



ASSESSING THE CRIME FIGHTERS

The ability of the criminal justice system to solve and prosecute crime

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INTRODUCTION

The South African criminal justice system is in a state of crisis. The awaiting trial population is at an historic high. The prosecution service is taking fewer cases to trial than at any time since 1949. Some serious violent crimes are solved so rarely that the perpetrators of these crimes have less than a one in fifty chance of being caught and punished.

This paper looks at a number of the criminal justice system's performance indicators to identify its crucial weaknesses. Most of the analysis will be devoted to the last three years (1996-98) for which comprehensive statistics are available for the whole country. However, a brief overview of selected historical trends is given as these provide valuable insight into some of the current weaknesses of the criminal justice system.

In South Africa, the police and the prosecution service are two distinct and separate institutions. Yet, they must rely on each other if they are to succeed in their fight against crime. A perfectly investigated crime will not lead to a conviction if its prosecution is flawed. Equally, a flawless prosecution will lead to an acquittal of the accused if the police has not uncovered sufficient evidence to allow the prosecution to prove its case beyond reasonable doubt. In essence, one weak link in the criminal justice process is all that is required for it to fail.

There are a number of weak links in South Africa's criminal justice system:

- Too many cases are withdrawn before they go to trial because of crime victims' lack of understanding of and faith in the criminal justice process, and inordinate delays in the country's criminal courts.
- Too many cases go undetected because of the public's general unwillingness to assist the police in its investigations, and to testify for the prosecution in criminal trials. Moreover, many cases go undetected because of the police's weak criminal investigation capabilities, especially in respect of forensic investigations.
- Too few cases are being taken on by the prosecution service because of a lack of experienced and adequately trained prosecutors.

HISTORICAL OVERVIEW

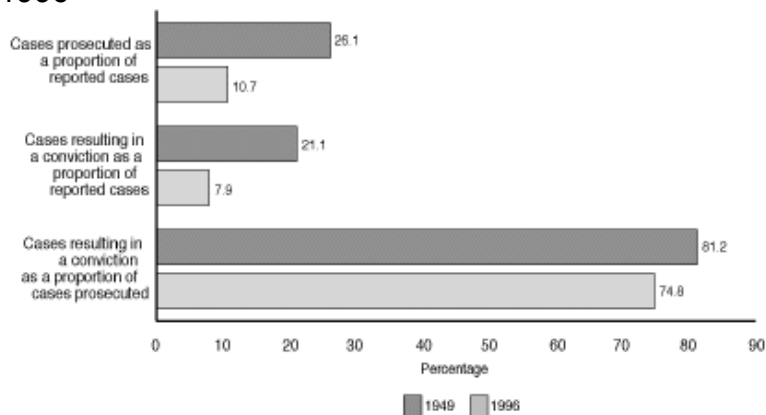
The changing nature of the kinds of crime which have been prosecuted over the past fifty years sheds some light on the current weaknesses in the criminal justice system.¹ A cause for declining prosecution and conviction rates is to be found in the 1970s. During this decade, the state increasingly prosecuted people suspected of having committed violent and property crimes, while the petty offences that were easy to solve no longer seemed serious enough to warrant prosecution.

Declining prosecution and conviction levels

In 1949, some 1 397 000 crimes were reported to the South African Police (SAP). These resulted in 363 903 prosecutions and 295 329 convictions.² Seen as a proportion of reported crimes, 26% of cases were prosecuted and 21% ended in the conviction of the perpetrators. Of the just under 364 000 cases prosecuted, 81% resulted in convictions.

In 1996, some 2 733 363 crimes were reported to the South African Police Service (SAPS). This figure is not strictly comparable with that of 1949, however. Fifty years ago, a high proportion of the offences reported would be considered petty today and go largely unreported (and would therefore not be prosecuted), such as drunkenness or disturbing the peace. Moreover, apartheid-related crimes that were prevalent in 1949, no longer exist.³ Nevertheless, of the reported crimes in 1996, some 291 842 resulted in prosecutions, and 218 394 in convictions.⁴ Thus, as a proportion of reported crimes, 10.7% of cases were prosecuted and 7.9% ended in the conviction of the perpetrators. Three-quarters (74.8%) of the prosecuted cases resulted in convictions (graph 1).

Graph 1: Proportion of cases prosecuted and those resulting in a conviction, 1949 versus 1996



While the average criminal whose actions were reported to the police stood a one in four chance of being prosecuted in 1949, his odds improved to one in ten in 1996. The same criminal stood a one in five chance of being convicted in 1949. In 1996, his chance of being found guilty by a court had dropped to almost one in thirteen.

During the last five decades, the proportion of cases prosecuted successfully (those resulting in convictions) has been consistently high — between 71% and 82% (graph 2).⁵ This is not surprising as the prosecution service elects which cases to prosecute. Cases are usually prosecuted only where there is a reasonable prospect of obtaining a conviction — that is, cases where the evidence is substantially in favour of the prosecution's case. Unlike the police, therefore, which has to investigate all the cases reported to it, the prosecution service accepts cases only if they have been fully investigated, and there is a case to be made against an accused.

Graph 2: Convictions as a proportion of cases prosecuted, 1949 - 1995/96 (excluding 1970/71 to 1976/77)



Changing nature of crimes prosecuted

There has been a marked change in the nature of the crimes reported and prosecuted over the last fifty years. Statistics South Africa categorised crimes into one of the following six classes for statistical purposes:

- Class A: crimes against 'government authority and good order'. These are crimes such as treason, terrorism, public violence, infringements of the Arms and Ammunitions Act, escaping from lawful custody, perjury and infringements of income tax laws.
- Class B: crimes against 'communal life', such as rape, indecent assault, drug-related offences, cruelty to and neglect of children, prostitution and bigamy.
- Class C: 'personal relations' crimes, such as murder, culpable homicide, assault, defamation and kidnapping.
- Class D: property crimes, such as robbery, burglary, theft, fraud, arson and malicious injury to property.
- Class E: 'economic affairs' crimes. This category primarily covers statutory crimes under the Companies Act, and the illegal possession of and trafficking in gold and precious stones.
- Class F: 'social affairs' crimes. This includes serious road traffic offences such as driving while under the influence of alcohol, and reckless or negligent driving.

