The Domestic Violence Act 116 of 1998 (DVA) was promulgated in an attempt to provide victims with an accessible legal tool to stop domestic abuse. Though far-reaching in its definition of what constitutes an act of ‘domestic violence’ and ‘domestic relationships’, implementation has been slowed by considerable teething problems. Notwithstanding its inconsistent application by the courts, the intention of the Act has been marred by the everyday constraints facing courts as well as the limitations of what the Act itself, and its agents, can reasonably provide victims of domestic violence.

The study on which this article is based finds that magistrates interpret and apply the DVA differently. This is not necessarily a problem given the unlimited range of abuses committed in domestic relationships and the remedies available under the Act. What is striking, however, is the difference of approaches by magistrates to the basic procedural aspects of implementing the Act and the extent to which this has measurable implications on the effectiveness of the protection orders granted.

Issues relating to evictions or removal of respondents, emergency monetary relief, contact orders with children, the role of alcohol and drugs, withdrawal of applications and charges, emotional and psychological abuse, breaches of protection orders and the adjudication of cases where existing High Court orders are in place, are areas of great debate and contention among magistrates. The discussion in this article will however be limited to the broader debates about implementation of the Act by magistrates.

Overall opinions of the Act
Magistrates were generally of the opinion that the Domestic Violence Act is a progressive and useful piece of legislation. The substantive law was evaluated as “very good” although minor revisions were suggested to include sectors such as health, welfare and correctional services in the Act in order to ensure that service provision in domestic violence cases does not solely rest with the police and the courts. Recognising that domestic violence is a major social issue, with potentially serious outcomes for victims and their families, the...
exclusion of these sectors was seen as a major shortcoming of the DVA.

Interestingly, the inclusion of positive legal duties on the police was considered necessary, and some magistrates even suggested that these should be extended to other sectors as well. It was argued that independent monitoring systems within the criminal justice system were not sufficient to ensure performance. It was noted that the performance of the police in domestic violence cases had improved dramatically since the inception of the DVA and that the fear of being charged with dereliction of duty was a great incentive to this end.

Procedurally, the DVA was seen as cumbersome. With cramped courts, heavy caseloads and the fact that magistrates don’t focus primarily on domestic violence cases, the application process was considered “sloppy”. As expected, magistrates expressed a great deal of frustration about the lack of specifically allocated resources to implement the Act in the way that the legislature intended. Over-stretched courts and personnel, insufficient office supplies and office space, lack of telecommunications, meagre court budgets and other basic infrastructural needs compounded an already over-burdened system.

Heavy caseloads mean that clerks of the court are necessarily hasty in filling out forms and in instructing applicants about procedures, documentation that needs submitting to the courts, and safety measures to protect themselves from further violence. It was consistently argued that the files containing the application forms were “sketchy” at best and could be one reason for the apparently “conservative decisions” made by magistrates in domestic violence cases. Magistrates reiterated that the dearth of information contained in the court papers was not necessarily due to a lack of effort or competence, but rather a lack of consultation time with applicants.

Despite the confidence expressed in the potential of the DVA and their relative effectiveness in implementing the Act, more sober reflections revealed that magistrates do not feel entirely confident that they are ‘doing the right thing’.

Training on the social context of domestic violence and the specific elements of the Act was seen as an important step in improving judicial approaches to the DVA. Working groups and workshops were considered “essential” to the development of magistrates who preside over these cases. The opportunity to be presented with current research and case studies as well as hearing how other magistrates deal with the ‘grey’ issues of domestic violence was cited as critical to improving how magistrates implement the Act. After four years of working with the Domestic Violence Act, a magistrate had this to say about training:

What can I say about training? I was trained second-hand – by a colleague who went to Justice College to be trained specifically on the Act. After presiding over domestic violence cases for a few years, I have realised that the Act is open to wide interpretation and that I fundamentally disagree with my colleague’s approach to this Act. I can confidently state that whatever training took place was given to the wrong people and that whoever did the training has never presided over a domestic violence case before or has done little to understand the ins-and-outs of the Act.

Applications for a protection order
Domestic violence caseloads vary considerably across magisterial jurisdictions with some magistrates reporting reviewing 40 applications a day, and others only about ten. This obviously has serious implications for how the cases are treated. One magistrate incisively explained the impact of the high number of applications on his court:

When you find yourself sitting with 30-40 applications a day, you begin to feel like your court has turned into an assembly line. The cases all begin to look the same and the time that you would like to spend...going through each application thoroughly... is terribly diminished. You begin to question the effectiveness of the system and the accuracy of your own judgment. You ask yourself whether you are granting this person this order because another person
earlier that day was granted a similar order, but the facts are completely different, and so on. The scope of the Act is wide enough to provide tailor-made protection orders to suit the circumstances presented to you, but you find yourself providing the same relief to everyone...despite your better judgment. There is little time to carefully examine these applications and to grant orders that specifically suit the situation. There are far too few magistrates dealing with domestic violence to give the Act its full effect.

Concern was also expressed about the apparent urgency of some applications. With high caseloads, the courts are sometimes unable to grant interim orders on the day that the application is made. Although section 6 of the application form allows the applicant to motivate “why the court should consider the application as a matter of urgency” and “why undue hardship may be suffered by the applicant if the application is not dealt with immediately”, this section seldom provides any more information than what is already contained in the affidavit.

Although the contents of section 6 have on occasion convincingly argued the case for an urgent application, the general consensus among magistrates was that there is rarely sufficient information in this section to warrant an urgent protection order. Applications are therefore processed on a ‘first come, first serve’ basis meaning that applications that cannot be reviewed on the same day are postponed to the following day(s).

In light of this, it was suggested that the courts, individually or collectively, develop a set of criteria for what constitutes “urgency” and “undue hardship”. This would enable clerks of the court to prioritise cases that required urgent intervention and ensure that applicants are sufficiently protected. It was emphasised that these criteria do not have to be inclusive, but instead consist of a ‘guiding’ set of circumstances that would warrant urgency. As with other issues debated, precisely what constitutes “imminent harm”, “undue hardship” and “urgency” remained controversial. The only real consensus among magistrates about what constitutes “urgency” and “imminent harm” in domestic violence cases includes situations in which:

- the respondent is in the possession of a firearm and has threatened to use the firearm against the applicant, or her dependents or other family members;
- the respondent has used a weapon against the applicant in previous incidences of domestic violence (not restricted to firearms or knives);
- the applicant was critically injured by the respondent on a previous occasion, or on the occasion in question;
- the applicant and her children have been ‘kicked out’ of the shared residence by the respondent or anyone affiliated with the respondent;
- the applicant has sufficient evidence (i.e. witness statements) that the respondent has threatened to harm her/him;
- the applicant fears for the safety of her children.

Clearly, these criteria do not sufficiently address the perceived risk of applicants of further and imminent harm. They also exclude a wide range of behaviours that may be threatening to the safety, health and wellbeing of the applicant and his/her dependents, such as stalking, harassment and economic abuse. The emphasis on physical abuse is worrisome and defeats the object of ensuring full protection against all forms of domestic violence set out in the definition of the Act.

Reading the affidavit

Great discrepancies were found between the various sections of the application for a protection order filled out by the complainant.‘The description of the abuses set out in the affidavit often did not correspond to the information completed in the rest of the form. An attempt was made to compare the affidavit with requests for cessation of abuses in section (7)(a) or (h) of Form 2 (Terms of the Protection Order in the application form), and the orders granted by the magistrate (Table 1).

The following discrepancies were found between the affidavits and the application orders:

- Although physical abuse was mentioned in 415 affidavits, orders against physical violence were requested in 54% of cases.
Only 17% of application forms mentioning sexual abuse requested protection from this. Only 11% of application forms mentioning economic abuse requested protection from this. 55% of application forms mentioning intimidation requested protection from this. Only 32% of application forms mentioning property damage requested protection from further damage.

It is evident that there is a great deal of variance between how victims experience abuse (as per the affidavit) and how the clerks of the court tend to ‘systemise’ or narrowly categorise the abuse. The results also illustrate how magistrates, in some instances, grant particular conditions to applicants for more comprehensive protection, despite what was applied for in the application form. This is particularly true for cases of physical abuse, harassment and stalking.

Magistrates reported that reading the affidavit against the application form was essential and constituted the basis for the decision to grant a protection order. It was also reported that any indication of physical violence and/or the threat of physical violence (often referred to as “intimidation”) in the affidavit resulted in an unequivocal decision to grant the applicant protection from further physical violence. This was the case regardless of whether section 7(a) or 7(h) of the application forms were specific about physical violence or not.

