

Justice versus Retribution:

Attitudes to Punishment in the Eastern Cape

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1. Totals of percentages used in the figures and tables may not always add up to 100% due to rounding, and the fact that for some questions some respondents answered 'don't know'.

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EXECUTIVE SUMMARY

An important way of measuring the impact of crime upon society is to assess the public's attitudes to punishment. The results of the attitudes to punishment survey — based on 470

interviews and eleven focus group discussions, conducted in the Eastern Cape in mid-1999 — present some interesting results. While most respondents took a fairly punitive approach on the issue of punishment for criminals, responses varied considerably between urban and rural respondents, and respondents of different race groups.

The survey revealed that, on average, every third adult inhabitant of the Eastern Cape became a victim of crime within a two-year period. Most crimes were reported to the police, but less than a third of respondents who did so were satisfied with the police's response. While rural respondents were least likely to report crime to the police, they were twice as likely to be satisfied with the police compared to their urban counterparts. Crimes reported in rural areas were the most likely to end up in court. Rural crime victims, however, were least likely to be satisfied with the outcome of the court proceedings.

Many respondents were ignorant of the role and purpose of the criminal justice system, and the different functions of its component parts (police, justice and prisons). Most respondents overestimated the increase in crime since 1994, and the proportion of crimes involving violence.

Only a minority of respondents felt that the criminal justice system was performing well or had improved since 1994. Most respondents were critical of the government's crime-fighting performance. Urban and white respondents were the most critical of the government's performance, while rural and black respondents were the most positive. Most respondents thought that the courts are independent and impartial. However, only a minority of black respondents felt that this was the case. A quarter of respondents felt that politicians should influence courts' judgments and sentencing decisions. In their evaluation of the various professions that form part of the criminal justice system, respondents were most critical of prison officials and uniformed members of the police. They were most praising of judicial officers and police detectives.

Most respondents thought that judicial officers should be responsible for punishing criminals. However, a sizeable minority — especially among rural respondents — felt that the police or the community should punish criminals. There was substantial support among rural and black respondents for alternative or traditional forms of punishment. Respondents were equally divided on the issue of vigilantism and whether it was something negative, or something to be welcomed because of the criminal justice system's perceived failure. Most respondents felt that there had been a countrywide increase in vigilantism since 1994. While one out of twenty respondents admitted to having personally participated in vigilante activity, every fifth respondent said he or she would consider doing so.

A substantial majority of respondents thought that sentences were too lenient, and that lenient sentences played a major role in the increase in crime since 1994. Three-quarters of respondents were in favour of a reintroduction of the death penalty for persons convicted of the most serious crimes.

Respondents were presented with brief descriptions of a number of crimes and asked to impose a sentence on the perpetrators of the described crimes. Respondents became considerably less punitive once they were given some information on an actual crime. Respondents were particularly lenient when it came to punishing persons who had been convicted of vigilante type crimes.

Just over half of the respondents supported the provision of free legal aid to accused persons who cannot afford their own legal representation. Most thought it is important that the criminal

justice system respects accused persons' constitutional rights. About three-quarters felt that it is important that the criminal justice process ensures that no innocent people are convicted of crimes, even if it means that some guilty people will walk free.

There was overwhelming support for forced manual labour for convicted prisoners who had committed serious crimes. Most respondents thought that juveniles should be treated differently and more benignly by the criminal justice system, but that corporal punishment for juveniles should be reintroduced as a punishment in law.

Respondents had an overall negative view of the efficacy of imprisonment. A minority thought that prisoners are helped to become law-abiding citizens. Most felt that prisoners learn new ways to commit crime while incarcerated. About a quarter of respondents thought that prison was not a punishment for offenders. Most felt that the most important goal of prison should be rehabilitation, followed by punishment and the removal of criminals from society.

Compared to their male counterparts, female respondents were consistently more punitive in their attitudes to sentencing and the goals of prison. They were also less concerned with protecting the rights of the accused and of convicted offenders.

KEY POINTS

- 34% of the respondents had been victims of crime over a two-year period. A higher proportion of white respondents were victims of crime (47%), than black (34%) or coloured respondents (23%).
- While 80% of white crime victims reported their victimisation to the police, only 66% of black and 52% of coloured respondents who had been victims of crime did so.
- Of those crime victims who had reported crime to the police, 31% were satisfied with the police's response. Rural respondents were the most satisfied with the police's response.
- 90% of the respondents thought that, compared to 1994, there was more crime in the country. Compared to white and urban respondents, black and rural respondents were less likely to think that crime had increased.
- 47% of the respondents thought that the general functioning of the criminal justice system had not improved since 1994. While 41% of black and 34% of coloured respondents said that the criminal justice system had improved, only 5% of whites said so.
- A quarter of the respondents thought that on the whole the criminal justice system is performing well, with 50% stating that it is not. Black and male respondents, and those living in small towns, were the most positive about the criminal justice system's performance.
- A quarter of the respondents agreed, and 58% disagreed, with the statement that 'the government has done a good job on fighting crime and lawlessness'. Only 8% of white respondents were positive about the government's performance, compared to 25% of coloured and 32% of black respondents.
- When asked in which area the government should spend money to prevent crime, 66% of the respondents identified job creation, followed by the criminal justice system (17%), and education (8%).

- 57% of the respondents agreed, and 24% disagreed, with the statement that 'the courts are independent of and impartial to outside influences such as the press, politicians and public opinion'.
- 23% of the respondents agreed, and 63% disagreed, with the statement that 'politicians should influence courts' decisions on what sentence to impose and in finding accused persons guilty or not'.
- 34% of black respondents thought that politicians should influence courts' decisions in finding accused persons guilty or not. Only 14% of coloured and 12% of white respondents thought so.
- 44% of the respondents agreed with the statement that they 'trust the police and would willingly report crime to them'. The majority, however, was either unsure (23%), or disagreed with the statement (33%). Rural and black respondents were least trusting of the police.
- In evaluating the participants in the criminal justice process, 44% of respondents thought that judges were doing a good job, followed by magistrates (35%), police detectives (31%), prosecutors and politicians (both 27%), uniformed police officers (23%), and prison personnel (18%).
- 59% of the respondents thought that magistrates or judges should be responsible for punishing criminals, 28% thought it should be the police, and 10% thought the community should be responsible for punishing criminals.
- Just under half of all respondents, and 75% of rural respondents supported alternative or traditional forms of punishment.
- 13% of the respondents said there had been an incident of vigilantism in their area, while 25% were unsure.
- Vigilante activity in the areas where respondents lived usually resulted in violence. In the majority of cases, the victims of vigilante activity were beaten (55%), killed or shot (18%). In only 10% of the cases were the victims of vigilantism banished from the area, or taken to the police (7%).
- Respondents who had been victims of crime were more likely to say that they either had or would participate in vigilante activity (31%), than respondents who had not been crime victims (20%).
- When asked what kind of sentence a person deserved who murders his daughter's rapist, 5% of respondents suggested no punishment and 38% chose a non-custodial sentence.
- Most respondents thought that the sentences handed down by the courts were either 'much too lenient' (58%) or 'slightly too lenient' (27%). Only 4% thought that sentences were much or slightly too tough.
- 90% of the respondents who felt that sentences were too lenient thought that lenient sentences had played a 'major role' in the increase in crime since 1994.

- 74% of the respondents thought that it was important that the criminal justice system respects the constitutional right of accused persons.
- Just over half (51%) of the respondents thought that corporal punishment for juveniles should be reintroduced as a punishment in law.
- About half (48%) of the respondents thought that being put in prison punishes offenders. 23% thought that prison was not a punishment for offenders, while 30% were unsure.
- 61% of the respondents thought that prisons should reform prisoners, rather than punish them.

INTRODUCTION

REASON FOR SURVEY

Criminal justice policy makers need to have an accurate appreciation of the impact of crime upon society. An important way of assessing impact is to establish the nature of public attitudes to punishment, sentencing and the criminal justice process. Criminal justice policy needs to be based on at least a degree of popular consensus and support. Where such consensus and support are lacking, it is essential to understand the reasons for this. The attitudes to punishment survey, undertaken by the Institute for Security Studies and the Institute for Human Rights and Criminal Justice Studies, seeks to provide this by analysing the views of Eastern Cape residents on punishment, sentencing and the criminal justice system.

The information contained in this monograph will assist policy makers and senior officials in the criminal justice system (especially the police and the judiciary) to make informed policy decisions based on the attitudes and perceptions of a wide cross-section of Eastern Cape residents. Many of the survey results are broken down by area of residence, as well as the gender and race of the respondents to assist policy makers in devising focused criminal justice policies and educational campaigns targeted at specific communities.

HOW TO READ THIS MONOGRAPH

The monograph is divided into a number of sections to permit easy reading and reference for those who are only interested in certain topics covered by the survey. The monograph's *executive summary* provides an easy to read synopsis of the main findings of the survey. The *key points* section consists of a selection of interesting quantitative survey results.

Every monograph chapter is preceded by a brief *chapter overview*. Readers are encouraged to read the overview first to get a basic understanding of the contents of the ensuing chapter. Readers who merely want a basic understanding of the contents of a chapter — without too much detail on respondents' answers broken down by area, gender and race — should read only the overview.

Chapters are interspersed with *focus group findings*. These provide additional qualitative information on the subject matter contained in the chapter. Readers will not miss out on any of the quantitative survey results by not reading the focus group findings. The survey canvassed the opinions of eleven focus groups. Sometimes the members of a focus group did not have anything to say on a certain issue, or they had nothing interesting to say which would add to the informative value of the monograph. In both cases, the comments of such a focus group were

excluded from the monograph.

Most chapters contain a number of *text boxes*. These contain information relevant to the survey results discussed at that part of the monograph and should be of interest to readers who wish to be informed about the 'bigger picture' of the issue under discussion. The boxes, however, do not contain any information obtained from the survey. Readers only interested in the survey results may omit reading these text boxes.

Every chapter ends with a section entitled *interpretation of findings*. These sections contain no new information collected through the survey process (again, readers can ignore them if they are only interested in the quantitative data which emerged from the survey data). The interpretation of findings sections are devoted to analyses of the survey results and the implications of the survey for the criminal justice system and criminal justice policy makers.

Readers only interested in the survey results should only read the chapter overviews and the text in the chapters which is of interest to them, excluding the focus group findings, the text boxes, and the interpretation of findings. Where relevant, survey data that is difficult to understand, is also presented in graph or table form. Readers interested in the questions asked of survey respondents, should peruse the appendix at the end of the monograph which contains a copy of the survey questionnaire used by the fieldwork team.

RESEARCH METHODOLOGY

This questionnaire-based survey was preceded by a focus group study conducted in June 1999. Participants of the eleven focus groups were chosen, based on their area of residence, race, profession or gender. The focus groups were comprised as follows:

- Port Elizabeth (white community; black community; coloured and Asian communities);
- Graaff-Reinet (farmers; black and coloured men; black and coloured women);
- Grahamstown (black community; white community; coloured community);
- Umtata; and
- Thabankulu.

Focus group participants were asked to comment on, *inter alia*, their personal experience of crime; their perceptions of violent crime; the police's ability to solve crime; the performance of the criminal justice system; judicial officers and lay assessors; sentencing policy; capital punishment; the prison service; vigilantism; and the rights of accused persons.

Many of the answers given by focus group participants were used to refine the interview schedule for the main part of the survey (see appendix). In total, 470 people over the age of 17 were interviewed.¹ Once the field team had selected an area, fieldworkers randomly selected households in that area from which respondents were chosen on the basis of their age, gender and race. The fieldwork was conducted in August and September 1999.

Two hundred respondents were drawn from urban centres (Port Elizabeth, East London and Umtata); 210 from small towns (Butterworth, Graaff-Reinet, Grahamstown and Queenstown); and 60 from rural areas (Bizana, Peddie, and Tombo). Half of the respondents were male and half were female.

Almost half of the respondents were black (230), while the white and coloured group each consisted of 120 respondents. The three age groups 18-30, 31-50, and older than 50) each

made up roughly one-third of the sample.

WHY THE EASTERN CAPE?

There were a number of reasons why the survey was done in the Eastern Cape only. Firstly, limited funding restricted the survey to one province. Secondly, the chosen province needed a mix of metropolitan areas, small towns and rural areas. Thirdly, the chosen province should have a wide spread of income levels ranging from high income earners to the very poor. Fourthly, parts of the chosen province should have been under the administration of one or more of the erstwhile homeland administrations. The Eastern Cape met all these requirements.

The Eastern Cape spreads across 169 000 square kilometres (13.9% of South Africa's surface area). According to the 1996 census figures, it has a population of 6.3 million people, which represents a 15.5% share of the national population.²

In 1996, some 86.4% of the province's population were black, 7.4% coloured, 5.2% white, and 0.3% Asian. The urbanisation level was 36.6% (53.7% for South Africa as a whole), while the unemployment rate was 48.5% (33.9% for the whole of the country).³ In 1996, 42% of the province's residents lived in formal dwellings, 11% in informal dwellings, and 41% in traditional dwellings. In 1991, the Eastern Cape's human development index was 0.507, while it was 0.677 for South Africa as a whole.⁴

ACKNOWLEDGMENTS

The survey was made possible by the generous funding of the Open Society Foundation — South Africa, the European Union, and Technikon South Africa's Institute for Human Rights and Criminal Justice Studies.

The fieldwork was undertaken by DRA-development. Mr Martin Sycholt trained and managed the fieldwork team, oversaw the collection and collation of the survey data, and wrote an extensive overview of the survey findings. He also cross-tabulated the data to a number of the questions in the interview schedule. Ms Lizette Meyer was responsible for setting up and conducting most of the focus group sessions, and she assisted in and gave technical advice on the design of the interview schedule.

Substantial assistance in the design of the interview schedule, and in the analysis and interpretation of the data was provided by two senior researchers from the Institute for Human Rights and Criminal Justice Studies: Dr Anthony Minnaar and Ms Duxita Mistry, and Ms Antoinette Louw, the head of the Crime Prevention and Policing Programme at the Institute for Security Studies.

Notes

1. The survey was preceded by a small pilot survey consisting of about 20 respondents from various communities in Port Elizabeth. This was done to train the fieldworkers or interviewers, and to refine the interview schedule further.
2. For a detailed breakdown of a range of socio-economic indicators on the Eastern Cape province see *Fast Facts*, 1/99, January 1999, South African Institute of Race Relations, Johannesburg, 1999, p. 2.
3. The unemployment rate is the proportion of the economically active population that is

unemployed, and includes the unemployed who have not taken active steps to look for work.

4. The human development index measures socio-economic development on a scale of 0 — 1, one being the highest and zero the lowest level of development.

EXPERIENCES OF CRIME AND THE STATE'S RESPONSE

CHAPTER OVERVIEW

The survey results indicate that, within a two-year period, every third adult inhabitant of the Eastern Cape became a victim of crime. The probability of an average person falling prey to crime generally, and to certain crimes specifically, is significantly affected by his or her race, gender, area of residence and income. For example, the average white person in the Eastern Cape is twice as likely to become a victim of crime than a coloured person. Whites, however, are primarily affected by property crimes, while blacks and coloureds are affected almost equally by property and violent crimes.

Respondents reported two out of three crimes to the police. Reporting rates were significantly affected by the race of crime victims, and to a lesser extent, their area of residence. Whites and residents of small towns were most likely to report crime to the police, coloured people and rural residents were least likely to do so. Of those crime victims who reported crime to the police, less than one-third were satisfied with the police's response. Whites were the most satisfied with the police's response, while rural respondents were almost twice as likely to be satisfied with the police compared to their urban counterparts.

One out of three crimes reported to the police went to court. Considerably more crimes which were reported to the police in rural areas went to court, compared to those which were reported in urban areas or small towns. Rural crime victims who testified in court, however, were less likely to be satisfied with the outcome of the court proceedings than crime victims residing in urban areas or small towns. Moreover, while proportionately more black than white crime victims went to court to give evidence, the latter were more likely to be satisfied with the outcome of the court process.

VICTIMISATION RATES

All respondents were asked whether they had been victims of crime in the past two years. Just over one-third (34%) of the respondents stated that they had been. Rural respondents reported the highest incidence of victimisation with 40% stating that they had fallen victim to crime over the same two-year period. Just over a third of urban respondents, and 32% of the respondents residing in small towns reported falling victim to crime.

The most common crimes that affected the respondents who had been victims of crime were theft (38% of crimes reported by the respondents), housebreaking (21%), robbery (18%) and assault (13%).

According to the Victims of Crime Survey undertaken by Statistics South Africa (SSA), 15% of individuals living in South Africa experienced at least one individual crime, and 21% of households experienced at least one

household crime, over a one-year period (1997).¹ According to the survey, burglary was the most frequent crime (experienced by 7% of respondents in 1997), followed by theft of property and stock theft (each 5%), assault (4%) and fraud (3%).

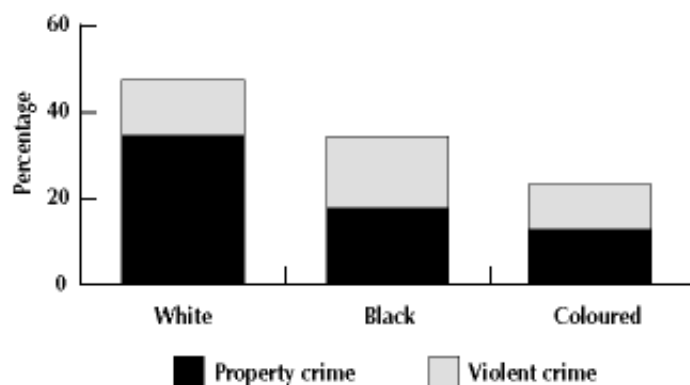
The SSA survey revealed that more men (16%) than women (13%) were victims of crime in 1997. Moreover, whites and coloureds (17% of both groups were victimised in 1997) had been victims of crime more than blacks (14%), or Asians (11%). Members of these race groups were not affected uniformly with regard to the ratio between property and violent crime. Almost half of all blacks were victims of violent crime (46%). This was significantly lower for members of other race groups: 38% for coloureds, 28% for Asians and 27% for whites.

Urban respondents who had been victims of crime were most likely to be victims of theft (37%), robbery (20%) and housebreaking (19%). The pattern was similar for residents of small towns: theft (31%), housebreaking (30%) and robbery (18%). Rural respondents experienced a higher prevalence of violent crime: assault (27%), theft (24%) and stock theft (20%).

Male respondents reported higher levels of victimisation (38%), than their female counterparts (30%). Men were more likely to be victims of assault (17% compared to 13% of female respondents) and robbery (22% compared to 12% of women). Women, however, reported higher levels of victimisation as a result of theft (37% compared to 29% of men).

A higher proportion of white respondents were victims of crime (47%), than black (34%) or coloured respondents (23%). White respondents experienced higher levels of victimisation in respect of property crime than coloured and black respondents who suffered more from violent crime. That is, the proportion of property to violent crime for white respondents was 73 to 27. For black respondents, it was 52 to 48, and for coloured respondents 56 to 44 (figure 1).

Figure 1: Victims of crime over a two-year period



There is an almost direct relationship between the victimisation rates of respondents and their level of education. Almost half (45%) of the respondents with a tertiary or post-matric qualification had been a victim of crime. This decreased to 39% for respondents with 12 years of schooling, and 22% for those with between six and 11 years of schooling. Some 27% of respondents with less than six years of schooling indicated that they had been victims of crime.

Not surprisingly (as there tends to be a positive relationship between people's qualifications and

income), higher income earners were more likely to have been victims of crime than low income earners. Over half (52%) of respondents earning more than R5 000 per month had been victims of crime. Respondents earning less than R1 000 per month were victimised the least (29%). There were no significant differences in victimisation rates between respondents of different age groups.

FOCUS GROUP FINDINGS

During the focus group phase of the survey (which preceded the main questionnaire-based survey), community members in five different cities, towns and villages were asked about their personal experiences of crime.

White focus group members in Port Elizabeth stated that there was a high prevalence of crimes that had no apparent motive. These were crimes committed by people who were bored or did not like their victim for personal reasons. Black focus group participants in Port Elizabeth felt that crimes against children, such as child abuse, were very prevalent. Coloured and Asian focus group members in Port Elizabeth stated that gang activities were the cause of most of the crime and anxiety within their areas, and that innocent people were often caught up in the turf wars of gangs.

Farmers in Graaff-Reinet felt that the most serious crimes committed in their area were murder and stock theft. Incidents of petty crimes were on the increase, which was of concern to farmers, as they felt that petty crimes, if left unchecked, lead to more serious crimes.

Coloured and black focus group participants in Graaff-Reinet stated that young people were committing a large proportion of crimes in their area. Moreover, that the high crime rate could be attributed to the large number of unemployed people living in their area who belonged to gangs and consumed drugs out of boredom. Black focus group participants in Grahamstown felt that theft and burglary were the most prevalent crimes. Whites focus group members in Grahamstown felt that the traditional white areas in the town — and the town centre — were relatively peaceful by national standards. Most felt that the majority of crimes were opportunistic in nature, and that theft — especially out of motor vehicles — was the most common crime in their area.

CRIME REPORTING LEVELS

Of the respondents who had been victims of crime, just over two-thirds reported the incident to the police. Respondents living in small towns were most likely to report the incident to the police, with three-quarters doing so. In urban areas, 65% of crime victims reported crime to the police, and in the rural areas just over half (58%) did so. There was a significant difference in crime reporting rates for different race groups. While 80% of white crime victims reported their victimisation to the police, only 66% of black and 52% of coloured respondents who had been victims of crime reported these incidents.