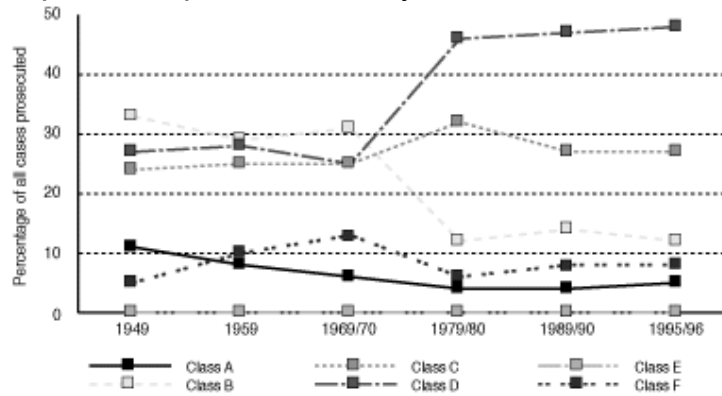
The number of prosecutions of crimes against 'government authority and good order' and against 'communal life', as a proportion of the total number of prosecutions, more than halved between 1949 and 1995/96. The number of prosecutions of property-related crimes as a proportion of all prosecutions increased significantly from 27% in 1949 to 48% in 1995/96.

In 1949, crimes against 'communal life' comprised the largest proportion of all prosecuted crime categories. In the late 1970s, the number of 'communal life' crimes prosecuted as a proportion of other crime categories shifted to third place, with property and 'personal relations' crimes shifting to first and second place respectively (graph 3 and table 1).

Table 1: Number of prosecutions, by class of offence, 1949-1995/96

	1949	1959	1969/70	1979/80	1989/90	1995/96
Class A	39 531	41 573	38 694	19 961	18 126	13 538
	-11%	-8%	-6%	-4%	-4%	-5%
Class B	120 317	138 635	185 590	55 382	64 035	34 905
	-33%	-29%	-31%	-12%	-14%	-12%
Class C	85 904	121 481	156 759	153 344	124 498	78 015
	-24%	-25%	-25%	-32%	-27%	-27%
Class D	99 540	139 981	153 691	217 587	209 747	141 516

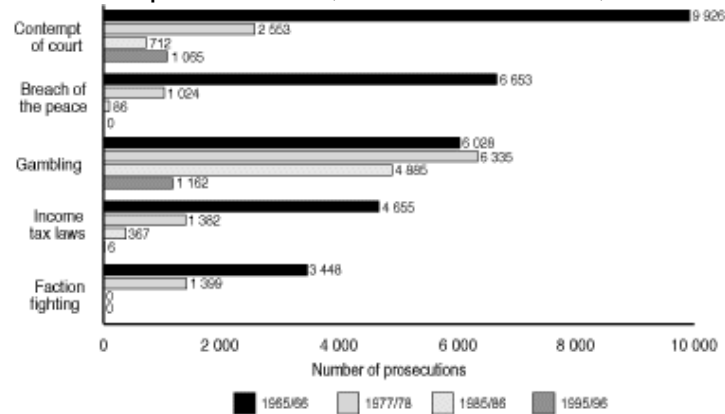
Graph 3: Proportion of prosecutions, by class of offence, 1949 - 1995/96



A reason for the shift in the number of prosecutions between crime categories has been a change in public morals and values (as reflected in the crimes being prosecuted) and police priorities over the last fifty years. There were, for example, 78 635 prosecutions for 'drunkenness' in 1965/66. The prosecutions for drunkenness comprised 15% of all prosecutions (or 58% of all 'class B' prosecutions), during 1965/66. Moreover, of all coloured people who were convicted between 1958 and 1962, a massive 44% were convicted of drunkenness. The proportion for other racial groups was 21% for whites, 12% for blacks, and 11% for Indians.⁶ After the mid-1970s, prosecutions for drunkenness were no longer considered serious enough to be officially recorded.

Other offences which have shown a marked decline in prosecution rates include 'contempt of court and defeating the end of justice', 'breach of the peace and riotous behaviour', gambling, the infringement of income tax laws, and faction fighting (graph 4).

Graph 4: Number of prosecutions, selected offences, 1965/66 - 1995/96



The shift in the relative prevalence of certain offence types partly explains the decline in the number of convictions and prosecutions as a proportion of reported cases. Petty offences such as drunkenness, disturbing the peace and gambling (especially the street side variety prevalent in South Africa in the 1960s and 1970s), were generally uncovered by the police themselves. Consequently, the prosecution of such cases was facilitated by a ready availability of reliable and competent witnesses for the prosecution. Moreover, persons charged with relatively petty offences tend to plead guilty to the charge against them (as the punishment is likely to be lenient), or pay an admission of guilt fine. For example, in 1965/66, some 95% of persons charged with drunkenness and 92% charged with gambling, were convicted.

Property crimes, by comparison, are more difficult to solve and prosecute successfully. No witness is usually present when, for example, a theft or housebreaking occurs, so that the police has to rely on circumstantial or forensic evidence to build up a convincing case. Persons charged with property-related crimes (except if the property involved is of a relatively

low value as is generally the case in shoplifting) are also less inclined to admit to the charge against them as a conviction can lead to a stiff fine and even imprisonment.

STAGES IN THE CRIMINAL JUSTICE PROCESS

Since 1996, the Crime Information Analysis Centre (CIAC) of the SAPS has published detailed statistics covering the various stages of a criminal case's journey through the criminal justice system. The statistics provide a bird's eye view of this process from the time a crime is reported or uncovered by the police, to when it is finalised with the conviction or acquittal of the person accused of committing the crime (diagram 1).

Diagram 1: Bird's eye view of the criminal justice process



Properly analysed, the statistics enable an evaluation of the criminal justice system's ability to investigate and prosecute crimes successfully. Moreover, they permit the identification of weaknesses in the criminal justice process. The categorisation of statistics and an explanation of their meaning are provided below.⁷

Reported cases

Reported cases refer to the number of complaints or crimes reported to the police. It includes crimes not reported by the public, but uncovered by the police themselves, such as cases of drunken driving detected at a police roadblock.