Table 1: Comparison of abuses noted in the affidavit, with the number of requests made and orders granted, in each category of abuse across magisterial districts

<table>
<thead>
<tr>
<th>Type of abuse noted</th>
<th>Court A n=170</th>
<th></th>
<th></th>
<th>Court B n=279</th>
<th></th>
<th></th>
<th>Court C n=160</th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Affidavit</td>
<td>Request for order</td>
<td>Order granted</td>
<td>Affidavit</td>
<td>Request for order</td>
<td>Order granted</td>
<td>Affidavit</td>
<td>Request for order</td>
<td>Order granted</td>
</tr>
<tr>
<td>Physical</td>
<td>111</td>
<td>47</td>
<td>151</td>
<td>184</td>
<td>159</td>
<td>236</td>
<td>120</td>
<td>18</td>
<td>146</td>
</tr>
<tr>
<td>Sexual</td>
<td>20</td>
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<td>0</td>
<td>19</td>
<td>3</td>
<td>7</td>
<td>7</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Emotional/verbal/psychological</td>
<td>137</td>
<td>90</td>
<td>111</td>
<td>251</td>
<td>240</td>
<td>244</td>
<td>132</td>
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<td>20</td>
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<tr>
<td>Economic</td>
<td>45</td>
<td>10</td>
<td>15</td>
<td>92</td>
<td>3</td>
<td>18</td>
<td>35</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>Intimidation</td>
<td>81</td>
<td>76</td>
<td>160</td>
<td>92</td>
<td>22</td>
<td>10</td>
<td>9</td>
<td>3</td>
<td>127</td>
</tr>
<tr>
<td>Harassment</td>
<td>21</td>
<td>57</td>
<td>73</td>
<td>15</td>
<td>7</td>
<td>0</td>
<td>6</td>
<td>3</td>
<td>1</td>
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<tr>
<td>Stalking</td>
<td>11</td>
<td>19</td>
<td>43</td>
<td>7</td>
<td>4</td>
<td>1</td>
<td>4</td>
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<td>Damage to property</td>
<td>45</td>
<td>22</td>
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<td>4</td>
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<td>1</td>
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<tr>
<td>Other</td>
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<td>*</td>
<td>19</td>
<td>121</td>
<td>*</td>
<td>5</td>
<td>10</td>
<td>*</td>
<td>0</td>
</tr>
</tbody>
</table>

* Data was not collected regarding the number of requests made for behaviour that would fall into the category of ‘other’.
Beyond physical violence
Less convincing for magistrates were applications involving sexual violence, economic abuse and psychological/emotional abuse. Magistrates presented numerous scenarios that revealed a strong scepticism – or perhaps cautiousness – about these three forms of domestic violence. The scenarios were wide-ranging and represented both the complexity of presiding over these matters as well as pervasive myths, preconceptions and deep biases about domestic violence and the ‘intentions of women’ in applying for protection orders.

Each case brings a new set of circumstances and a new set of facts and should be treated with the appropriate, individual attention. Of particular concern are the following notions about domestic violence that may impede appropriate justice for applicants seeking protection:

- Some women apply for protection orders because they are angry about their husband’s or partner’s infidelity. Protection orders should therefore not be issued when there is evidence of extra-marital relationships or when the couple has separated due to an extra-marital relationship.
- Women often apply for emergency monetary relief because they were unsuccessful in getting maintenance from their partners.
- Sexual violence is not common in marriage or long-term domestic relationships.
- Some women apply to have their husbands/partners removed from the shared residence so that their new boyfriends can stay with them.
- Some women apply for protection orders against ‘emotional abuse’, but they are in no real danger of being harmed.
- Some women use the ‘excuse’ of being concerned about the safety of their children to get a protection order. However, it is really their partners they are trying to punish for something they did to them.
- Some applicants (both men and women) use the Domestic Violence Act to further their own cause in divorce or custody proceedings.

While it is true that relationships between people are complex, and that ‘third parties’ and financial matters create antagonism in domestic relationships, magistrates need to seriously consider the possibility that the breakdown or dissolution of the relationship may put the applicant at risk of harm.

While some applicants may abuse the DVA – as much as people abuse the services of the police, the ambulance service, the fire department, 10111 call centres and the courts, more generally – the default position that assumes that applicants are ‘getting back’ at their partners, are not ‘abused enough’, are equally abusive or are in ‘no real danger’ when physical abuse is not present, is a weak premise from which to make decisions. What appear to be minor domestic conflicts or abuses can easily escalate over a short period of time. Emotional abuse is quickly translated into serious physical and sexual violence and therefore should be considered as serious as physical violence when granting protection orders.

It was also found that court personnel become desensitised to matters of inter-personal violence, particularly non-physical abuses experienced by complainants. It was suggested that in order to circumvent “personal biases” by the magistracy, magistrates should base their decisions on intensive interrogation of the facts presented to the court. In order for the Act to work effectively, the decision to grant a protection order, or specific conditions thereof, must be based on the assumption that the applicant’s reason for applying for an order are bona fide until proved otherwise.

The impact of police work
Magistrates were careful to point out that they are, to some extent, victims of the “domino effect”: their decisions are dependant on how well the other agents of the criminal justice system manage an incident of domestic violence and document investigations. When police and witness statements are poor, missing or even illegible, the case against an accused/respondent is weakened.

While acknowledging that it is up to magistrates to discern the relevance of the papers presented to the court and to further interrogate the matter until a reasonable decision can be made, magistrates reported that the quality of these papers is often very unsatisfactory. The extent to which magistrates
saw themselves as being effective was greatly dependent on the previous interventions and interactions with these ‘frontline’ workers.

The magistrates were, however, very sympathetic to the ‘triage-type’ working conditions and demands placed on clerks of the court. They argued that if the police took better statements from complainants, clerks could spend more time providing applicants with detailed information about the relevant criminal and civil procedures. It was recommended that when an incident of domestic violence is reported to the police, the statement taking should include these five essential questions:

- the history of the abuse;
- a description of the most recent incidence of domestic violence;
- any medical attention sought by the complainant as a result of the current incident or previous incidents or any other evidence to show that an act of domestic violence has taken place;
- the complainant’s knowledge of any previous criminal records of the accused;
- the complainant’s knowledge of any orders against the accused (protection orders, interdicts under the Prevention of Family Violence Act, 1993, maintenance orders, eviction orders, and so on).

It was suggested that these questions would assist the court in providing a more informed and comprehensive service to the applicant. Acknowledging that transforming police responses to domestic violence cases was a long term prospect and that over-burdened clerks often find little time to fully explain the range of legal remedies to applicants, it was recommended by some that magistrates themselves play a greater role in advising both applicants and respondents at the Return Date. The idea that magistrates take on this ‘additional clerk’s duty’ however, became a contentious issue. It was argued that:

*By advising the applicant of her [or his] rights, the magistrate becomes a ‘legal advisor’ and therefore becomes impartial. The magistrate is in no position to be a legal advisor. There are other people to advise the applicant on her rights under the Act.*

A magistrate cannot be impartial if he is acting as an investigating officer… and has given legal advice to the applicant… especially when the respondent has not been heard at this stage.

A more moderated position about the role of magistrates in explaining the remedies available under the Domestic Violence Act was:

*It must be clear... that the magistrate is not giving legal advice. It must be stressed that the magistrate is simply re-iterating the legal options set out in the Act and reinforcing the information that the clerk of the court or the court volunteer has given to the applicant.*

The final recommendation by magistrates was that magistrates should inform both the applicant and the respondent about the remedies available under the Act as well as other legal options such as applying for maintenance, custody, evictions or divorce, and still retain the role of impartial observer to the proceedings. Although it was pointed out that section 2 and 4 of the Act, as well as Regulation 3 and 5 of the Act, provide that the clerk of the court should undertake this role, it was largely agreed that informing the applicant and respondent of their rights, remedies and obligations under the Act, “could do no harm”. It was argued that a magistrate could explain the legal options available under the Domestic Violence Act, or any other relevant Act to the applicant, without necessarily advising the applicant on which options she/he should take.

**Counter protection orders**

Counter protection orders – orders that are applied for by a respondent against a complainant – were cited as an increasing problem for magistrates. The current system of file management does not allow for accurate tracking of counter protection orders.

Respondents rarely voluntarily submit information of orders issued against them when applying for an order against someone else, and court clerks do not
have the capacity to cross-reference applications for counter orders. However, magistrates and clerks do identify applications for counter protection orders, simply by remembering, by name or by sight, the original applicant or respondent. The magistrates estimated that between 5%–30% of applications are counter protection orders and that this was on the increase:

You see more and more of these things. One party gets an order then the other party gets another order to retaliate. It’s not that uncommon, but the courts are quickly wising up to it. It is very difficult to track if you don’t have good record-keeping systems at the court and the second applicant is very hesitant to say that the reason he is applying for a protection order is because his wife got one against him. My tolerance for these cases is limited. It wastes the courts time and it undermines the real purpose for the DVA. These people need to learn to play these games outside of my court.

Although counter protection orders may be necessary in some cases, the granting of such orders should be done with caution. In order to limit vexatious claims against the original applicant and to avoid granting conflicting orders between the two parties, it was recommended that:

- the court establishes whether the applicant is aware of any other orders against the respondent including maintenance orders, protection orders;
- the court establishes whether the applicant has any orders against him/herself including maintenance orders, protection orders;
- the court establishes whether any High Court orders are in place such as custody orders;
- when existing orders are in place, the courts ensure that those orders are entered into the court file and that any new orders issued do not contradict the existing orders. It may, however, be the case that an urgent application is required to provide the new applicant with temporary relief from domestic violence. In this case, the court should consider providing such relief until the original order can be varied or amended.