According to the 1997 Victims of Crime Survey conducted by Statistics South Africa (SSA), 53% of crimes were reported to the police.² The reason why SSA's survey reveals a relatively low reporting rate could be explained by the fact that SSA's survey included household crimes. If, for example, a vehicle was stolen (a household crime) from a member of a survey respondent's household, it was recorded as a crime. It is likely that such respondents were

not always aware that somebody else in their household had reported the crime to the police, with the result that the respondents might have thought that the crime went unreported. Moreover, a majority of the respondents in the SSA survey were from non-urban areas where crime reporting rates are generally lower.

Based on the reasons why crime went unreported, respondents were almost equally divided into three groups. Just over a third (34%) failed to report the crime because they 'did not get around to it'. A further 36% thought that the police were unreliable or would not do anything, while 28% thought that the crime should be solved by the community or by themselves. Only 2% of respondents did not report the crime to the police because they feared for their safety, or were threatened by the offender.

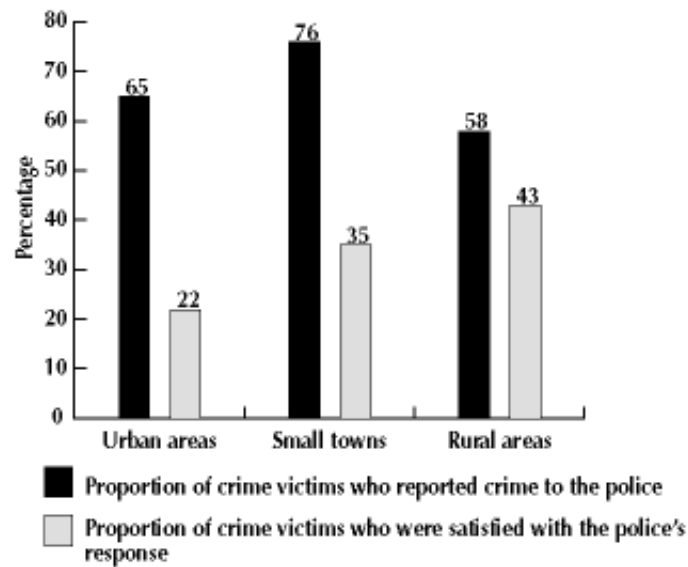
Of the white respondents who did not report crime to the police, three-quarters failed to do so because they thought the police were unreliable or would not do anything, compared to 54% of coloured, and only 8% of black respondents. Most black respondents who failed to report crime to the police indicated that it was not out of a lack of faith in the police. Almost half did not report the crime because they thought that the crime should be solved by the community or by themselves.

Of the rural respondents who did not report the crime to the police, two-thirds said they rather relied on the community, the local community police forum, or themselves to solve the crime. Only 11% of rural respondents who failed to report the crime to the police thought that the police were unreliable or would not do anything to help them. In contrast, 29% of respondents living in small towns, and 50% residing in urban areas who did not report the crime to the police thought the police would be unreliable or unhelpful.

A high proportion of respondents in urban areas (38%), small towns (35%) and rural areas (22%) did not report crime to the police as they 'did not get around to it'. This could indicate that, especially in the urban areas, many of the crimes were considered to be relatively petty and did not warrant a trip to the local police station. Moreover, as urban respondents expressed a high degree of lack of faith in the police, many might have thought that reporting the crime would not assist them in any way.

Of those crime victims who had reported crime to the police, less than one-third (31%) were satisfied with the police's response. There was no significant correlation between the race of respondents and their satisfaction with the police's response. White respondents were only marginally more satisfied with the police's response (33% of those who had reported crime to the police) than black or coloured respondents (both 29%).

Figure 2 Crime reporting and satisfaction with poice's response



Satisfaction with the police's response seems to be directly correlated with respondents' urbanisation levels. Almost twice as many rural respondents were satisfied with the police's response compared to urban respondents. (figure 2)

Significantly, however, whites were almost twice as likely as black and coloured respondents to have a positive perception of the police because of their 'good or efficient response'. Blacks and coloureds were more praising of the police because of their ability to apprehend suspects.

Victims in all areas were most likely to be dissatisfied with the police because of a lack of progress in investigating their case, or because their stolen goods were not recovered. Those who expressed satisfaction with the police in the urban centres and small towns said this was because of the good and efficient response from the police. Only a small number of urban and small town respondents were satisfied with the police because the latter had apprehended the suspects. However, just over a third of rural respondents who had reported the crime to the police, said they were satisfied with the police's response because they had apprehended the suspects.

In the 1997 Victims of Crime Survey conducted by Statistics South Africa (SSA), respondents were asked how satisfied they were with the way the police was controlling crime in their neighbourhood. Nationally, respondents were slightly more likely to be dissatisfied with the police (39%) than satisfied (38%), while 23% were neither satisfied nor dissatisfied.

Respondents in the Eastern Cape were more likely to be satisfied with the police (43%) than dissatisfied (33%), while just under a quarter were neither satisfied nor dissatisfied (24%). Moreover, out of all the provinces, residents of the Eastern Cape came fourth in positively expressing their satisfaction with the police, after residents of the Northern Cape (58%), Western Cape (54%) and the Free State (51%). Least satisfied were residents of Gauteng, where only a quarter expressed their satisfaction with the police.³

PROSECUTION LEVELS

Of the respondents who reported crime to the police, just under one-third (29%) ended in court to give evidence. The number of rural victims who reported crime to the police and testified in court, as a proportion of all rural respondents who reported crime to the police, was 79%. It was considerably lower for respondents in small towns and urban areas (both 22%).

However, while rural respondents were most likely to testify in court, they were least likely to be satisfied with the outcome, with only 36% saying they were satisfied. Most indicated that they were not satisfied with the outcome as the suspects were not punished or imprisoned, or because justice was not done. Half of urban, and 64% of small town respondents who testified, were satisfied with the outcome, mainly because the offenders were sentenced and imprisoned.

Of the black respondents who reported crime to the police, 37% testified in court; for coloureds, the corresponding proportion was 29%; and for whites, only 20%. While whites were least likely to testify in court, of those who did, over three-quarters (78%) were satisfied with the outcome, compared to only 50% of coloureds and 37% of blacks.

INTERPRETATION OF FINDINGS

Crime reporting levels in the Eastern Cape are higher in small towns than in urban areas. There could be a number of reasons for this. It is possible that, in a small town, people have a more personal relationship with the police than in a large city. That is, small town residents will know where their local police station is, and it will not be more than a few minutes' drive for them to get there (which is often not the case for city residents). Moreover, the volume of reported crime at a police station in a small town is likely to be lower than in a larger city. Complainants might consequently receive a more personal and attentive service in a small town police station compared to one in a city. Small town respondents were the most likely group to be satisfied with the police's response to their reporting of a crime because of the good or efficient response of the police (22% of all small town respondents who reported a crime to the police), compared to urban (18%), and rural (7%) respondents.

Two-thirds of rural respondents who did not report crime to the police, failed to do so because the crime was solved by the victim himself, the community, or the community police forum. This is not necessarily bad, provided that the victim or the community do not take the law into their own hands. The limited extent of vigilante activity in rural areas of the Eastern Cape (see chapter on attitudes to punishment) would indicate that this is not (yet) the case to any large extent. Nevertheless, it does indicate that a significant minority of rural crime victims in the Eastern Cape seek the help of their community, rather than the South African Police Service (SAPS), when there are victimised by criminals.

Taking cognisance of the above, the SAPS in the rural Eastern Cape should develop community policing structures that place a high premium on community participation, and improve the operational effectiveness of its detective service. The police's task should be made easier by the fact that rural respondents had a relatively positive view of the police. It is not because of a lack of faith in the police that rural respondents do not report crime to the authorities. Only one out of ten rural respondents did not report crime because he or she thought that the police were unreliable or unhelpful. Moreover, rural respondents who did report crime were most likely to be satisfied with the police's response.

Just over half of coloured respondents reported crime to the police — the lowest reporting rate for all three race groups. Unlike black respondents, few coloured respondents did not report crime to the police because they relied on themselves, their community, or a community police

forum to solve the crime. In fact, only 15% of coloured respondents who did not report crime to the police relied on themselves or the community to solve the crime. Most coloured respondents failed to report crime because they thought that the police were unreliable or would not do anything. This might have to do with the fact — as was expressed by coloured focus group participants — that criminal gangs in coloured areas have an almost omnipotent status. Many coloured crime victims seem to think that the police are powerless to combat the activities of criminal gangs in their areas. The police need to make a determined effort to ‘retake the streets’ in many of the traditional coloured areas of the Eastern Cape. The people in these areas need to be convinced that the state and its police service have a monopoly over the use of force, and that the police has the ability to protect the public.

Less than a third of respondents who reported crime were satisfied with the police’s response. There were two main reasons why respondents were dissatisfied with the police’s response, both of which could be attended to. Firstly, over a third of dissatisfied respondents were unhappy with the fact that there had been no progress with their case, or that their stolen property had not been recovered. Secondly, respondents were dissatisfied because the police did not investigate their case or took too long to investigate or to react to the complaint.

A key police issue that needs attention is its detective service. Through better resource allocation and better training, the SAPS should be able to improve the operational effectiveness of its detective service, thus improving its detection rate and speeding up its case-solving rate.⁴ Some cases are almost impossible to solve. Property-related crimes without witnesses and other forensic evidence (such as fingerprints left behind by the culprits) are extremely difficult to solve. The police should endeavour to explain this to crime victims, and at the same time, bolster the police’s image by assisting and advising victims on what to do to minimise the risk of being victimised again. As will be shown in a discussion of focus groups’ comments on the police (to follow below), the public has considerable sympathy for the police and the resource constraints it has to work under. It is likely that many victims of crime whose cases are not solved, will not react negatively to the police, provided they are treated sympathetically and informed of the difficulties the police have in solving their particular case.

Out of the respondents who reported crime to the police, rural respondents were substantially more likely to end up testifying in court. This tends to indicate that the police’s ability to solve cases in such a way that they end up in court, and the prosecution service’s ability to prosecute such cases, are better in rural areas than in the towns and cities of the Eastern Cape. While rural police stations and courts may be poorly resourced, they are arguably better able to deal with the cases that come their way because of the lower volume of cases they have to deal with compared to urban centres.

The fact that a crime victim’s case ends up in court does not guarantee that such a victim will be satisfied with the outcome. While rural and black crime victims were most likely to testify in court, they were least likely to be satisfied with the outcome. However, white and small town crime victims were least likely to testify in court, but were the most satisfied with the outcome. An explanation for this is that, while urban courts take on proportionately more cases, the quality of the detective work and the prosecution, and the resources available to them to do their job adequately are not as good in rural areas as it is in the towns and cities.

Notes

1. *Victims of crime survey 1998*, Statistical release P0342, Statistics South Africa, Pretoria, 1999, pp. 5-6.

2. *Victims of crime survey 1998*, Statistical release P0342, Statistics South Africa, Pretoria, 1999, pp. 88-102.
3. *Victims of crime survey 1998*, Statistical Release P0342, Statistics South Africa, Pretoria, 1999, p. 105.
4. See A Altbeker, *Solving crime. The state of the SAPS detective service*, ISS Monograph Series, 31, Institute for Security Studies, Halfway House, November 1998, pp. 65-72.

KNOWLEDGE OF CRIME AND CRIMINAL JUSTICE

CHAPTER OVERVIEW

Generally, respondents had a fairly inaccurate idea about the extent of crime — especially violent crime — in South Africa. The number of serious crimes reported to the SAPS increased slightly between 1994 and 1999. Measured on a per capita basis the number of serious crimes reported actually declined over this period. Yet, four-fifths of the survey respondents thought that the country's crime rate had increased significantly during this period. While respondents correctly felt that crime had increased more nationally than it had in their area, most thought that crime in their area had increased substantially.

Most respondents underestimated the number of murders that are committed in South Africa. While just under 25 000 people were murdered in 1998, half of the respondents estimated that 5 000 or fewer people were murdered.

About a third of all crimes reported to the SAPS involve violence or the threat of violence. Respondents were more pessimistic when trying to guess the proportion of crimes which involve violence in South Africa. Just over half of the respondents thought that 80 or more out of every 100 crimes involved violence or the threat of violence. Four-fifths of the respondents thought that violent crimes were more serious than property crimes.

Out of all crimes reported to the police only about 12% are solved and end up in the prosecution of the culprits.¹ The perceptions of respondents about the criminal justice system's ability to solve and prosecute crimes were considerably more positive. About half of the respondents thought that 50% of all reported crimes were solved or prosecuted.

Just under half of all convicted offenders go to prison. Three out of four respondents thought that less than half of all convicted offenders received a prison sentence. Very few respondents believed that convicted prisoners remained incarcerated for the full duration of their sentences: three-quarters of the respondents thought that an offender sentenced to 10 years' imprisonment would spend seven years or less in prison.

PERCEPTIONS OF LEVELS OF CRIME

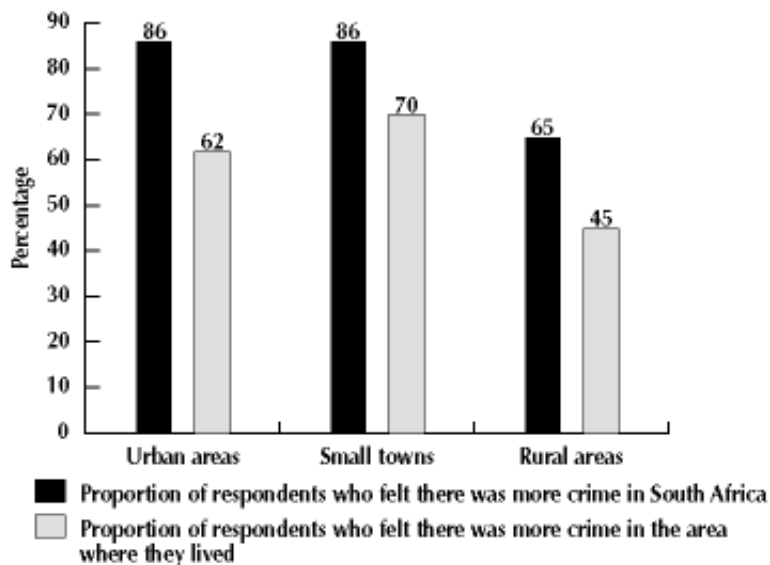
Respondents were asked whether they thought that the crime rate in the country had changed since 1994. The vast majority (83%) thought that, compared to 1994, there was much more crime in the country. A further 7% indicated that there was slightly more crime. Only one out of ten respondents thought that crime levels had remained the same or had decreased.

Rural respondents were the most positive with 65% stating that there was much more crime in

the country compared to 1994, while 86% of respondents in small towns and urban areas thought so. Moreover, fewer black respondents (79%) thought there was much more crime, compared to white (83%) and coloured (92%) respondents. Female respondents were also more negative (with 86% stating that there was much more crime) than male respondents (80%).

Respondents' perception of whether the crime rate had changed since 1994 was not significantly affected by the fact that they had been victims of crime over the previous two years. In fact, those who had been victimised, were slightly less likely (81% compared to 85% of those who had not been victimised) to say that crime had increased significantly.

Figure 3: Respondents who stated that crime had increased



According to the Crime Information Analysis Centre (CIAC) of the SAPS, the twenty most serious crimes (which make up 99.3% of the volume of all serious crimes) increased from 1 998 000 reported crimes in 1994, to 2 154 000 reported crimes in 1998 – an increase of 7.8%.² South Africa's population increased by just under 10% over the same period.

In the Eastern Cape, the reported number of the twenty most serious crimes increased from 244 176 in 1994, to 255 474 in 1998 – an increase of 4.6%. Reported crime in the Eastern Cape consequently increased less than the national average between 1994 and 1998. Moreover, measured on a per capita basis, the Eastern Cape had higher reported crime levels in 1998 than the national average for four out of the twenty crime categories only: murder, assault with the intent to inflict serious bodily harm, stock-theft and arson. In respect of the other crime categories, such as attempted murder, robbery, rape, common assault, all forms of theft (except stock-theft) and fraud, the per capita reported crime rate in the Eastern Cape was below the national average.

The number of reported murders in South Africa decreased from 26 832 in 1994 to 24 875 in 1998 – a decrease of 7%. In 1994, there were 3 769 reported murders in the Eastern Cape, down from 4 492 in 1998 – a decrease

of 16%. Over the same period, the proportion of reported murders decreased to a greater extent only in one other province: KwaZulu-Natal.³

According to the CIAC, 31.9% of serious crimes reported in South Africa in 1998, involved violence or the threat of violence. This is a slight increase from 1994 when the proportion of reported crimes involving violence or the threat of violence was 30.9%.⁴

Respondents generally felt that, since 1994, crime had increased more on a national level than in the area where they lived. Nevertheless, when asked whether they thought that the crime rate had changed in their area since 1994, just under two-thirds (63%) thought there was much more crime. A further 15% thought there was slightly more crime, and a quarter thought that local crime levels had stayed the same or had decreased.

As with respondents' perceptions of changes in the national crime level, rural respondents were the least likely to think that crime had increased significantly in their area. However, black respondents (who were the least likely to think that crime had increased much on a national level), felt the strongest that crime showed a large increase locally (67%), followed by white (59%) and coloured (58%) respondents.

Respondents' perception of whether the local crime rate had changed since 1994 was not significantly affected by the fact that they had been victims of crime in the previous two years.

When asked how many murders were committed, in their opinion, 'in South Africa last year' (1998), half of the respondents thought 5 000 or less, and two-thirds thought there were fewer than 25 000 murders. Rural and black respondents generally gave lower estimates of the number of murders in South Africa than urban and white respondents.

PERCEPTIONS OF VIOLENT CRIME

Respondents were asked to estimate what proportion of crimes recorded by the police throughout the country involved violence or the threat of violence. The vast majority of respondents thought that violence — or the threat of violence — played a part in the commission of most crimes.

Just over half of the respondents thought that 80 or more out of every 100 crimes involved violence or the threat of violence. Of the respondents, 79% thought that more than half of all crimes involved violence or the threat of violence, while 28% thought that just under a third of all crimes involved violence or the threat of violence.

Urban respondents were slightly more inclined than rural and small town dwellers to believe that violence played a role in the majority of reported crimes. Whites were more likely to think that more than half of all crime involved violence: 93% of white respondents, as compared to 87% of black and 83% of coloured respondents.

Most respondents (83%) thought that violent crimes were more serious than property crimes. Only 1% thought that violent crimes were less serious, while the remainder (15%) thought that violent crimes were 'as serious' as property crimes. Most respondents felt that violent crimes were more serious than property crimes because the former had a greater negative impact on people's lives and affected victims psychologically, and because life had greater value than

property.

Respondents in the urban centres were slightly more inclined to feel that violent crimes were more serious than property crimes, than their counterparts in small towns and rural areas. White respondents were most likely to argue that violent crimes were more serious than property crimes (87%), than coloured and black respondents (83% and 82% respectively).

Focus group findings

White focus group participants in Port Elizabeth felt that most reported crimes involved violence, as less serious crimes (i.e. those not involving violence) were generally not reported. They also argued that the proportion of crimes involving violence had increased over the last decade — which was echoed by the Umtata focus group. Black focus group members in Port Elizabeth thought that the most commonly reported crimes were rape, domestic violence where the husband abused his wife, and murder — all of which involved violence. Coloured and Asian focus group participants in the city felt that the law protected criminals as they had more rights than victims of crime. As a result, criminals had become more brazen, and were more inclined to use violence than in the past.

Members of the farming community in Graaff-Reinet stated that many property crimes were not reported, especially in the case of less serious property offences as it was not worth the effort to report such crimes. Black and coloured male focus group members in Graaff-Reinet felt strongly that violent crimes were committed by gang members as most of them carried firearms or knives. Thabankulu focus group participants thought that many violent crimes were alcohol-related, as many youths ended up in fights and assaulted each other at the local shebeen (unlicensed bar).

White focus group members in Grahamstown were more realistic in their assessment of the prevalence of violent crime. They thought that less than half of all reported crime in their area involved violence.

PERCEPTIONS OF PROSECUTION AND CONVICTION RATES

To the question of what proportion of crimes recorded by the police were prosecuted or solved when the accused person admitted guilt, the respondents were almost evenly split between those who thought that less than 50% of reported crime were prosecuted or solved, to those who thought that this occurred in more than half of all reported cases.

Small town dwellers were the most positive in thinking that a majority of cases were solved, urban respondents the least. That is, while 52% of respondents resident in small towns believed that half or more of all reported crimes were solved or prosecuted, only 40% of rural respondents, and 38% of urban respondents thought so. Black respondents were the most positive, and whites the least. Thus, 51% of black respondents thought that half or more of all reported crimes are prosecuted or solved. For coloured and white respondents, the comparable proportions were 42% and 34%, respectively.

In 1998, some 2.2 million crimes were reported to the South African Police Service, of which 259 000 cases (or 12%) resulted in a prosecution or in a guilty plea by the accused person.⁵ Nine out of ten survey respondents thought that more than 12% of reported cases were prosecuted or solved to result in a

guilty plea by the accused person.