This category represents the number of crimes reported or uncovered, and not the number of suspects involved. Thus, if one suspect is alleged to have committed two separate offences, then each offence is registered separately under its crime type category. If, for example, a suspect robs a woman of her handbag by threatening her with an unlicensed firearm, then this would be registered separately by the police as a 'robbery' and 'possession of an unlicensed firearm'.

Should more than one person be involved in committing the same offence, however, then this is registered as a single 'reported' incidence. For example, three persons murdering a fourth is registered as one reported incident, as only one murder has occurred.

Withdrawn cases

Where a suspect has not been charged, the reported case against him may be closed or 'withdrawn' by the police themselves or by a public prosecutor.

This frequently occurs with offences committed in a domestic setting. A typical example is where a husband assaults his wife on a Saturday night. She goes to the police, makes a statement, and an assault case is opened against her husband. Such cases are often not considered to be overly serious by police officials working at charge office level, especially where the complainant sustains no visible physical injuries. As a result, and because the

police often have their hands full on weekend nights dealing with other serious crimes, the husband is not arrested and formally charged. As the weekend comes to an end, the husband apologises to his wife, who then goes back to the police on Monday morning asking that the case against her husband should be withdrawn. The police usually comply with such a request.⁸

A case may also be withdrawn by the prosecution service if there is insufficient evidence to warrant a prosecution.⁹ For example, person X (the complainant) goes to the police and makes a statement alleging that Y (the suspect) stabbed him in his arm with a sharp object earlier in the day. An investigating officer is assigned to the case who takes X to the district surgeon's office for a medical examination. The district surgeon makes a statement to the effect that he can find no injury consistent with a stab wound on X's arm. A statement is also taken from Y who denies the allegation against him. The investigating officer places the three statements in a docket and sends it to the local prosecutors' office for a directive whether to conduct further investigations, charge Y, or close the investigation because of a lack of evidence.

It is likely, given X and Y's conflicting statements, and the fact that the district surgeon's statement contradicts X's versions of events, that the prosecution service will decline to prosecute the case, with the result that it is withdrawn.

The prosecution service usually declines to prosecute a matter if there is insufficient evidence against a suspect for there to be a reasonable prospect of obtaining a conviction. In less serious matters, such as the domestic violence case discussed above, the prosecution service will generally also decline to prosecute a matter at the request of the complainant.

Undetected cases

There are two types of undetected cases. The first consists of cases where the suspect is unknown, and where there is insufficient evidence to enable the police to identify a suspect. A typical example is where a person snatches a handbag from a woman's arm as he runs past her in a crowded street. The woman is unable to get a glimpse of the suspect's face, and can give only a vague description of the suspect to the police (e.g. he ran fast, was of average build and wore a dark T-shirt). If no new evidence comes to light within a few days of the reporting of such a case, the police file it away and mark it as 'undetected'.

Undetected case dockets are usually perused by the police on a yearly basis, especially in serious cases such as murder, to ascertain whether new evidence has come to light in the interim which would warrant the reopening of the case.

The second type of undetected case is where the suspect is known and a warrant for his arrest has been issued, but his whereabouts are unknown, and he has not been charged.

Unfounded cases

Cases are registered as 'unfounded' where no evidence exists that a crime has actually been committed, or it is established that the reported crime never occurred.

For example, a farmer reports a case of stocktheft, but subsequently finds that his livestock had simply gone astray. Alternatively, person X reports that person Y stole his money. It then transpires that X lent Y the money as part of a business deal. What was initially a theft case, and therefore a criminal matter, becomes a civil dispute over a breach of contract. The police would close their theft case marking it 'unfounded'.

Cases to court

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

Once a person has been charged, the case can only be finalised through the office of the prosecution service. That is, the case against a person who has been formally charged with a

crime may only be withdrawn by the prosecution service and not by the police.

A suspect can be charged under a variety of circumstances. A suspect can be caught in the act of committing a crime, and arrested by the police at the scene of the crime. A suspect can also be arrested on the basis that the police has a reasonable suspicion that he has committed a crime (e.g. driving a motor vehicle that has been reported stolen, or a complaint is received from a member of the public that he has just been robbed by the suspect). In both cases, the suspect would be arrested by the police and taken to a police station to be formally charged.

If the alleged crime is a serious one (such as robbery or motor vehicle theft), the suspect will be kept in custody and taken before a court within 48 hours. At the court, a bail application will be heard, where the court decides whether the accused should be released on bail or kept in custody pending the finalisation of his trial.

In some cases the speedy arrest and charging of a suspect after the commission of an offence are not possible. This is usually because there is insufficient evidence against a suspect to warrant his arrest. Especially in commercial crimes where the police's investigations are lengthy, the suspect or suspects will be charged only after the police have built up a strong case. In these cases, the police usually build up a case against a suspect in consultation with the prosecution service. Once the investigating officer on the case or the prosecution service is satisfied that there is sufficient evidence against a suspect to warrant a prosecution, an application will be made to a magistrate or judge for a warrant of arrest to be issued against the suspect.

Cases withdrawn in court

Cases may only be 'withdrawn in court' by the prosecution service. This happens after the accused has been charged, but before he pleads to the charge.

There can be a variety of reasons why the prosecution service might withdraw the charge against an accused. As with the example of the wife who is assaulted by her husband (see 'withdrawn' section above), the complainant in a case might approach the prosecutor and inform him that he no longer wants the prosecution to go ahead. Where the case involves a petty offence such as trespassing, or where the complainant is the spouse of the accused, the prosecution will usually comply with such a request, and withdraw the charge.¹⁰ In more serious cases, the prosecution is reluctant to do so.

A further common reason for the withdrawal of charges against an accused is where the court (i.e. a magistrate or judge) refuses the prosecution any further postponements in respect of a case on the court roll. The Constitution grants every accused the right to go on trial without any unreasonable delay.¹¹ Suspects are often charged before all the investigations pertaining to their cases have been completed by the police. This often happens in serious cases where an accused is arrested at the scene of a crime or shortly after a crime is committed. While the accused will be brought before court within 48 hours, the police often require weeks or even months to complete all their investigations.¹²

A multiple shooting incident in a busy shopping centre, for example, may involve dozens of witnesses, the collection and analysis of ballistic and fingerprint-related evidence (if it is unclear who was shot by whom with which gun), and evidence from the state pathologist to show which bullet from which gun killed the deceased. Unless the prosecution is certain of all the relevant facts of the case, it is unable to formulate an intelligible charge sheet to which an accused would have to plead.