Conclusion

Despite the impression that magistrates have a tendency to adjudicate domestic violence matters conservatively, both the empirical research from the First Report and this recent study with magistrates have illustrated that most magistrates take a ‘better safe, than sorry’ approach in granting particular conditions in protection orders. The general sentiment of magistrates is that it makes more sense to have an all-inclusive protection order, than one that will be subject to variation at a later stage. Still, decisions regarding emergency monetary relief, removal of the respondent from the shared residence and contact orders with children are reportedly treated with much more caution than the other remedies available under the Act.

Local court monitoring initiatives are therefore essential in ensuring that the DVA is implemented in a way that ensures both procedural consistency and legal uniformity. Local data on magisterial interpretation of the Act is essential to improve overall decision-making. To ensure that the DVA is implemented equitably, 45 magistrates have contributed to the development of guidelines for the implementation of the DVA. It is hoped that these guidelines will be Gazetted in the near future and assist magistrates in more effective decision-making.

Endnotes

1 Parts of this article were originally published in L Artz, Magistrates and the Domestic Violence Act: Issues of Interpretation, Institute of Criminology, Faculty of Law, University of Cape Town, 2003.
2 This study was conducted to investigate the various approaches by magistrates in implementing the Act. Broadly, the study involved the re-examination of our monitoring database on the DVA (see P Parenzee, L Artz & K Moul, Monitoring the Domestic Violence Act: First Report, Institute of Criminology, Faculty of Law, University of Cape Town, 2001); in-depth interviews with magistrates from each of the nine provinces; the analysis of the outcomes of two major conferences including over 350 magistrates and High Court judges, facilitated by this author and her associates; as well as the outcomes of monthly meetings with the Domestic Violence Working Group (a group consisting of magistrates representing each province, the Justice Training College, the Gender Directorate of the Department of Justice and the author).
4 S. 7 contains the Terms of the Protection Order.

5 This may be done with the applicant and the respondent, on the Return Date. The regulations of the Act do provide, in a notice to the applicant, that if the applicant knowingly gives false information when applying for a protection order or when laying a criminal charge, the applicant may be prosecuted.


7 See L Artz, op cit.
South Africa has one of the highest murder rates of all the countries that record crime statistics. Understanding such high levels of violence should begin with an investigation of who the victims and perpetrators are, and how the homicides are committed – not only now but also in the past. An historical analysis reveals that the coloured population has, as long as accurate records are available, had the highest murder rate of all race groups in the country.

South Africa has a long history of violence. The most accurate way to study violence is to analyse homicides. These are the crimes most likely to be reported to the police, and can therefore be studied accurately over time and compared internationally. Such comparisons show that South Africa’s murder problem is undoubtedly more serious than most other countries where the statistics are recorded: in 2002 the homicide rate for the entire population was 48 per 100,000. In comparison Russia’s murder rate was 21 per 100,000, Brazil was 19, the USA had a rate of 5.6, and most of Europe was under four homicides per 100,000 people.1

Explaining South Africa’s high murder rate is no easy task. In order to better understand the present situation it is necessary to look at homicide patterns in the past. These trends shed light on the nature of violence and allow for some level of prediction about where South Africa is heading. It is also important to consider who is most at risk from violence and who the perpetrators are, so that both groups can be dealt with through effective policing and social improvements.

Crime analyses have shown that violence does not occur equally across society but is more frequent within certain gender, age and race groups. As with all other countries, young adult males in South Africa are most likely to be both victims and perpetrators of violence. However, there are clear differences if race is taken into account. The coloured population has the highest homicide rate in South Africa. This is not a recent trend, but has been the case for as long as accurate records are available.2

The majority of homicides in South Africa are intra-racial (between people of the same race) and are committed by someone known to the victim and living within their community. Homicides that are committed by strangers are usually linked to other crimes, such as robbery or – prior to 1994 – politically motivated crimes. Even so, politically motivated acts only accounted for a maximum of 20% of homicides in that period.3

Murder rate: 1938–2003
After 1990 race was no longer officially recorded in the government death records. However, the racial patterns of homicide have remained relatively consistent in the past. By comparing recent data from the National Injury Mortality Surveillance System (NIMSS) with the racial homicide trends prior to 1990, an educated guess can be made...
about present and future homicide patterns. Conducted by the Medical Research Council, the NIMSS has analysed mortuary data from across the country since 1999. Their data incorporates 36 urban and rural mortuaries in six provinces, which together account for 34% of all deaths in the country. This sample, although incomplete, is the most accurate available.

The homicide rate for coloureds has almost always been higher than other race groups, exceeding 60 murders per 100,000 since 1980 (Figure 1). This does not, however, show the full picture. When analysed according to age and gender, the extent of violence within the coloured community becomes clearer. Prior to 1994, the coloured male homicide rate peaked in 1982 at over 160 per 100,000, and has
remained over 80 per 100,000 since 1980. The female murder rate has been much less at between 20 and 40 per 100,000 (Figure 2). This means that for every coloured female murdered, at least four males were murdered.

In comparison, the homicide rate for black South Africans has fluctuated between 60 and 120 per 100,000 for males, and between five and 20 for females. White and Indian homicide rates are lower than both the coloured and black rates.

**How many overall deaths are murders?**

The full impact of violence in a community can be better understood by calculating the percentage of all deaths that are caused by violence. Between 1982 and 1990, murder was the cause of nearly half of all deaths of coloured males between the ages of 16 and 30, making it the primary cause of death for this group. More recent data has shown that this proportion has reduced, but this can probably be attributed in part to an increase in AIDS cases, which will affect this age group the most.

The proportion of deaths attributable to homicide is lower for coloured females, but still remains high with over 20% of all deaths being caused by homicide (Figure 3). Other race groups have lower proportions of homicide deaths for this age group, as shown in Table 1.

### Table 1: Percentage of deaths caused by homicide, 16–30 year age group, 1982–1990

<table>
<thead>
<tr>
<th></th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coloured</td>
<td>48.2</td>
<td>24.4</td>
</tr>
<tr>
<td>Black</td>
<td>47.5</td>
<td>15.6</td>
</tr>
<tr>
<td>Asian</td>
<td>29.4</td>
<td>13.8</td>
</tr>
<tr>
<td>White</td>
<td>15.4</td>
<td>11.5</td>
</tr>
</tbody>
</table>

*Source: Stats SA*

The level of violence that this represents is overwhelming. Only a limited number of assaults end in death, and the number of assaults occurring in the coloured population is likely to be many times greater than the number of homicides. In 2002 the SAPS recorded 21,738 murders compared to 299,411 attempted murders and serious assaults in the country. The Northern and Western Cape – where the coloured population is in the majority – had the highest rates of murder, attempted murder and assault (see the next article in this issue).
Weapons used in murders

The type of weapon used in a murder shows the availability of the weapon, as well as giving some indication about the type of murder that occurred. The weapons used in coloured murders have been consistent for the period from 1968 to 1990 when these records were available (Figure 4).

For more than two decades, knives or other stabbing weapons were used in the vast majority of murders of coloured people. Firearms were used in less than 5% of murders before 1990, but this has since risen to 41% in the latest mortuary reports, with guns now as likely to be used as knives. These trends are in stark contrast to those for the other race groups, where firearms are much more likely to be used in homicides than knives (Figure 5).

Many homicides are believed to be assaults that ‘go too far’. An attack with a knife is more likely to result in wounding and less likely to result in death than one with a firearm simply because a gun is a more deadly weapon. The levels of non-lethal violence reflect this. In the Western and Northern

Figure 4: Weapon used in coloured homicides

Source: Stats SA, NIMSS

Figure 5: Weapons use in homicides in 2001, by race

Source: NIMSS
Cape provinces, the rates of assault with grievous bodily harm in 2002 were 823 and 1,365 respectively – far in excess of the national average of 582. There are far more assaults that result in injury than in death, suggesting that the use of knives has ironically helped to keep the homicide rate lower than it could be for these provinces.

Although more pronounced in the murder of coloured people, the change in weapon use towards guns has occurred in all race groups, and is concerning as the use of a firearm increases the risk of death. A growth in the availability and ownership of firearms has lead to this change, and although it is not necessary to use a firearm to kill someone, research has shown that carrying a gun will increase the likelihood of being killed. And if a gun is used in an assault, the risk of death is also greater.

**Why does it happen?**
Criminologists have shown that certain communities are affected by high levels of violence. One explanation is that members of such communities are more willing to use violence in everyday matters. The theory is that these people exist on the fringes of society and create their own set of rules about how to behave. These ‘subcultures’ see violence as normal and are more willing to use violence in situations where other people would not. They are also more likely to carry a weapon and more willing to fight to protect their ‘honour’ or ‘status’. Young adult males are more likely to engage in this type of behaviour, and thus increase their chances of being both victims and perpetrators of violence.