Focus group findings

White focus group members in Port Elizabeth felt that the police often solved a case, but that the courts then bungled the case's prosecution. The city's black focus group participants felt that the police solved very few cases, possibly because they did not have enough vehicles to investigate crimes and to look for suspects. This focus group also implied that some police officers might be corrupt, as some officers based their decision to investigate a case or not on the identity of the complainant. The coloured and Asian focus group (in Port Elizabeth) felt that many cases were not solved because of police negligence. They felt, however, that the police should not be blamed for this as police officers had no job satisfaction, no job security, no incentives, and worked under physically dangerous conditions.

The farming community in Graaff-Reinet felt that few crimes were solved because the police did not have the personnel or the resources to do their job adequately. Coloured and black male focus group participants in Graaff-Reinet stated that many gang-related crimes were not solved because police officers were too scared to investigate them. Moreover, it was felt that some police officers were corrupt and were bribed by the persons whom they investigated to drop the cases against them. Many crimes were not solved because of the justice system's ineffectiveness. For example, culprits were arrested by the police, but then released on bail. The coloured and black female focus group in Graaff-Reinet also blamed the courts, arguing that many cases were postponed so often in court that they were eventually dropped altogether.

White focus group members in Grahamstown felt that the police were generally doing a good job and that they tried to solve most of the crimes reported to them. However, the group stated that they would prefer to report crimes to private security companies. Members of the Umtata focus group felt that the police rarely solved a case without the help of the community. Moreover, it was felt that police officers sometimes said that they could not do anything about a crime unless the victim could identify the suspect.

PERCEPTIONS OF IMPRISONMENT RATES

Almost three-quarters (72%) of respondents thought that less than half of convicted offenders receive a prison sentence. This view was the strongest in rural areas (80% of rural respondents), followed by urban centres and small towns (75% and 68%, respectively). Moreover, white respondents were most likely to think that less than half of convicted offenders received a prison sentences (82%), followed by coloured and black respondents (72% and 67%, respectively).

Most (78%) respondents thought that the number of convicted offenders who had been sent to prison, had increased over the past five years (1994-99). Twelve per cent of respondents thought the number of convicted prisoners had decreased, while 8% thought prisoner numbers had not changed. The feeling that prisoner numbers had increased, was stronger among urban and small town respondents (where 80% thought so), compared to rural respondents (62%). Coloured respondents were most likely to think that the number of sentenced prisoners had increased (86%), than white or black respondents (78% and 76%, respectively).

Respondents were asked how long, on average, they thought a person sentenced to 10 years imprisonment will actually spend in prison. The majority of respondents thought five years or

less (54%). Three-quarters of respondents thought seven years or less, and only 7% thought that an average offender will be incarcerated for the full duration of the sentence.

Between January 1994 and June 1999, the number of prisoners in South African prisons increased from 115 827 to 154 213 – an increase of 33%. This has led to massive overcrowding as the country's 231 prisons were built to accommodate 99 400 inmates. Prisoner numbers have not increased evenly in respect of sentenced and awaiting trial prisoners. In the five and a half years after January 1994, the number of awaiting trial prisoners increased from 22 757 to 54 107 – an increase of 138%. Over the same period, the number of sentenced prisoners increased from 93 070 to 100 106 – an increase of 8%.

According to the 1996 Nedcor project on crime, violence and investment, every 100 prosecutions in South Africa result in 77 convictions, and in the imprisonment of 36 convicted accused. In other words, out of every 100 convicted persons, 47 will end up serving some time in prison. The Nedcor project also found that out of every 100 persons sentenced to imprisonment, an average of 22 will serve a prison sentence of two years or longer.⁶

Rural respondents were most likely to think that convicted prisoners spent the bulk of their sentence incarcerated. Only 12% of rural respondents thought that a person receiving a ten-year prison sentence would serve five years or less, while 55% of respondents in small towns, and 65% of urban respondents thought so. If the respondents' answers are broken down by racial groups, 67% of white, 53% of coloured, and 47% of black respondents thought that the average criminal who received a ten-year prison sentence would serve five years or less.

According to the Correctional Services Act of 1998, a person sentenced to imprisonment for a definite period must serve at least a quarter of the effective sentence imposed or the non-parole period, if any – whichever is the longer – before being considered for placement under correctional supervision.⁷

A prisoner serving a determinate sentence may not be placed on parole until he has served the stipulated non-parole period. However, parole must be considered whenever a prisoner has served 25 years of a sentence.⁸ A person who has been sentenced to life imprisonment, may not be placed on parole until he has served at least 25 years of the sentence. However, a prisoner may be placed on parole on reaching the age of 65 if he has served at least 15 years of his life sentence.⁹

The minister of correctional services may place any prisoner on community corrections provided that he is satisfied that the prison population is reaching such proportions that the safety, human dignity and physical care of prisoners are affected materially.¹⁰ Moreover, the president may remit any part of a prisoner's sentence. The president may also authorise the placement on correctional supervision or parole of any sentenced prisoner.¹¹

INTERPRETATION OF FINDINGS

The survey found widespread ignorance among the public in the Eastern Cape about crime and criminal justice statistics. Misperceptions were systematic rather than random, in that significant majorities overestimated the increase in crime levels since 1994, and the proportion of crimes involving violence or the threat of violence.

The police's CIAC frequently release reported crime figures for South Africa that receive wide coverage in the (mainly print) media. The point has often been made by the CIAC that crime levels have not increased substantially since 1994. There could be a number of reasons why people disbelieve, ignore or are unaware of published crime statistics.

Firstly, the media tend to emphasise increases rather than decreases in the crime rate. Increases of certain crimes (for example rape) receive much media coverage, while significant decreases in other crimes (such as murder) receive less emphasis by the media. Secondly, large proportions of the population simply miss or forget relevant newspaper stories and broadcasts, or disbelieve official crime statistics.¹² Thirdly, police figures might be somewhat of an unreliable guide to crime trends. During 1994-96, many reported crimes (especially those committed in the erstwhile homelands and TBVC states) were not captured in the police's statistical net.¹³ Moreover, certain crimes have notoriously low reporting levels. Fourthly, while reported levels of crime did not increase substantially between 1994-99, crime levels did not change evenly throughout the country or even within the different provinces. For example, traditionally white middle class suburbs and shopping areas which were heavily policed and segregated in the past, experienced a significant increase in crime after 1994. This was because of a shift in policing resources to other areas, and because non-residents (including criminals) had greater access to these areas than was the case in the past.

Survey respondents clearly overestimated the proportion of crimes which involved violence or the threat of violence. Research in other countries has shown that violence is central to public conceptions of crime.¹⁴ One explanation for this is that the news media disproportionately report crimes of violence. Moreover, many South Africans have developed a habit of speaking about crime, and passing on anecdotes about particularly violent crimes they have read or heard about. This in itself serves to fuel people's perceptions about high levels of crime in their community.

Moreover, certain types of violent crime did increase substantially after 1994. While the 20 most serious reported crimes increased by about 8% between 1994 and 1998, carjacking increased by 126% and common robbery by 92% over the same period. The crime of carjacking enjoys a high media profile, and common robbery (that is, robbery without the use of a dangerous weapon, such as a mugging) is a random crime which can happen to anyone walking down a busy street. Both crime types, therefore, might instil a high level of fear in the average person.

While national per capita reported crime levels have decreased and the proportion of crimes involving violence have remained constant, people's fear of crime has increased. In 1994, a minority of South Africans felt unsafe (16%) living in South Africa, with most feeling safe (73%). In 1998, almost half of South Africans felt unsafe (49%), and only 45% felt safe living in South Africa.¹⁵ The public's misconceptions about the increase in levels of crime and the extent of violent crime should be addressed. There is a clear need for an ongoing information campaign to educate the public about the crime situation in the country. Such a campaign would have to provide an honest assessment of the crime situation to gain the public's confidence, but

emphasise any positive developments in the state's fight against crime.

A majority of respondents were more optimistic about the criminal justice system's ability to solve and prosecute crimes successfully than what official figures indicate. Crime solving and prosecution rates receive little publicity in the news media. Accordingly, it is not surprising that most members of the public had an inaccurate idea of these statistics. It is likely that most respondents had little idea about the actual clearance rate, and were simply guessing. The response most frequently chosen (by over one out of four respondents) was that exactly 50% of all crimes were solved or prosecuted — the successful bluffer's way of expressing ignorance.¹⁶

Respondents living in small towns, who were the most positive in thinking that a majority of crimes were solved, were also most likely to say that the criminal justice system was performing well. They were also positive about the performance of the various agents of the criminal justice system (see the section on this topic in the next chapter). There is a positive correlation between respondents with a positive view of the criminal justice system and the people working within it, and the belief that a high proportion of crimes are solved and prosecuted.

While almost half of all convicted persons are sent to prison, a substantial majority of respondents thought that this was not the case. As is the case with respondents' views on sentencing (see the chapter on 'Opinions about sentencing and sentencers'), there is a general perception that the courts are considerably more lenient with convicted criminals than what is actually the case. As this erroneous perception is in itself a cause of dissatisfaction with the criminal justice system, there is a need to educate the public about the courts' use of imprisonment as a sentencing option.

The survey results and the focus group discussions display high levels of ignorance about the basic purpose and function of the criminal justice system. There was, for example, a dearth of knowledge among many focus group participants about the role of the courts, the purpose of bail, and the role of certain court official, such as prosecutors and interpreters. Some focus group participants stated explicitly that they did not know how the criminal justice system worked, and that they had been abused by police officers in the past because they were unaware of their rights and the police's responsibilities. The various agencies comprising the criminal justice system would be well advised to educate the public about their purpose, function and role in the fight against crime.

Notes

1. For a crime to be solved sufficiently for the prosecution service to take on the case, there must be enough evidence against the suspect(s) for there to be a 'reasonable prospect' for the prosecution service to obtain a conviction.
2. *The incidence of serious crime January to December 1998*, Semester Report 1/99, Crime Information Analysis Centre, Pretoria, April 1999.
3. Ibid.
4. Ibid.
5. See M Schönreich, *Assessing the crime fighters: The ability of the criminal justice system to solve and prosecute crime*, ISS Papers, Institute for Security Studies, Pretoria, 40, September 1999, p. 10.

6. *The Nedcor project on crime, violence and investment*. Main report. June 1996. (No place of publication), p. 5.
7. Section 73(7)(c)(iii) of the (still to be promulgated at the time of writing) *Correctional Services Act* no. 111 of 1998.
8. Section 73(6)(a), *Correctional Services Act* no. 111 of 1998.
9. Section 73(6)(b)(iv), *Correctional Services Act* no. 111 of 1998.
10. Section 81, *Correctional Services Act* no. 111 of 1998. The minister must, however, obtain the consent of the National Council for Correctional Services.
11. Section 82, *Correctional Services Act* no. 111 of 1998.
12. According to a victim survey conducted by the Institute for Security Studies in Pretoria in 1998, less than half of the respondents believed government statistics about crime levels. See A Louw, *Crime in Pretoria: Results of a city victim survey*, Institute for Security Studies, Halfway House, August 1998, pp.73-75.
13. Two TBVC states — the Republics of the Transkei and the Ciskei — fell within the present boundaries of the Eastern Cape province.
14. M Hough & J Roberts, *Attitudes to punishment: Findings from the British Crime Survey*, Home Office Research Study 179, Home Office Research and Statistics Directorate, 1998, p. 9.
15. R Alence & G Pimstone, Crime and the 1999 election: Perceptions of voters, *Nedcor ISS Crime Index*, 3(1), January — February 1999, Institute for Security Studies, Halfway House, p. 1.
16. The 1996 British Crime Survey made a similar finding where a fifth of the respondents thought that precisely 50% of crimes were cleared up by the police. See Hough & Roberts, *op cit*, p. 11.

OPINIONS ABOUT THE CRIMINAL JUSTICE SYSTEM AND ITS AGENTS

CHAPTER OVERVIEW

A minority of respondents felt that the criminal justice system was performing well or had improved since 1994. While black respondents were more positive, even among this segment of the respondents a majority still thought that things had either not improved or they were unsure whether things were better or worse. Almost no white respondents thought that things had improved since 1994, or that the criminal justice system was performing well.

Most respondents were critical of the government's crime-fighting performance. Urban and white respondents were the most critical of the government's performance, while rural and black respondents were the most positive. A significant majority of respondents felt that, in order to prevent crime, the government should spend more money on job creation rather than the

criminal justice system.

Overall, most respondents thought that the courts were independent and impartial. However, only a minority of black respondents felt that this was the case. A quarter of the respondents felt that politicians should influence courts' judgments and sentencing decisions. Less than half of black respondents were explicitly opposed to such political interference.

A minority of respondents trusted the police and would willingly report crime to them. White and urban respondents were slightly more trusting of the police than their black, coloured and rural counterparts. Most respondents, however, said that they would willingly give evidence in court. The willingness to testify was especially high among respondents from small towns and rural areas.

In their evaluation of the various professions within the criminal justice system, respondents were most critical of the prison service and uniformed members of the SAPS. They were most praising of judicial officers and police detectives. Rural respondents were generally the least positive about employees of the criminal justice system.

THE CRIMINAL JUSTICE SYSTEM

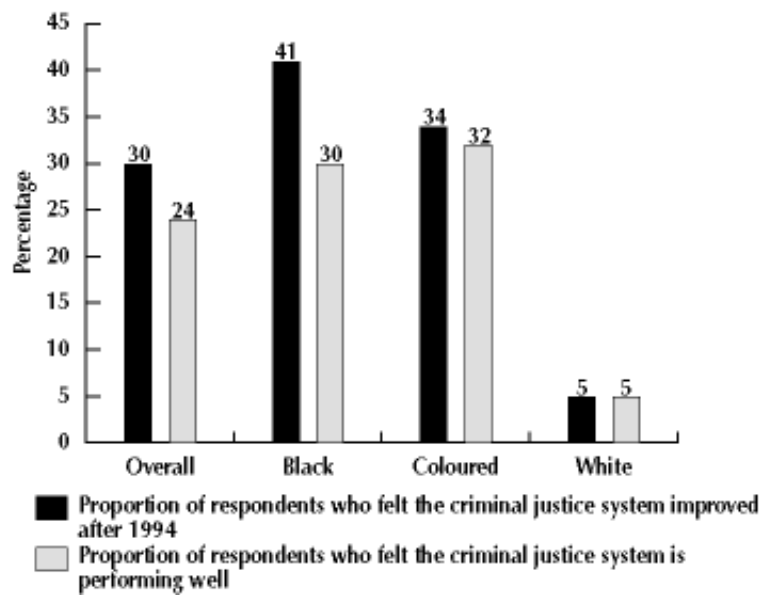
Respondents were asked to comment on the statement that 'the general functioning of the criminal justice system improved after 1994'. Almost half of the respondents (47%) thought that there had been no improvement in the functioning of the criminal justice system, while 30% thought there had been. The remainder (23%) were undecided.

Rural respondents (40%) were most likely to say that the functioning of the criminal justice system improved since 1994. Urban respondents were the most critical, with only a quarter saying that it had improved over the last five years.

There was also a significant difference in the responses of the various race groups. While 41% of black and 34% of coloured respondents said that the criminal justice system had improved, only 5% of whites said so.

Respondents' views of the functioning of the criminal justice system were directly related to their income, with those in the highest income bracket being the most negative. Thus, 73% of respondents earning more than R5 000 per month did not think the functioning of the criminal justice system had improved since 1994, while only 44% of respondents earning less than R1 000 a month, and 40% of respondents earning no income gave the same response. Similarly, respondents with higher educational qualifications were less likely to state that the criminal justice system had improved than those with lower educational qualifications. Just over half (54%) of respondents with five years of school education or less thought the system had improved, compared to only 16% of respondents with a tertiary qualification.

Figure 4: Perceptions of the general functioning of the criminal justice system



When confronted with the statement that, ‘on the whole, the criminal justice system is performing well’, a quarter of the respondents said that it was, with half saying that it was not. The remainder were undecided.

Almost a third (31%) of respondents living in small towns were of the opinion that the criminal justice system was performing well. However, only about a fifth of urban and rural respondents were equally positive. Male respondents were almost twice as likely to think that the criminal justice system was performing well (31%), compared to female respondents (17%). Almost a third of black and coloured respondents approved of the criminal justice system’s performance. Only 5% of white respondents expressed their approval.

Focus group findings

White focus group participants in Port Elizabeth felt strongly that the criminal justice system had not improved since 1994. Their main reasons were that prison sentences had become shorter, bail was given too easily (especially to rapists), the courts were more inefficient, and the police and law-abiding citizens had far less power in relation to criminals than before. Coloured and black focus group participants in Port Elizabeth agreed that criminals had received more rights. However, they were unsure whether this was bad. Some, for example, were supportive of the fact that certain injustices, like the death penalty, no longer existed.

Graaff-Reinet farmers also felt that too many rights were afforded to criminals, and that the Constitution was often interpreted incorrectly, thus favouring criminals. The focus group in Graaff-Reinet comprised black and coloured men (most of whom had a criminal record) who were positive about the criminal justice system, arguing that prison conditions had improved markedly, and that accused persons had the right to legal representation. Coloured and black female focus group members in Graaff-Reinet felt that the police’s performance had not improved since 1994, but that they could not be blamed as the courts consistently postponed cases until they were dismissed. This group also felt that criminals enjoyed too many rights.

Black focus group participants in Grahamstown thought that the structure of the police and the courts had not changed since 1994, and was still ineffective. They felt that it was both a good and a bad thing that the Constitution afforded rights to criminals. White focus group participants in Grahamstown argued that the courts handed down sentences that were too lenient and that too many criminals that were incarcerated in prison were released on amnesties. This group

was unsure whether the functioning of the criminal justice system had actually worsened since 1994, or whether this negative perception was caused by the media. Before 1994, the media were restricted in reporting about the failures of the pre-1994 criminal justice system. This was no longer the case, focus group members argued.

Focus group participants in Umtata and Thabankulu felt that the functioning of the criminal justice system had worsened because criminals enjoyed too many rights. As a result, cases were dismissed or remained unsolved because criminals exploited loopholes in the Constitution that could protect them.

THE GOVERNMENT'S FIGHT AGAINST CRIME

A quarter of respondents agreed, and 58% disagreed, with the statement that 'the government has done a good job in fighting crime and lawlessness'. Urban respondents were most critical of the government: 63% thought that the government had not done a good job, compared to 58% of respondents in small towns, and 42% in rural areas.

White respondents were considerably more critical of the government's performance. Only 8% of whites were positive about the government's performance. For coloured and black respondents, the proportions were 25% and 32% respectively. High income earners and respondents with tertiary academic qualifications were the most critical of the government's performance.

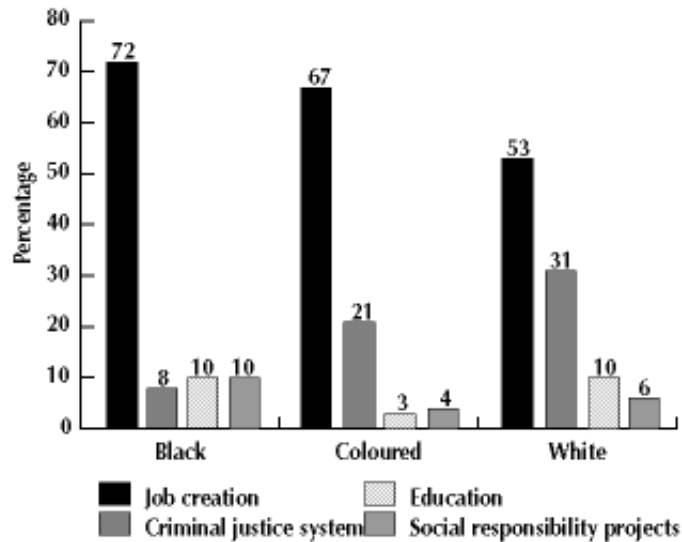
Younger respondents were more critical of the government's performance than their older counterparts. Thus, 65% of respondents aged 18 to 30 years thought that the government had not done a good job in fighting crime and lawlessness since 1994, while 55% of respondents aged over 30 years thought so. Women were less positive of the government's performance than men. While 29% of male respondents thought that the government had performed well, only 20% of female respondents thought so.

Respondents were told that, in order to prevent crime, the government can spend money in different areas. If the government had money for one of these areas only, which one should the money be spent on? The majority of respondents (66%) identified job creation as the most important area where the government should spend money, followed by the criminal justice system (17%) and education (8%).

There were, however, considerable differences in the answers, depending on where the respondents lived and what racial group they belonged to. Virtually all rural respondents stated that, in order to prevent crime, the government should spend money on job creation (87%) or education (12%). Not one rural respondent suggested that state spending should go toward improving the criminal justice system. Respondents in small towns and urban centres did not differ much in their responses. Approximately two-thirds of these respondents also selected job creation as the government's spending priority, followed by spending on the criminal justice system (about a fifth of these respondents), and education and social responsibility projects.

Of black respondents, 72% thought job creation should be the government's spending priority. Fewer coloured (67%) and white respondents (53%) thought so. The reverse applied in respect of government spending on the criminal justice system. Almost a third of white respondents said this should be the government's priority, but only 21% of coloured, and 8% of black respondents said so (figure 5).

