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POSITIVE TRENDS

The 2004/05 crime statistics

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In September 2005 the SAPS released its latest batch of crime statistics for the country, covering the period April 2004 to March 2005. The trends that emerge from these figures suggest that South Africans should be encouraged by the successes shown in managing down the levels of crime. This article describes some of the key trends and explains what can and cannot be read into them.

Spring is South Africa's annual crime statistics season, the time of year when the South African Police Service (SAPS) releases figures on the number of cases it recorded in the financial year that ended in the preceding March. The release of these data coincides with the presentation of the SAPS Annual Report. This document – one of the most impressive of the annual reports put out by any government department – contains far more information than just the crime statistics; however, for obvious reasons, it is these on which the press and public fixate.

The public obsession with crime statistics is perfectly understandable. These are, after all, among the most important measurements of the health of our nation and the state of its social fabric. There are, of course, problems with using police crime statistics as the sole measure of the level of crime. The essential problem here is that what is reflected in official statistics are only those crimes that were brought to the attention of and recorded by the police. It is by no means a full and complete accounting for the actual amount of crime committed in the country in that year. Before looking at this, however, the basic facts as we have them from police statistics will be reviewed.

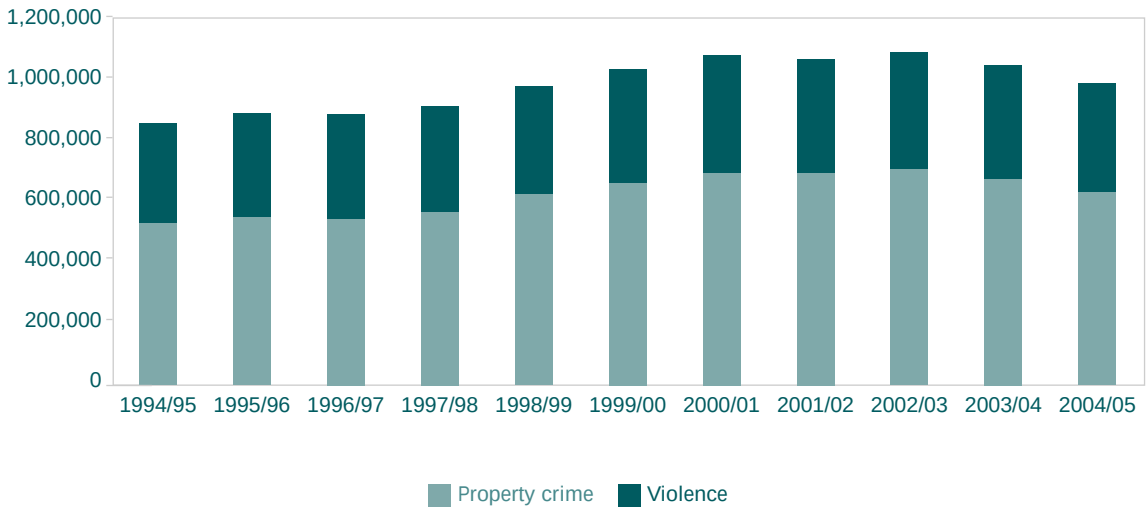
How much crime was reported in 2004/05?

Although the SAPS provides data on 25 crimes (four of which are sub-categories of aggravated robbery), it is not unreasonable to say that there are eight forms of criminality which dominate public concern about crime: murder, attempted murder, serious assault, and rape (collectively, 'violent crime'); and aggravated robbery, common robbery, car theft and housebreaking (collectively, 'property crime'). As Figure 1 depicts, the aggregate of these crimes rose from about 855,000 in 1994/95 to nearly 1.1 million in 2002/03, before falling to 980,000 in 2004/05.

This meant that in 2002/03, the sum of all these crimes was 28% higher than it was in 1994/95, with violent crime being 20% higher, and property crime 32% higher. Since then, violent crime levels have fallen by 8% and property crime levels have fallen by 11%. All of this is good news. Indeed, on closer examination, the news is even better. Figure 2 shows that murder (which has fallen fairly consistently for ten years) is well below the level of 1994/95 and attempted murder (having fallen steeply in the last two years) is, for the first time, also lower. Rape and assault GBH account for over 70% of incidents of serious violence.