It has been argued that South Africans have become accepting of violence – that they are part of a ‘culture of violence’. If true, the coloured community would seem to represent the extreme of this ‘violent culture’. They have a long history of unemployment, inadequate housing and health care, high rates of alcohol use, and family dislocation (see ‘Still marginal: Crime in the coloured community’ in this issue). The high number of gangs in the Western Cape is a result of this phenomenon. They have filled a gap in the community, giving young males a sense of identity. Gangs use violence to achieve their goals and have normalised the carrying and use of weapons. The continued high rate of knife use is undoubtedly connected to this behaviour.

The use of alcohol is also a key factor in creating a violent environment. Research confirms that excessive alcohol use will increase the likelihood of violence being committed, and South African research has shown that many victims and offenders of violence had high levels of alcohol in their systems. There is a long history of alcohol abuse in the coloured community, encouraged through the ‘dop system’ of paying wine farm workers in alcohol. It should therefore come as no surprise that this sector of the population suffers from high rates of violence.

In order to reduce levels of violence in the coloured community, dealing with only one of these factors will not be enough. Viable alternatives to the gang structures must be created, the state must improve the conviction rate of those who kill, and individuals have to learn that there are alternatives to using violence.

**What does the future hold?**
The decline in the national homicide rate since 1994 is positive, even though projections suggest that it will take more than 15 years to reach levels below 20 murders per 100,000 people – a rate that is more in line with other countries in transition.

However, it is difficult to accept that this downward trend will continue. The high rates of non-lethal violence suggest that rather than people becoming less violent, more victims are now surviving. If medical care declines, homicide rates will increase. If firearms are increasingly used, the homicide rate will escalate. The lack of social and economic stability will continue to influence overall crime levels. AIDS could also affect homicide rates by further reducing the ability of the family structure to provide adequate socialisation for young males. Finally it is likely that if unchecked, the continued high rates of drug and alcohol abuse within the coloured community, along with gang activity, will result in continued high levels of violence and homicide.
Endnotes


2 Deaths of black South Africans were not recorded prior to 1968, and no data is available for deaths and homicides in the former ‘Homeland’ areas. Race was not recorded in official death records after 1990. Statistical projections of past race patterns of homicide were used to interpret the post-1990 data.


4 See the complete National Injury Mortality Surveillance System, Medical Research Council, www.mrc.ac.za.


6 The ability of the victim to get to adequate medical care in time will also influence whether a murder or a serious assault occurs.

7 Data from the Crime Information Analysis Centre of the SAPS.


10 A Dissel, Youth, Street Gangs and Violence in South Africa, Centre for the Study of Violence and Reconciliation, Johannesburg, 1997; I Kinnes, From urban street gangs to criminal empires: The changing face of gangs in the Western Cape, ISS Monograph Series No 48, Pretoria, June 2000.


Unlike previous reports, the 2002/3 South African Police Service (SAPS) Annual Report and accompanying statistics did not make direct comparisons of provincial crime rates. A quick look at these figures shows stark disparities between the provinces, with the Western Cape having four and a half times more recorded crime than Limpopo. While this difference may be due in part to reporting rates, the divergence in crime profiles is so striking that it calls out for further discussion.

According to the official statistics, the Western Cape has by far the worst overall crime problem in the country (Figure 1) and in many crime categories, the fastest growing crime problem (Table 1). The Northern Cape has the highest rate of violent crime. Between the two of them, these provinces have the worst crime rates in the country in 17 of the 22 serious crime categories tracked by the SAPS.

Relying on the official crime statistics is problematic, especially for violent crimes, because of under-reporting. Many people do not report the crimes they experience to the police, for reasons ranging from inconvenience to mistrust. If rates of reporting are high in a province, this could make the area look more crime-ridden than it actually is.

But the 1998 National Victims of Crime survey did not find particularly high levels of reporting in the Western or Northern Cape. While reporting rates for robbery were unusually high in the Northern Cape, they were unusually low in the Western Cape. Assault and burglary reporting rates were close to average in both provinces (Figure 2). Thus, the fact that these two provinces have relatively high recorded crime rates needs to be taken seriously.

Violent crimes
The Western Cape has by far the nation’s highest rate of murder: 85 murders per 100,000 citizens in 2002/3. By comparison, second place Gauteng had 59 murders per 100,000, and the national average was 47. Murder is the most accurate gauge of the violent crime situation, as it is more likely to come to the attention of the police than other violent crimes. This means that very few murders remain unrecorded.

While the decline of political violence has caused drastic reductions in killings in Gauteng, KwaZulu-
In addition, the Western Cape boasts the country’s highest levels of common and indecent assault, as well as common (but not aggravated) robbery. And aside from the violence, the province also suffers from the highest overall rates of property crime.

But according to the recorded crime statistics, it is residents of the Northern Cape, not the Western Cape, who are at the greatest risk of falling victim to violent crime. The Northern Cape has the highest rates of reported attempted murder, assault with the intent to inflict grievous bodily harm (GBH), rape, and child abuse. The rate of assault GBH in the Northern Cape is more than twice that of any other province besides the Western Cape, and the province also comes second to the Western Cape in many other crime categories. Figure 4 illustrates the provincial rates of total recorded assaults, including both common assault and assault GBH.

But if the Northern Cape has the most violence per capita, why does the Western Cape have the country’s highest rate of murder? This puzzle could be explained by the proliferation of firearms in the
Figure 2: Reporting rates by province

Source: Stats SA, 1998

Figure 3: Change in recorded murder rates between 1994/5 and 2002/3, by province

Source: SAPS Crime Information Analysis Centre
Western Cape. The Western Cape has the highest rate of recorded cases of illegal possession of a firearm or ammunition, while the Northern Cape has the lowest rate, second only to Limpopo. While finding firearms generally requires proactive work on the part of the police, there is no reason to believe that the Western Cape is unusually diligent in this regard or that the Northern Cape police are particularly negligent.

This conclusion is backed up by NIMSS data. In the Western Cape, firearms are the preferred murder weapon, with 46% of homicides captured by the system caused by firearms. In the Northern Cape only 12% of the homicides captured were caused by firearms, with the primary cause being stabbings (64%).

More lethal weapons could be the reason why Western Cape killers succeed more often than would-be killers in the Northern Cape. Calculating the number of murders as a percentage of both murders and attempted murders for each province reveals that only 19% of murders attempted in the Northern Cape in 2002/3 ‘succeeded’, whereas 43% of those attempted in the Western Cape were ‘successful’.

In keeping with the low levels of gun crime, the Northern Cape also has the second lowest rate of aggravated (which generally means armed) robbery in the country, just slightly over that of Limpopo. But oddly, levels of aggravated robbery in the Western Cape remain less than half those in Gauteng, despite the fact that common robbery is most likely in the Western Cape. This may be due in part to the fact that Gauteng is still home of the heist, with more of the syndicate-type robberies such as hijackings, bank-related robberies, and home and business robberies.

### Property crimes

Aside from the violence, the Western Cape also has a problem with property crime, including coming first in the rates of commercial burglary, residential burglary, theft from vehicle, common theft, and malicious damage to property. Apart from coming second or third in many of these categories, the Northern Cape is tops for shoplifting, stock theft, and arson. Oftentimes, the rate of these crimes is far in excess of most other provinces. For example, the rate of theft from vehicles in the Western Cape is ten times that of Limpopo, and more than double that of any other province besides Gauteng.

In addition to aggravated robbery, however, Gauteng remains tops for vehicular theft and fraud by quite a wide margin. Vehicular theft, like hijacking, is often conducted by organised syndicates, which may be better developed in Gauteng. The greater proximity of...
Gauteng to the border and commercial interests may also contribute to the prevalence of vehicular crime in the area. Fraud, of course, is often related to business interests, and Johannesburg’s continued role as the financial centre of the country probably leaves it more vulnerable.

But the bottom line is that the Western Cape and Northern Cape have emerged as the country’s riskiest provinces, at least according to the official statistics. The question is: why?

Why is risk greatest in the two Cape provinces?
The high crime levels in the Western Cape are baffling to criminologists who link crime to deprivation, because it is also South Africa’s best-developed province. The Western Cape has the lowest unemployment levels in the country and is better resourced in just about every respect than any other province. In addition, it has the lowest Gini coefficient of any province, which suggests that income is more equitably distributed in the Western Cape than in other provinces, possibly due to relatively high employment levels.

The Northern Cape is also highly developed, coming third after the Western Cape and Gauteng in having the lowest poverty rates in the country. The 2001 Census revealed that it has the highest share of formal dwellings in the country and, alongside the Western Cape, it has consistently held the nation’s highest matric pass rate.

Why are the best-developed provinces in South Africa the most crime-ridden? To answer this question would require considerable further research, but the following are offered as possible and partial explanations.

Migration and urbanisation
Two possible and related explanations are inward migration and urbanisation, as some criminologists link population instability and urbanisation to crime. The Western Cape is the second most urbanised province in South Africa (89%), second only to Gauteng (97%). According to the HSRC, it is also the province that experienced the fastest rate of annual population growth in the country between 1996 and 2001 (2%), perhaps due to its relative affluence. In addition, it had one of the highest levels of inward migration in the country between 1992 and 1996, second only to Gauteng, with many migrants coming from the impoverished Eastern Cape.

