and analysis systems at these stations.

It is a trite point to make, but the SAPS – especially at stations situated in poorer communities and in many rural areas – lacks the resources its personnel need to work effectively. Many police stations work with insufficient and/or old and inadequate equipment such as vehicles, radios and basic information technology equipment, and even handcuffs.

Clearly, more and better resources cost money which is in short supply in a country with many pressing socio-economic needs. It should, however, be possible to allocate existing resources in a more productive way. Inter alia, this could entail: reallocating head office-based police officers to police stations in high crime areas; placing more officers on duty over times when most crimes occur (Friday and Saturday evenings and at months' end); and transferring state vehicles used by officers performing administrative and managerial functions (and which are not used during the course of the day) to stations for direct policing duties. The majority of the almost 3,000 bodyguards who are placed at the disposal of politicians by the police's VIP protection unit should be re-deployed to high-crime areas.

Moreover, to reduce the workload on its staff, the police service should outsource a number of its non-core functions or services to the private sector. The SAPS could put out to tender the provision of a variety of services it currently performs, and set standards for the provision of these services with which private contractors would have to comply.<sup>69</sup> For example, in many rural areas police officers spend long periods of time transporting unsentenced prisoners between their police station, the nearest court and prison (which are often far apart). Private security companies could be contracted to perform such a function thereby relieving the police of this function.

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<sup>69</sup> For a discussion of the benefits to the state of outsourcing its functions see Benson B.L. *To Serve and Protect. Privatization and Community in Criminal Justice* (New York University Press, New York, 1998) p 26-40.

Finally, it needs to be borne in mind that there is a limit to what the police service and the criminal justice system can do to reduce crime. The criminal justice system lacks the influence to deter many perpetrators from committing crimes. Perpetrators tend to be motivated by such feelings as anger, hatred, lust or jealousy (often in the context of alcohol and drug abuse). They are not in a rational frame of mind to weigh up the consequences of their actions. This is not to say, however, that the criminal justice system's role is unimportant. The system plays a crucial role in prosecuting repeat offenders and crack down on organised crime syndicates. The criminal justice system can also play a vital role to reduce some of the facilitators of crime, such as drugs and firearms. The point has been made that much of the country's criminal gang and organised crime problem is linked to the ready availability of drugs – because drug addicts turn to crime of various kinds to finance their drug habits.

In South Africa there appear to be a disproportionately large number of young males who are prepared to use crime, often involving high levels of violence, to satisfy their material desires. Many also engage in wanton violence in a misguided attempt to bolster their masculinity, or to vent their anger and frustration at a society they feel has abandoned them.

Culture of violence theories argue that the effects of apartheid coupled with years of political violence and the continued exposure to violence in the home and in the neighbourhood have produced a destructive culture which manifests itself in what the Nedcor Project on Crime, Violence and Investment calls "murderous intolerance".<sup>70</sup> It also means that South Africans quickly resort to violence as a means of solving conflicts – whether in the domestic, social or work environment.

As the legitimacy of the South African Government began to decline from the mid-1970s onwards, and opposition to its policies intensified, the distinction between political and criminal behaviour became blurred. Apartheid offences were classified as crimes. The state's security forces committed crimes, and showed disdain for the rule of law, in their zeal to clamp down on the Government's political opponents. And those engaged in 'the struggle', particularly from the mid-1980s onwards, justified forms of violence as legitimate weapons against the system. Actions which were violent crimes were often seen and justified by their perpetrators as a legitimate defence against political opponents and enemies. The result was a society in which the use of violence to achieve political and personal aims became widespread.<sup>71</sup>

Crime prevention strategies can only be effective within institutional contexts that are strong enough to support them. This is because 'families, communities, schools, churches and work contexts discourage crime by creating commitments to conventional life patterns that would be endangered by crime'.<sup>72</sup>

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<sup>70</sup> *Nedcor Project on Crime, Violence and Investment: 1996, Final Report*, The Nedcor Project, Johannesburg.

<sup>71</sup> Shaw M. *Partners in crime? Crime, political transition and changing forms of policing control*, (Centre for Policy Studies, Johannesburg, 1995) p 9.

<sup>72</sup> Emmett T. 'Addressing the underlying causes of crime and violence in South Africa' in Emmett T. and Butchart A. (eds), *Behind the mask. Getting to grips with crime and violence in South Africa*, (HSRC publishers, Pretoria, 2000) p 280

The role of informal social control becomes problematic when institutions like the family and community break down and are not able to exert the pressures necessary to uphold the law. Writing in the early 1990s, Mamphela Ramphele analysed the causes and consequences of social disintegration in black communities.<sup>73</sup> Among the symptoms of disintegration she lists the following:

- family breakdowns, with increasing divorce rates, separation, single parenthood and teenage pregnancy;
- breakdown of authority of parents and teachers;
- high unemployment and unemployability rates;
- high alcohol and drug abuse;
- high crime rates and endemic violence at all levels of social interaction; and
- flight of skills and positive role models from the townships into higher-income areas.

To change the widespread culture of violence in South Africa will take time. Crucially, it cannot be done by the criminal justice system alone. Peoples' beliefs and values are at their most mouldable during their childhood and early adolescent years. During this time young people generally have little contact with the police or criminal justice system. Their role models and those who have influence over them are their parents, siblings, extended family members, teachers, religious leaders, friends and other people in their age group with whom they mix on a regular basis. Such role models and age-group peers, and civil society organisations all exert informal social controls, or pressures to conform to the law and socially acceptable behaviour. This places an onus on all law abiding South Africans to play their part in changing the destructive values and attitudes that have been internalised by a large portion of the population.

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<sup>73</sup> Ramphele M. 'Social disintegration in the black community: Implications for transformation' in *Monitor* (1991) p 7-16)