

SOUTH AFRICAN LAW COMMISSION



RESEARCH PAPER 18

**Conviction rates and other outcomes of crimes reported in eight
South African police areas**

PROJECT 82

**SENTENCING
(A NEW SENTENCING FRAMEWORK)**

COMMISSIONED BY



German Technical Co-operation

ISBN: 0-621-31582-6

INTRODUCTION

The South African Law Commission was established by the South African Law Commission Act, 1973 (Act 19 of 1973).

The members of the Commission are -

The Honourable Madam Justice Y Mokgoro (Chairperson)

The Honourable Mr Justice CT Howie

The Honourable Madam Justice L Mailula

Prof IP Maithufi (Full Time Member)

Adv J J Gauntlett SC

Ms Z Seedat

Mr P Mojapelo

Prof CE Hoexter

The Secretary is Mr W Henegan. The Commission's offices are on the 12th floor, Sanlam Centre C/o Andries and Pretorius Street, Pretoria. Correspondence should be addressed to:

The Secretary

South African Law Commission

Private Bag X 668

PRETORIA

0001

Telephone : (012) 392-9540

Telefax : (012) 320-0936

E-mail : whenegan@justice.gov.za

Internet site : <http://www.doj.gov.za/salrc/index.htm>

The project leader responsible for this project is Professor D Van Zyl Smit. The other members are -

Ms L Camerer

Mr K Govender

Mr JD Kollapen

Mr V Petersen

Mr PM Shabangu

Ms ME Ramagoshi

PREFACE

This research paper is published as part of the investigation of the South African Law Commission into all aspects of sentencing. The research was designed to assist the Commission in acquiring data on sentencing practices in South African courts and to provide the Commission with the information it required to evaluate the impact of the 1997 Criminal Law Amendment Act 105 of 1997 on these processes. The two empirical studies that comprise the bulk of the paper have already been used in the Commission's discussion paper on a new sentencing framework (Discussion Paper 91).

The Commission's project committee on sentencing, which is responsible in the first instance for the investigation of sentencing on behalf of the Law Commission, commissioned empirical research with the assistance of the *Deutsche Gesellschaft für Technische Zusammenarbeit* (GTZ) as part of the joint 'Legislative Drafting Project'. On behalf of the Commission GTZ contracted the Institute of Criminology at the University of Cape Town to conduct a quantitative empirical study on sentencing practices in South African courts and an assessment of the impact of the 1997 Criminal Law Amendment Act. Dr Heather Sherwin and Mr Ron Paschke undertook this study for the Institute.

GTZ also contracted the Institute for Human Rights and Criminal Justice Studies at the Technikon South Africa and the Institute for Security Studies (ISS) to conduct a qualitative empirical study of the attitudes of key role players in the criminal justice system to the 1997 Criminal Law Amendment Act and to other aspects of sentencing. Ms Duxita Mistry of the Technikon South Africa and Mr. Martin Schönteich and Mr. Johan Struwig of the Institute of Security Studies undertook this qualitative study.

The third part of the research paper, which draws conclusions from an overview of the two studies, was written by Mr. Paschke.

Flowing from the study conducted by the Institute of Criminology the researchers also completed a study dealing with the progress and finalisation, including by conviction, of criminal matters reported to the police. The results of the former two empirical studies have already been published in the Commission's research series because they contain important information on sentencing practices which could form the basis for legislative and other measures to address the problems associated with sentencing in South Africa. The latter study is now also published in the Commission's research series. It is hoped that the research paper will provide relevant background information for further developments in this regard.

The Project Committee on Sentencing and the Commission are indebted to all the researchers for their work and to the officials in various government departments and private individuals who assisted them with information. We would like to express our appreciation to GTZ for its technical assistance and in particular to its advisor, Mr. Rainer Pfaff, for his personal engagement with the research work.

Professor Dirk van Zyl Smit

Project Leader: Sentencing Committee

1 Contents

1	Contents	4
2	Acknowledgements.....	5
3	Introduction	6
3.1	Background	6
3.2	Aims of this study	6
3.3	Structure of the report.....	6
3.4	Comparative research	7
4	Methodology	8
4.1	Overview of methodology	8
4.2	Tracking of individual cases	8
4.3	Convictions in relation to cases tried or cases reported?	9
4.4	Sample	10
4.5	Ways in which cases progress to finalisation	11
5	Results.....	14
5.1	Overall outcome of violent crime cases reported to police	14
5.1.1	Cases that do not make it to court.....	15
5.1.2	Effect of non-finalised cases on conviction rate calculations.....	16
5.2	Outcome of cases reported to police by crime category	17
5.2.1	Conviction rates by crime category: South African yearly-review comparison.....	20
5.2.2	Conviction rates by crime category: international comparisons	21
5.3	Conviction rates of cases reported to police by crime category and police area.....	23
6	Conclusion	26
7	Appendix.....	28

2 Acknowledgements

German Technical Co-operation (GTZ) commissioned the Institute of Criminology at the University of Cape Town to conduct this study. On behalf of the German Government, GTZ is providing technical assistance to the Department of Justice and the South African Law Commission (SALC) through the joint “Legislative Drafting Project”.