Figure 5: Respondents' views on where the government should spend money in order to prevent crime



The amount of money spent on the three core components of the South African criminal justice system (police, justice and prisons) increased considerably in the 1990s. Spending increased from R4.3 billion in 1990/91 to R23.5 billion in the 1999/2000 budget year – an increase of 450%. Over a similar period (1990 to 1999), the consumer price index increased by 159%. The proportion of the national budget devoted to the criminal justice system more than doubled over a twelve-year period, from 4.8% in 1987/88 to 10.8% in the 1999/2000 budget year.¹ Some 22% of the 1999/2000 budget was allocated to education, 11% to health, and 9% to social security and welfare spending.²

Focus group findings

Coloured and black men in the Graaff-Reinet focus group discussion felt that young people committed a large proportion of crimes in their area. They also said that the high crime rate could be attributed to the large number of unemployed people living in their area. Because many young people were unemployed and bored, they joined gangs. People in positions of authority such as parents, teachers, and even police officers were scared of gangs and did little to stop their activities.

According to the participants, unemployed juveniles left Graaff-Reinet to find work in the bigger cities such as Port Elizabeth and Cape Town. They were often unsuccessful in their quest for employment, and joined gangs to survive. During the holiday season, many of these gang members returned to Graaff-Reinet from the cities resulting in an increase in crime as rival gang members crossed swords. Coloured and black women in Graaff-Reinet also cited unemployment, gangs and drugs as significant contributors to crime in their area.

Black focus group participants in Grahamstown felt that unemployment was the primary reason for crime in their area, with theft and burglary being the most prevalent crimes.

JUDICIAL INDEPENDENCE

Most (57%) of the respondents agreed with the statement that ‘the courts are independent of, and impartial to outside influences such as the press, politicians and public opinion’. However, a significant minority (24%) disagreed with the statement.

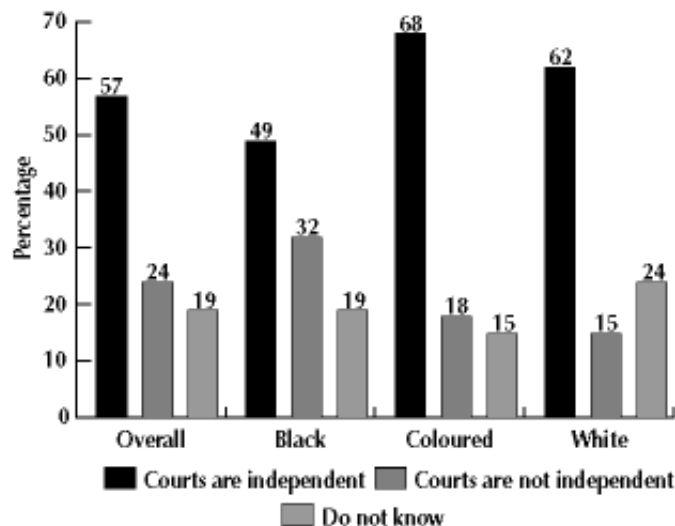
The differences in the responses between inhabitants of particular areas were negligible. Answers varied in respect of the respondents’ race, however. While 68% of coloured and 62% of white respondents thought that the courts were impartial, less than half (49%) of black respondents thought so. The proportion of black respondents (32%) who explicitly stated that the courts were not impartial, was almost twice that for white and coloured respondents (figure 6).

Almost a quarter of the respondents (23%) agreed with the statement that ‘politicians should influence courts’ decisions on what sentence they impose’. Some 63% of respondents disagreed with the statement, while a further 12% were unsure. Urban respondents were most likely to oppose political interference in courts’ judgments (73%), followed by respondents from small towns and rural areas (56% and 53%, respectively). White respondents were the most opposed to political interference (84%), followed by coloured (78%) and black (44%) respondents.

When given the statement ‘politicians should influence courts’ decisions in finding accused persons guilty or not’, 63% of respondents disagreed and 23% agreed. Urban respondents were the most likely to disagree (73%), followed by those living in small towns (57%) and rural areas (55%).

A third (34%) of black respondents thought that politicians should influence the decision by the courts to find accused persons guilty or not. Only 14% of coloured and 12% of white respondents thought so. Some 45% of black respondents said there should be no political interference in courts’ judgments, compared to 78% and 84% of coloured and white respondents, respectively. The remainder of the respondents were undecided on this issue.

Figure 6: Respondents' answers to the question whether the courts are independent of and impartial to outside influence



All focus groups participants in Port Elizabeth felt that the criminal justice system was mostly impartial and independent. They did express some concern, however, that influential and powerful people were treated preferentially by the system at times.

Black focus group participants in Grahamstown thought that the courts were impartial. However, this group felt that some inequalities remained in the criminal justice system. The police, for example, reacted faster to crimes that occurred in traditional white areas with the result that criminals committing crimes in these areas were more likely to be arrested and prosecuted. White focus group participants in Grahamstown felt that a distinction had to be drawn between the high and lower courts. While the high courts were seen as impartial, the lower courts were often not because magistrates were prone to be influenced by the government and the public. Coloured focus group participants in Grahamstown felt that politicians should not interfere with the courts as they were not familiar with people's experiences at grassroots level. They did say, however, that justice was not equal — that wealthy accused sometimes had an influence over courts' decisions.

Umtata focus group participants felt that friends of the prosecutor or court interpreter were treated preferentially in court. They also said that accused who bribed any court official or police officer would have their cases dismissed or would be acquitted.

CO-OPERATION WITH THE JUSTICE SYSTEM

A significant proportion of respondents (44%) agreed with the statement that they 'trust the police and would willingly report crime to them'. The majority, however, was either unsure (23%), or disagreed with the statement (33%). While half of urban respondents said they trusted the police, just over one-third of rural respondents did so. White respondents were slightly more trusting of the police (48%) than black or coloured respondents (both 42%).

Two-thirds of respondents agreed that they 'would willingly give evidence in court and act as a witness', with 20% saying that they would not do so. Respondents in rural areas and small towns were more willing to give evidence in court (71%), than their urban counterparts (59%). Coloured respondents were the least likely to be enthusiastic about giving evidence in court, with 56% saying they would do so, followed by black (68%) and white (73%) respondents.

AGENTS OF THE CRIMINAL JUSTICE SYSTEM

Respondents were asked to comment on the quality of the jobs fulfilled by the following participants in the criminal justice process: uniformed members of the SAPS, police detectives, the prosecution service, magistrates, judges, the prison service, and policy makers and politicians who write the country's laws and crime fighting policies.

Respondents were the most positive about judicial officers (judges in particular), followed by detectives. They were the most critical of the prison service and uniformed members of the police, and politicians and policy makers (table 1).

Table 1: Respondents' evaluation of the job performance of the professions working in the criminal justice system

	Good job (%)	Fair job (%)	Poor job (%)
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SAPS uniformed	23	46	30
SAPS detectives	31	45	22
Prosecutors	27	48	23
Magistrates	35	49	14
Judges	44	42	13
Prison service	18	46	33
Politicians	27	39	31

Respondents in small towns were the most positive about the performance of prosecutors, judicial officers, the prison service and politicians. Urban respondents, however, were the most praising of the police's performance (uniformed members and detectives).

Rural respondents were the least positive about all categories of participants in the criminal justice system, with the exception of the politician/policy maker category where rural respondents were slightly more positive than their urban counterparts. For the other categories, the differences are significant. For example, while about a third of urban and small town respondents thought that detectives and prosecutors were doing a good job, less than one out of ten rural respondents thought so. Or, over a third of urban and small town respondents were positive about magistrates' performance, while less than a sixth of rural respondents thought so (table 2).

Coloured respondents were the most positive about the performance of all categories of people and agencies who participated in the criminal justice process. Coloured respondents were, however, the most outspoken group. Respondents had the opportunity to evaluate job performance in one of three ways: they could say that they thought it was 'good', 'fair', or 'poor'. A relatively small proportion of coloured respondents thought that people's performance was 'fair'. Unlike black or white respondents, coloured respondents tended to evaluate job performance as either 'good' or 'poor'. Black respondents were the least positive about the police's job performance (uniformed members and detectives), while whites were the least positive about the job performance of judicial officers, the prison service, and politicians.

Table 2: Urban, small town and rural respondents' evaluation of the job performance of selected professions working in the criminal justice system

		Good job (%)	Fair job (%)	Poor job (%)
SAPS uniformed	Urban	27	47	27
	Small town	21	49	31
	Rural	17	38	40

SAPS detectives	Urban	36	38	26
	Small town	33	49	16
	Rural	7	57	30
Prosecutors	Urban	29	47	24
	Small town	31	46	21
	Rural	8	60	27
Magistrates	Urban	35	48	17
	Small town	41	45	12
	Rural	15	68	12
Politicians	Urban	25	33	41
	Small town	29	41	27
	Rural	27	55	15

There was a consistent divergence in opinion between male and female respondents. Male respondents were more positive about the performance of all categories of people and agencies who participated in the criminal justice process.

Respondents who had fallen victim to crime during the previous two years were all less positive about job performance than those who had not been victimised. This was especially striking in respondents' evaluation of the performance of uniformed members and politicians, where non-victims were about 60% more likely to evaluate their job performance positively than victims. Differences in opinion between victims and non-victims were the least in respondents' evaluation of the job performance of judicial officers and prosecutors.

INTERPRETATION OF FINDINGS

There appears to be a high level of distrust of the police among the people surveyed. This seems odd in light of the fact that two-thirds of crime victims reported the incident to the police. This might be because the sentence 'I trust the police and would willingly report crime to them' actually contains two statements. It is possible that some respondents did not trust the police, but nevertheless reported crime to them. Moreover, many crime victims might report crime because they were required to for insurance purposes, or because, in the case of more serious crimes, they had nowhere else to turn to and did so out of a sense of desperation.

There was not a significant difference between the proportion of white, black and coloured respondents who trusted the police and would willingly report crime to them. It is likely that differences in opinion on this issue, between the different race groups, were substantially larger before the political transition in 1994. It is to the credit of the police that it enjoys more or less equal levels of trust among members of all race groups in the Eastern Cape, albeit at a low level.

Generally, respondents were more trusting of the courts than of the police. It is possible that respondents came across more police officers than court officials with the result that their chances of coming across a corrupt police officer were greater than coming across, for example, a corrupt prosecutor. The public generally have more direct dealings with the police than with court officials. A crime victim's first port of call is the police and not the local prosecutor's office. As a result, many respondents would have based their answer in respect of court officials on their perceptions of them rather than on actual experiences or observations.

Moreover, it is possible that on balance, more police officers are corrupt or collude with criminals than prosecutors or magistrates. The reasons for this could be, *inter alia*, that the nature of the police's work dictates that police officers deal more directly with criminals than prosecutors or magistrates. The possibility of criminals bribing police officers is consequently greater than their

bribing members of, for example, the prosecution service. It also became apparent from some of the focus group discussions — especially among members of the coloured community — that criminal gangs are so powerful in certain areas that they are able to intimidate the police and bribe some of its members.

Only a minority of black and coloured respondents thought that the functioning of the criminal justice system had improved since 1994, or that the government had done a good job in fighting crime since 1994. While support for the ruling party is high among — especially black — Eastern Cape residents, many were nevertheless critical of the government's performance of crime.³ These comments are startling, because the civil liberties of many black and coloured South Africans were restricted by police action in the enforcement of government policies before 1994. However, the fact that rural, poor and less educated respondents (who would be almost exclusively black) were the most positive, indicates that, for these groups, the functioning of the criminal justice system had improved after 1994.

Focus group discussions revealed that many black and coloured participants were positive about the fact that the post-1994 criminal justice system was intent on protecting everyone's rights. However, a number of participants were concerned that people's rights were protected unequally with criminals enjoying greater protection than law-abiding citizens.

Moreover, it would appear that the root cause of dissatisfaction with the criminal justice system and the government's performance in fighting crime among many black and coloured respondents, does not lie with the overall crime-fighting policy and strategic vision of the system and the government. Much of the dissatisfaction seems to be with the day-to-day functioning of the system. Focus group participants were less concerned with the constitutional rights of criminals than with missing dockets, unhelpful and corrupt police officers, and long delays in the finalisation of court cases.

Significantly, female respondents were substantially less positive than males about the performance of the criminal justice system and the government after 1994. Moreover, the proportion of male respondents who thought that the criminal justice system was performing well was almost twice that of their female counterparts. It would seem that women in the Eastern Cape felt strongly that the government and the criminal justice system had failed to protect them from crime and criminals.

There is a considerable race-based disparity between respondents' opinions on judicial independence. While about two-thirds of white and coloured respondents thought that the courts functioned independent of outside influences, less than half of black respondents thought so. Black respondents were also least concerned about guarding against political interference in courts' decisions. Proportionately, black South Africans support the ruling party to a considerably greater extent than members of any other race group (and especially white South Africans). Moreover, most judicial officers — especially high court judges — are white and thus likely to be supporters of opposition parties. It is possible that it is for these reasons that a high proportion of black respondents were relatively unconcerned about political infringement of judicial independence.

It is possible that many respondents did not attach much value to judicial independence because of a lack of knowledge about the doctrine of the separation of powers, and the role of the courts to act as a bulwark against abuses of power by the country's political executive. Many of the focus group participants revealed a high degree of ignorance about basic functions of the criminal justice system. It is thus likely that many survey respondents did not fully understand

the importance of a judiciary independent of outside — especially political — influence.

Finally, many of the rural black respondents grew up under the authority of a tribal chief who was the political head of their community and the arbiter of disputes occurring within their community. The 'political executive' and 'judiciary' in such communities exist in one person (and his advisors). Persons living in such a community might consequently not find it worrying if the country's politicians on a national level were able to interfere in the courts' decision-making process.

Notes

1. M Schönteich, The rising costs of crime: State spending on criminal justice, *Nedcor ISS Crime Index*, 3(4), July — August 1999, Institute for Security Studies, Pretoria, pp. 18 — 21.
2. *1999 Budget Review*, Department of Finance, Government Printers, 1999.
3. In the June 1999 general election, the ruling African National Congress (ANC) received 74% of the vote in the Eastern Cape. Nationally, the ANC drew 66% of the votes cast.

ATTITUDES TO PUNISHMENT

CHAPTER OVERVIEW

Most respondents thought that judicial officers should be responsible for punishing criminals. However, a sizeable minority — especially among rural respondents — felt that the police or the community should punish criminals. There was substantial support for alternative or traditional forms of punishment. This support was especially pronounced among rural and black respondents on the basis that such forms of punishment were part of respondents' tradition, and that it was an effective way of ensuring that criminals were punished. Most rural respondents also stated that alternative or traditional forms of punishment were actually being practiced in their communities.

Respondents were more or less equally divided between those who saw vigilantism as something negative or illegal, and those who accepted and even welcomed it as something which was necessary because of the criminal justice system's perceived failure.

Most — especially urban and white respondents — felt that there had been a country-wide increase in vigilantism since 1994. About one out of ten respondents stated that there had been an incidence of vigilantism in their area. Real levels of vigilantism, however, are likely to be higher: only half of black and a third of rural respondents could say with certainty that no act of vigilantism had ever taken place in their community.

While only one out of every twenty respondents admitted that they personally participated in vigilante activity, every fifth respondent said they would consider doing so. Urban and black respondents were most prepared to get involved in vigilante activity. Respondents who had been victims of crime were more likely to say that they would participate in vigilante activity, than respondents who had not been victimised.

When asked what the government should do to reduce vigilantism, the most common response was that the government should improve the efficiency of the criminal justice system so that the

public could see that offenders were punished.

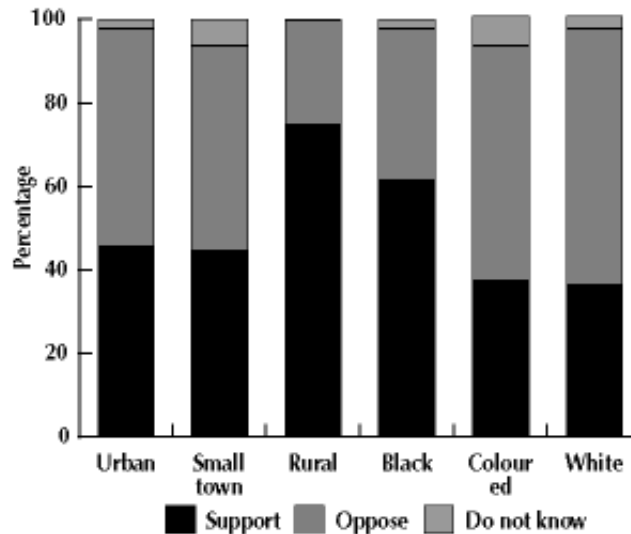
ALTERNATIVE SOURCES AND FORMS OF PUNISHMENT

Respondents were asked who they thought should be responsible for punishing criminals. As a first choice, most respondents said magistrates or judges (59%). A significant minority, however, said that it should be the police (28%), or the community (10%).

Rural respondents were more likely to believe that it was the function of the police and the community to punish criminals, than urban and small town dwellers. Coloured and white respondents were slightly more inclined to say that judicial officers should punish criminals than their black counterparts. Significantly more black respondents thought the police should punish criminals. Blacks were the only race group which recorded any substantial support for the community and tribal authorities taking responsibility for punishing criminals.

Just under half (49%) of respondents indicated that they supported alternative or traditional forms of punishment, such as people's courts, expulsion from a village, fines to be paid to a tribal chief, or restitution and compensation to a victim. The reason most respondents gave for opposing alternative or traditional forms of punishment was that the criminal justice system and the police should be responsible for punishing criminals and that there should be one law for all people (27% of all respondents). The most common reason given for supporting traditional or alternative forms of punishment was that it was an effective way of ensuring that criminals were punished (24% of all respondents).

Figure 7: Support for alternative or traditional forms of punishment



Rural respondents indicated far more support for alternative or traditional forms of punishment (75%), than urban and small town dwellers (46% and 45% respectively). The justifications given by rural respondents for their support were that such forms of punishment were part of respondents' tradition and that the role of the traditional leader was important to the local communities (30%). Moreover, they felt that such forms of punishment were more efficient than the police in accessing local information on crime (15%).

Urban (29%) and small town dwellers (21%) agreed with their rural counterparts that alternative or traditional forms of punishment were effective in ensuring that offenders were punished. However, urban (30%) and small town respondents (28%) were more inclined to suggest that

there should be one law for all offenders, and that the criminal justice system and the police were responsible for punishing criminals. Only 13% of rural respondents thought so.

Respondents from the urban centres and small towns (both 6%) also suggested that alternative or traditional agents of punishment were not suitably qualified or trained, with half of rural respondents saying so (3%). There were a small number of respondents from all areas who did not support such forms of punishment as they thought it would abuse human rights or result in the imposition of unfair punishment (7% of urban and small town respondents, and 5% of rural respondents).

Far more black respondents indicated their support for alternative or traditional forms of punishment (62%) than white or coloured respondents (37% and 38%, respectively). This support was justified on the grounds that such forms of punishment were an effective way of ensuring that offenders were punished, that traditions and the roles of traditional leaders were important, and that traditional leaders were more efficient than the police in accessing local information on crime. White and coloured respondents who supported such forms of punishment also did so because they thought that they were effective ways of ensuring that offenders were punished. Thirty per cent of white and coloured respondents, and 23% of black respondents, did not support alternative or traditional forms of punishment as they felt that there should be one law for all, and that the criminal justice system and the police should be responsible for punishing offenders.

Just under a quarter of respondents (23%) said that alternative or traditional forms of punishment were actually being practiced within their communities. The most common types of these forms of punishment occurred when the community (59%) or community elders (35%) decided upon the punishment, and expulsion from the village or area (7%).

Rural respondents were far more likely to have alternative or traditional forms of punishment in their area (87%), than urban (14%) or small town (12%) respondents. Moreover, considerably more black respondents reported the use of such forms of punishment in their areas (43%), than white (4%) or coloured (3%) respondents.

A South African Law Commission discussion paper on community dispute resolution structures offers the following explanation for the high levels of support that alternative forms of justice enjoy among black South Africans.

“Over the years, South Africa’s formal legal system has been perceived by certain sections of the population, notably black South Africans as illegitimate (because of its association with the apartheid government), as repressive (through its implementation by the police force) or as an expensive process in which the cost of justice is prohibitive. For many, a foreign, dominant, Western legal system, is seen to be superimposed on an intuitive, indigenous legal system. It is seen as alien, inaccessible and inappropriate for dealing with conflict which most South Africans experience in their daily lives.

Many of the peculiar problems facing the black community stemmed from the largely ineffective administration of the justice system in black areas. The legal problems as well as problems of social adjustment encountered by urban blacks were not being solved. It is therefore not strange that people resorted to self-help in the form of unofficial or folk institutions. In urban areas different

forms of community courts were instituted. 'Community courts' has become the contemporary term used when referring to popular justice structures, or the many types of informal tribunals existing outside the formal legal structures, such as street committees and yard, block or area committees operating in urbanised African townships and informal settlements.

Effective government is largely dependent on a legal system that is respected by those it is intended to serve. The challenge facing the democratic state is therefore to ensure that the justice system is acceptable and accessible to the larger community. A great need exists to create an alternative but uniform system where the resolution of community disputes can be handled much more effectively and in less time than in formal courts.”¹

VIGILANTISM

Attitudes to vigilantism

When asked what they thought an act of vigilantism was, almost one-third of respondents did not know. This was primarily because no appropriate words for vigilante or vigilantism exist in Xhosa and Afrikaans (the home languages of most respondents). Just over one-third (35%) of respondents thought that vigilantism was a criminal act or a form of illegal punishment. One-fifth thought it was a form of local punishment meted out because the criminal justice system or the police were inefficient. Others (12%) suggested that vigilantism involved community protectors or community anti-crime actions. Urban respondents were more likely to say that vigilantism was the work of community protectors or community anti-crime actions (18%).