Courts will grant postponements to the prosecution only for a reasonable time to allow the police to finalise their investigations. Especially in less serious cases, lengthy and frequent postponements are rarely granted. For example, prosecutors require a blood-alcohol analysis report from the Department of Health's forensic chemical laboratories for the successful prosecution of persons charged with driving while under the influence of alcohol. It takes about six weeks for such a report to be finalised, and the courts are generally prepared to postpone drunken driving cases for such a length of time. However, over busier periods, such

as at the end of the year, when there are many police road blocks and the number of people charged with drunken driving increases, the finalisation of these reports can take up to three months. Most courts are unlikely to postpone drunken driving cases for such a long time.

Once a court has refused a further postponement of a case, the prosecution has two choices. Firstly, the prosecution can withdraw the case against the accused. As the accused has not pleaded to the charge, such a withdrawal does not amount to an acquittal, and the prosecution can reinstate the same charge at a later date once all the investigations have been completed.¹³

Secondly, the prosecution can formally put the charge to the accused. The court will then ask the accused to plead to the charge. However, once an accused has pleaded to a charge, it cannot be withdrawn. Should the prosecution realise that it has insufficient evidence to secure a conviction, after the accused has pleaded to the charge, it can only stop the prosecution in respect of that charge. In such an event, the court will acquit the accused.¹⁴ The prosecution is then unable to charge the accused again in respect of the same offence.

Consequently, in instances where a court refuses to postpone a case, the prosecution is likely to withdraw the charge against the accused. By doing so, the prosecution can reinstate the charge against the accused at a later date when it is satisfied that it has sufficient evidence against him. Once a case is reinstated against an accused, it is again registered under the 'cases to court' section (see above). It is likely, therefore, that some cases involving the same crimes and accused are registered under this category more than once.

Cases settled otherwise

Cases 'settled otherwise' are primarily those that have been sent 'to court' (see above), but where the accused has failed to attend court on the date he has been officially instructed to do so either by the police or the court. As a result, a warrant for the accused's arrest is issued by the court. Once the accused is found and rearrested, such a case is again registered under the 'cases to court' category.

At any stage in the criminal proceedings, a court may make a finding that an accused is not capable of understanding the court proceedings as a result of mental illness or incapacity and a proper defence can thus not be mounted. The court may declare such an accused as a state president's patient, who is then indefinitely detained in a mental hospital or a prison. Such cases are marked as 'settled otherwise'.¹⁵

Accused who are certified as state president's patients after they have pleaded to their charge, are not entitled to be acquitted or convicted of the charge against them. Moreover, if a court makes such a declaration after the accused has been convicted of the offence with which he was charged, but before sentence is passed, the court shall set the conviction aside.

Should a finding be made at a later date that the accused's mental condition has improved, and that he is capable of understanding the court proceedings, the accused may be prosecuted and tried for the original offence. When this occurs, the case is again registered as a 'case to court' (see above).

Not guilty

This category refers to cases where courts acquit the accused of the offences for which they were prosecuted.

As with 'reported cases' (see above), this category represents the number of cases ending in an acquittal, and not the number of accused who are acquitted. Thus, if one suspect is prosecuted for committing two separate offences, and he is acquitted of both of them, each offence is registered separately under its crime category. However, should two persons be prosecuted for committing the same offence (e.g. murdering the same person, or raping the same woman) and both of them are acquitted, then this is registered as one acquittal.

Guilty

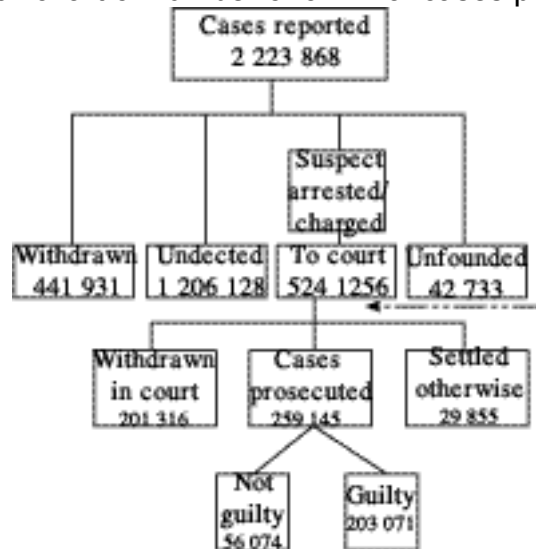
This category represents cases where the courts convict the accused of the offences for which they were prosecuted. As with the 'not guilty' category, the number of cases resulting in a conviction are registered, and not the number of accused who have been convicted. The category also includes cases where the accused pay admission of guilt fines that have been set by the prosecution service. This can be done for relatively minor offences only, such as common assault, malicious injury to property, negligent driving, and the negligent loss of a firearm.¹⁶

MEASURING THE PERFORMANCE OF THE CRIMINAL JUSTICE SYSTEM

In using data documented according to the above categories, two important indicators can be identified as yardsticks of the performance of any criminal justice system. The first is the number of cases that the police solve sufficiently well for the prosecution to decide to take on the case in court. The second is the number of cases that result in a successful prosecution. The South African criminal justice system is performing poorly on the basis of the first indicator, but well on the second.

In 1998, some 2 223 868 crimes were reported to the police.¹⁷ Of these, over one million went 'undetected', and just under half a million were withdrawn. Of the 524 125 cases that were sent to court, 203 071 ended in the conviction of the accused (diagram 2).¹⁸

Diagram 2: Flowchart of number of criminal cases processed in 1998



Cases sent to court

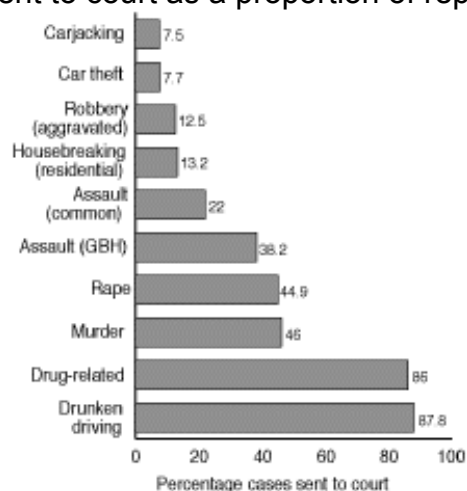
When measured as a proportion of the total number of cases reported in South Africa, a minority end up with the prosecution service. There is a considerable discrepancy, however, between different types of crimes.