Professor Dirk van Zyl Smit, chair of the Sentencing Project Committee of the SALC, provided overall guidance for this research and the broader sentencing research project from which this study evolved. He and Rainer Pfaff of GTZ, gave helpful input on the text of the report.

The then National Commissioner of the SAPS and Dr Chris De Kock of the police Crime Information Analysis Centre (CIAC) facilitated invaluable access to the police databases. Senior Superintendent Ters Ginter and his staff at the Cape Town office of CIAC provided excellent co-operation by making computers available and otherwise accommodating our researchers. Other SAPS personnel provided helpful technical assistance. Senior Superintendent Watermeyer from the Pretoria office of CIAC gave a most helpful written comment on a draft of this report and we have attempted deal with each of CIAC’s suggestions and criticisms.

Pat Langan, Statistician for the Bureau of Justice Statistics in the United States of America, assisted in locating the material used in the international comparisons.

Thank you also to the many others who assisted in making this research possible.

The data reported here was collected in the course of an empirical quantitative study of sentencing practices in South Africa on behalf of the SALC.

Ron Paschke¹
Chambers
Cape Town

¹ Member of the Cape Bar; Tel (021) 422 2265; ronp@intekom.co.za

3 Introduction

3.1 Background

Conviction rates are one way of telling us how well the criminal justice system is doing. It is particularly important for victims of violent crime that their attackers are convicted and appropriately punished. A criminal justice system that consistently fails to secure convictions has little credibility and the dangers exist that victims may give up reporting crime and communities may instead resort to extra-legal, vigilante action. From the perspective of a victim of crime, it makes no difference if the system fails them at the stage of the police investigation, the prosecution in court or because of a disjointed interaction between the two. It is therefore important to measure the effectiveness of the criminal justice system as a whole rather than artificially isolate its constituent elements. For this reason, it is useful to measure the numbers of convictions compared with the number of cases reported to the police to get a sense of how effectively the police and prosecution authority work together to hold perpetrators of crime accountable for their actions.

This is not to say that conviction rate is the only appropriate performance measure. In fact, too narrow a focus on conviction rates can be detrimental to the interests of justice. For example, in a constitutional democracy such as ours, the police are not permitted to break the law themselves in order to obtain a conviction at all costs; it is also not in the interest of justice to prosecute all cases; and fairness dictates that an accused must be acquitted if reasonable doubt exists about their guilt. So there are clearly important considerations other than conviction rates in assessing how effective and just the criminal justice system is. However, the progress and outcome of cases does provide us with a ready barometer to evaluate systemic performance and this is the subject of this report.

3.2 Aims of this study

The aims of this study were to measure the progress and outcome, including conviction rates, of a representative sample of crimes reported to the police in South Africa and compare such progress and outcome by crime category and police area.

3.3 Structure of the report

This introduction is followed by an outline of the methodology used including a comparison with methods used in other studies. The results section is divided into three parts: (1) Overall outcome of

violent crime cases; (2) outcome of cases by crime category; and (3) conviction rates of cases by crime category and police area. The conclusion provides comments on the results and their implications for the South African criminal justice system.

3.4 Comparative research

The Crime Information Analysis Centre (CIAC) of the South African Police Services (SAPS) have done a number of studies of how reported crimes have been finalised. The Central Statistical Service (as it then was) reported on prosecutions and convictions for certain crimes for 1995/1996.² Martin Schönreich used these sources to provide a useful compilation and analysis of a number of performance indicators in respect of the South African criminal justice system.³ In addition to these South African studies, a number of international comparators are available. As far as possible, the results section compares this other research with the findings contained in this report.⁴

² Central Statistical Service. 1998. *Crimes: Prosecutions and convictions with regard to certain offences*, CSS report No 00-11-01 (1995/1996) Central Statistical Service, Pretoria.

³ Schönreich, M. 1999. *Assessing the Crime Fighters. The ability of the criminal justice system to solve and prosecute crime*. Institute of Security Studies Paper 40.

⁴ See section 5.2.2 on page 21.

4 Methodology

4.1 Overview of methodology

The sample consisted of 15,529 cases involving five crime categories reported to the police in eight police areas in South Africa. The outcome of each of these cases was checked, on average, more than two years after the crime was reported to the police. This time interval was selected to allow a reasonable period for cases to be finalised. The methodology is described in more detail below.

4.2 Tracking of individual cases

The way in which this study was done differs from other research into conviction and clearance rates. The most significant difference is that this study tracked the outcome of individual cases, whereas other studies do not follow individual cases but instead compare the progress of different cases in the same time period.

This “individual case tracking method” used the police CAS database⁵ to check the outcome of every individual case in a random sample of cases reported to the police. Thus when this study reports, for example, conviction rate as a percentage of all cases reported to the police, then this is a precise measure in respect of this sample. This study took a random sample of murders reported to the police in 1997/1998, and checked two years later to see how many of **those** cases had actually resulted in convictions.