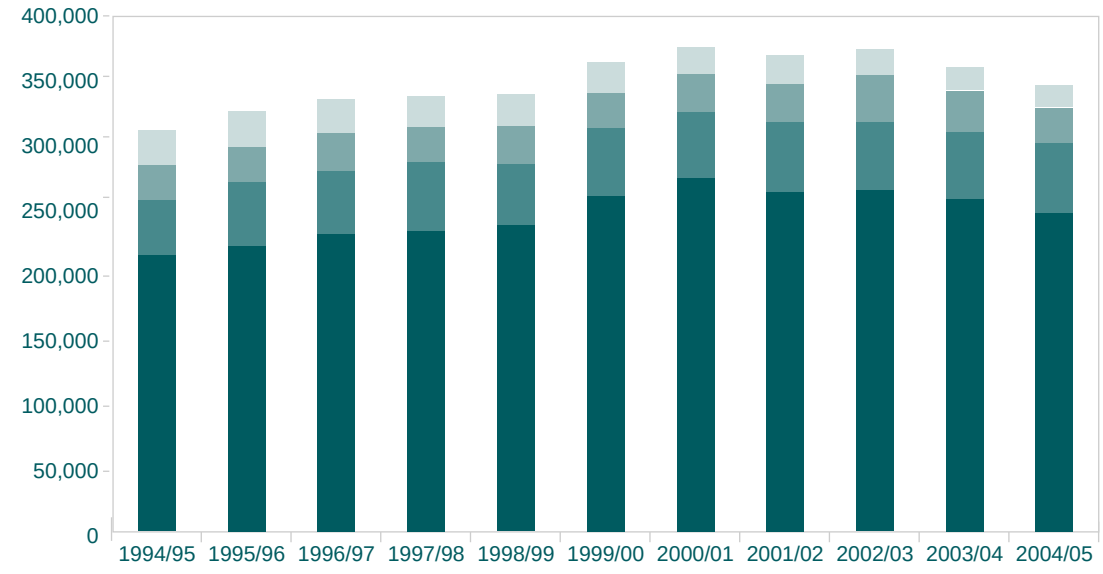
A similar picture emerges when we look at serious property crime (Figure 3). Car theft numbers in 2004/05 were lower than in any previous year, burglary (which includes both business and residential housebreaking) is off its peaks, as are both common and aggravated robbery (though the last has fallen only in 2004/05).

Figure 1: The number of recorded serious crimes in SA



Source: SAPS annual reports 1994 - 2005

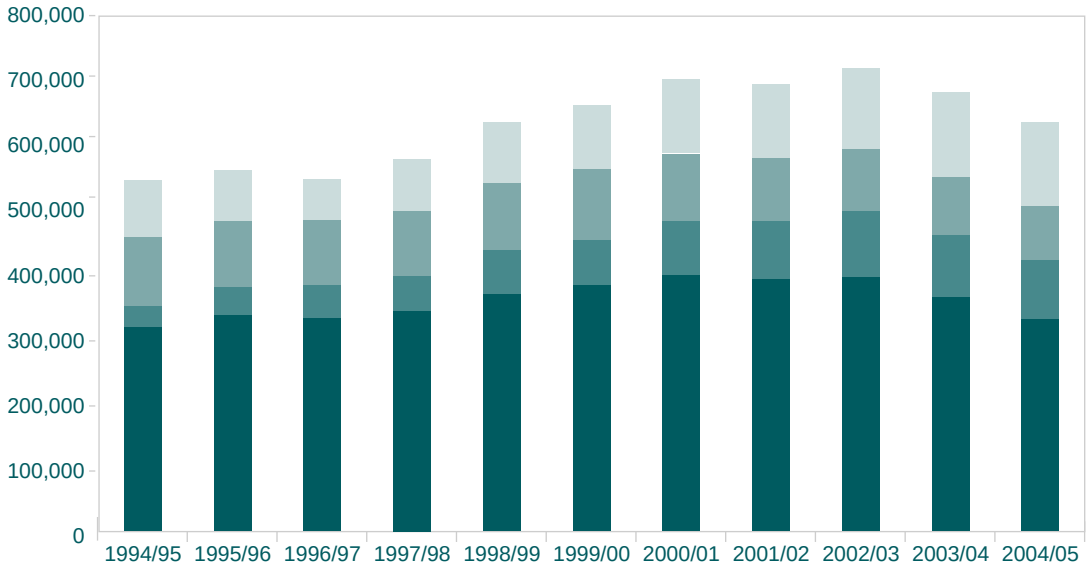
Figure 2: The number of recorded serious violent crimes in SA



	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05
Murder	25,965	26,877	25,470	24,486	25,127	22,604	21,758	21,405	21,553	19,824	18,793
Attempted murder	26,806	26,876	28,576	28,145	29,545	28,179	28,128	31,293	35,861	30,076	24,516
Rape	44,751	49,813	51,435	51,959	49,679	52,891	52,872	54,293	52,425	52,733	55,114
Assault GBH	215,671	223,097	231,497	234,819	237,818	261,804	275,289	264,012	266,321	260,082	249,369

Source: SAPS annual reports 1994 - 2005

Figure 3: The number of recorded serious property crimes in SA



	1994/95	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05
Aggravated robbery	84,785	77,167	66,163	73,053	92,930	98,813	113,716	116,736	126,905	133,658	126,789
Car theft	105,867	98,669	97,332	102,507	107,448	103,041	100,030	96,859	93,133	88,144	83,857
Common robbery	32,659	45,683	50,676	54,932	64,978	74,711	90,215	90,205	101,537	95,551	90,825
Burglary	318,955	336,280	331,818	341,873	368,354	382,998	394,607	389,771	393,959	363,919	332,212

Source: SAPS annual reports 1994 - 2005

The bottom line, then, is that crime levels, as revealed by police statistics, appear to be improving, and to be improving across a broad front. The obvious objection to this conclusion, however, is that police statistics do not capture all the crimes committed in a given period. The question that arises is how seriously we ought to take this conclusion.