Black respondents were less likely to see vigilantism as a criminal act or a form of illegal punishment (21%), compared to white and coloured respondents (46% and 53%, respectively). White respondents, in particular, associated an act of vigilantism with people who caused chaos or damage (only a negligible number of black and coloured respondents thought so). By contrast, a majority of black respondents associated vigilantism with the local punishment of offenders because of an inefficient criminal justice system or police service (36%), and with community protectors or community anti-crime actions (17%).

Overall (across all race groups), there is an even split between those who saw vigilantism as something bad or illegal, and those who saw it as something acceptable or even positive — local punishment because of the criminal justice system's failure, or a form of community policing. Moreover, there seemed to be somewhat of a blur between vigilantism and community policing in the minds of some respondents.

Extent and potential of vigilantism

Some 60% of respondents thought that there had been a general countrywide increase in vigilante activity since 1994. Only 18% thought there had not been an increase, with the remainder being unsure. Urban respondents were far more likely to suggest that vigilantism had increased since 1994 (70%), than small town and rural respondents (58% and 32%, respectively). Moreover, while almost four out of five white respondents thought that vigilante activity had increased, just over a half of coloured and black respondents thought so. Younger respondents were also marginally more inclined to think that vigilantism had increased, compared to older respondents.

Only 13% of respondents said there had been an incident of vigilantism in their community. One-quarter of respondents were unsure, while 61% said there had never been an incident of vigilante activity in their community. Only half of black respondents could say with certainty that no act of vigilantism had taken place in their community, with 20% saying there had, and 31% being unsure. In comparison, almost three-quarters of white and coloured respondents stated unequivocally that no acts of vigilantism had ever taken place in their communities, while 8% of coloured and 4% of white respondents said there had. Nine out of ten respondents who said that there had been incidents of vigilantism in their community, said the last incident occurred during the past year.

A fifth of rural respondents stated that there had been an incident of vigilantism in their area in the past, with one-half being unsure, and 30% saying there had not. A majority of respondents living in small towns and urban areas said there had never been an incidence of vigilantism in their area (63% and 68% respectively), while 14% of urban and 11% of small town respondents said that there had.

Vigilante activity in the areas where respondents lived, was more likely to result in violence than in the peaceful resolution of the conflict. In the majority of cases, the victims of vigilante activity were beaten (55%), killed or shot (18%). In 10% of the cases, the victims were banished from the area, forced out of their village, or taken to the police (7%). Victims of vigilante activity in the urban areas and small towns were more likely to be beaten than rural victims who stood the greatest chance of being shot or killed.

Only 5% of all respondents indicated that they had ever participated personally in vigilante activity. (A further 7% indicated that members of their household or their friends had participated in vigilante activity.) Respondents who had participated personally in vigilante activity did so mainly to retrieve their stolen goods, or participated in instances where suspects of serious crime got away with it (i.e. they were not caught by the police or convicted by the courts). Black respondents were most likely to have been involved in vigilante activity. A slightly higher proportion of female respondents admitted to participation in vigilante activity than male respondents. Women were more inclined to participate in vigilante activity to retrieve their goods, while men were more likely to do so if suspects of serious crime got away with it.

One-fifth of respondents who had never been involved in vigilante activity said that they would consider doing so. They said they would do so if a close family member was raped or murdered, or became the victim of some other serious crime (56%), where the police were ineffective and the offender got away with the crime (28%), or where a serious crime was committed in the local community (13%). Urban and small town respondents who had never been involved in vigilante activity were twice as likely to suggest they would consider it, compared to rural respondents. Black respondents were more likely to say that they would consider participating in vigilante activity (23% of black respondents who had never taken part in vigilante activity), compared to their white and coloured counterparts (18% and 14% respectively). Female respondents were somewhat more likely to suggest that they would participate in vigilante activity than men.

Respondents who had been victims of crime during the previous two years were significantly more likely to say that they either had or would participate in vigilante activity (31%), than respondents who had not been crime victims (20%).

Government's response

When respondents were asked what the government should do to reduce vigilantism, almost one-fifth did not know. One-third suggested that the government should improve the efficiency of the criminal justice system so that people knew that offenders were being punished. Other responses included punishing vigilantes or arresting them (12%), increasing the size of the police (10%), training vigilantes and integrating them into the criminal justice system (8%), and refusing bail and imposing harsher sentences on criminals (7%).

Almost half of rural respondents (45%) did not know what the government could do to reduce vigilante activity. The most common response from respondents in urban and small town areas was to improve the efficiency of the criminal justice system so that offenders were punished (41% and 32%, respectively). A significant number of respondents from small towns and rural areas suggested that vigilantes should be punished (16% and 12%, respectively), with less support for this option from urban respondents (7%). However, 15% of urban respondents thought the government should increase the size of the police, while only 8% of rural and 6% of small town respondents thought so.

White respondents were more convinced that the government should improve the efficiency of the criminal justice system. Coloured respondents were more in support of punishing vigilantes, while black respondents indicated relatively more support for increasing the size of the police, or integrating vigilantes into the criminal justice system (table 3).

Focus group findings

Most white focus group participants in Port Elizabeth felt that it was ‘wrong and barbaric’ for people to take the law into their own hands. They did indicate, however, that they understood why people engaged in vigilante type activities: because they had lost faith in the legal system. Most black focus group participants in the city were opposed to vigilantism as innocent people might be punished without a full investigation into their alleged criminal conduct. Anti-crime organisations were more acceptable as they did not punish suspected criminals, but took them to the police. Coloured and Asian focus group participants in Port Elizabeth all felt that vigilantism was a good thing provided it was controlled: ‘It is illegal but has become a necessity.’

Table 3: What respondents thought the government should do to reduce vigilante activity

	Urban (%)	Small town (%)	Rural (%)	Black (%)	Coloured (%)	White (%)
Improve efficiency of criminal justice system	41	32	15	29	32	44
Punish vigilantes	7	16	12	8	20	11
Increase size of police	16	6	8	14	9	6
Integrate vigilantes into the criminal justice system	8	8	7	11	7	3
Do not know	14	16	45	19	20	18
Other	14	22	13	19	12	18

Farmers in Graaff-Reinet felt that people took the law into their own hands because the courts and the correctional system were ineffective. Little policing took place in black areas and the formal criminal justice system was weak in such areas, with the result that vigilantism was prevalent there. Black and coloured male focus group participants in Graaff-Reinet stated that the public should assist the police, but left the punishment of criminals to the courts. Most female black and coloured focus group participants in Graaff-Reinet argued that vigilantism was wrong. The group suggested that the government should introduce a system where criminals were dealt with immediately, so that their court cases were not postponed. Corporal punishment

should be reintroduced.

Black focus group participants in Grahamstown spoke approvingly of a vigilante group in their area which apprehended suspects only if they could be identified and there was strong evidence against them. For example, in a case of theft, the stolen item should be found in the suspect's possession. Or, in the case of rape, the victim should obtain a medical certificate to show that she was raped. White focus group participants in Grahamstown opposed vigilante activities, but felt that it was growing because the criminal justice system was not working. Most coloured focus group members in Grahamstown stated that they might get involved in vigilante activities if the criminal justice system did not improve, or if they became victims of violent crime.

Umtata focus group participants agreed that the community should not mete out punishment, but should take information about crime suspects to the police. However, the police sometimes did not do their work properly and used excuses, such as the fact that they did not have any vehicles. The police did not arrest certain suspects because of corruption within police ranks, or out of fear of revenge. Thabankulu focus group members agreed that it was wrong for members of the public to take the law into their own hands, but it was sometimes hard to resist doing so.

INTERPRETATION OF FINDINGS

A significant minority of the respondents felt that it should not be the courts' responsibility to punish criminals. Many felt that it should be the police's responsibility to punish criminals. Almost half of the respondents indicated their support for alternative or traditional forms of punishment. This indicates that a large number of Eastern Cape residents do not understand the proper role and purpose of the courts as being the arbiters of punishment for criminals. Significantly, a large proportion of the public in the Eastern Cape have a fundamentally different understanding of the concept of justice and the basic role of the criminal justice system — especially regarding the issue of punishment — compared to government policy makers and officials of the criminal justice system.

This has far-reaching implications for the state's ability to combat crime and maintain law and order successfully in certain parts of the Eastern Cape. If, for example, only a minority of rural respondents believe that the courts should be responsible for punishing criminals, and three-quarters support alternative or traditional forms of punishment, then the state will have some difficulty in selling its crime-fighting initiatives to rural citizens. Moreover, many rural residents in the Eastern Cape have conceptions of justice fundamentally different from those held by the state. It would consequently help little for the state to become more effective in its crime-fighting capabilities. Many rural respondents support alternative or traditional forms of punishment not because they perceive the state to be ineffective (although that does play a role), but because they believe that traditional forms of crime control and punishment are more important to them and their communities than anything the state can do.

The state therefore has the difficult task of not only educating many of its rural citizens about the role and purpose of the criminal justice system, but also of persuading rural residents that some of their traditions and customs are not compatible with the values of a modern state's criminal justice system based on the rule of law and constitutionally entrenched individual rights. The state consequently has to change people's values and attitudes which have developed and become entrenched in rural citizens' communities over centuries.

The government needs to take cognisance of the fact that a fifth of the respondents who had never been involved in vigilante activity, were prepared to do so under certain circumstances.

The fact that urban respondents were the most prepared to get involved in vigilante activities should be of concern. The rapid growth of Pagad (People Against Gangsterism and Drugs) in the greater Cape Town region, and Mapogo-a-Mathamaga in Pretoria shows that urban people, despondent as a result of high levels of crime and the state's apparent ineffectiveness to combat it, are easily persuaded to give their support to vigilante organisations.² It is vital that the government listens to the reasons why respondents would be prepared to participate in vigilante activities: high levels of serious and violent crime, the state's ineffectiveness in apprehending and convicting criminals, and the perceived lack of punishment for criminals. Should the criminal justice system be unable to address these concerns, it is likely that vigilante activity in the Eastern Cape will increase, especially in urban areas.

Notes

1. South African Law Commission, *Community dispute resolution structures*, discussion paper 87, project 94, 1999, pp. 3-5.
2. Mapogo-a-Mathamaga was formed in the Northern Province in 1996. It is the largest formal self-defence/vigilante organisation in South Africa, and claimed to have a signed up membership of 40 000 in mid-1999. See A D Smith, In a jungle of crime, the leopard changes its spots, *Sunday Independent*, 25 July 1999. (For information on Mapogo-a-Mathamaga's growth in Gauteng, see E Ngoben, Vigilante group sweeps the suburbs, *Mail & Guardian*, 21 January 2000.)

OPINIONS ABOUT SENTENCING AND SENTENCERS

CHAPTER OVERVIEW

Most respondents believed that crime levels are affected by the sentences handed down by the country's courts. A substantial majority thought that sentences were too lenient, and that lenient sentences had played a major role in the increase in crime since 1994. Most respondents thought that the introduction of harsher sentences would decrease the crime rate.

Three-quarters of the respondents were in favour of the reintroduction of the death penalty for persons convicted of the most serious crimes. Most respondents who favoured a return of the death penalty did so because they believed that it would help to reduce serious crimes and serve as a deterrent to criminals.

Respondents were given a brief description of a number of crimes. They were then asked to place themselves in the position of a sentencing officer and determine what sentence the offenders in the given examples should receive. Respondents were considerably less punitive when they were given some information on an actual crime than when they were asked general questions about sentencing. While three-quarters of respondents favoured a return of the death penalty, when presented with detailed examples of crimes, less than half imposed such a sentence even for the most serious and brutal crimes. Respondents were particularly lenient in punishing persons who had been convicted of vigilante type crimes.

There was a widespread feeling among respondents that magistrates and judges were not in touch with what ordinary people thought. Rural respondents were the most likely to think so.

Most respondents felt that lay assessors should assist magistrates in sentencing offenders. Respondents typically motivated their support for the use of lay assessors in the sentencing process by saying that assessors knew more than magistrates about the local conditions where

the crime took place. A substantial majority of respondents were opposed to grant lay assessors the power to overrule magistrates' sentencing decisions. Respondents generally felt that lay assessors would be more punitive than magistrates when it came to punishing convicted offenders.

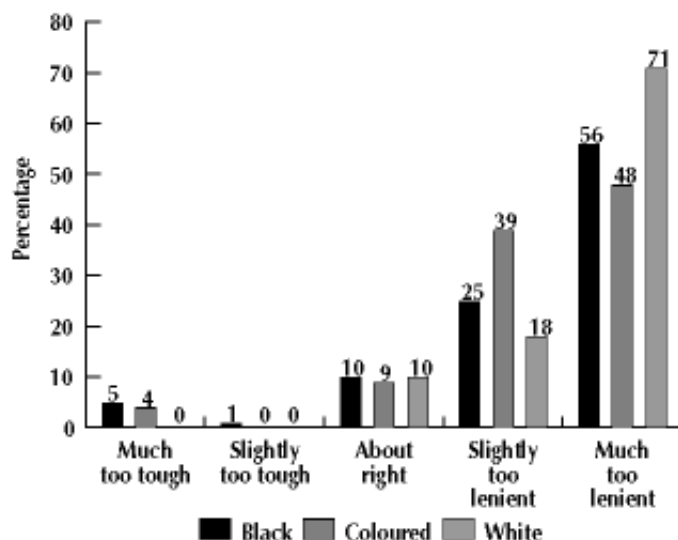
THE EFFICACY OF SENTENCING

Just over three-quarters of the respondents thought that sentences handed down by the courts had an effect on criminals' propensity to commit crime. Respondents in the urban areas were most convinced of this (82%), followed by those in small towns (73%), and rural areas (68%). Moreover, coloured and black respondents were more likely to think that sentences affected criminals' behaviour (86% and 81% respectively), compared to white respondents (58%).

When asked what they thought about the sentences handed down by the courts, a majority said they were 'much too lenient' (58%) or 'slightly too lenient' (27%). Only 4% of respondents thought sentences were much or slightly too tough, and one out of ten respondents said sentences were 'about right'. While just over 60% of urban and small town respondents thought sentences were much too lenient, only 28% of rural respondents thought so. The most common rural response was that sentences were slightly too lenient (48%).

White respondents were most likely to state that sentences were much too lenient, with 71% saying so, compared to 56% of black and 48% of coloured respondents. Moreover, not one white respondent thought that sentences were either much or slightly too tough (figure 8). Female respondents came out strongly in saying that sentences were much too lenient (66%), with just under half of male respondents saying so. A significant higher proportion of respondents aged 18 to 30 years and those older than 50 thought that sentences were much too lenient compared to the middle-aged group (31 to 50 years).

Figure 8: Respondents' perceptions of sentences handed down by the courts as too tough, about right, or too lenient



Almost half of the respondents motivated their views on sentencing by saying that sentences handed down by the courts were too lenient on repeat offenders and had no deterrent effect. A further 22% of respondents felt that sentences were too lenient and did not match the severity of the crime committed by the convicted person. Some 11% thought that sentences were too lenient in that criminals got off too lightly or were released from prison too early.

South African courts are obliged to take an offender's previous convictions into account when imposing a sentence.¹ Generally, an offender with relevant previous convictions will receive a tougher sentence on conviction.

The High Court has held that courts should consider the nature, number and extent of similar previous convictions and the passage of time between them, and the offence for which sentence is being handed down. The closer the present offence is in time and nature to the previous offence for which a person was convicted, the greater a bearing the offender's previous criminal conduct should have on his present sentence.²

Not much statistical information is available on sentencing trends in South Africa. The available information indicates that, over the last decade, courts have been sending fewer convicted persons to prison.³ Courts are making greater use of correctional supervision as a sentencing option (and as an alternative to imprisonment).

However, it would seem that prison sentences are getting longer.⁴ This could reflect a harsher sentencing regime by the courts, or it could mean that criminals are generally committing crimes of a more serious nature than in the past. It is likely that longer prison sentences are a combination of both these factors. Moreover, minimum sentencing legislation (applicable to certain serious crimes committed after April 1998) will result in the imposition of longer prison sentences.

Four-fifths of all respondents thought that repeat offenders should automatically receive a longer sentence of imprisonment. Urban respondents felt most strongly about this with 90% advocating longer prison sentences for recidivists, compared to small town and rural respondents (75% and 65% respectively). Moreover, white respondents were more likely to favour tougher prison sentences for repeat offenders (95%), than coloured (78%) or black (73%) respondents.

Respondents who had said that sentences handed down by the courts were much or slightly too lenient, were asked to comment on what role lenient sentencing had played in the increase in crime levels since 1994. Nine out of ten of these respondents thought that lenient sentences had played 'a major role' in the increase in crime since 1994. There were no significant differences in the responses when broken down by race, gender or area of residence.

Respondents who thought that sentences handed down by the courts played a role in increases in post-1994 crime levels were asked whether they thought that the introduction of harsher sentences would decrease the crime rate. Regardless of area of residence, race or gender, almost all of these respondents (97%) thought that harsher sentences would lower the crime rate.

CAPITAL PUNISHMENT

Three-quarters of the respondents thought that the death penalty should be reintroduced for persons convicted of the most serious crimes. A smaller proportion of urban and small town respondents favoured the reintroduction of the death penalty (72% and 74%, respectively), compared to rural respondents (87%). White respondents were most inclined to support the

reintroduction of the death penalty (85%), followed by coloured (75%), and black (69%) respondents. Female respondents were significantly more in favour of the reintroduction of the death penalty than male respondents (80% versus 69%). Thus, almost a third of male respondents were opposed to the reintroduction of the death penalty for persons convicted of the most serious crimes. Education levels made only a negligible difference to respondents' support for the death penalty.

Of the respondents who favoured a return of capital punishment, most (92%) believed this would help to reduce serious crimes and would serve as a deterrent to criminals. The remainder took an 'eye for an eye approach' arguing that criminals who murdered, deserved to die. Most respondents who opposed a return of the death penalty did so on the basis that the taking of any life was wrong, that the death penalty would not reduce crime, and that the Bible did not support the death penalty.

It would appear that the support by most respondents for capital punishment is not based on a belief that the death penalty is an effective preventive measure in that it permanently removes dangerous criminals from society. When the pro-capital punishment respondents were asked whether they would continue to support the death sentence if offenders who committed serious crimes would be given a true life sentence without the possibility of parole, most (76%) answered in the affirmative. Black respondents were most inclined to change their position on the death penalty if real life sentences without parole were handed down (29%), compared to coloured (15%) and white (20%) respondents. The respondents' answers differed only negligibly when broken down by geographic location.

Focus group findings

Most members of Port Elizabeth's white focus group felt that the punishment should fit the crime. Thus, a murderer should get at least a life sentence or should be executed. Focus group members were less concerned with the perception that some sentences were too lenient or harsh, but that sentences were too inconsistent. That is, a crime which is punished harshly by one court, is punished leniently by another. Most felt that the death penalty should be reintroduced, especially for rape and murder. Even if there was a true life sentence for serious criminals, most focus group members still favoured capital punishment as life prisoners would cost the tax payer too much money.

African focus group participants in Port Elizabeth also felt that sentencing was too inconsistent from one court to the next. Many did not understand how the sentencing system worked and found the way judicial officers arrived at their sentencing decisions confusing. A majority of focus group members were in favour of reintroducing the death penalty as they felt that crime was out of control. Coloured and Asian focus group members in the city also felt that sentencing was inconsistent, and that harsh sentences were not a deterrent. Many sentenced and incarcerated prisoners remained in contact with those who worked for them (e.g. drug dealers), and continued to manage their criminal syndicates from within the prison walls. Such prisoners should be transferred to prisons in other cities and provinces far removed from their criminal syndicates. Most focus group members supported capital punishment, with those who did not, opposing it on religious grounds.

Graaff-Reinet farmers held that sentences were too lenient and did not serve as a deterrent to criminals. Moreover, sentenced prisoners rarely served the full term of their sentence, and less than half of an imposed prison term is generally actually served. While most focus group members favoured capital punishment, many cautioned that it should be used sparingly. Black

and coloured male focus group participants in Graaff-Reinet felt that first time offenders were often punished too harshly by the courts, while repeat offenders were sentenced too leniently. Sentences were not uniform. Most sentences were too lenient, especially in respect of juvenile criminals. The death penalty should be reintroduced for serious offenders on the principle that they got what they deserved: 'an eye for an eye'. Black and coloured female focus group members felt that sentences should be harsher to serve as a deterrent.

Black focus group participants in Grahamstown were unsure whether sentences were generally too lenient or too harsh. Most did feel, however, that sentences for murder, rape and theft were too lenient. The government should prescribe tough sentences so that these would deter criminals. Virtually all focus group members thought that capital punishment should not be reintroduced, as it conflicted with the basic human right to life as enshrined in the Constitution.

White focus group members in Grahamstown felt that mandatory minimum sentences prescribed by statute were not a good thing. This tied the hands of the country's judicial officers who would be prevented from sentencing individual accused in relation to the facts of the case before them. Capital punishment was not the ideal sentence for serious criminals, but was necessary because some elements of society still resembled the 'dark ages'. The death sentence, however, should be used only for criminals who could not be rehabilitated.