While the Northern Cape contains vast rural spaces, the majority of its people live in towns, and it is the third most urbanised province in the country. It is, however, projected to have the nation’s slowest population growth, second only to the Free State. It is also believed to have one of the lowest levels of former migrants in the population, and traditional wisdom would view it as a source of outward migration. So population instability, at least in a trans-provincial sense, is not likely to be a factor.

Alcohol and drugs
It is likely that alcohol and drugs also play a role in the violence in the Cape. The Western Cape and the Northern Cape have the country’s highest rates of arrest for driving under the influence of alcohol or drugs, as well as the highest rate of recorded drug crimes. As with firearms, these crimes require proactive work on the part of the police in order to be detected, but there is no reason to believe that the Cape police are doing more in this area than their counterparts in the rest of the country.

Indeed, all past scientific work on the subject has indicated that the Cape has a serious substance abuse problem. A 1998 study found that in 55% of all non-natural deaths in Cape Town the deceased had blood alcohol concentrations equal to or greater than .08g/100ml, with the highest levels being found among homicide victims and transportation deaths. More recently, the NIMSS found that alcohol was present in the bloodstreams of most murder victims tested in 2002 in both the Western Cape (59%) and Northern Cape (69%). An ongoing Department of Transportation study found that 13% of pedestrians stopped nationwide after office hours had blood alcohol levels above .08g/100ml, but in the Western Cape, the figure was 23%.

The Western Cape has one of the highest incidences of foetal alcohol syndrome in the world. Individuals with foetal alcohol syndrome may become involved in crime as victims or perpetrators due to poor judgement and a low frustration threshold. A study in British Columbia found that 24% of youth in jail...
showed evidence of foetal alcohol syndrome or foetal alcohol effects.13

But while alcohol may impact violent crime in a number of ways, its impact on property crime is less clear. Drugs, however, can feed property crime as addicts may steal to pay for their habits. In the 2000 MRC/ISS arrestee drug monitoring study, Cape Town was found to have the highest share of arrestees testing positive for any drug (56%), surpassing Gauteng and Durban. The study also showed six times the level of Mandrax usage in Cape Town as Gauteng.

Police coverage
To the extent that the police can make an impact on crime levels, then low levels of police service could contribute to criminality. Table 2 contains the police to public ratios listed by the SAPS on their website. Given the vast differences in provincial crime rates, considerable variation in the police to public ratios is appropriate.

The Northern Cape has the highest levels of police coverage in the country, which correctly corresponds with its position at the top of the crime rankings. But the Western Cape in 2002 scored just above the average in terms of police, and considerably below the Free State, a province with just over half the crime. This situation has changed drastically since that time, with the Western Cape moving to a more appropriate level of coverage. But the legacy of past neglect may have consequences still felt today, especially if many of these new troops are recruits fresh from the academy.

The coloured population
Another possibility is linked to the dominant population group in the region: the coloured community. Western and Northern Cape are the only provinces in which black Africans do not comprise the majority of the population. They are home to most of South Africa’s coloured population, which makes up more than half of the population of both provinces. As will be discussed in the following article in this issue, this population group appears to be more likely to become both the victims and perpetrators of crime.

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Sources: 2000 figures from the SAPS website: http://www.saps.gov.za; 2003 figures personal communication, SAPS Head Office

Endnotes
1 Third Annual Report of the National Injury Mortality Surveillance System, Crime, Violence, and Injury Lead Programme of the Medical Research Council, Cape Town, 2001. This remained the case in 2002, according to a special report prepared for the ISS by the MRC.
2 Ibid.
3 Fast Facts, South African Institute of Race Relations, Johannesburg, April 2002(a).
4 South Africa Survey 2001/2, South African Institute of Race Relations, Johannesburg, 2002(b).
5 Northern Cape has highest matric pass rate, SAPA news release, 30 Dec 2003; Fast Facts, South African Institute of Race Relations, Johannesburg, February 1999.
6 SAIRR, 2002(a), op cit.
8 SAIRR, 2002(a), op cit.
9 Ibid.
10 P Kok et al, op cit.
12 C Parry, Alcohol and crime in the Western Cape: A provincial action plan, Crime and Conflict No 17, 1999.
STILL MARGINAL

Crime in the coloured community

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Is the crime problem in the Western Cape and the Northern Cape rooted in the coloured population? Official figures suggest that coloured people are twice as likely as any other ethnic group to be murdered, and twice as likely to be incarcerated. Unfortunately, it is impossible to properly explore the linkage between the crime rates in the Cape and the coloured communities without station-level crime statistics, which the police no longer release to the public. Nevertheless, more research is needed to understand the links between this group and the crime problem.

Coloured people are a minority group in South Africa. According to the 2001 Census data, they represent just 9% of the country’s population. But in two provinces – the Western Cape and the Northern Cape – they are the majority. Any discussion of conditions in these two provinces cannot ignore this population group.

There is not, nor has there ever been, a clear definition of the population group referred to as ‘coloured’, and the usefulness of the term has been questioned. But it does refer to a group of people who, rightly or wrongly, were lumped together in the past, and therefore share a common history. This history has often been a troubled one. The commonly heard lament is that coloured people were not ‘white enough’ under apartheid and are not ‘black enough’ in the new democracy. The sense of this complaint is that coloured people continue to feel socially excluded, even under democracy.

Assigned a status above black Africans under apartheid, the largely Afrikaans-speaking coloured population found itself voting for the National Party in 1994 and thus initially delivering the province to the opposition. Arguably, this affiliation has led to continued marginalisation. Reinforcing this distance is the problem of crime, which is at once a symptom and cause of exclusion.

Victims and perpetrators
As is discussed elsewhere in this issue (see the article by Thomson), coloured people are far more likely to be murdered than any other group, and this has been the case for quite some time. Thomson’s projected figures indicate that coloured people are more than twice as likely to be murdered than black people in 2003 (Figure 1).

Figure 1: Projected murder rate in South Africa, by race, 2003

Source: Thomson, 2004
This sad fact is backed up by figures from the National Injury Mortality Surveillance System (NIMSS), which also show coloureds to be far more vulnerable. In both 2001 and 2002, the NIMSS recorded a disproportionately large number of coloured homicides in the total reviewed: 14% in 2001 and 13% in 2002, compared to the 9% share held by coloureds in the national population. As is also true in the black community, homicide is the number one cause of non-natural death among coloureds, outpacing suicides, automobile accidents, and other non-intentional injuries by a wide margin. The 2002 data show that coloured victims are the only ethnic group more likely to be stabbed (44%) than shot to death (39%) – the average is 54% shot compared to only 30% stabbed.2

Unfortunately, it is highly likely that the assailants of these victims were also coloured. Victim survey data, as well as docket research on murder by the SAPS’ Crime Information Analysis Centre, suggest that the vast majority of murder victims are killed by people they know, including intimate partners and family members.3 Due to persistent segregation in the country, the chances are that most murder victims are of the same ethnicity as the perpetrator.

Coloured people are also over-represented in the nation’s prisons according to the Department of Correctional Services (Figure 2). Coloured people represent only 9% of the national population, but they make up 18% of the national prison population. Coloured people are also nearly twice as likely to be imprisoned than African blacks.

Higher levels of incarceration suggest, but do not establish, higher levels of criminality in this community. There are other reasons why more coloureds might be in jail than other ethnic groups, including the possibilities that this population group is being targeted for enforcement, that this group may lack access to good legal counsel, or that judges in the area are especially punitive. It may be that other ethnic groups have other ways of dealing with crime problems, through private security or traditional means of dealing with offenders, while the coloured community is more reliant on the state.

What high incarceration rates do establish is the level of exposure within the community to a correctional system too overpopulated to encourage rehabilitation, including being subject to the violence of gangsterism, drugs, and the possibility of being sexually assaulted while in custody (see S Gear and K Ngubeni, SA Crime Quarterly No 4, June 2003).4 The effects of this victimisation may lead to further violence upon release. Being incarcerated may also lead to life-long gang allegiances that keep inmates locked into criminal lifestyles even after release.

But this does not explain why coloured people find themselves in this situation to begin with. While much further research is required to answer this question, some obvious points need to be made at the outset.

**Problems confronting the coloured community**

Because the coloured people have experienced higher murder rates since the earlier parts of the last
century, any explanation of the violence in this community would have to include extensive historical research, which is beyond the scope of this article. Focusing strictly on present social conditions, however, several factors can be identified that could be linked to long-term trends.

**Pressured idleness**

As a population group, the coloured people remain better off than the black African population, though considerably poorer than the whites or the Indians. For example, the white population of South Africa sits at about 6% unemployment, while 27% of coloured people are unemployed and 50% of the black population is unemployed.\

Looking at changes since 1994, however, unemployment has increased only 19% in the black community, compared to 35% in the coloured community. Thus, relative to accustomed standard of living, the coloured community has experienced more detrimental change since 1994 than the black community.

In addition, with the loss of the job preferences given to coloureds under apartheid, many coloured people today find themselves competing with black Africans for lower skill jobs: 32% of employed coloured people work in “elementary occupations” (unskilled labour) compared to 34% of black people. Thus, any sense that affirmative action is favouring black Africans, who hold political power, would increase the sense of exclusion.