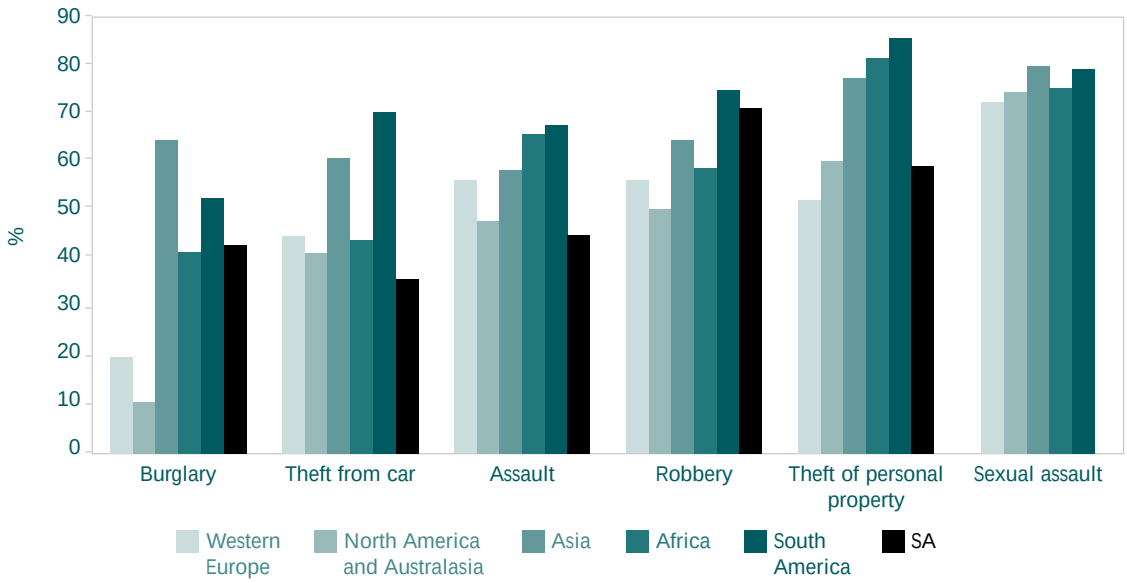
Are the statistics right?

It is well known that police crime statistics tell only part of the crime story. This is so because for a crime to be recorded in the statistics three things must happen: it must be noticed, it must be reported, and it must be accurately recorded. The last two steps mean that doubts are often expressed about the reliability of official statistics.

The under-reporting of crime by victims is a worldwide phenomenon. It arises principally from the fact that many victims of crime do not believe there is much purpose in reporting a matter to the police. This is either because they believe the incident was minor, or because they don't believe much purpose will be served by making the complaint, since the perpetrator cannot be readily identified or, indeed, because they know who the perpetrator is and they would prefer not to subject him or her to criminal sanctions.

The result is that in a survey of 5,000 South Africans conducted in 2003, 71% of those who reported having been robbed said they had not reported the matter to the police, with the same being true of 64% of victims of stock theft, 59% of victims of theft, 45% of victims of assault, 43% of burglary victims and 36% of those who had something stolen out of a motor vehicle.[1] This pattern is not unique to South Africa, however, as Figure 4 reflects.[2]

Figure 4: Proportion of victims who did NOT report the crime to the police



Source: Unicri, 1998 and Burton, et al, 2003

Nor is under-reporting the only problem. Under-recording is also a relatively common phenomenon – and one that is often badly misunderstood, since it is often assumed that when police officers fail to record a crime that has been reported to them, they must have done so in order to deceive the public into believing that crime levels are lower than they really are. This may well be one factor in explaining the disparity between reported crime levels and recorded crime levels, but there are other, less malevolent reasons why some cases may not get reported.

One example of a crime which comes to police attention but does not get into the official statistics are the thousands of relatively petty domestic disturbances to which officers are called every month but which are dealt with (they are not 'resolved') at the scene. These are cases in which a crime may well have been committed – most will involve one or more of *crimen injuria*, common assault and malicious damage to property, but some might also involve theft – and has come to police attention, but has not made it into official statistics, for reasons other than the desire to deceive the public.

The upshot of all of this is that there are real reasons to doubt that police crime statistics reflect every crime committed in any given period. Indeed, it is doubtful that this is the case anywhere in the world. It does not follow that police statistics should be dismissed, however. This is for two reasons.

One reason why it is useful to look at police statistics is that, even if they may not fully account for crimes committed, it is possible that the trend reflected is not dissimilar to the underlying reality of crime levels. Thus, if the rates of under-reporting and under-recording are relatively stable, it may be that the trend we observe in the statistics reflects a real trend in crime levels.

It is not, of course, possible to show that reporting and recording rates are consistent over time unless surveys are conducted regularly. Indeed, although surveys conducted by ISS are not done as regularly as would be ideal, they do show that there have been some changes in the reporting rates for some crimes.

The 2003 victimisation survey, for instance, found that reporting rates had generally risen in South

Figure 5: Murder and car theft trends (1994/95 = 100; except carjacking, 1996/97 = 100)

Source: SAPS annual reports 1994 – 2005

Africa from the levels recorded in a 1998 survey: theft out of vehicles was reported 64% of the time compared to 57% in 1998; assault was reported 55% of the time compared to 38%; and the reporting rate for theft was 41% compared to 28%.

Since reporting rates for these crimes appear to have risen it follows that any changes in the recorded levels may overstate any rise or understate any fall in the actual number of crimes committed – assuming that recording practices have not changed at the same time.