Coloured focus group members in Grahamstown felt that sentences were generally too lenient. Imprisonment was not a deterrent to prisoners who could study for free and who were released early on good behaviour. Most felt that capital punishment should be reintroduced in cases of rape, murder and child abuse. Most also continued to favour a return of capital punishment even if true life sentences were imposed as the latter might not have a deterrent effect for those who enjoyed prison, as it is a place where prisoners received regular meals, could watch M-Net (a popular subscriber-based television channel) and not pay taxes.

Umtata focus group members thought that sentences were too lenient, especially for those convicted of rape and child abuse. Mandatory minimum sentences were a good idea, provided that these reflected the true sentence and convicted persons were not released early on parole. The majority of the focus group participants were opposed to the reintroduction of the death penalty. Many felt that capital punishment was not as painful to prisoners as that which they would suffer if they were left in prison for the rest of their lives. Some focus group participants in Thabankulu felt that rapists and murderers should be killed. In the case of theft, victims should be permitted to take something from their thieves which was of equal value as the stolen items. Virtually all focus group participants were in favour of the death sentence as such a sentence would deter would-be criminals, with the result that there would be less crime because of the fear of being caught and sentenced to death.

SENTENCING CASE STUDIES

Respondents were given a brief description of a number of crimes. They were then asked to place themselves in the position of a sentencing officer and to determine what sentence the offenders should receive in the given examples. The crime description and a summary of the respondents' answers follow below.

Where the crimes are covered by the *Criminal Law Amendment Act* of 1997, the minimum sentence as prescribed for these crimes is given. Judicial officers are not compelled to impose the minimum sentence as prescribed by the Act. They may, however, impose a lesser sentence (than the prescribed minimum) only if they are 'satisfied that substantial and compelling

circumstances exist which justify the imposition of a lesser sentence’.

Murder

An adult man shoots and kills a police officer who tries to stop him at a roadblock. The man had some dagga (cannabis) in his car and did not want his vehicle to be searched by the police officer.

Some 41% of respondents stated that the perpetrator deserved the death penalty. A further 23% imposed life imprisonment or a prison sentence in excess of 50 years. Eight per cent opted for imprisonment ranging from 26 to 50 years, and 21% for imprisonment of 25 years or less. Many respondents also favoured a prison sentence with forced labour.

Criminal Law Amendment Act: The Act prescribes life imprisonment of any adult convicted of murdering a police officer. (In practice, this would entail a period of imprisonment in excess of 25 years, but probably less than 50 years depending on the age of the convicted prisoner.⁷)

Rape

A 30 year-old man rapes a 15 year-old girl whom he does not know.

Just over a quarter of respondents (27%) imposed the death sentence, and 24% imprisonment in excess of 50 years. Fourteen per cent opted for imprisonment ranging from 26 to 50 years, and 20% for imprisonment of 25 years or less. The remainder (16%) chose non-prison sentences or did not know what sentence to impose.

Criminal Law Amendment Act: As the victim is under the age of 16, the Act prescribes a sentence of life imprisonment.

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.”⁵

For example, the Act mandates life imprisonment for persons convicted of murder, where:

it was planned or premeditated;

the victim was a law enforcement officer, or a person likely to give material evidence in a criminal trial; or

it involved rape or robbery with aggravating circumstances.

The Act also provides for life imprisonment for rape where the victim is:

raped more than once, or by more than one person, or by a person who has been convicted of two or more offences of rape, or by a person who knows that he has HIV/Aids;

a girl under the age of 16 years, or is a physically disabled woman and thereby particularly vulnerable, or is a mentally ill woman; or

seriously assaulted.

The Act came into operation on 1 May 1998 and applies only to persons who are convicted of having committed an offence covered by the Act after April 1998. The minimum sentencing part of the Act will automatically expire two years after it came into operation (i.e. on 30 April 2000), unless its operation is extended which the president with the concurrence of parliament may do one year at a time

The courts have always been critical of mandatory minimum sentencing legislation. In a 1990 decision, Chief Justice Corbett commented: "... the imposition of a mandatory minimum prison sentence has always been regarded as an undesirable intrusion by the legislature upon the jurisdiction of the courts to determine the punishment to be meted out to persons convicted ... and as a kind of enactment that is calculated in certain instances to produce grave injustice."⁶

A 25 year-old man rapes his 21 year-old girlfriend.

Seventeen per cent chose the death penalty, and 31% imprisonment in excess of 10 years. Six per cent imposed imprisonment of 10 years, and a fifth (21%) imprisonment of less than 10 years. A further 17% favoured an alternative to imprisonment such as correctional supervision, public shaming, or the payment of compensation to the victim.

Criminal Law Amendment Act: A minimum 10 year period of imprisonment is prescribed.

Vehicle hijacking

An adult man hijacks a motor vehicle by threatening the owner of the vehicle with a firearm.

Four per cent chose the death penalty, and a further 36% imprisonment in excess of 15 years. Thirteen per cent opted for 15 years imprisonment. A third (34%) chose imprisonment of less than 15 years, and 8% an alternative to imprisonment (such as public shaming and community service)

Criminal Law Amendment Act: A minimum 15 year period of imprisonment is prescribed.

Housebreaking

A 32 year-old man breaks into a house and steals twelve music tapes/CDs, and an expensive television set.

Sixteen per cent opted for lengthy prison sentences ranging from 11 to 30 years. A fifth imposed imprisonment ranging from 6 to 10 years, and 36% imprisonment ranging from 2 to 5 years. A further 15% favoured an alternative to imprisonment such as a fine or community service.

A 16 year-old boy breaks into a house and steals twelve music tapes/CDs and an expensive television set.

Respondents were more lenient where a juvenile (as opposed to an adult) was convicted of housebreaking.

Only 5% suggested imprisonment in excess of 10 years. Fifteen per cent chose imprisonment ranging from 6 to 10 years in duration, and 23% imprisonment ranging from 2 to 5 years. The majority (37%) proposed an alternative to imprisonment such as a whipping (13% of respondents), correctional supervision or house arrest.

Shoplifting

A 17 year-old boy steals a loaf of bread and polony sausage from a shop.

The most common sentence imposed (by 37% of respondents) was a whipping. A further 40% elected other alternatives to imprisonment such as compulsory counselling sessions, or correctional supervision and house arrest. Only 10% suggested some form of imprisonment.

An adult woman steals a dress and a pair of shoes from a large department store.

Just over half of the respondents (52%) chose imprisonment as a sentencing option, with most favouring a prison sentence between 1 and 5 years (41% of respondents). Other popular sentencing options were a fine (9% of respondents), community service (8%), and public shaming (7%).

Fraud

An accountant defrauds his employer over a two year period. In total the accountant fraudulently enriches himself by stealing one million rand.

Of the respondents, 22% opted for imprisonment in excess of 15 years. Nine per cent imposed imprisonment of exactly 15 years, and 37% imprisonment of less than 15 years. A further 22% of the respondents imposed a non-custodial sentence such as the payment of compensation to the victim, a fine, or community service. Eight per cent did not know what sentence to impose.

Criminal Law Amendment Act: The Act prescribes a minimum of 15 years imprisonment.

Victimless crime

Peter, who is 28 years old, has 10 grams of dagga (cannabis) in his possession which he intends to smoke as it relaxes him. He obtained the dagga from plants he cultivates in his garden.

The most common sentence imposed was a non-custodial one (46% of respondents), primarily a fine, a suspended prison sentence, and compulsory counselling sessions. Some 36% of respondents imposed a prison sentence, with most imposing 1 to 5 years of imprisonment (almost a quarter of respondents). Fifteen per cent of respondents did not know what sentence to impose, and 3% imposed no punishment. Rural and male respondents were the most tolerant of the illegal possession of dagga and were significantly more likely to impose non-custodial sentences.

Vigilante crimes

An adult man sjamboks (whips) a 15 year-old boy whom he caught stealing his weekly wages. As a result, the boy receives serious injuries to his buttocks, and has to receive medical treatment at the local clinic.

One-third of respondents favoured some form of imprisonment. Two per cent opted for more than 10 years imprisonment, and another 2% for 10 years exactly. A further 28% chose imprisonment of less than 10 years, and 52% favoured an alternative to imprisonment such as paying compensation to the victim or a wholly suspended sentence.

Interestingly, 11% of respondents did not know what sentence to impose. This might indicate the possible sympathy of some respondents with vigilante type behaviour. Almost 5% of respondents said that the accused should receive no punishment at all.

Criminal Law Amendment Act: A minimum sentence of 10 years imprisonment is prescribed as the victim is under the age of 16 and the assault is a serious one.

An adult man catches a 19 year-old male youth whom he saw robbing a woman of her handbag by threatening her with a knife. The man hits the youth with an open hand, forces him to strip naked against his will, and then forces him to walk naked to the police station which is 2 kilometres away, where he hands the youth over to the police.

A quarter of respondents chose imprisonment, with most falling into the 1 to 5 years range. A large group (52%) selected an alternative to imprisonment such as a fine or wholly suspended prison sentence. Fifteen per cent did not know what punishment to impose, and 9% would have imposed no punishment.

John is told by his teenage daughter that she was raped and stabbed in her leg with a broken bottle by the local gang leader who is 26 years old. John fetches his gun and a canister of petrol and drives to the home of the gang leader some 10 kilometres away. There he shoots the gang leader in the stomach, douses him with petrol and sets fire to him while he is still alive. The gang leader dies shortly thereafter.

Five per cent imposed the death penalty, and 6% imprisonment in excess of 25 years. Four per cent choose imprisonment of 16 to 25 years, and 2% imprisonment of exactly 15 years. Over a quarter (26%) opted for imprisonment of less than 15 years, while 38% favoured an alternative to imprisonment such as a suspended prison sentence (18% of all respondents) and compulsory counselling sessions. Fourteen per cent did not know what punishment to impose, and 5% imposed no punishment.

Criminal Law Amendment Act: Life imprisonment will apply if it can be proven that the murder was planned or premeditated, otherwise 15 years imprisonment.

SENTENCING OFFICERS

Most respondents thought that judicial officers were not in touch with what ordinary people thought. Approximately two-thirds of respondents thought that both magistrates and judges were either 'very out of touch' or a 'bit out of touch' with what ordinary people thought. Rural respondents (and to a lesser extent black respondents) were the most likely to think that judicial officers were out of touch with the public. In respect of magistrates specifically, the proportion of rural respondents who thought that they were very out of touch with popular thinking was almost twice as high (52%) as that for urban respondents (28%).

When asked whether magistrates or judges are tougher in imposing sentences, a considerable majority of respondents thought judges were tougher (59%). Only one out of ten respondents thought that magistrates were tougher, while almost a third (28%) thought that neither judges nor magistrates were tougher. White respondents were most likely to consider judges and magistrates to be equally tough (40%), while just under a quarter of black and coloured respondents thought so.

LAY ASSESSORS

Respondents were informed that lay assessors are ‘members of the local community who sit in on a trial at a magistrate’s court and assist the magistrate to come to a decision on sentencing. The lay assessor also provides the magistrate with information on the attitudes and feelings of the local community towards a particular crime.’

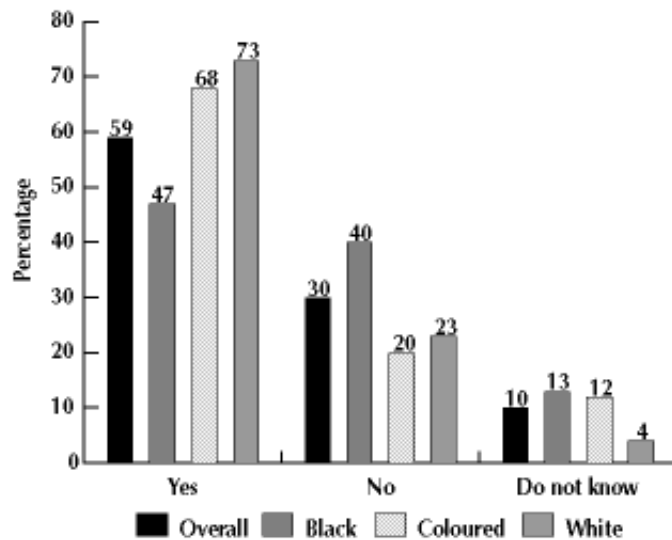
Most respondents (59%) felt that lay assessors should assist magistrates in sentencing offenders, with 30% saying that they should not. The remainder of respondents were undecided and indicated that they did not know. Rural and black respondents were the least enthusiastic about the use of lay assessors to assist magistrates in their sentencing decisions. Thus, almost an equal proportion of rural respondents were both for (43%) and against (38%) the use of lay assessors. In the urban and small town areas, the proportion of respondents in favour of using lay assessors was about twice as large as those who were opposed to their involvement in the sentencing process. Only a minority of black respondents favoured the use of lay assessors (47%), compared to a majority of their coloured and white counterparts (68% and 73%, respectively) (see figure 9).

The law permits judges to pass tougher sentences than magistrates. Thus, unless legislation provides otherwise, a district court magistrate may impose a maximum period of imprisonment of three years, while a regional court magistrate may hand down periods of up to 15 years.⁸ There is no limit for high court judges. Legislation and the minister of justice determine the maximum fine which can be imposed by the lower courts for common law offences:⁹ R60 000 by a district court magistrate, and R300 000 by a regional court magistrate.¹⁰ There is no limit for the high court.

Almost three-quarters of the respondents who were in favour of lay assessors assisting magistrates in the sentencing of offenders motivated their reason by saying that assessors have a better feel for the local context (in which the crime occurred), and might know more than a magistrate about local conditions. Some also argued that magistrates needed the help of lay assessors when difficult decisions had to be made.

Of the respondents who opposed the use of lay assessors in the sentencing process almost three-quarters did so because they thought that assessors were not trained in the law or were not suitably qualified. This reason was especially prominent among black respondents. About twice the proportion of black respondents gave a lack of legal qualifications as their reason for opposing the use of lay assessors, as compared to their coloured and white counterparts.

Figure 9: Whether lay assessors should assist magistrates in sentencing offenders



Respondents were opposed to lay assessors having the power to overrule magistrates' sentencing decisions (71% compared to 16% in favour). Urban respondents registered the highest level of opposition to the granting of additional powers to lay assessors. Moreover, a significantly higher proportion of white respondents were opposed to greater powers for lay assessors (81%), than their black and coloured counterparts (both 67%).

When asked whether lay assessors would be more lenient or stricter in their sentencing decisions (on the presumption that they could overrule magistrates' sentencing decisions), the most common response was that lay assessors would be stricter than magistrates (46%). Just under a fifth of respondents thought that lay assessors would be more lenient than magistrates in their sentencing decision (19%), while 13% thought that there would be no difference. A significant proportion of respondents across area, race and gender could not motivate why they thought lay assessors would be stricter than magistrates. The community's desire for retribution was the most common reason given by respondents in urban areas and small towns. Rural respondents, however, were most likely to argue that assessors would be harsher because they were not trained in the law.

Upon the application of either party in a trial, courts may summon the assistance of one or two persons who are suitable and who may be willing to sit and act as assessors in an advisory capacity.¹¹

New legislation (which had not been promulgated at the time of writing) makes the use of lay assessors compulsory under certain circumstances. According to the Magistrates Courts Amendment Act of 1998, magistrates must be assisted by two assessors in the trial of any person accused of murder, rape, robbery or assault where serious bodily harm has been inflicted on the victim, or indecent assault.¹²

Magistrates may use – but are not compelled to – two assessors in any trial where the offences are not those listed above; in a bail application; or to determine a proper sentence for a convicted person.

In respect of a bail application or in determining an appropriate sentence, an assessor may assist the magistrate in an advisory capacity only. However, in a trial and for the purposes of judgement (i.e. finding the accused person guilty

or not) the finding or decision of the majority of the members of the court is the finding or decision of the court. That is, in a factual dispute, two assessors can overrule a magistrate's finding or decision. Any matter of law arising for decision at a trial is to be decided by the magistrate only.

INTERPRETATION OF FINDINGS

Respondents placed much faith in the ability of tough sentences to bring down the crime rate. This belief is both fallacious and dangerous. It is fallacious as most criminals are never apprehended and even fewer are convicted and sentenced by the courts. In 1998, some 2.2 million crimes were reported to the SAPS and 203 000 perpetrators were convicted.¹³ Thus, on average, around 9% of reported crimes end in the successful prosecution and sentencing of the perpetrators involved. As many crimes are not reported, the proportion of criminals punished for their crimes is likely to be considerably lower than 9%.

It is also dangerous to presume that tougher sentences will impact directly on the behaviour of criminals. This belief has resulted in public pressure on politicians and policy makers to influence the country's judicial officers to hand down tougher sentences. One result has been the passing of the *Criminal Law Amendment Act* of 1997 which prescribes minimum sentences for persons convicted of a range of offences. Another result has been open criticism by parliamentarians of individual judges who passed sentences which were deemed to be too lenient by sections of the public and the media.¹⁴ Legislative measures prescribing minimum sentences have the effect of impinging on judicial independence. Through such legislation, the country's executive usurps the judiciary's traditional function of punishing the perpetrators it convicts, after having listened to and evaluated all the relevant evidence relating to the crimes in question.

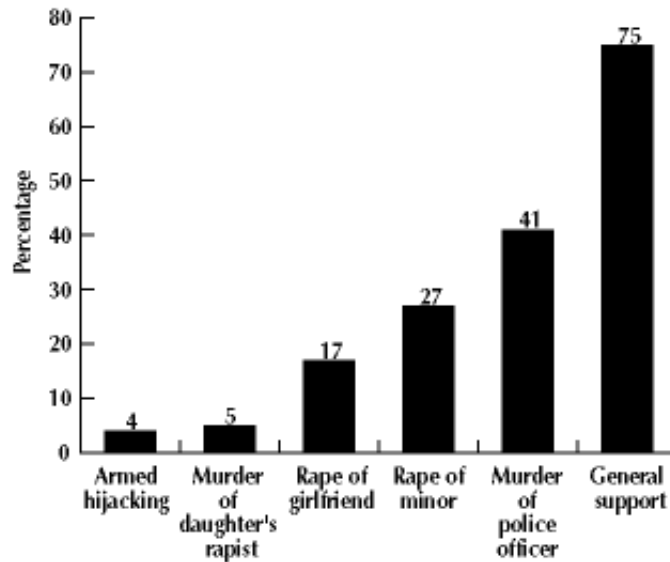
For the courts, sentencing is a complicated process involving the appraisal of a range of factors, circumstances and theories.¹⁵ For the public, especially in a country ravaged by high levels of violent crime, this process is often confusing and frustrating when people convicted of horrendous crimes receive what appear to be lenient sentences.

Based on the survey results, it would appear, however, that the public is neither more nor less punitive than the country's judicial officers. Once respondents were given some information about an actual crime and offender, they became considerably more lenient in their sentencing approach.¹⁶

For example, three-quarters of the survey respondents thought the death penalty should be reintroduced for persons convicted of serious crimes. However, when the same respondents were faced with more detailed scenarios of actual crimes, they were considerably less draconian. Even for the most serious crimes, only a minority of respondents opted for the death penalty. For example, only 41% of the respondents imposed the death penalty on the murderer of a police officer (figure 10).

The survey also revealed that 85% of respondents thought that the courts were either 'too lenient' or 'much too lenient' in sentencing offenders. However, when provided with some information about actual cases, a sizeable minority (between a third and just under a half) of respondents opted for a more lenient sentence than provided for by minimum sentencing legislation (figure 10).

Figure 10: Support among respondents for the death penalty



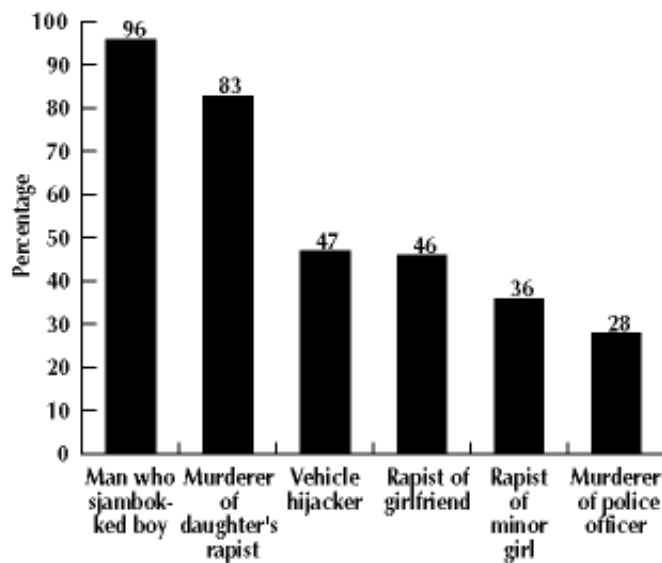
It would seem that the more information available to people about an individual crime, the less punitive they tend to become in their punishment of the offender. While three-quarters of respondents would probably send an offender who had shot and burnt somebody to death to the gallows, very few would do so once they knew the offender committed the crime out of revenge for his daughter's violent rape (figure 11).

This could explain the discrepancy which exists between the sentences that are handed down by the courts and the public's perception about them. The general public might read one or two newspaper articles about a crime and the circumstances which led to the commission of the offence. A judicial officer often has hundreds of transcribed pages of testimony and evidence on which a proper sentencing decision can be based.