With crimes where the perpetrators are likely to be known to their victim, or crimes that are more likely to be committed in the presence of eyewitnesses who know their identity, such as murder, rape and assault, as well as crimes reliant on police action for their detection, such as drug-related crimes, the police's ability to send the case to court for possible prosecution is high.¹⁹ However, crimes where the perpetrators are likely to be unknown to their victims, such as housebreaking, robbery, car theft and carjacking, are less likely to be solved by the police and sent to court.

Of all cases of murder reported during 1998, some 46% were sent to court or to a prosecutor for a decision whether to prosecute. The proportion for most other serious crimes was lower. For rape it was 44.9%, assault with the intent to commit grievous bodily harm 38.2%, common assault 22%, residential housebreaking 13.2%, robbery with aggravating circumstances 12.5%, car theft 7.7%, and carjacking 7.5%. For crimes that are largely

detected by the police themselves, such as drug-related crime (86%), and drunken driving cases (87.8%), a higher proportion of cases were sent to court (graph 5).

Graph 5: Cases sent to court as a proportion of reported cases, 1998



Withdrawals

One out of five cases reported to the police is withdrawn before anyone is formally charged. Over half of all common assault, and over a third of all serious assault charges are withdrawn (graph 6). As the 433 000 assault cases reported during 1998 make up one-fifth of the 33 most serious and common offences reported during 1998, considerable police resources are wasted in conducting investigations in respect of assault cases that end up being withdrawn.

No empirical research has been conducted to show why so many assault cases are withdrawn. However, given the nature of the offence, it is likely that most assault victims know their assailants fairly well. Many assaults happen in a domestic environment (between husband and wife or intimate partners), a social environment (between acquaintances in a bar or shebeen), and in a working environment (between employer and employee, or between colleagues).

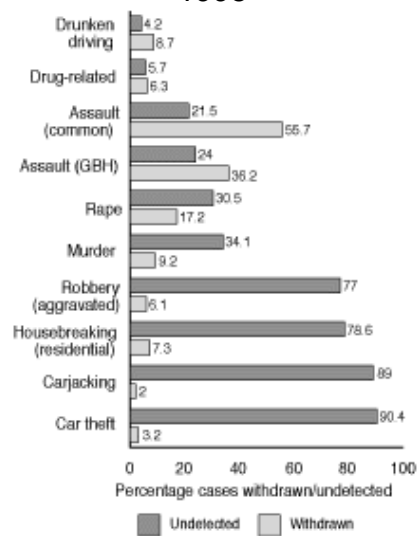
Many assault victims therefore continue to interact or live with their assailants after the assault has occurred. Many victims ask the police to discontinue with a case after they have been reconciled with their assailant. Moreover, many complainants are intimidated into withdrawing the case against their assailant, especially in a domestic environment. Some feel 'trapped' in an abusive relationship because of their dependence on partners for food, shelter and money.²⁰

To counter the high number of withdrawals, police officials at charge office level should be trained to assist assault victims. Such victims should be informed of the implications of opening a criminal case. They should understand that they might be asked to go to court to testify against the person who assaulted them, and that the latter might have to pay a fine or might even be imprisoned, should he be convicted.²¹ If the assault in question is a minor one, victims should be informed of the alternatives to laying a criminal charge, such as contacting a social worker or a counselor. Victims who have opened an assault case against someone should be discouraged from withdrawing such a case. Police officers should make sure that such victims are not being intimidated into withdrawing their case, and assist them (e.g. referring them to a victims' support centre) in pursuing their case to the end.

Police detection

About half of all cases reported to the police are not detected. In 1998, more than 75% of reported car theft, carjacking, residential housebreaking and serious robbery cases were closed as 'undetected' (graph 6).

Graph 6: Cases withdrawn and undetected as a proportion of reported cases, 1998

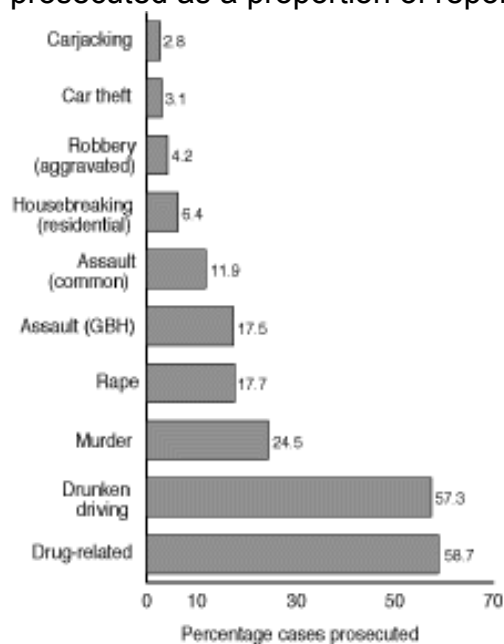


The detection rate is low for cases where the perpetrator is not known to the victim, and where there are often no eyewitnesses to the crime. To solve such cases the police consequently have to rely primarily on either forensic evidence (such as fingerprints), or circumstantial evidence (such as linking a suspect to a series of housebreakings that all show a similar *modus operandi*). The fact that the detection rate for these kinds of crimes is low, tends to indicate that the police's forensic and criminal investigation capabilities are weak.²²

Cases prosecuted

The number of cases where the prosecution service decided to institute a prosecution, as a proportion of the number of reported cases, is low.²³ In 1998, it was 24.5% for murder, about 18% for rape and for assault with the intent to commit grievous bodily harm, 11.9% for common assault, 6.4% for residential housebreaking, 4.2% for robbery with aggravating circumstances, and around 3% for car theft and carjacking. However, for crimes heavily dependent on police action for their detection, the proportion of cases prosecuted was much higher. For drunken driving and for drug-related offences it was over 57% (graph 7).