In contrast to this generally positive trend, the reporting rate for robbery fell from 41% to 29%, while the rate for housebreaking was unchanged at 57%.[3]

A second reason why looking at police crime statistics can tell us something about the real crime levels is that some crimes are not under-reported or under-recorded to any significant degree. The two most obvious examples of crimes falling in the category of well-reported and well-recorded are murder (because of its seriousness and because there is a body which needs to be accounted for),[4] and car theft and carjacking (which are well reported for insurance purposes). It turns out that when we look at these two crimes, they both reveal significant declines over a reasonably long period (Figure 5).

The number of murders peaked in South Africa in 1995/96 at 26,877 and has since fallen by 30% to 18,793 in 2004/05. In per capita terms, because the population has grown, this represents a fall of over 40%. Car theft numbers peaked later, in 1998/99, at 107,500 and have since fallen by 22% to under 83,900. This trend is broadly matched by car hijacking numbers, which have also come off by 21% since their peak of nearly 15,800 in 1998/99.[5]

Although it need not follow that declines in these well-reported and well-recorded crimes necessarily imply that the downward trends of other crimes reported in the statistics are also an accurate reflection of crime trends, they do suggest that real progress is being made in key areas. In this regard, we should look at those few crimes for which increased numbers of incidents have been recorded.

Increases in some crime categories

Although the majority of the most serious crimes saw decreases in 2004/05 relative to 2003/04 (with some having seen continuing declines over a number of years), there were a few categories of crime in which the recorded number of incidents rose. These include rape (which rose by 5% to 55,114), indecent assault (which rose by 9% to 10,123), common assault (which rose by 5% to 267,857), drug offences (34% to 84,001), drunken driving (20% to 29,927), truck hijacking (3% to 930), cash-in-transit robberies (15% to 220) and bank robbery (7% to 58).

There is no single explanation that accounts for the increases in the recorded number of these crimes. In some cases – truck hijacking, cash-in-transit robbery and bank robbery – this is likely to reflect increased incidents rather than increased reporting, since these are well-reported crimes. It should be noted, however, that the absolute number of incidents in all three cases is pretty small and the total increase in the number for all three categories of crime amounts to only 61 additional cases.

In the case of drug crime and driving under the influence, on the other hand, the increased number of cases reflects increased police activity, since these are cases that are opened by police officers themselves. It probably reflects the increased number of police officers on our streets, as well as improved targeting of problematic locations and people.

Finally, in the case of rape and indecent assault, the increased number of recorded incidents could reflect either a change in the level of reporting or an increase in the underlying level of victimisation. Indeed, so great is the presumed under-reporting of these crimes, it is not inconceivable that an increase in reporting rates combined with a *decrease* in the number of actual incidents, could have led to an increase in the number of recorded cases. It is, therefore, impossible to tell from these figures what, if anything, has happened to the actual number of incidents of these crimes.

Arrest and detection rates

While there are numerous sets of figures in the SAPS Annual Report to which attention should be paid, two of the more significant relate to the number of arrests made by the SAPS, and the detection rates achieved by the Service's detectives.

In the 12 months to April 2005, the SAPS arrested nearly 2.5 million people – more than one person in 20 in South Africa, and nearly one person in every ten over the age of 19 (Figure 6).[6] It is an extraordinary figure, made more so by the fact that it is 40% higher than the figure for the number of arrests made four years earlier.

In 2004/05, 27% of all arrests were made in the Western Cape and 23% in Gauteng. Twelve percent were made in the Eastern Cape and 10% in Mpumalanga.

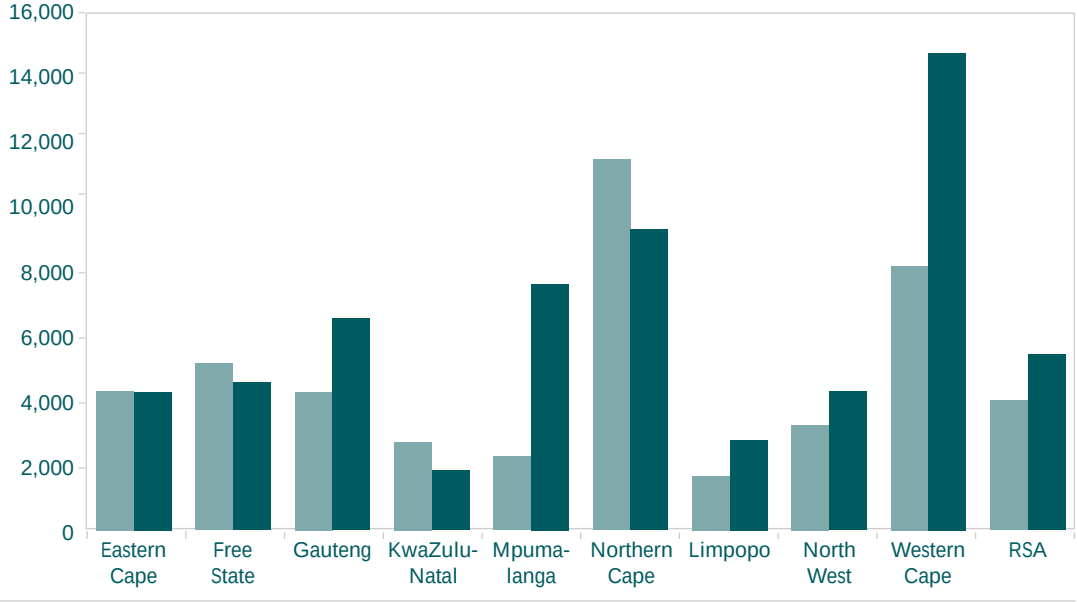
The enormous number of arrests made by the police reflect, in part, the large-scale operations that they conduct, and will, therefore, include a very large number of people arrested for minor crimes. At the same time, assuming that arrestees are processed properly, the SAPS's Automated Fingerprint Identification System makes it possible to link people arrested for minor crimes to more serious cases. In addition, it also helps to build up the system's database. This might help improve detection and conviction rates in the future.