The misunderstanding between the public and the administrators of justice has to do with a lack of information and communication. Some judges and magistrates seem to be unaware of the public's feelings and anxieties about certain crimes. Likewise, most people are unaware of the information used by the courts to come to fair and justifiable sentencing decisions.

When it came to vigilante type crimes in the survey's case studies, many respondents adopted an extremely lenient approach towards the perpetrator of 'vigilante crime'. Even for the most brutal crime (where the offender shoots and burns to death his daughter's rapist) over half of the respondents thought that the offender deserved a non-prison sentence, or respondents did not know what punishment was deserved, or they thought that the offender deserved no punishment. While most respondents indicated that they would not get involved in vigilante activity, many seem to harbour latent sympathies for those who committed vigilante type crimes. This should be a warning to policy makers and senior officials within the criminal justice system: a significant number of people are prepared to condone criminal behaviour if it is directed at criminals. That is, many people seem to be prepared to sacrifice criminals' constitutional rights and the rule of law if such an approach was perceived to be effective in combating criminality.

Figure 11: Respondents choosing a more lenient sentence than provided for by law



Notes

1. Section 271(4), *Criminal Procedure Act* no. 51 of 1977.
2. Muggel 1998 (2) SACR 414 (C).
3. L Muntingh, A criminal justice crisis: Sentencing trends in South Africa, *Crime and Conflict*, 4, Summer 1995, pp. 21-24.
4. Ibid; S Oppler, Correcting corrections: Prospects for South Africa's prisons, ISS Monograph Series, 29, Institute for Security Studies, Halfway House, October 1998, pp. 23-26.
5. Section 51(3)(a), *Criminal Law Amendment Act* no. 105 of 1997.
6. Toms, Bruce 1990 (2) SA 802 (A) at 822C.
7. Persons sentenced to life imprisonment in terms of the *Criminal Law Amendment Act* of 1997 may not be placed on parole unless they have served at least four-fifths of the term of imprisonment imposed or 25 years, whichever is the shorter. Presumably, therefore, life imprisonment in terms of the *Criminal Law Amendment Act* entails a minimum period of imprisonment of 25 years. See section 73(6)(b)(v) of the (still to be promulgated at the time of writing) *Correctional Services Act* no. 111 of 1998.
8. Section 92(1)(a), *Magistrates Courts Act* no. 32 of 1944, as amended.
9. Common law offences are offences created through custom and judicial decisions. Statutory offences are offences specifically created by statute or legislation, such as an infringement of the *Income Tax Act*.
10. Section 92(1)(b), *Magistrates Court Act* no. 32 of 1944, as amended, read with Government Notice No. R. 1411 of 30 October 1998 (*Government Gazette* 19435).
11. Section 34, *Magistrates Courts Act* no. 32 of 1944, as amended.

12. Section 93, *Magistrates Courts Amendment Act* no. 67 of 1998.
13. M Schönteich, *Assessing the crime fighters: The ability of the criminal justice system to solve and prosecute crime*, ISS Papers, 40, Institute for Security Studies, Pretoria, September 1999, p. 10.
14. Maduna notes outpouring of fury over Foxcroft sentencing: State moves on minimum terms for rape, *Pretoria News*, 22 October 1999; L Altenroxel, Anti-rape group outraged after repeat-offender gets just 9 years in jail: Rape sentence slammed, *Pretoria News*, 12 November 1999; D Greybe, Judges should take sensitivity lessons: ANC MP says judiciary should be given compulsory training, *Business Day*, 16 November 1999; Carping of judges OK: ANC, *The Citizen*, 16 November 1999.
15. See M Schönteich, *Sentencing in South Africa: Public perception and the judicial process*, ISS Papers, 43, Institute for Security Studies, Pretoria, November 1999, pp. 9-13.
16. This proposition is supported by research conducted in the Northern Province in May 1998. See C E Oliver, *Public punitiveness and opinions on just desserts: An exploratory study*, Master of Arts (penology) dissertation, University of South Africa, June 1999.

RIGHTS OF ACCUSED PERSONS AND CONVICTED OFFENDERS

CHAPTER OVERVIEW

The state-sponsored provision of free legal aid to accused persons who cannot afford their own legal representation was supported by just over half of the respondents. Black respondents were least supportive of free legal aid, and white respondents the most.

Around three-quarters of respondents thought it was important that the criminal justice system respected the constitutional rights of accused persons. However, black respondents were more than three times as likely to say that accused persons' rights were unimportant compared to their white and coloured counterparts. Black respondents, however, were the most concerned that the criminal justice process should ensure that no innocent person was convicted of a crime even if it meant that some guilty people went free.

Most respondents felt that it was important that convicted offenders were treated fairly by the criminal justice system. There was overwhelming support among the respondents for forced manual labour for prisoners who had committed serious crimes. Respondents were equally divided on the question whether convicted offenders should lose their right to vote.

Almost two-thirds of respondents thought that juveniles should be treated differently and more benignly by the criminal justice system. This view was especially strong among rural and black respondents. About half of the respondents thought that caning for juveniles should be reintroduced as a punishment in law. Rural respondents were most in favour of a reintroduction of corporal punishment for juvenile offenders.

Respondents thought that free education is the most important privilege that should be afforded to prisoners. Only a minority of respondents thought that prisoners should have a right to free medical treatment and access to books.

LEGAL AID

Slightly over half of all respondents (57%) thought that it was important for the criminal justice system to provide free legal assistance for accused persons who could not afford a lawyer. A significant minority (27%) thought it unimportant, while the remainder (15%) were indifferent. The proportion of respondents who thought that free legal assistance was important, was not influenced by respondents' area of residence. However, more rural respondents believed that the provision of free legal aid was not important (42%), than their counterparts living in small towns (27%) and urban areas (24%).

Half of black respondents held the view that free legal aid for indigent accused was important, compared to 59% and 66% of coloured and white respondents respectively. Respondents earning less than R1 000 a month were least likely to say that free legal assistance should be given to the poor (46%). Respondents earning no income were most likely to attach importance to free legal aid (63%), followed by the highest income group comprising individuals earning more than R5 000 a month (59%).

CONSTITUTIONAL RIGHTS

Almost three-quarters of respondents thought that it was important that the criminal justice system respected the constitutional rights of accused persons, such as the right to remain silent, the right to bail, and the right to appear in court within 48 hours of being arrested. Twelve per cent of respondents thought that it was unimportant, with a further 12% being indifferent. Only one out of ten urban and small town respondents thought that such rights were unimportant, but almost a third (28%) of rural respondents thought so (table 4). Moreover, while 25% of black respondents stated that it was not important that the criminal justice system respected the constitutional rights of accused persons, only 6% and less than 1% of white and coloured respondents, respectively, expressed a similar opinion.

In terms of South Africa's constitution various rights are accorded to arrested, detained and accused persons.¹ For example:

Everyone who is detained, including every sentenced prisoner, has the right to have a legal practitioner assigned to him or her by the state and at the state's expense, if substantial injustice would otherwise result, and to be informed of this right promptly.

Everyone who is arrested for allegedly committing an offence has the right to remain silent; to be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest; and to be released from detention if the interests of justice permit, subject to reasonable conditions.

Every accused person has a right to a fair trial, which includes the right to be presumed innocent.

Just under three-quarters of respondents thought that it was important that the criminal justice process should ensure that no innocent person was convicted of a crime, even if it meant that some guilty people would go free. Only 6% of respondents thought this was an unimportant attribute of the criminal justice system, while 17% of respondents were indifferent. Rural respondents were most likely to say that it was important that innocent people were not falsely

convicted (88%), followed by urban and small town respondents (73% and 71%, respectively). Moreover, black respondents attached more importance to this aspect of the criminal justice process (78%), than coloured and white respondents (71% and 68%, respectively).

Table 4: Importance placed by urban, small town and rural respondents on the rights of accused persons

		Important (%)	Neither important nor unimportant (%)	Unimportant (%)
Free legal aid	Urban	57	19	24
	Small town	58	15	27
	Rural	52	3	42
Constitutional rights	Urban	78	13	9
	Small town	72	16	10
	Rural	67	2	28
No innocent convicted	Urban	73	15	9
	Small town	71	22	5
	Rural	88	5	2

Focus group findings

White focus group participants in Port Elizabeth felt that accused persons should not lose any rights as they had not been convicted of any crime. Black focus group participants in the city felt that accused persons on trial for serious crimes should not be permitted to see their families. The right to be released on bail should also be denied to such accused persons.

Umtata focus group participants felt that accused persons' rights should be determined by the type and seriousness of the crime they allegedly committed. For example, no bail should be granted to persons accused of rape. All accused, however, should have a right to an attorney. Focus group participants in Thabankulu stated that accused persons should have a right to bail but that the amount of bail money set by the courts should be so high that it would be difficult for an accused person to pay it.

Focus group participants all felt that accused persons should have some rights. Most respondents were not very specific about the rights accused persons should be accorded.

FAIR TREATMENT, VOTING RIGHTS AND MANUAL LABOUR

Almost three-quarters of respondents thought it was important that the criminal justice system treated convicted offenders fairly. Some 17% thought that it was not important, while 10% were indifferent. Rural respondents, however, were less convinced that convicted offenders deserved fair treatment with only 57% saying that they did (and a third that they did not). Almost all coloured respondents (95%) and the overwhelming majority of white respondents (86%) thought that it was important that convicted offenders were treated fairly, while just over half of black respondents thought so (53%). Moreover, while almost a third of black respondents (30%) thought it was unimportant whether convicted offenders were treated fairly, only a small minority of white (6%) and coloured respondents (3%) thought so.

Half of all respondents thought that convicted offenders should lose their right to vote. This view was held most strongly by rural respondents (57%), followed by urban (51%) and small town (47%) respondents. Moreover, white respondents were considerably more likely to advocate a

no-vote policy for convicted offenders — with just over three-quarters doing so — than coloured (58%) and black (31%) respondents.

Four-fifths (80%) of respondents thought that prisoners who had committed serious crimes should be forced to do manual labour while in prison. Only 5% of respondents disagreed with such a proposal, and 16% were unsure. Urban respondents were most enthusiastic about compulsory manual labour for prisoners (90%), followed by respondents in small towns (75%) and rural areas (63%). White respondents were almost unanimously in favour of forced manual labour (93%). About three-quarters of black and coloured respondents expressed a similar view.

Focus group findings

All focus group participants (across all race groups) in Port Elizabeth favoured the introduction of a forced labour system in the country's prisons. Most felt that prisoners should grow their own food to reduce the amount of tax money spent on supporting prisoners. Moreover, prisoners should be compelled to grow food or knit jerseys for the homeless as a way of 'paying off their debt' to society.

Farmers in Graaff-Reinet thought that forced labour for prisoners would be an excellent idea. The feeling was that prisoners should work to earn their keep. Black and coloured male focus group participants in Graaff-Reinet thought that prisoners should do farm work, build schools and even be hired out. The principle should be 'no work no meal'. Female black and coloured focus group participants in the town thought that part of the prisoners' earnings should go to a victims' fund from which money could be paid to victims of crime by the state as restitution. Moreover, through a forced labour system, prisoners would learn skills they would be able to utilise upon their release.

Focus group participants in Grahamstown — across all race groups — were in favour of forced labour for prisoners. This would oblige prisoners to 'earn their keep'. Umtata and Thabankulu focus group participants supported compulsory labour for prisoners, partly because the money earned through such work could go towards the expenses of prisoners' families.

In terms of the Correctional Services Act of 1998, every sentenced prisoner must perform any labour which is related to any development programme or which is designed to foster habits of industry, unless a medical officer or psychologist certifies that the prisoner is physically or mentally unfit to perform such labour.²

Moreover, sufficient work must be provided as far as is practical to keep prisoners active for a normal working day, and a prisoner may be compelled to do such work. A sentenced prisoner may elect the type of work he prefers to perform, if such choice is practical and in accordance with an appropriate vocational programme. A prisoner, however, may never be instructed or compelled to work as a form of punishment or disciplinary measure.³

JUVENILE OFFENDERS

Almost two-thirds of respondents thought that juveniles (persons younger than 18 years) should be treated differently by the criminal justice system. This view was especially prevalent among

rural respondents (75%), followed by respondents in small towns and urban areas (64% and 60%, respectively). Moreover, three-quarters of black respondents thought that juveniles should be treated differently, compared to about half of their white and coloured counterparts.

The most common reason why respondents felt that juveniles should be treated differently, was that young people were ignorant, they were easily influenced by others, and were susceptible to peer group pressure. That juveniles could be reformed and that they should be given a second chance were other reasons why they should be treated differently. Respondents who felt that juveniles should not be treated differently by the criminal justice system, argued that if juveniles committed the same crimes as adults, they should face the same consequences as adult offenders.

Just over half (51%) of the respondents thought that caning for juveniles should be reintroduced as a punishment in law, while 46% were opposed to this. There were considerable regional differences in respondents' answers, however. While only 42% of urban respondents favoured a reintroduction of corporal punishment for juveniles, 54% of small town respondents and 68% of rural respondents favoured it.

White respondents were most enthusiastic about the reintroduction of caning for juvenile offenders (60% for versus 39% against). Black respondents were almost equally divided (48% for versus 47% against). Coloured respondents, however, were largely opposed to the reintroduction of corporal punishment (47% for versus 53% against).

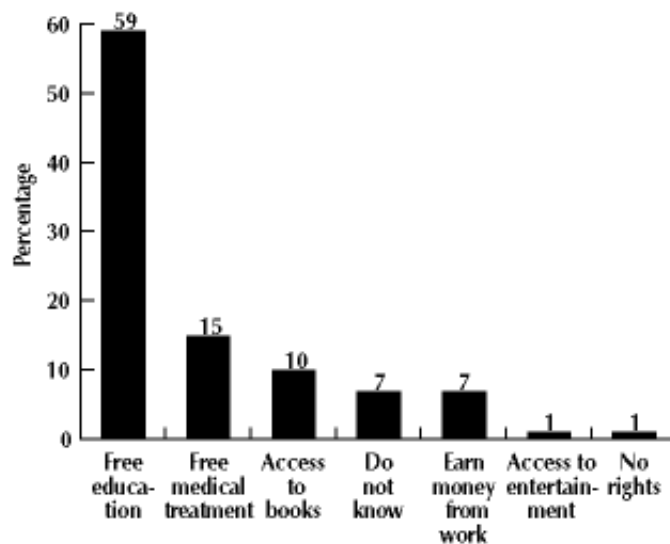
A considerable majority (83%) of respondents thought that juveniles who committed violent and serious crimes should be detained in places of safety or juvenile detention centres, as opposed to prison with adult criminals. There were no significant differences in the responses given by the various categories of respondents. Rural and coloured respondents were slightly more inclined than the average to favour sending juveniles to places of safety rather than to prison.

According to the Correctional Services Act of 1998, prisoners who are children (i.e under the age of 18 years) must be kept separate from adult prisoners and in accommodation appropriate to their age.⁴ Every prisoner who is a child must be provided with social services, religious care, recreational programmes and psychological services. Moreover, every prisoner who is a child and is subject to compulsory education must attend and have access to such educational programmes while incarcerated.⁵

PRISONERS' PRIVILEGES

Respondents were asked to list those rights and privileges which should be afforded to convicted prisoners, provided that these would not be a threat to security (figure 12). Respondents from urban centres and small towns were similar in their suggestions: free education, followed by (in order of preference) free medical treatment, the provision of books, earning money from manual labour, and access to entertainment (such as television and radio). Rural respondents' answers were similar, with the exception that they placed the provision of free education near the bottom of their list.

Figure 12: Rights and privileges that should be afforded to convicted prisoners



Focus group findings

In Port Elizabeth, white focus group participants felt that convicted prisoners should 'lose all their rights except their basic human rights'. All agreed that prisoners should have no privileges such as television or sport. That is, prisoners should not have a normal social life. Black focus group participants thought that prisoners should not be able to watch television, but that they should have access to medical care. Coloured and Asian focus group participants in the city felt that a convicted criminal should have no rights.

Farmers in Graaff-Reinet argued that prisoners should have no more rights than basic human rights such as the right to food, a place to sleep and toilet facilities. No privileges should be given to convicted prisoners other than family visits as the children of prisoners should have the right to see their parent. Female black and coloured focus group participants in Graaff-Reinet thought that convicted prisoners had the right to be educated and to be taught new skills. However, they should not have the right to privileges such as access to television and sport.

White focus group participants in Grahamstown felt that prisoners had the right to medical care. This could lead to a situation, however, where a criminal received medical care from the state and the victim did not. Prisoners' privileges should be controlled and earned. Coloured focus group participants in the town thought that prisoners had too many rights. Prisons were full during the winter as people wanted to be incarcerated in order to receive a hot meal and a warm bed. Prisoners should have only their basic needs met. Some felt that prisoners should have a right to watch television or to play sport. If such 'entertainment' rights were taken away, prisoners might find other more destructive ways to entertain themselves. Others argued that prisoners should have no privileges even if the boredom drove them insane.

Umtata focus group participants stated that prisoners had a right to life, but should have no right to watch television or read newspapers. Many unemployed people committed crimes to be sent to prison where they were assured of three meals a day, warm water, a bed and access to television.

INTERPRETATION OF FINDINGS

A high proportion of respondents expressed sympathy with vigilante behaviour and vigilante type crimes. Yet, a sizeable majority of respondents expressed the view that it was important that the constitutional rights of accused persons were protected, even if it meant that some guilty

people would go free.

There appear to be inconsistencies in the views of some respondents. Some who condoned vigilante type behaviour (even if it resulted in violent and criminal behaviour) paradoxically thought it important that the criminal justice system does not convict anyone unfairly even if a few guilty people should go free as a result.

It is possible that respondents reacted more instinctively (in the case of some of the more descriptive case studies) and therefore more sympathetically towards vigilantes, than when they were confronted about constitutional rights to be upheld by the criminal justice system. It is also possible that some respondents judged the state and its organs more strictly than they did individuals such as vigilantes. Whatever the reason for respondents' support for the protection of the constitutional rights of accused persons, their views are encouraging. It means that, notwithstanding the high levels of crime, there is still substantial support for many of the rights crime suspects enjoy by virtue of the country's Bill of Rights.

Notes

1. Section 35, *Constitution of the Republic of South Africa Act no. 108 of 1996*.
2. Section 37(1)(b), *Correctional Services Act no. 111 of 1998*.
3. Section 40, *Correctional Services Act no. 111 of 1998*.
4. Section 7(2)(c), *Correctional Services Act no. 111 of 1998*.
5. Section 19, *Correctional Services Act no. 111 of 1998*.

THE ROLE AND FUNCTION OF PRISON

CHAPTER OVERVIEW

Respondents had an overall negative view of the efficacy of imprisonment. A minority of respondents thought that prisoners were helped to become law-abiding citizens, while most thought that prisoners learned new ways to commit crime while incarcerated. About half of the respondents thought that being put in prison punishes offenders.

About a quarter of respondents thought that prison was not a punishment for offenders. Almost a third were unsure. Most respondents thought that the most important goal of prison should be rehabilitation, followed by punishment and the removal of criminals from society. Three-quarters of respondents thought that prisoners should receive training to assist them in getting a job after their release.

A third of the respondents thought prisoners who behaved well should be considered for early release before the end of their prison sentence. About half of the respondents disagreed with this.

Most respondents did not have a clear idea of what could be done about prison overcrowding. A quarter of the respondents thought that more prisons should be built. A small minority thought that non-violent offenders should be released early and placed under correctional supervision. Most respondents felt that prison should be harsher on prisoners.

THE EFFECT OF IMPRISONMENT

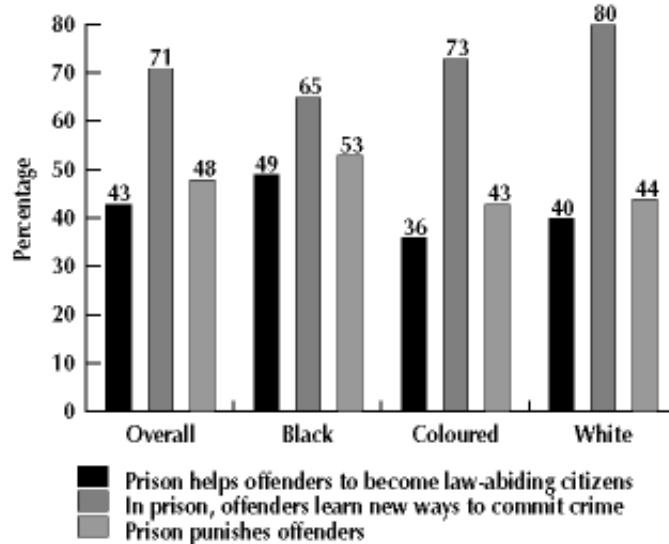
Less than half of the respondents (43%) thought that offenders were helped to become law-

abiding citizens in prison. Almost a third (31%) did not think this was the case, and a quarter of respondents were unsure. Rural and black respondents were more likely to think that prisoners were assisted in turning away from a life of crime than their more urbanised (and coloured and white) counterparts.

A majority of respondents thought that offenders learned new ways to commit crime while in prison (71%). This was most strongly felt by urban respondents (82%), followed by respondents in small towns and rural areas. Four-fifths of white respondents thought that prisons could be schools for criminals, followed by coloured and black respondents (73% and 65%, respectively).