Given that the Western and Northern Cape provinces have the highest matric pass rates in the country, an obvious strategy would be for coloured graduates to move toward the high skill end of the job market. The latest census results suggest that this is not happening. While coloured people are slightly more likely to have finished secondary school than blacks (19% versus 17%), they are less likely to have tertiary education. Of members of the population aged 5-24, 36% of the coloured community is not enrolled in an educational facility, compared to 27% of the black community.

Why young coloured people are not continuing their education at the rate of young blacks is a subject in need of further research. But those who opt out of tertiary study further contribute to the pool of urban, idle, and marginalised youth.

**Claustrophobia**

Formal employment is far more important in urban areas than rural ones, and the coloured population is largely urban based. In the Western Cape, coloured people were resettled under apartheid into high-density ‘dormitory communities’ in the Cape Flats. This has meant greater access to formal housing, but little room to expand as families grew.

Only 4% of coloured people live in shacks, compared to 16% of the black population, but coloured people have the largest household size of any population group. Despite the fact that fertility levels are less than in the black community (an estimated 2.5 live births among coloureds in 1998 compared to 3.1 in the black community), coloured households average 4.3 members, compared to 3.9 among black people. While this may not sound like much, consider that many coloured people are living in two bedroom flats, and that these average figures include households many times this size.

As a result, areas like the coloured townships of the so-called Cape Flats are characterised by high concentrations of jobless people who need cash to pay rent, purchase food, and pay for services. Disadvantaged under apartheid, they may still feel disadvantaged under democracy, and have no revolutionary hopes that the situation will change drastically in the future.

Population density has been correlated with juvenile delinquency in at least 12 academic studies. But residential mobility has been deemed an even more robust correlate and, paradoxically, all indications are that the coloured areas are some of the most stable. In the Cape Flats, the high cost of rent outside the coloured townships causes tenants to cling to their 99-year leases. As children are born and families expand, these densely settled areas leave little room to expand. As less than 4% of coloured households live in shacks, squatting is hardly an option. This causes further crowding, but strong population stability.
Ironically, however, the stability of the population in the Cape Flats seems to have become a factor in shaping the nature of crime in the area. In a word, it could lead to the creation of gangs.

**Gangsterism**

With little room inside the home, coloured youth in urban areas spend a lot of time on the streets. The playgroup becomes a kind of surrogate family, but with a different set of norms. When the norms of the street become more important than the norms of the home, you have a gang.

Stable populations feed this phenomenon. Long-term residence may result in identification with ‘turf’ among local youth. Lack of mobility may cause perpetrators to pick local victims, but the face-to-face familiarity found in stable neighbourhoods could deter selecting immediately local victims. This could result in the broader community becoming fragmented into factions, which are at once protective and aggressive.

A great deal has been written on gangs in the coloured community, but much of this now needs updating. There is need for fresh research in this area, and for the national government to develop a strategy for dealing with the issue.

**Substance abuse**

Due to their presence in the country’s wine growing areas, many coloured people have historically worked in the vineyards. As a result of the so-called ‘dop system’, in which labourers were paid part of their wages in wine, alcoholism is rife in certain parts of the community. A 1995 survey of Stellenbosch farms revealed that the dop system was still prevalent on 9.5% of farms,¹⁴ and the legacy of alcoholism could extend well beyond the years of farm labour. The dop system is diabolical in its ability to keep labour submissive and dependent, and has had the side effect of promoting violence, dysfunctional families, and foetal alcohol syndrome.

As discussed in the previous article, foetal alcohol syndrome is more prevalent in the Western Cape than just about anywhere in the world, and this is especially true in the coloured community. In the Stellenbosch study cited above, nearly 6% of the children in the study showed signs of foetal alcohol syndrome.¹⁵

The NIMSS tested the blood alcohol contents of people who died unnatural deaths in 2002, and found that coloured people were the ethnic group most likely to have alcohol in their systems at the time of death: 68% compared to an overall average of 50%. They were also the group most likely to have extreme levels of alcohol present, with 17% having blood alcohol contents of more that .25 g per 100 ml, compared to an overall average of 12%.¹⁶

Unfortunately, alcohol is not the only substance abused in the community. Mandrax, a street version of a discontinued pharmaceutical sedative of the same name, is abused in South Africa like nowhere else in the world. The tablet is smoked with a combination of tobacco and cannabis that has been treated with a solvent in a combination known as a ‘white pipe’. Urine testing of arrestees has shown that over half of coloured men in the sample tested positive for Mandrax in their systems (Figure 3).¹⁷

Mandrax has been one of the primary commodities traded by gang members since the mid-1980s, and its dis-inhibitive effects may be associated with violence. In addition, drug markets have increased...
the stakes in gang conflict, providing another impetus for turf wars. The Mandrax market also paved the way for dealing in even more addictive drugs that have emerged in the country and the community since 1994, including crack cocaine and crystal methamphetamine.

There are very few state rehabilitation facilities in the Cape – far too few to cope with the need. The complex links between drugs and gangsterism need further research, and an action plan needs to be devised to address the uniquely South African scourge of the white pipe.

Is the Cape crime problem a coloured problem?
In order to evaluate whether coloured people contribute disproportionately to the crime problem in the Cape, the crime rates in coloured and non-coloured areas would have to be compared. Unfortunately, this is impossible without station-level crime statistics – figures that the government no longer releases to the public.

Without this information, it is impossible to tell whether the present crime rates are being fuelled primarily by incidents in coloured areas or other areas, or whether the violence is related to gangs or to tensions around the influx of migrants from the Eastern Cape, for example.

Looking back at 1998 figures, crime rates between station areas can be compared. In the West Metropole police area of Cape Town, several station areas were nearly ethnically ‘pure’: Langa, Nyanga, and Guguletu were almost 100% black, while Manenberg, Mitchell’s Plain, and Phillipi were almost 100% coloured. In the Eastern Metropole police area, Atlantis, Bishop Lavis, and Elsie’s River were almost 100% coloured, and Khayalitsha was almost 100% black.

While crime rates in all these areas are bad, the 1998 figures suggest that it is the black areas of the Cape Town metropole that had the worst violence problem. Nyanga had the worst murder rate (176 per 100,000), Guguletu the worst firearm robbery rate (340 per 100,000), and Langa the worst assault with grievous bodily harm rate (1,123 per 100,000). Mitchell’s Plain had the worst burglary rate (1,040 per 100,000), and coloured areas generally scored higher for property crime. Whether this pattern is still true today will remain a state secret for the time being.

Simply urban and marginalised?
But crime rates in most of these areas of the Cape Town metropolitan area are quite egregious, and if a greater share of the coloured population lives in such urban areas, compared to the share of the black population that lives in them, this could partly explain the higher crime rate in the coloured community in general. The relatively low rates of murder in the black community may be due to the fact that a large portion of this group is based in low-crime, rural areas.

In other words, murder rates in the national coloured population may be highest because a higher share of the coloured population is both urban and poor when compared to other ethnic groups. While the most dangerous police station areas in the country may be black, the average coloured station area is more dangerous than the average black station area.

This does not explain why it is in the urban areas of the Western Cape and Northern Cape in particular that crime is so bad, as opposed to the other urban areas. More research is required to sort out what lies behind this problem, and to inform the interventions needed to correct the situation. Access to current station-level statistics would be a great help in this regard.

Endnotes
1 According to Census 2001, coloured people comprise 54% of the population of the Western Cape, followed by black people (27%), white people (18%) and Indian people (1%), and 52% of the Northern Cape, followed by black people (36%), white people (12%), and Indian people (less than 1%).
2 Third Annual Report of the National Injury Mortality Surveillance System, Crime, Violence, and Injury Lead Programme of the Medical Research Council, Cape Town, 2001. The 2002 data was derived from a special report prepared for the ISS by the MRC.
4 For a description of the risks involved in serving time in South Africa, see S Gear, and K Ngubeni, Daai


7 Census 2001.

8 Northern Cape has highest matric pass rate, SAPA news release, 30 December 2003; Fast Facts, South African Institute for Race Relations, Johannesburg, February 1999.


10 Ibid.


15 Ibid.


For the past five years Business Against Crime’s (BAC) Support Partnership for Police Station (SPPS) programme has been focused on improving service delivery at local level in an entrepreneurial manner in which the partners themselves identify and address the areas of greatest need. Each partnership comprises a willing business, a selected police station and the community served by that police station represented by the Community Police Forum (CPF). BAC facilitates the process.

The SPPS programme operates in Gauteng and Mpumalanga. In Gauteng, BAC follows priorities of the South African Police Service (SAPS) wherever possible in the selection of police stations to partner. There are currently 33 partnerships in the province (out of 121 police stations). In Mpumalanga, where BAC partners the most needy police stations in areas where big business operates, there are currently 14 partnerships with business potential for 20 (out of 92 police stations in the province).

Following a review of the programme in Gauteng in early 2003, BAC saw the need to focus all partnerships on the same service delivery criteria in order to standardise and facilitate evaluation. The three focus areas selected are those that most impact crime victims:

- the community service centre (CSC) where the victim reports the crime;
- the detective component which investigates the crime; and
- the victim support facility at the station which assists the traumatised victim of crime (Figure 1).