Having said this, there are also legitimate human rights concerns that arise when a society arrests as many people as we currently do every year.

Arrests, as anyone who reads the literature on police performance assessment knows, are a very rough measure of police productivity, because the hurdle that must be cleared is pretty low. To make any sense of these numbers, then, it is necessary to look at the rate at which serious crimes go to court and the rate at which convictions are obtained. While the police provide no information on conviction rates – arguing only half-accurately that this is something over which the National Prosecuting Authority has more direct control – they do provide information on the rate at which cases are taken to court.

A couple of obvious points need to be made about the rate at which cases are referred to court. The

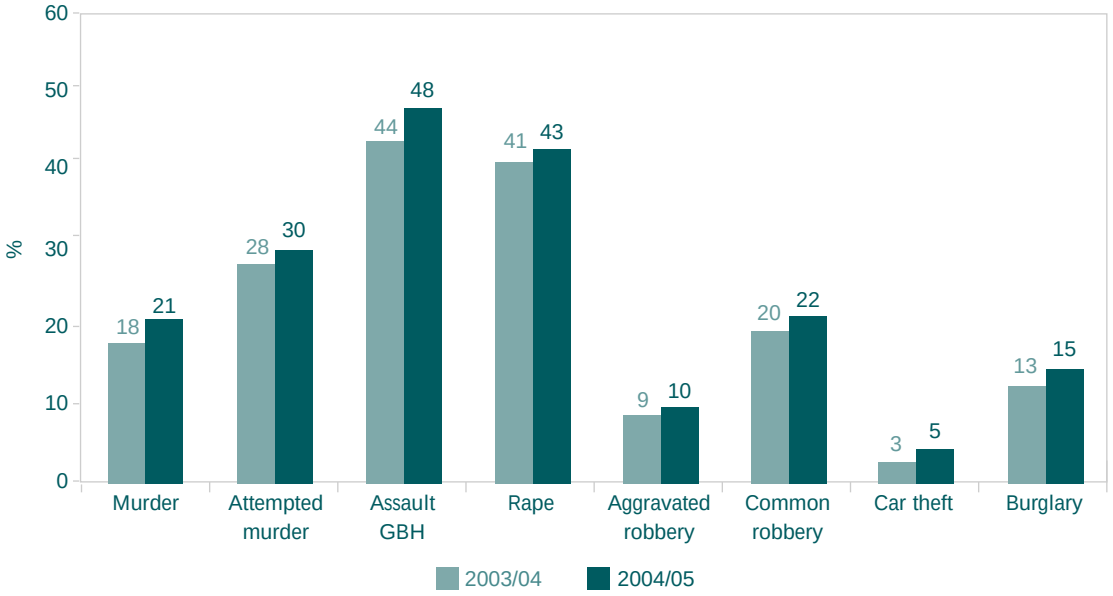
Figure 6: Arrests per 100,000 people
2001/02 vs 2004/05



	Eastern Cape	Free State	Gauteng	KwaZulu-Natal	Mpuma-langa	Northern Cape	Limpopo	North West	Western Cape	RSA
2001/02	4,205	5,135	4,247	2,719	2,258	11,316	1,627	3,181	8,096	3,966
2004/05	4,200	4,562	6,522	1,778	7,516	9,197	2,690	4,202	14,582	5,321

Source: SAPS Annual Reports 2001/02 and 2004/05

Figure 7: Charges referred to court
2003/04 and 2004/05



Source: SAPS Annual Report 2004/05

first is that there is a pleasing rise in the proportion of cases going to court for all serious crime categories. The second is that those cases that are typically committed by strangers – robbery, car theft and burglary – are solved much less frequently than are cases of violence where the perpetrator is linked to the victim. A third, slightly less favourable point to make, is that for these eight crimes, the number of cases taken to court fell from 293,012 to 291,679 between 2003/04 and 2004/05 (see Figure 7). The lower number of recorded crimes, however, meant that this represented a higher proportion of all cases.