About half (48%) of the respondents thought that being put in prison punished offenders. Almost a quarter (23%) thought this was not a punishment for offenders, while 30% were unsure. Rural and black respondents were most likely to see imprisonment as a punishment, while urban and coloured respondents were least likely to do so. A significant higher number of male respondents believed imprisonment was a punishment for offenders than female respondents (56% versus 40%).

Figure 13: Black, coloured and white respondents' views on the effect of imprisonment



THE ROLE OF PRISON

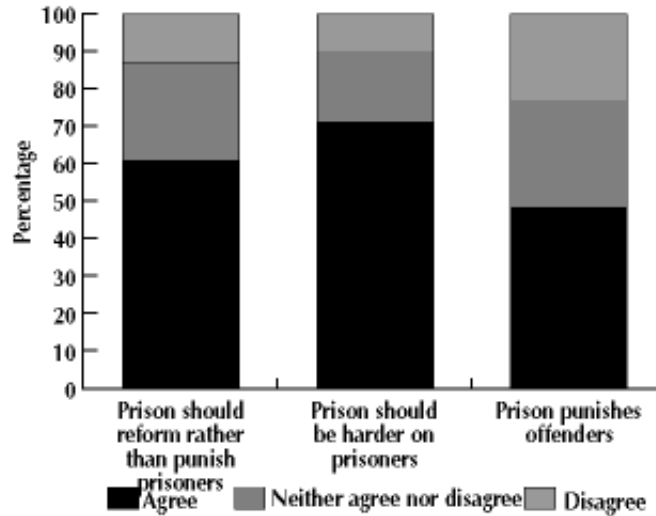
Most respondents (61%) agreed that prisons should reform prisoners, rather than punish them. Only 13% of respondents disagreed with this aim of imprisonment, while just over a quarter were unsure. Urban respondents were significantly more in favour of prison reforming rather than punishing offenders (71%), compared to rural and small town respondents (62% and 52%, respectively). Moreover, black respondents were more supportive of the reform rather than the punitive approach (65%), compared to their white and coloured counterparts (both 58%).

Almost three-quarters (71%) of respondents felt that prison should be harder on prisoners, with only 10% disagreeing. Urban respondents were most likely to think that prison should be harder on prisoners, with 80% saying so, compared to 66% of small town and 58% of rural respondents. Three-fourths (80%) of white respondents thought that prison should be harder on prisoners, followed by black (69%) and coloured (65%) respondents.

Respondents were asked what they thought should be the most important goal of prison in respect of convicted offenders. Most thought rehabilitation (59%), followed by punishment

(26%), and the removal of criminals from society (14%). Rural respondents were significantly more likely to say that prison's most important goal should be rehabilitation (75%), followed by urban (62%) and small town (51%) respondents. Moreover, while almost a third of urban and small town respondents thought that prison's most important goal was punishment, only 3% of rural respondents thought so.

Figure 14: Respondents' views on the role of prison



A third (34%) of respondents thought that prisoners who behaved well should be considered for release before the end of their prison sentence. A small majority (51%) disagreed, while the remainder were unsure. Rural and urban respondents were more likely to favour the early release of well-behaved prisoners (40% and 38%, respectively), than their small town counterparts (29%). Black respondents were significantly more in favour of the early release of model prisoners (40%), than white and coloured respondents (28% and 20%, respectively).

Just over three-quarters of respondents thought that prisoners should receive training to assist them in getting a job after their release. Only 7% of respondents indicated their opposition to such a training scheme, with the remainder being undecided. Urban and white respondents were more in favour of training for prisoners than their rural and black counterparts.

According to the Correctional Services Act of 1998, the purpose of the correctional system is to contribute to the maintenance and protection of a just, peaceful and safe society by:

- enforcing the sentences of the courts;
- detaining all prisoners in safe custody while ensuring their human dignity; and
- promoting the social responsibility and human development of all prisoners.¹

The Act also states: “With due regard to the fact that the deprivation of liberty serves the purpose of punishment, the implementation of a sentence of imprisonment has the objective of enabling the sentenced prisoner to lead a socially responsible and crime-free life in the future.”²

PRISON OVERCROWDING

Respondents were asked what they thought would be the most effective way of reducing prison overcrowding. Most (52%) — especially rural respondents — could not think of a practical solution, and merely said that the alternative should be a cheaper punishment than imprisonment, but tougher than granting parole to prisoners. A quarter of respondents suggested that more prisons should be built. This was suggested by a third of urban respondents, but only by 5% of their rural counterparts. The construction of new prisons was also a more popular option for white respondents (35%), than coloured (23%) or black (20%) respondents. Eighteen per cent of respondents thought that non-violent offenders should be released early and placed under correctional supervision. This proposal was more popular among rural and black respondents.

South Africa's prisons have been built to accommodate 99 400 inmates, but in June 1999 were holding 154 000. In June 1999, some 54 000 prisoners were awaiting trial, the remainder (100 000) were sentenced prisoners. Between June 1994 and June 1999, the number of sentenced prisoners increased by 25%. The number of awaiting trial prisoners increased by 177% over the same period. The government is seeking to address the overcrowding problem by reducing the number of awaiting trial prisoners and outsourcing the construction of some new prisons to the private sector.

Focus group findings

White focus group participants in Port Elizabeth felt that prisons should rehabilitate prisoners, but that this rarely happens. Most thought that convicted prisoners serve only about one-third to a half of their sentence. Prison overcrowding should be addressed through the construction of more prisons, and the allocation of more money to fight and prevent crime. Black focus group participants in Port Elizabeth felt that juveniles should be kept out of prison. They also felt that petty criminals should receive fines and that the money thus raised, should be used for the construction of new prisons. Coloured and Asian focus group participants in the city favoured the building of more prisons to alleviate the overcrowding problem. Many also felt that criminals' reasons for committing crime should be addressed, such as the high level of unemployment.

Graaff-Reinet farmers felt that the objective of prison should be the punishment of prisoners. However, it was hoped that imprisonment would have a rehabilitative effect on at least some prisoners. Prison overcrowding should be addressed by building more productive prisons where prisoners sustained themselves through work and farm activities. Black and coloured focus group participants in Graaff-Reinet thought that prisons were supposed to rehabilitate prisoners.

Black focus group participants in Grahamstown thought that punishment was the main objective of prison. Prison overcrowding should be addressed through training and rehabilitation programmes which seek to reduce the chances of released prisoners offending again. White focus group participants in the town felt that the main objective of prison should be rehabilitation, and to a lesser extent retribution. Prison overcrowding could be reduced if the criminal justice system was functioning effectively as this would deter many potential criminals from committing crimes in the first place. Coloured focus group participants felt that punishment was the main objective of prison, followed by the need to remove dangerous criminals from society, and the rehabilitation of prisoners.

Focus group participants in Umtata felt that the most important goal of prison was to protect the community from criminals. First offenders and petty criminals should be rehabilitated, but it would be impossible to rehabilitate other offenders. For Thabankulu focus group participants, rehabilitation should be the objective of prison, but not in the case of serious criminals such as murderers. Prison also protected the criminal from the family of the murdered person. It was also felt that prison kept criminals away from society and prevented them from committing further crimes. Participants felt that prison overcrowding was partly caused by the fact that many criminals did not see imprisonment as a punishment. *"Many prisoners want to be in prison because they can get away from the responsibility of looking after their wives and children,"* one focus group member commented.

INTERPRETATION OF FINDINGS

South Africa's prisons are overcrowded. Three-quarters of the country's prisons are over 20 years old.³ Owing to a lack of resources, the inmate to warder ratio is a high 5 to 1.⁴ In Botswana it is 3 to 1, in Germany and Australia only 1.5 to 1. Owing to overcrowding, poor supervision and a lack of recreational facilities, life in many of South Africa's prisons is harsh.⁵ Yet, less than half of the respondents thought that being put in prison punishes offenders. It is likely that many South Africans are not aware of the rigour of prison life. Moreover, because many South Africans are living under impoverished conditions, it is possible that prison life might appear relatively benign.

It is possible that South Africans have become so annoyed with crime and criminals that many feel that imprisonment is not a sufficient punishment for those who have made their life a misery. This would explain why female respondents were considerably less likely to feel that prison punishes offenders. Crime is likely to have had a greater impact on women and their lifestyles than men, with the result that the former have developed a more punitive approach towards the punishment of offenders.

Notes

1. Section 2, *Correctional Services Act* no. 111 of 1998.
2. Section 36, *Correctional Services Act* no. 111 of 1998.
3. Suspension of repairs puts prison staff, inmates at risk, *Business Day*, 6 October 1998.
4. *Hansard* (NCOP:Q) no. 1, cols. 33-34, 5 March 1998.
5. See M Schönteich, Unshackling the crime fighters: Increasing private sector involvement in South Africa's criminal justice system, *Spotlight Series*, South African Institute for Race Relations, Johannesburg, 1999, pp. 83-86.

GENDER AND LEVELS OF PUNITIVENESS

CHAPTER OVERVIEW

A higher proportion of male respondents reported that they had been victims of crime over a two year period (38%), than female respondents (30%). Male respondents were more likely to be victims of assault (17% compared to 13% of women), robbery (22% compared to 12% of

women), and hijacking (8% compared to 5% for women). Female respondents, however, reported higher levels of victimisation through theft (37% compared to 29% of men), and stock theft (7% compared to 3% for men).

Of the 87 female respondents who had been victimised over a two year period, two reported that they had also been raped. Cognisance needs to be taken of the fact that surveys are likely to undercount sexual offences because of the sensitivity of discussing such incidents with a stranger.

While the proportion of female respondents who had been victimised, was lower than that for male respondents, the former group were consistently (albeit only to a relatively small extent) more pessimistic about perceived increases in the crime rate, and the performance of the criminal justice system and those who worked within it.

Female respondents were also consistently more punitive in their attitudes to sentencing and the goals of prison, and were less concerned with protecting the rights of the accused and of convicted offenders.

Table 5: Female and male perceptions of crime levels and the state's response

	Female (%)	Male (%)
There has been a lot/slightly more crime in South Africa since 1994	94	86
There has been a lot/slightly more crime locally since 1994	81	74
More than half of all reported crimes involved violence/threat of violence	89	86
Functioning of the criminal justice system has improved since 1994	22	38
The criminal justice system is performing well	17	31
Government has done a good job fighting crime since 1994	20	29

Table 6: Proportion of female and male respondents who thought the crime fighting professions were doing a good job

	Female (%)	Male (%)
Uniformed police officers	20	26
Police detectives	27	35
Prosecution service	23	32
Magistrates	33	37
Judges	39	49
Prison service	13	23
Policy makers/politicians	20	33

CRIME LEVELS AND THE STATE'S RESPONSE

Female respondents were more likely to think that crime had increased since 1994 and that most crimes are violent in nature. Moreover, female respondents were also more critical of the performance of the government and the criminal justice system (table 5).

Table 7: Proportion of female and male respondents who thought it important that certain rights are afforded to offenders

	Female (%)	Male (%)
The criminal justice system should treat convicted accused fairly	69	75
The state should provide free legal aid to poor accused	53	60
The state should respect accused persons' constitutional rights	66	82
Convicted accused should have the right to vote	44	49

Table 8: Attitudes to punishment of female and male respondents

	Female (%)	Male (%)
	(%)	(%)
Sentences are much too lenient	66	50
Harsher sentences will reduce crime rate	98	96
The death penalty should be reintroduced	80	69
Prison should be harsher on prisoners	72	70
Punishment is the most important goal of prison	29	24
Prison should reform rather than punish	60	63
Rehabilitation is the most important goal of prison	55	60

PERFORMANCE OF CRIME FIGHTERS

Compared to their male counterparts, female respondents were significantly less likely to think that the various professions involved in fighting crime were performing well (table 6).

RIGHTS OF OFFENDERS

Female respondents were less concerned than their male counterparts with safeguarding offenders' rights. There was one exception: female and male respondents were equally likely to think that it was important that no innocent person was convicted of a crime, even if it meant that some guilty people would go free (see table 7).

ATTITUDES TO PUNISHMENT

Female respondents took an almost consistently more punitive approach towards the punishment of criminals. This is especially apparent from responses which advocated the reintroduction of the death penalty for persons convicted of serious crimes, and respondents' comments that sentences were much too lenient. Female respondents were less punitive only on the questions whether repeat offenders should receive longer prison sentences (to which 78% of female and 80% of male respondents agreed), and that prisoners should be compelled to do manual labour (77% of female versus 82% of male respondents in favour) (see table 8).

INTERPRETATION OF FINDINGS

Victims surveys have shown that men are generally more at risk of falling victim to crime than women. This is especially the case for young men who, because of their lifestyles, place themselves at greater than average risk of being victimised. Women, however, are more vulnerable to victimisation. Women are generally less able to defend themselves against violent

criminals, and women of all ages are at considerable greater risk than adult men of sexual crimes and domestic violence.

It is possible that this greater vulnerability to criminal victimisation causes women to change their lifestyles (as a direct consequence of a fear of crime) more than in the case of men. Many South African women, for example, would hesitate to go out alone at night, drive on certain roads, and walk in their immediate neighbourhood (at any time of the day or night). This clearly has an effect on women's freedom of movement and their general quality of life. This greater awareness of their vulnerability might have caused the women of the Eastern Cape to display more draconian attitudes towards criminals.

The direct negative impact of the threat of crime on women's day-to-day lives might have made them more critical in their appraisal of the criminal justice system's effectiveness. Moreover, women are disproportionately affected by sexual crimes and domestic violence — crimes where the criminal justice system is particularly weak in assisting women. This is likely to be a contributing factor to women's critical assessment of the system.

CONCLUSION

INTERNATIONAL PERSPECTIVE

The attitudes to punishment survey of Eastern Cape residents revealed a high level of ignorance of crime levels and the nature of crime in the country, and a widespread belief that criminals are not punished harshly enough. It would be easy to blame much of this on a poorly educated populace in the Eastern Cape and an underresourced criminal justice system which is incapable of effectively fighting crime. However, a comparison of the findings of the Eastern Cape survey with those of a 1996 survey about attitudes to punishment in England and Wales reveals a surprising similarity in opinion and perceptions among respondents in both countries.¹

In both surveys, the majority of respondents had the mistaken belief that crime had increased substantially. Even though levels of reported crime had decreased over an 18 month period prior to the survey, 47% of the respondents in the British survey thought there was a 'lot more crime' compared to the previous two years. In the Eastern Cape, 83% of respondents thought that there was a 'lot more crime' in South Africa compared to 1994, while the number of reported crimes had increased by only 8% over that period.

Respondents in both surveys overestimated the proportion of recorded crime involving violence. In the British survey, 78% of respondents thought that 30% or more crimes recorded by the police involved violence or the threat of violence, when only 6% of crimes recorded by the police at the time of the survey were violent or sexual in nature. In the Eastern Cape, just over half of the respondents thought that 80 or more out of every 100 crimes involved violence or the threat of violence. In fact, some 32% of crimes reported to the SAPS involved an element of violence.

In the British survey, 82% of the sample thought that judges were out of touch with the public (66% among Eastern Cape respondents); the figure for magistrates was 63% (68% in the Eastern Cape).

Some 79% of the respondents in the British survey thought that sentences were too lenient. In the Eastern Cape, 85% of the respondents thought so.

Compared to South Africa, England and Wales have low levels of (especially violent) crime, and an adequately resourced criminal justice system staffed by well-trained personnel. Moreover, in comparison to the residents of the Eastern Cape, the public in England and Wales are better educated and have access to a variety of media to remain informed about new government crime-fighting initiatives, crime levels and sentencing trends.

The fact that many of the responses in both the British and the South African survey are similar, indicates that people's views on crime and punishment are largely independent of actual levels of crime (levels of reported crime for England and Wales decreased in the 18 months prior to the British survey), and the effect crime has on people's lives (as crime has arguably had a greater impact on people's lives in South Africa than in Britain).

RURAL-URBAN DIVIDE IN ATTITUDES

The Eastern Cape survey results show that there are considerable disparities in attitudes to punishment between rural and urban respondents. Compared to their urban counterparts, rural respondents were considerably more likely to say that it was the function of the police and the community to punish criminals. Rural respondents also indicated far more support for alternative or traditional forms of punishment than urban respondents. Rural respondents who had been victims of crime were least likely to report crime to the police, primarily because they relied on the community or themselves to solve the crime.

Rural respondents had different expectations of the criminal justice system and the state's role in the fight against crime. They also placed less importance on constitutional rights and the fair treatment of crime suspects and convicted offenders. Compared to rural respondents, urban respondents were about three times as likely to think that it was important for the criminal justice system to respect the constitutional rights of accused persons. Rural respondents were also the least likely to think that it was important for convicted offenders to be treated fairly by the criminal justice system.

The rural-urban divide in people's attitudes towards punishment and the criminal justice system has important implications for the state's approach to crime-fighting. If the state wants to persuade all its citizens to participate in the criminal justice process it needs to adopt different crime-fighting approaches for different communities. A crime-fighting strategy for an urban environment might fail in a rural area because of different local conditions. Moreover, not only should crime-fighting strategies be devised that take local conditions into account, they should also be marketed with local attitudes in mind. A crime-fighting strategy which is not understood and accepted by rural citizens is unlikely to work in the country's rural areas. Centrally developed crime-fighting policies which are applicable uniformly to the whole country are likely to fail in a country with as disparate a population as South Africa's. This is particularly important in respect of the department of justice's policy on community dispute resolution, and the state's response to vigilantism.

PERCEPTION MANAGEMENT

Many respondents' perceptions of various aspects of the criminal justice system were wrong. For example, respondents overestimated the increase in crime since 1994, and the extent of violent crime. This could have clouded their attitudes towards punishment for criminals and the effect of sentences on crime levels. There was a widespread belief among respondents that harsher sentences and a more efficient criminal justice system would drastically reduce crime levels.

Although tough sentences have a deterrent effect, they are unlikely to address many of the factors that cause (especially violent) crime. Many violent crimes occur within the family relationship or among people who know each other.² There is, for example, little an efficient criminal justice system can do to prevent acquaintance rape or domestic violence. Moreover, harsher sentences are likely to have a positive effect on levels of crime only if more criminals are caught.

The public needs to be informed about what the criminal justice system can and cannot do. The perception that an efficient criminal justice system, and 'quick-fix' measures such as harsh laws and capital punishment, can put a stop to crime needs to be dispelled. The state should be forthright about the criminal justice system's limitations, and should seek the co-operation of civil society and the public in the fight against crime. Truthful and timely information also needs to be disseminated about criminal justice performance indicators such as crime levels, and prosecution and imprisonment rates.

To bolster people's confidence in the ability of the state to combat crime, the public have to be informed about what is being done to strengthen the criminal justice system. New legislative initiatives (such as the minimum sentencing legislation), and operational improvements to the criminal justice system have to be marketed to the public.

KNOWLEDGE OF THE CRIMINAL JUSTICE SYSTEM

There appeared to be considerable ignorance among a large portion of respondents about the criminal justice system, its role and responsibilities, and the different functions of its component parts (police, justice and prisons). If people are to have confidence in the criminal justice system, and make use of its services to protect themselves and their assets from criminals, they need to have at least a rudimentary understanding of how the system works. Moreover, if people are to co-operate with the criminal justice system, they need to have the confidence, for example, to provide the police and the prosecution service with information and evidence against criminals and their activities. Such confidence can be fostered only by telling the public what the role and duties are of, for example, police officers and prosecutors.

The public also have to be educated on how judicial officers arrive at their sentencing decisions and what goes on in the country's prisons. The widespread belief that sentences are too lenient and that prisoners have an easy life in South African prisons must be dispelled if confidence in the criminal justice system is to be restored, and calls for draconian measures against criminals are to be countered.

DRACONIAN VERSUS CONSTITUTIONAL APPROACH

The survey revealed that the potential for members of the public to engage in vigilante activity is considerable. While few respondents admitted to participation in vigilante activities, many indicated their willingness to do so under certain conditions. Respondents also took a draconian approach towards the punishment of criminals, with a majority favouring a reintroduction of the death penalty, corporal punishment for juveniles, and forced manual labour for prisoners.

However, most respondents thought it was important that the criminal justice system respected the constitutional rights of accused persons and treated convicted offenders fairly. There seems to be a tension between respondents' desire to deal harshly and mercilessly with criminals, on the one hand, and to afford convicted criminals constitutional rights and protection, on the other.

It would appear that crime levels and feelings of insecurity have not reached levels in the Eastern Cape that would erode public confidence in the Constitution and the rule of law. Most respondents wanted tough action against criminals — without sacrificing constitutional liberties. However, the position of respondents is precarious. A worsening crime situation, for example, could push many respondents firmly into a draconian position where they would be indifferent to the state trampling on the constitutional rights of criminals, provided that such an approach lowered the crime rate. It is incumbent on politicians not to take a populist stance and thus encourage the public's desire for revenge against criminals, lest this results in a general loss of respect for the country's Constitution and the rights enshrined in it.

Notes

1. M Hough & J Roberts, *Attitudes to punishment: Findings from the British Crime Survey*, Home Office Research and Statistics Directorate, Home Office Research Study 179, London, 1998.
2. A Louw, *Crime in Pretoria: Results of a city victim survey*, Institute for Security Studies, Halfway House, August 1998, pp. 40-42.