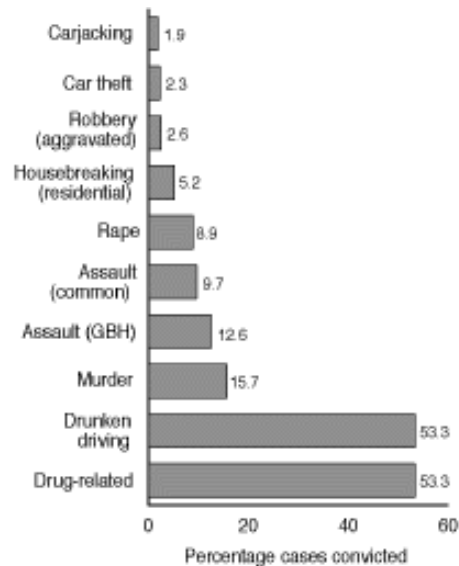
Graph 7: Cases prosecuted as a proportion of reported cases, 1998



Successful prosecutions

The number of cases that resulted in a conviction, as a proportion of the number of reported cases, is very low. In 1998, it ranged from just over 50% for drug-related offences, to 15.7% for murder, 8.9% for rape, and 1.9% for carjacking (graph 8). On average, therefore, only one out of every six and a half reported murders end in the conviction of the perpetrator. For rape the comparable ratio is one out of 11, for carjacking one out of 53.

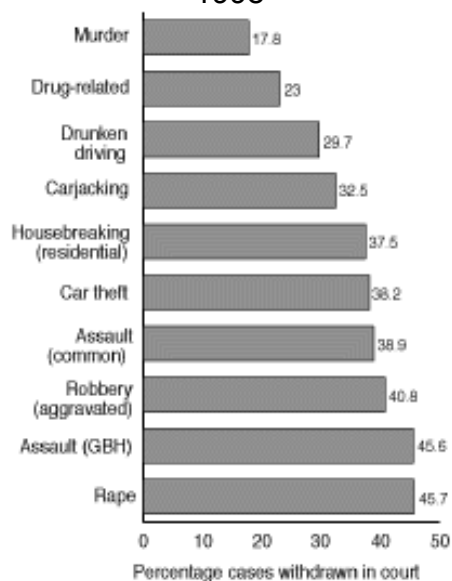
Graph 8: Cases resulting in a conviction as a proportion of reported cases, 1998



Cases withdrawn in court

A high number of cases are withdrawn in court. This is not surprising in cases where the victim and the offender are known, or even related to each other (and where the victim might decline to testify against the accused), and in cases where the trial might be unreasonably delayed due to outstanding investigations (e.g. a district surgeon's report). Thus, as a proportion of the number of cases sent to court by the police, about 45% of rape and serious assault cases were withdrawn in court in 1998 (graph 9).

Graph 9: Cases withdrawn in court as a proportion of cases sent to court, 1998



More worrying, however, is the fact that about 40% of all residential housebreaking, serious robbery and car theft cases that were sent to court in 1998, were withdrawn by the prosecution service. It is unlikely that, in the case of these crimes, the victims are the reason for the high number of withdrawals.

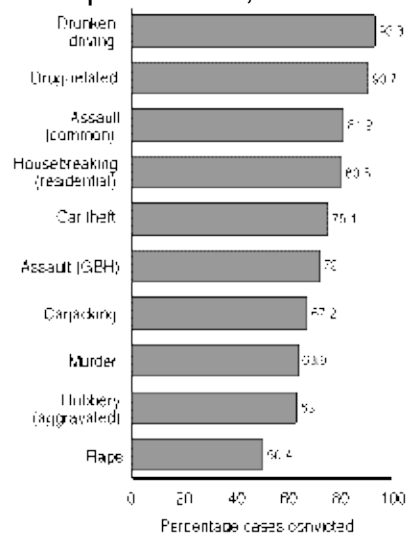
The more likely reasons are inordinate delays in the investigation of these crimes and the failure of witnesses to testify in court. The latter might be because witnesses are intimidated into not attending court by the criminals they are supposed to testify against. Many burglaries, robberies and car thefts are committed by crime syndicates with members who would not hesitate to intimidate those who might testify against them. Moreover, some witnesses might have no faith in the criminal justice system and, for this reason, elect not to testify.²⁴

Conviction rate

Once the prosecution service decides to institute a prosecution, the performance of the criminal justice system improves. On average, of all crimes that are prosecuted, some three-quarters result in a conviction of the accused person. There is a considerable variation between crime types, however. During 1998, over 80% of residential housebreaking prosecutions and 75% of car theft prosecutions resulted in convictions. Below the average were carjacking (67.2%), murder (63.9%), robbery with aggravating circumstances (63%) and rape (50.4%).

The highest conviction rates are to be found for crimes where police officers are more likely to be the prosecution's main witnesses. Thus, for drug-related crimes the conviction rate was 90.7%, and for drunken driving offences 93.3% (graph 10).

Graph 10: Cases resulting in a conviction as a proportion of cases prosecuted, 1998

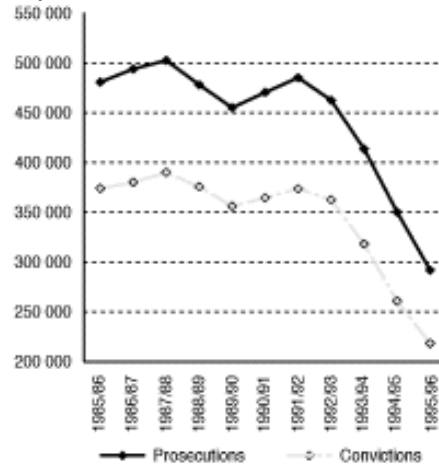


There is an above average chance that accused persons will be punished for their crimes once they have made the journey through most of the criminal justice system, and the prosecution service decides to prosecute them. This is partly to be expected as the prosecution service — in contrast to the police — take on cases only where there is ‘a reasonable prospect of obtaining a conviction’.