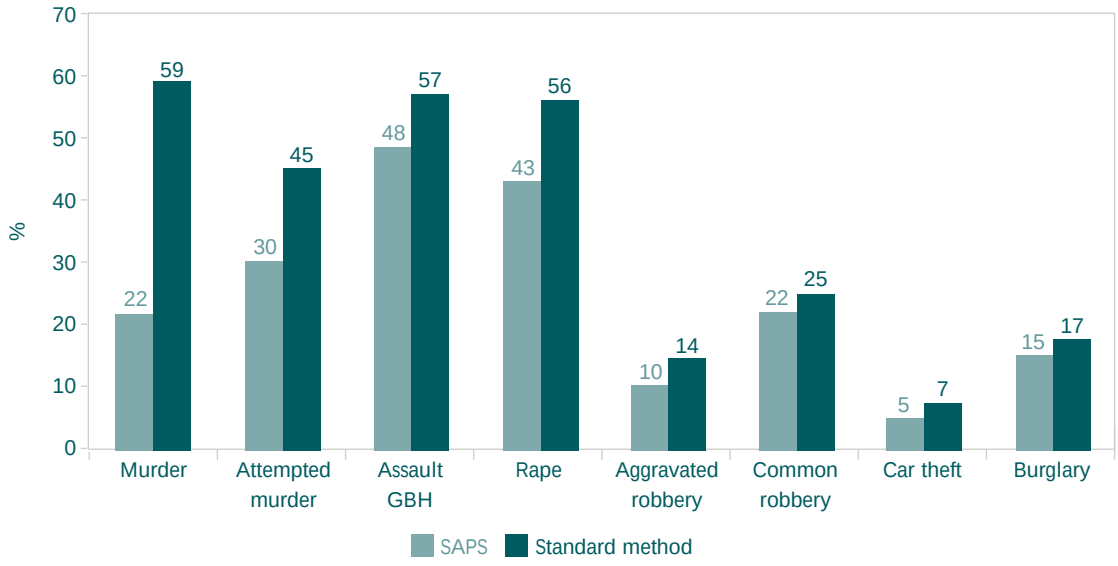
A less obvious point to make is that, in calculating these ratios, the SAPS have done themselves a severe disservice: especially in the case of murder, the rates at which cases are referred to court are actually better than they appear here.

The SAPS calculates the referral rate of cases to court by dividing the number of cases going to court in any year by the number of cases reported *plus* the number of cases on hand at the start of the year. This, they argue, reflects the fact that the cases on hand also received investigative attention during the year and should, therefore, be factored into the assessment. There are a number of problems with this approach, however:

- The first problem is that comparing a flow (the number of cases going to court) with both a stock (the number of cases on hand) and another flow (the number of cases reported) is not methodologically sound. Flows can be compared to stocks or to flows, but not to stock plus other flows, as this is not comparing like with like.

- The second problem is that the approach leads to anomalies if the rules governing the disposal of cases differ across crime types. If, for example, it is much more difficult to close murder cases as undetected than it is to close burglary cases in this manner, you find that the stock of murder cases on hand at the start of the year is a much greater proportion of cases reported in that year than is the stock of burglary cases. And this, in fact, appears to be the case. At the start of 2004/05, the SAPS had more than 32,000 murder cases on hand. This meant it had over 70% more cases on hand than were reported in 2004/05. By contrast, on the same date, the

Figure 8: 2004/05 referral rate
(SAPS method vs standard method)



Source: SAPS Annual Report 2004/05

SAPS had more than 53,000 burglary cases on hand. This was 80% fewer than the number of cases that would be reported in the course of the year.

- Finally, and perhaps most significantly, we know of no other police agency that would calculate a comparable rate in this fashion. Thus the New York Police Department, which this year expects to record the fewest murders since 1961, has seen almost no change in the proportion of murders that are solved – this has hovered at 60% for decades.[7] Interestingly, when we recalculate the rate at which cases are referred to court by the SAPS, using more standard methods, we find a ratio of almost exactly 60% (Figure 8).

Having recalculated the SAPS referral rates, it would be desirable to compare these to those achieved by police agencies in other jurisdictions. The trouble is that getting comparable data on these rates seems to be impossible, since the standards set for sending a docket to court and even for obtaining a conviction, differ greatly across countries. Nor does there appear to be a central repository of these data.

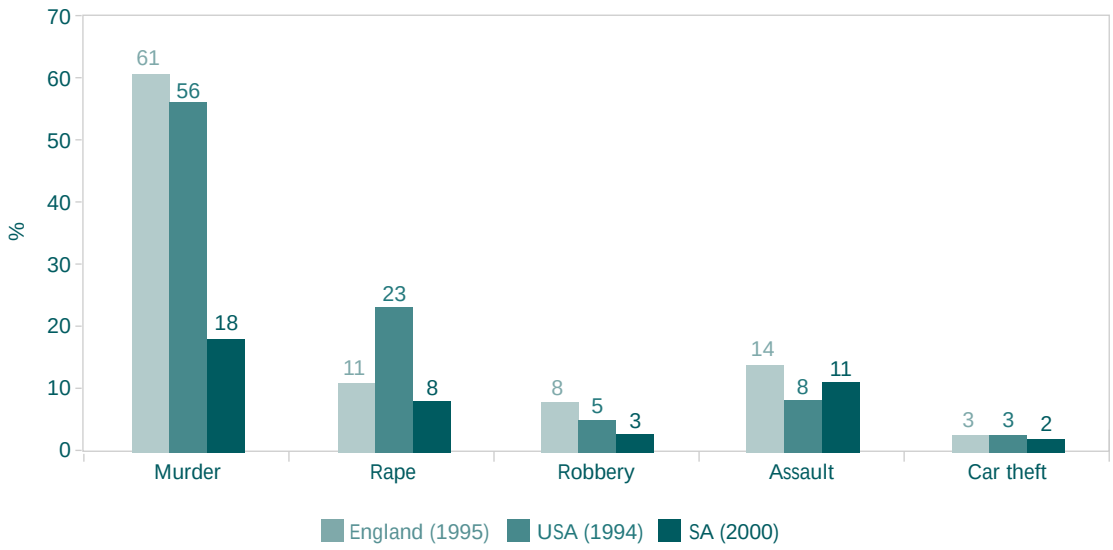
It is also quite possible that even if we had comparable data for some steps in the criminal justice system (such as the number of cases that go to court as a proportion of the number of cases reported), in the absence of data on subsequent stages (such as the rate at which prosecutors reject police cases), these data may resist interpretation.