As part of Business Against Crime’s Support Partnership for Police Station programme, service delivery in 33 of Gauteng’s 121 police stations was evaluated in late 2003. The results highlight many often overlooked issues which can be simply rectified to present a user-friendly environment in which police can offer a more sympathetic and professional service. Most ‘clients’ had positive views of the police when leaving the station, but detectives must be assisted to improve the system of providing feedback to victims on progress with their case.

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Figure 1: SPPS model for service delivery focus,
Phase 1: 1–3 year intervention
It is interesting to note that, according to the study which this article is based on, approximately 80% of people who visit police stations deal only with the CSC. The onus for excellent service delivery lies very much, therefore, with these important members of every police station.

**Approach to the evaluation**

A baseline evaluation was conducted by an independent evaluation specialist at 33 SPPS police stations in Gauteng during August/September 2003 (Table 1).

Four evaluators under a single supervisor conducted the research over the course of 30 days. A variety of different research approaches were utilised for the study. Given that the criteria against which the stations were assessed are primarily service-related, the research tools were designed to explore the various aspects of service and more specifically, the inter-personal service received at stations, and the nature of the station environment.

<table>
<thead>
<tr>
<th>Area Johannesburg</th>
<th>Area North Rand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johannesburg Central</td>
<td>Edenvale</td>
</tr>
<tr>
<td>Hillbrow</td>
<td>Ivory Park</td>
</tr>
<tr>
<td>Jeppe</td>
<td>Oliifantsfontein</td>
</tr>
<tr>
<td>Booyens</td>
<td>Langlaagte</td>
</tr>
<tr>
<td>Cleveland</td>
<td>Kagiso</td>
</tr>
<tr>
<td>Yeoville</td>
<td>Krugersdorp</td>
</tr>
<tr>
<td>Brixton</td>
<td>Area West Rand</td>
</tr>
<tr>
<td>Sophiatown</td>
<td>Vereeniging</td>
</tr>
<tr>
<td>Linden</td>
<td>Evaton</td>
</tr>
<tr>
<td>Bramley</td>
<td>De Deur</td>
</tr>
<tr>
<td>Norwood</td>
<td>Meyerton</td>
</tr>
<tr>
<td>Sandton</td>
<td>Sharpeville</td>
</tr>
<tr>
<td>Alexandra</td>
<td>Sebokeng</td>
</tr>
</tbody>
</table>

Table 1: Police stations in Gauteng where SPPS partnerships were reviewed

A similar approach was used for assessing service in the rest of the station and from the detectives. An observation module was completed at the same time as the CSC observation module. In the case of the detectives, only those clients who actively engage with these officials are in a position to report on the service received. So while at the station, evaluators collected basic contact information from randomly selected crime dockets made available by the relevant officer at the station. Telephonic interviews were then conducted with clients about the service received from the detectives.

A brief observation module was formulated and completed for the victim support facility at each station. The station commander was also interviewed about the number of personnel trained in victim support, resources available and the system at the station for referring victims to specialised support services.

In total 844 exit poll interviews were conducted at all the stations and 305 follow-up interviews were conducted about the service received from detectives.

Ten criteria were measured in each of the three focus areas. The criteria started with such fundamental issues as neatness, cleanliness and tidiness, through functional layout and signage, to the skills required by police officers in order to render a consistently reliable service to members of the public.
Overall performance

The results, although not surprising, highlight many often overlooked issues which can be simply rectified to present a neater, more user-friendly environment in which the police can offer a more sympathetic and professional service.

Bearing in mind that only 33 stations (out of 121 police stations in Gauteng) were evaluated, Norwood scored the highest in terms of its CSC service, Edenvale for its detective component, and Bedfordview for its victim support facility. De Deur and Sharpeville in the Vaal area scored the lowest (Figure 2).

Stations which could be regarded as consistent in their service delivery since they reflect average scores across the three focus areas are Johannesburg Central, Booyens, Kwa Thema, Diepkloof, Moroka and Vereeniging. Many of the stations scored above average for two of the focus areas but were considerably below in the third.

Some of the stations that scored the lowest in the Community Service Centre did so because of the inadequacy of the facility, for example Yeoville and Meyerton. It must also be noted that the indicators for professionalism and attitude tested in the survey are highly subjective, with expectations and points of reference differing widely for different individuals and communities. People in wealthier or more commercial areas tend to be more demanding of their police station whereas those in former township or principally residential areas, where there are higher levels of unemployment, are less demanding.

In general, most clients leaving the police station had positive views of the police. Figure 3 indicates that 61% of respondents (who had just had dealings with the CSC) said the police were either competent, friendly, effective or efficient. The objective of the SPPS programme is, through further improving service delivery, to convert the views of the remaining 39%. While corruption is the main complaint about the police, this is based on general perceptions rather than actual experience: respondents have most often not had any personal experiences of corruption within the SAPS.

Respondents were also asked whether their impressions of the police had been affected by their visit to the station, and if yes, whether the visit improved or worsened their opinion. Just over half

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**Figure 2: Best and worst performing stations in Gauteng (of the 33 stations evaluated)**

<table>
<thead>
<tr>
<th>Station and detectives</th>
<th>Victim support facility</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Best</td>
<td>74,9</td>
<td>61,4</td>
</tr>
<tr>
<td>Worst</td>
<td>46,5</td>
<td>32,4</td>
</tr>
<tr>
<td>Mean</td>
<td>62,0</td>
<td>47,2</td>
</tr>
</tbody>
</table>
(53%) said their opinion had changed as a result of their visit, and of these, a clear majority (78%) reported an improvement. Just over one fifth (22%) said their opinion had worsened.

**Views on the CSC**

Suggestions on how the Client Service Centre could be made more user-friendly revolved exclusively around the existing indicators about which clients were questioned. These include making available more seating and chairs (43%), more plants (41%) and pictures (21%), and cleanliness and tidiness (39%). Human resource issues were also raised as suggestions, such as training (12%) and making staff available (8%).

Generally the communication skills of members in the CSC were regarded as good to excellent. By comparison, the attitude of police officials, their application of knowledge to the job and telephone etiquette were rated ‘average’. A particularly positive finding was that the length of time taken to deal with customers in the CSC was minimal in most stations.

**Views on detectives**

The follow-up interviews that canvassed opinion on the detectives indicated that generally the attitude of detectives was excellent but that their communication skills were lacking. Of concern is that respondents rated the detectives’ referral to victim support as ‘poor’, and their feedback to victims on the progress with their cases as ‘very poor’. This is very clearly reflected in Figure 4 which shows what victims expected of detectives at the time they were interviewed for this study (in other words, after their initial contact with detectives).

The results are encouraging in the sense that nearly two thirds of victims want information: either on the progress of their case (60%) or on court proceedings (4%). Providing information should be much less complicated than arresting suspects (only 13% expected this) or recovering goods (expected by only 9% of respondents). No doubt the high case loads facing most detectives hampers their ability to provide feedback to victims. Nevertheless, given the clear need expressed in the study, as well as the obvious implications of this aspect of police work for achieving convictions, solutions must be found.

**Improving police service delivery**

Many police officials probably don’t realise that they have a considerable knowledge of criminal procedures with which they are able to, and
should, assist and inform victims. And while SAPS members have become accustomed to the horror of crime that they deal with every day of their lives, many of those who arrive at their Client Service Centres are first-time victims who are shocked and traumatised by their first exposure to crime.

There exists, therefore, great opportunity for police officials to understand the important and valuable roles that they can play in offering a sympathetic and professional first-line service to the public. This is the first step in eliciting a positive response from their clients, rather than the somewhat dissatisfied responses which one is used to hearing.

Many of the indicators for achieving the criteria are matters of police management and discipline which can be easily overlooked. The results of the baseline study have been presented to the SAPS Area Commissioners, station commissioners and partnership teams. It is hoped that by drawing attention to these issues, station managers will be encouraged to address them. The challenge is now out for all 33 stations covered in the study, with their partners’ assistance, to achieve 90–100% in all ten criteria in all three focus areas.

BAC’s role is to assist and advise the partnerships, to provide tools for the station to record their progress, to supply the stations with posters of participation and victim support awareness, and to conduct the re-evaluation.

While the issues of housekeeping, aesthetics and efficiency can be thus addressed, the deeper issues of professionalism, attitude and competence that underlie consistently excellent service provision require comprehensive customer care training for all members working in the CSC. To this end, BAC has entered into a joint proposal with Tshwane University of Technology in Pretoria to conduct a comprehensive customer care awareness programme for 1,155 members across the 33 SPPS police stations, starting this year.