Declining number of prosecutions and convictions

Despite the relative success of the prosecution service, its weakness lies in the fact that it is taking on fewer and fewer cases. While the number of reported crimes have increased considerably over the last decade, the number of cases taken on by the prosecution service have declined over the same period. In 1985/86, some 480 605 prosecutions (and 373 980 convictions) took place. In 1995/96, only 291 842 prosecutions and 218 394 convictions occurred²⁵ (graph 11).

Graph 11: Number of prosecutions and convictions, 1985/86 - 1995/96



Moreover, the number of cases taken on by the prosecution service since 1991/92, have declined consistently from one year to the next. Fewer people were prosecuted in 1995/96 than in 1949, or in any of the intervening years.

Because of a lack of experienced staff, the prosecution service is unable to deal with all the cases referred to it by the police. Since 1987, the number of prosecutors has increased from 1 019 to 1 770, thus by 74%. Over a similar period (1987-98), the reporting of many serious crimes more than doubled. Serious assault rose by 95%, murder by 153%, rape by 172%, and robbery by 225%. In 1987, there was one prosecutor for every 45 robberies reported during a year, on average. In 1998, there was one prosecutor for every 85 reported robberies.²⁶

Between 1994 and 1998, some 546 prosecutors resigned. The high personnel turnover has meant a decline in the experience level of the average prosecutor. In 1997 (the latest period for which figures are available), the average experience level of prosecutors was three and a half years. Experience levels varied from province to province. In the Western Cape, for example, it was a mere six months.²⁷

A rapid turnover of staff undermines the professional capacity of the prosecution service. Prosecuting is a practically oriented profession. It requires the ability to apply legal theory to the actual cases before court, and to present witnesses and various forms of evidence in such a manner that a convincing case can be built up. Many of these skills cannot be easily taught and are acquired and perfected through practice and experience.

Little change since 1996

Between 1996 and 1998 (the only period for which complete annual figures are available for the whole of South Africa, including the previous homeland areas), the police's ability to solve cases and send them to court has declined marginally.

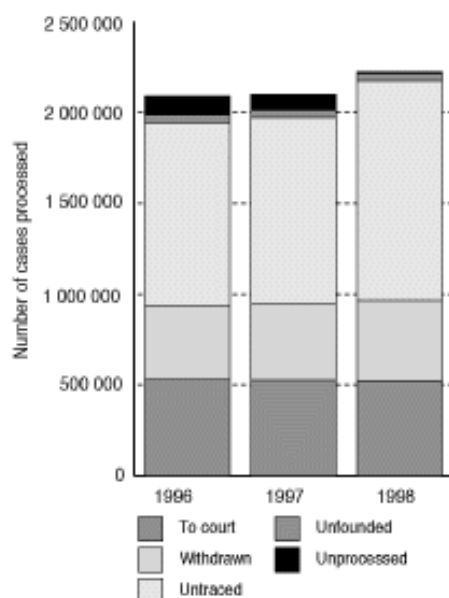
The number of cases sent to court as a proportion of all reported cases dropped from 25.3% in 1996 to 23.6% in 1998. The number of undetected cases as a proportion of all reported cases increased from 48% in 1996 to 54.2% in 1998 (graph 12 and table 2).

Table 2: Cases processed by the police, 1996-98

Unprocessed	104 705	86 649	8 951
	5.00%	4.10%	0.40%
Unfounded	45 671	41 292	42 733
	2.20%	2.00%	1.90%

Undetected	1 004 448	1 028 021	1 206 128
	48.00%	48.90%	54.20%
Withdrawn	407 318	417 105	441 931
	19,5%	19,9%	19,9%
To court	529 276	527 373	524 125
	25,3%	25,1%	23,6%

Graph 12: Manner in which cases have been processed by the police, 1996-98



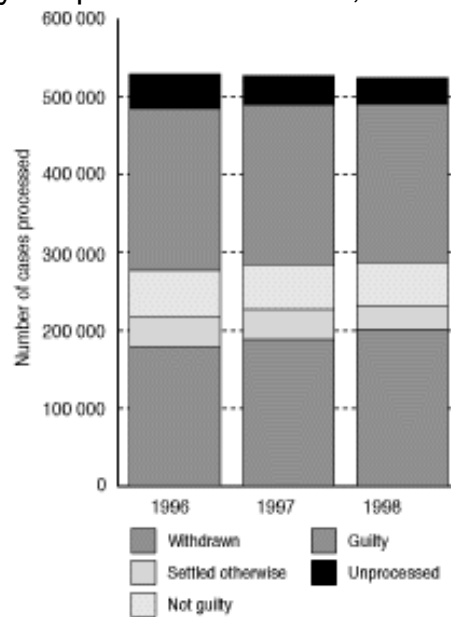
Between 1996 and 1998, the prosecution service's performance changed only slightly. The number of cases resulting in a conviction as a proportion of all cases sent to court dropped from 39.2% in 1996 to 38.8% in 1998. The proportion of cases resulting in a not guilty finding by the courts dropped marginally from 11.4% in 1996 to 10.7% in 1998. The proportion of cases withdrawn in court increased, however, from 33.8% in 1996 to 38.4% in 1998 — an increase of almost 14% (graph 13 and table 3)

Table 3: Cases processed by the prosecution service, 1996-98

	1996	1997	1998
Unprocessed	44 754	37 506	33 809
	8.50%	7.10%	6.50%
Guilty	207 203	204 937	203 071
	39.20%	38.90%	38.80%
Not guilty	60 491	58 113	56 074

	11.40%	11.00%	10.70%
Settled otherwise	38 123	38 715	29 855
	7.2%	7.39%	5.7%
Withdrawn in court	178 705	188 102	201 316
	33.8%	35.7%	38.4%

Graph 13: Manner in which cases have been processed by the prosecution service, 1996-98



CONCLUSION

To improve the operation of the South African criminal justice system, an holistic approach is required. Detectives and prosecutors need to be better trained and should be encouraged to remain in their respective occupations. Detectives and prosecutors need to co-operate more closely and guide each other in their respective fields of expertise to improve their chances of putting more dangerous criminals behind bars. Finally, crime victims and members of the public need to be encouraged to assist and co-operate with the police and the prosecution service. All this needs to be done simultaneously if the criminal justice system is to be effective in its fight against crime, and to dispel the popular belief that crime pays in South Africa.