Still, a referral rate of 60% does not seem unreasonably bad unless a large proportion of those cases are, in fact, rejected by prosecutors or fail for other reasons. Sadly, some admittedly dated research suggests that this may be what happens in a large number of murder investigations. By contrast, conviction rates in other matters seemed more comparable to those achieved in England and the United States (see Figure 9).[8]

Conclusion

Although doubts are frequently expressed about the reliability of police crime statistics, an initial look at the figures suggest that progress is being made on a broad front. Most serious crimes are down on the number recorded in 2003/04, with many having fallen for a number of years. Car theft and murder, two of the better reported and recorded

Figure 9: Comparative conviction rates



Source: T Leggett, South Africa's conviction rates in perspective, SA Crime Quarterly 5, 2003

crimes, are substantially down, suggesting that other downward trends may be plausible.

In addition, figures relating to arrests and the initiation of criminal justice processes suggest that steady improvements are being made in the rate at which cases are taken to court, while the number of arrests made has grown exponentially.

All of which is to say that progress is being made in the fight against crime, even if much work still remains to be done.

Acknowledgement
This article is part of the ongoing work of the ISS's Criminal Justice Monitoring project.

Endnotes

1 P Burton, A du Plessis, T Leggett, A Louw, D Mistry and H van Vuuren, 2004, *National Victims of Crime Survey: South Africa 2003*, ISS Monograph 101, Institute for Security Studies, Pretoria, 2004, p 107.
2 Data are sourced from Unicri, A Alvazzi del Frate, Victims of Crime in the Developing World, 1998, Unicri, Rome, p 88.
3 Burton et al, op cit, p 107.
4 I have argued previously that there are many countries in the world in which even murder is not well reported and recorded (see A Altbeker, Puzzling statistics: Is SA really the world's crime capital?, in *SA Crime Quarterly* 11, 2005). This does not appear to apply to South Africa.
5 Note that no carjacking figures were kept until 1996/97.
6 Figures for population over the age of 19 calculated from mid-year population estimate of Stats SA.
7 S Roberts, Where killers are out of style, *New York Times*, August 7, 2005.
8 The figures in the following graph come from T Leggett, South Africa's Conviction Rates in Perspective, *SA Crime Quarterly* 5, 2003.

YOUNG GUNS

Children in organised armed violence

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The problem of gangs is not new to South Africa. This is one of the reasons that Cape Town has been included in an innovative international study that has identified the phenomenon of 'children in organised armed violence'. Given the youthfulness of South Africa's population, as well as levels of poverty and unemployment, the risk factors for children's involvement in armed gangs as recorded by the international study should serve as an early warning to us.

In 2003/04 the Institute for Security Studies (ISS) collaborated in a ten-country study to explore the phenomenon of children's involvement in organised armed violence.[1] The study explored the experiences of the ten countries and described a phenomenon that had, up to that time, not been identified as a specific problem within the international human right arena – that of children in organised armed violence (COAV). In South Africa, the study focused on gangs in the Cape Town area.

This article describes some of the key findings of the ten-country study, as analysed by Dowdney.[2] This is followed by a description of the planned follow-up initiative, the COAV Cities project, and a discussion of some of the implications of the new project for South Africa, and for gang-related work in Cape Town.

Who are 'children in organised armed violence'?

The idea of 'children in organised armed violence' is a relatively new one, and the phrase was coined to describe the situation demonstrated in earlier work undertaken by Brazilian NGO, Viva Rio, in Rio de Janeiro.[3] For the purposes of the ten-country study, which sought to describe and analyse the phenomenon in more depth, the term was intended to describe "children and youth employed or otherwise participating in organised armed violence where there are elements of a command structure and power over territory, local population or resources".[4]

The ten-country study[5]

The ten countries that were examined in the study were:

- Brazil (drug factions operating in poor communities known as *favelas*);
- Colombia (criminal groups known as *bandas delincuentes* that relate to larger paramilitary organisations, operating in poor communities);
- Ecuador (local urban youth gangs called *pandillas*, and organised national youth gangs known as *naciones*);
- El Salvador and Honduras (organised youth gangs known as *maras* and *pandillas*);
- Jamaica (area gangs and corner gangs);
- Nigeria (armed vigilante groups and ethnic militias);
- the Philippines (civilian vigilante groups);
- South Africa (street gangs); and
- the United States of America (institutionalised street gangs).

The discussion that follows describes the findings of the ten-country study, with a particular focus on the children who became involved in organised armed groups.

Features of the organised armed groups

The first part of the study describes the nature, structure and history of the identified armed groups. An interesting fact is that in eight of the ten countries studied, the armed groups did not have

criminal origins, although all were involved in criminal activities at the time of the research. Groups initially formed around a range of purposes, including the protection of neighbourhoods, and even the development of the community.

The study argues that external factors prompted the shift of these groups towards becoming violent (or more violent), and towards criminal activities. The two primary external factors identified by the study were illicit drugs and access to firearms.