**Figure 4: Respondents’ expectations of detectives at the time they were interviewed**

<table>
<thead>
<tr>
<th>Expectation</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provide an update on case</td>
<td>60</td>
</tr>
<tr>
<td>Suspects should be arrested</td>
<td>13</td>
</tr>
<tr>
<td>Goods should be recovered</td>
<td>9</td>
</tr>
<tr>
<td>Quicker work by detective</td>
<td>5</td>
</tr>
<tr>
<td>Quicker reaction time</td>
<td>3</td>
</tr>
<tr>
<td>Feedback on court proceedings</td>
<td>3</td>
</tr>
<tr>
<td>More effective/better procedures</td>
<td>2</td>
</tr>
<tr>
<td>Sincerity</td>
<td>2</td>
</tr>
<tr>
<td>More info on court proceedings</td>
<td>1</td>
</tr>
<tr>
<td>Objectivity</td>
<td>1</td>
</tr>
<tr>
<td>Trauma counselling</td>
<td>1</td>
</tr>
<tr>
<td>Enough operators to take calls</td>
<td>1</td>
</tr>
</tbody>
</table>
South Africa has one of the highest incarceration rates, ranking fifteenth in the world (Figure 1). One reason for this state of affairs is the country’s crime levels. The crime situation has placed enormous pressure on the criminal justice system, and has led both the public and government to favour harsh measures to deal with crime. In recent years several pieces of legislation have been promulgated such as those pertaining to minimum sentencing and tougher bail conditions. These new laws have resulted in the often indiscriminate use of imprisonment to deal with those accused and guilty of crime.

Is the use of incarceration in this manner the way to deal with crime? The country’s prisons are heavily overburdened and struggle to function optimally. Thousands of people who have been through our prison system are believed to re-offend shortly after their release.1 This situation creates the impression that, rather than rehabilitating offenders, prisons instead facilitate the ‘right of passage’ to a criminal career.

The Department of Correctional Services’ (DCS) draft white paper released in December 2003 recognises that for rehabilitation to work, the challenges of overcrowding, corruption, awaiting trial prisoners, inmates who are terminally ill, and undocumented migrants among others, will need to be overcome.2 But for any programme, including rehabilitation, to be implemented effectively, the prisoner population will need to be significantly reduced. Until this happens, DCS will remain unable to utilise its resources (personnel, accommodation and finances) optimally in pursuit of its policy objectives.

Have early releases worked?
One way of achieving a reduction in prisoner numbers is through early releases. However, past experiences both locally and in other countries such as in Nigeria and Malawi, indicate that early releases do not necessarily provide a lasting solution.3 This is particularly true if the police continue to make numerous arrests for petty offences like urinating in public, or if the courts continue to send people to prison at the same rate as they did when the early releases were implemented.

During 1998, a presidential taskforce on prison overcrowding in South Africa recommended the early release of certain categories of prisoners. Between 1998 and 2000 over 8,000 prisoners were released but the relief was short-lived, with prisons...
soon as overcrowded as before. In Malawi, a study conducted by paralegals recommended the closure of the juvenile section in Zomba prison. Yet within two months the section had been reopened and the population remained more or less the same as before the facility was closed.4

The early release of prisoners, while potentially a good short-term measure, does not seem to solve the problem of overcrowding. Rather, it may actually foster feelings among the public that the justice system is treating offenders too leniently, despite the fact that those released pose no threat to the society and have often committed minor offences. Admittedly in South Africa, the public were justified in this reaction considering that during the first batch of early releases, an administrative glitch resulted in a few serious and violent offenders being let out along with the majority who had committed minor offences.5

Should prison sentences be so popular?
The situation in South Africa necessitates asking the question: does imprisonment work? And should it be the main form of punishment handed down by the judiciary? Given our apparently high recidivism rate, it could be argued that if less offenders are sent to jail, the chances of them reoffending as a result of their experiences in prison will reduce – which ultimately means lower prisoner numbers. And more careful application of prison sentences will mean that DCS will have more time and resources to ensure safe and humane detention, and increased capacity to rehabilitate inmates. It is only under these conditions that one can realistically think of rehabilitation.

It does not, however, appear that all criminal justice agencies are giving equal attention to these questions. Instead, indications are that prison sentences are becoming more popular and – judging by the length of the sentences handed down between 1995 and 2002 – a more punitive approach now prevails (Table 1). It is of course possible that longer sentences are being handed down because criminals have become more violent since 1995, or because there are more serial offenders now than before. But the extent of the increase in sentences of ten years or more reflected in Table 1 suggests that other more significant factors are at work.
Table 1: Change in length of prison sentences, 1995-2002

<table>
<thead>
<tr>
<th>Length of sentence</th>
<th>1995</th>
<th>2002</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-10 years</td>
<td>61,181</td>
<td>68,418</td>
<td>11%</td>
</tr>
<tr>
<td>10-15 years</td>
<td>6,168</td>
<td>18,956</td>
<td>67%</td>
</tr>
<tr>
<td>15-20 years</td>
<td>2,660</td>
<td>8,355</td>
<td>68%</td>
</tr>
<tr>
<td>+ 20 years</td>
<td>1,885</td>
<td>7,885</td>
<td>76%</td>
</tr>
</tbody>
</table>

Source: Office of the Inspecting Judge

Although the number of prisoners serving short prison sentences (less than ten years) has also increased, what is concerning is the large number of prisoners in that category (Table 1). This suggests that a significant number of offenders (who committed less serious crimes) could have been given alternative sentences instead of being sent to prison. For example, in 1999 almost 70% of prisoners in this category were serving sentences of less than five years, with the largest number (49%) serving less than six months.

Even more alarming is the increase in the number of prisoners serving long sentences. This trend, although not a direct result of the promulgation of the minimum sentencing legislation, is likely to continue with the existence of this piece of legislation. Longer sentences will also probably result from the hiking of the sentencing jurisdiction of both district and regional courts. Together these courts hear 94% of all criminal cases – most of which are in the district courts. The sentencing jurisdiction of the district courts has been increased from one to two years, while that of the regional courts has risen from ten to 15 years. Both minimum sentencing and the increased sentencing jurisdiction could hamper measures to reduce prisoner numbers, such as early release and increasing the available accommodation.

Alternatives to imprisonment

Both the police and the courts have a number of alternatives other than imprisonment that can be applied when dealing with offenders. The police, for example, have some powers that enable them to grant bail. Where the courts are concerned, the accused can be discharged with a reprimand, be granted affordable bail or have sentences postponed or suspended with or without conditions. Such cases would include minor assault, very minor theft, and urinating and drinking in public. Where conditions are attached, these could include compensation to the victim in money or service, community service, or submission to treatment. There is also the option of periodical imprisonment. For example, a person arrested on drinking and driving charges, can be compelled to spend weekends in prison instead of awaiting trial for months.

In 2003, the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) handled the diversion of 17,724 offenders. Another 6,000 were handled through other institutions. In addition, the latest statistics from the National Prosecution Authority (NPA) show that over 50,000 offenders have been diverted to date. This is further testimony that imprisonment is not the only option for dealing with offending behaviour. It also sends a message to other criminal justice agencies to reinforce the efforts of the prosecution service and non-governmental service providers to apply non-custodial options.

Of course these measures are not, and should not, be applied without careful consideration. There are factors to be taken into account such as the nature of the offence, whether it is the first offence, and the willingness of the offender to reform and participate in rehabilitative programmes.

But most importantly, there must be incentives for police and prosecutors to apply measures other than arrests and jail sentences. Such incentives should not be provided on an ad hoc basis, but should be built in to the official performance indicators of the department concerned. In order to talk about a truly integrated justice system that has a sustainable impact, it is imperative that performance indicators of the police, courts and prisons are aligned to achieve common goals. Currently this does not appear to be the case, with the police aiming to make as many arrests as...
possible and the courts sending more and more people to prison. This makes it virtually impossible for DCS to achieve its goal of rehabilitating offenders.

DCS takes up the challenge

“At least 95% of all prisoners will be released back into the community to continue with their lives. Through some miracle, they are expected to fit in as if nothing has happened and to continue with their lives as constructive citizens contributing to the common good.”

It is clear from the Department of Correctional Services’ recent white paper that the need for a paradigm shift has been recognised: “We believe that rehabilitation and the prevention of recidivism are best achieved through correction and development as opposed to punishment and treatment.” The Department’s view is that rehabilitation requires correcting the offending behaviour, human development and the promotion of social responsibility and positive social values.

The white paper goes beyond conceptualising the process, with a focus on the following aspects of corrections:

- correction of offending behaviour;
- development of the offender;
- security (for inmates and correctional officials);
- care of the offender (health, physical and psychological needs);
- facilities;
- after care (needs in terms of support after release, ie. reintegration).

While DCS has clearly taken up the challenge, rehabilitation is not just about offenders and changing their behaviour. Upon completion of their sentences and programmes, offenders return home. What happens to them then? Another crucial part of rehabilitation is the education of communities to which offenders must return. The public needs information on how prisons work, how rehabilitation works, and the fact that offenders have served their sentences under programmes that prepared them for their return to society. This will go a long way in preventing stigmatisation and reducing the chances that rehabilitated offenders will lose hope and return to crime.

Endnotes
4 Ibid.
8 Ibid.
11 Interview with Deon Ruikers, NICRO Cape Town, 16 February 2004.
12 Office of the Inspecting Judge, op cit.
14 L Muntingh, op cit, p 6.
15 Draft white paper, op cit.
16 Ibid.