ENDNOTES

1. For an historical analysis of South African crime statistics, see L Glanz, WPMostert & BEHofmeyr, An analysis of South African crime statistics: Convictions for the period 1956 to 1988, Human Sciences Research Council, Pretoria, 1992.
2. Bureau of Statistics, Statistics of offences and of penal institutions, 1949 to 1962, Special Report No 272, Republic of South Africa Bureau of Statistics, Pretoria, 1964.
3. For example, pass law related offences, or the offence of 'possession of firearm and ammunition by non-White'.
4. CSS, Crimes: Prosecutions and convictions with regard to certain offences, CSS Report No 00-11-01 (1995/96), Central Statistical Service, Pretoria, 1998. (Since 1962, annual prosecution and conviction figures are no longer compiled by calendar year, but cover the period from 1 July to 30 June. At the time of writing, 1995/96 was

the latest period for which prosecution and conviction figures were available from Statistics South Africa.)

5. The former Department of Statistics did not release figures for the number of cases prosecuted for the years 1970/71 to 1976/77. It is consequently impossible to calculate the proportion of cases that were successfully prosecuted during these years.

When analysing South African crime statistics over time, it is important to remember that the 'independent' homelands were excluded from official South African crime statistics. Thus, crimes reported to police stations in the Transkei after October 1976, Bophuthatswana after December 1977, Venda after September 1979, and Ciskei after December 1981, are not included in this paper. The 'independent' homelands were reincorporated into the rest of the country in 1994. See, M Schönteich, *Crime increase partly a statistical quirk*, Fast Facts, 3/99, South African Institute for Race Relations, Johannesburg, March 1999, p. 2.

6. This information is available only by racial group as provided by the Bureau of Statistics at the time. See Bureau of Statistics, op. cit.
7. For a technical description of these categories see SAPS, *South African Police Service standing order no 392*, 22 September 1995. For a more general description, see J J Claasen, *Conviction rates*, Crime Information Analysis Centre, SAPS Detective Service: Head Office, Pretoria, February 1999.
8. Under such circumstances, a case is withdrawn only after the complainant has signed a 'withdrawing affidavit' stating that she does not wish the case to proceed. Moreover, the decision to withdraw the case is made by the head of the CID branch at the police station where the case was opened. Should the CID head be in doubt whether to withdraw the case, he or she would refer the matter to the local prosecutors' office for a decision on whether to proceed with the case and charge the suspect in question.
9. Republic of South Africa, Criminal Procedure Act No 51 of 1977, as amended, Government Printers, Pretoria, 1977, Section 6(a).
10. In terms of section 195 of the Criminal Procedure Act, No 51 of 1977, the state may not compel one spouse to give evidence against the other, for the prosecution in criminal proceedings, in respect of a range of offences listed in the Act (including any offence committed against the person of either of them, such as assault).
11. Republic of South Africa, Constitution of the Republic of South Africa Act No 108 of 1996, Government Printers, Pretoria, 1996, Section 35(3)(d).
12. Most detectives are investigating upwards of fifty cases at any one time. See M Shaw, *South Africa: Crime in transition*, [ISS Papers. 17](#), Institute for Security Studies, Halfway House, March 1997, p. 4.
13. Criminal Procedure Act No 51 of 1977, op. cit., Section 6(a).
14. See *ibid.*, Section 6(b).
15. See *ibid.*, Section 77.
16. *Ibid.*, Section 57(1)(a).
17. This includes the 33 most serious and prevalent offences only. Minor offences such as trespassing, urinating in public and traffic offences are excluded.
18. Caution needs to be exercised when comparing the annual number of cases reported with the annual number of cases undetected, withdrawn, sent to court, and prosecuted and convicted. Cases reported during one year, are often investigated and prosecuted during the following year. For example, the investigation of a complicated murder case reported in December 1996 might be finalised in mid-1997. The prosecution of the case may occur only in 1998. There was no dramatic change in the number of crimes reported from one year to the next between 1995 and 1998, however. Cases prosecuted (and those ending in a successful prosecution) as a proportion of reported cases, also did not change much between 1996 and 1998. As a result, the proportion of untraced, withdrawn and 'sent to court' cases, and prosecutions and convictions resulting from actual cases reported during a given time would not vary much from the proportions calculated in this paper.
19. According to a 1997 Institute for Security Studies victims survey conducted in Johannesburg, the majority of assault, rape and murder victims (or members of the victim's household in the case of murder) knew the offender by name or by sight. See

- A Louw, M Shaw, L Camerer & R Robertshaw, Crime in Johannesburg: Results of a City Victim Survey, [ISS Monograph Series, 18](#), Institute for Security Studies, Halfway House, February 1998, pp. 23-24.
20. A Louw & M Shaw, Stolen opportunities: The impact of crime on South Africa's poor, ISS [Monograph Series, 14](#), Institute for Security Studies, Halfway House, July 1997, p. 13.
 21. It is not being suggested that police officials should discourage crime victims from reporting crime, merely that they should educate complainants in terms of the implications of opening a criminal case against someone.
 22. During the 1980s, the police's criminal investigation capabilities were neglected. During the apartheid era, only one in ten members of the SAP were engaged in detecting and investigating crime. See M Shaw & L Camerer, Policing the transformation: New issues in South Africa's crime debate, [IDP Monograph Series, 3](#), Institute for Defence Policy, Halfway House, April 1996, p. 13.
 23. [See endnote 18](#).
 24. A 1996 survey of people on the Cape Flats (outside Cape Town) found that most disapproved of and were dissatisfied with the performance of the SAPS and the courts. Overall, perceptions of the police and the courts were worse among those who had been victimised. Moreover, perceptions of the police and the courts were the most negative among those who had laid a charge and had had contact with the police and the courts. See C Africa, J Christie, R Mattes, M Roefs & H Taylor, Crime and community action: Pagad and the Cape Flats, 1996-1997, POS Reports, 4, June 1998, Idasa, Cape Town, 1998, p. 11.
 25. 1995/96 is the latest period for which figures are available from Statistics South Africa.
 26. M Schönteich, *Lack of conviction: Prosecution's poor performance*, [Nedcor • ISS Crime Index, 3\(2\)](#), March-April 1999, pp. 5-8.
 27. Hansard [NA:Q] 9, 20 August 1997, col 2173.