By contrast, other studies (using what is hereafter called the “yearly-review method”) do not track the outcome of individual cases. Using annual conviction rate to illustrate, this method compares the number of convictions in one year with the number of cases reported to the police in the same year. For example, if during one year there were 2,000,000 cases reported to the police and during the same year there were 200,000 convictions, then the conviction rate is reported as 10%. Some writers erroneously phrase the statistical conclusion along the following lines: “There were 2,000,000 reported cases **of which** 10% resulted in convictions.” This statement is misleading because very few cases in South Africa reported during a particular year are finalised during the same year and hence convictions in a particular year are seldom in respect of crimes committed in that same year.

⁵ The Crime Administration System (CAS) database records cases reported to the police and tracks the progress of those cases through the Criminal Justice System. The information on the CAS system is typed in from the police dockets.

The problem with this yearly-review method of calculation is that a number of factors may distort the results. These factors include fluctuating numbers of cases reported to police from year to year and growing court backlogs resulting in declining absolute numbers of cases finalised by the courts in a year. Rates based on the yearly-review method are premised on the assumption that the statistics are stable from year to year and that there is no growth or decline in backlogs. To the extent that this assumption is false, such results are misleading and flawed and are at best approximations.⁶ In general, changes in classifications of crimes, shifted geographical policing boundaries or altered statistical reporting policies from year to year can further complicate the analysis of the data, although these two factors did not change during the course of this particular study.⁷

The advantage of the yearly-review method is that it is quick to collect data for an entire population to obtain, for example, the national conviction rate. Whereas the individual case tracking method requires painstaking follow-up of separate cases and is thus feasible for only a smaller sample, such as the one used in this report. For this reason, and despite the problems described above, the yearly-review method is widely used both in South Africa and internationally.

4.3 Convictions in relation to cases tried or cases reported?

Conviction rates can be expressed in terms of the numbers of cases that go to trial or in terms of the numbers of cases reported to the police:

- **Trial-based perspective.** Statistics from prosecution authorities or courts tend to focus on the cases that go to trial. This trial-based perspective ignores many reported crimes that do not make it to trial because for example they were undetected by the police or withdrawn in court before trial. A problem with this approach is that the conviction rate is inflated, which in turn creates a potentially misleading impression of the extent to which perpetrators of crimes are held accountable for their actions.
- **Report-based perspective.** The conviction rates in this report are calculated in relation to the numbers of crimes reported to the police. This gives a clear picture of the extent to which crimes have been successfully investigated and prosecuted. This approach recognises that the criminal justice system is an integrated system and holds the police and prosecution authority jointly responsible for ensuring that criminals are brought to book.

⁶ But compare the remarks by Martin Schönsteich (see note 3) at his endnote 18.

⁷ According to CIAC, since the amalgamation of the eleven former policing agencies into the SAPS in 1994, the geographical policing boundaries stayed the same. CIAC also reports that no changes occurred with regard to the classifications of crime or the statistical reporting policies since July 1995. [Watermeyer, Sr Supt. Crime Information Analysis Centre (CIAC). Personal communication 2000-11-23.]

4.4 Sample

The sample comprised all cases that had been reported to the police, in the police areas concerned, from January 1997 to April 1998. In August, September and October 1999, the status of each case was checked. This timing allowed at least 16 months and up to 33 months to pass since the reporting of the crime to police. In some relatively low-crime police areas certain crimes committed earlier than January 1997 were included to boost sample sizes. The average time elapsed since the police received a report until the status of the case was checked was more than two years, although for the sake of simplicity, the time elapsed since the report of the case is referred to as “two years” in this report. A total of 15,529 cases reported to the police (including 10,776 cases of violent crime) make up the sample.⁸

The sample consisted of the following crime categories:

- murder;
- rape of girls under 18;
- rape of adults (women aged 18 and older);
- robbery with aggravating circumstances (robbery with use of a dangerous weapon⁹); and
- fraud

The study was conducted on crimes reported to the police in four provinces: Western Cape, Eastern Cape, KwaZulu Natal and Gauteng. These provinces were further divided into rural and urban police areas. The police areas chosen for the study were:

- Western Cape: Western Metropole (urban) & Boland (rural)
- Eastern Cape: Port Elizabeth (urban) & Cradock (rural)
- KwaZulu Natal: Durban (urban) & Midlands (rural)
- Gauteng: Johannesburg (urban) & East Rand (semi-rural)

South Africa was divided into 42 police areas at the time of the study.¹⁰ We chose the above eight police areas based on the predominance of crime in those regions (and hence the likelihood of obtaining larger samples).

⁸ Table 5 in the appendix gives a breakdown of this sample by crime category and police area.

⁹ The CAS system does not have a classification of robbery with aggravating circumstances. However, it does have categories dealing with robbery involving the use of weapons (firearm or knife or other dangerous weapon). Because aggravating circumstances include the use of a dangerous weapon, these categories were used instead.

¹⁰ Watermeyer, Sr Supt. Crime Information Analysis Centre (CIAC). Personal communication 2000-11-23.