All the armed groups studied were involved in informal and illicit economies, with crime being the most common form of economic gain. Offences such as armed robberies, robbery, car theft and kidnapping were cited. Nine of the ten groups were involved in the drug trade. In two cases armed groups extorted protection money from community residents. In two countries (Colombia and South Africa), armed groups engaged in or controlled legal business interests. In five cases (Brazil, Colombia, Nigeria, South Africa[6] and Ecuador), armed groups paid members fixed salaries, primarily for armed services.

All of the groups studied were involved in armed violence. In eight of the countries, this related to territorial disputes with rival groups, and in seven countries it related to rivalry with opposing groups. In five of the countries armed groups participated in vigilantism and/or carrying out executions. Armed groups in four countries participated in armed confrontation with state forces.

Children in organised armed groups[7]

The children in the armed groups studied were often from single-parent families, with many experiencing domestic violence and overcrowded living conditions. Many children had dropped out of school either immediately before or after joining their respective armed groups, citing poverty - they could not pay school fees or they dropped out of school in order to work. In general, these children considered it unlikely that schooling would lead to a job.

Children often became members of armed groups at a relatively young age (on average 13 years and six months), and it was also found that the age of recruitment to these armed groups was decreasing. The process of 'recruitment' into armed groups was demonstrated to be a gradual process, rather than an event. This was characterised by children's initial exposure to these groups in their neighbourhoods, and their introduction to the group, most often by a family member or friend.

The research also explored with children the question of why they join armed groups. The responses received included poverty, access to consumer goods, lack of alternatives, access to guns, status and girls, a preference for spending time on the street with others in the armed groups, thereby accessing friendship and surrogate families, and revenge.

The study found that children gained access to arms at a very young age (on attaining full membership of the armed group), on average at 13½ years. In some cases, children were provided with training in the use of arms. The children who became active in gangs were reported to routinely witness armed violence and death, while most of the children reported having been shot at or actually hit by gunfire. Children from all the countries that were examined reported that they shoot at and murder other people.

Children across the ten countries indicated that leaving their armed group could be a dangerous undertaking, and might involve a number of complications - but is possible if done in the correct manner.

In assessing trends in government responses to children's involvement in organised armed groups, the study found that, in most of the countries examined, governments used repressive approaches to deal with children in these groups.

The COAV Cities Project: Implications for South Africa

In 2005, Brazilian NGO, Viva Rio, once again requested the ISS to collaborate on a project, this time to follow up on the ten-country study, and initiate discussions with local stakeholders to develop solutions to the problem of children in organised armed violence.

The COAV Cities project aims to engage government representatives, researchers, practitioners and children in five cities in the development of policy recommendations for more effective responses to children's engagement in organised armed violence, and includes Cape Town, Medellin (Colombia), New

York City (United States), Niteroi (Brazil) and Zacatecoluca (El Salvador).

For these discussions to have any meaning for Cape Town, and South Africa more generally, the following are some of the key issues that immediately present themselves.

Gangs in Cape Town: More questions than answers

Recent information about the nature, extent and effects of gangs is limited, notwithstanding some new information generated by the ten-country study. While some efforts were made in the past to estimate numbers and characterise the nature of 'gangs' and their effects on the communities in which they operate, these issues remain largely elusive, which encourages further mystification rather than offering illumination.

Standing has demonstrated that there is little evidence to support current views about gangs (i.e. that they are clearly definable social entities, with identifiable membership, that they are becoming more organised and sophisticated, etc.), yet much of the gang policy that has been developed thus far is based on these ideas.[8]

It is also problematic for South Africa that discussions relating to organised armed groups have been focused on Coloured gangs of the Cape Flats. Recent research and anecdotal evidence indicate that there are different levels of criminal organisation in other parts of the country, and that children are being engaged in the activities of these criminal groups.[9] While some of the activities of such groups may be examined under the rubric of organised criminal 'syndicates', little is known about the lower levels of organised criminal activity, and children's engagement in this. More information on these issues could assist the development of new strategies to respond to the problem.

Targeted interventions

While much of the discussion in recent years has been in response to the phenomenon of gangs themselves, the COAV Cities project in Cape Town will be expressly about reducing children's involvement in gangs, and reducing the impact of such groups on the lives of children. While these objectives are obviously not mutually exclusive, the reduction of children's engagement in gangs is a new approach to the issue.

It may well be asked why this strategy has not been adopted previously. Could it be that there is a strong belief that little could be gained from anything but the elimination of armed groups? While this is a question of strategy and targeting, it also raises some useful questions as to the location of intervention efforts. A focus on reducing children's engagement in gangs may be located in the realm of social and environmental programmes, rather than in the criminal justice system.

Gangs and children's rights

This issue has received little attention from the child rights sector, both locally and internationally. While child rights advocates in South Africa have a long history of concern for children that come into conflict with the law, little attention has been given to the existence of organised groups that may recruit children for use in criminal enterprise; and the impact on such children. This weakness is demonstrated by the fact that there is little language within the child rights sector to engage with this phenomenon, with neither 'child offending' nor 'child soldiers' offering an adequate description.

The COAV Cities project may offer an opportunity for the child rights establishment internationally to engage with this particular problem. Recent work in South Africa, done by the Community Law Centre on behalf of the International Labour Organisation and the Department of Labour on children being used by adults to commit crime, may also have opened the door to a far deeper engagement with children's experiences of organised forms of crime and violence.

Most importantly, the findings of the ten-country study, Standing's research,[10] and that of Frank and Muntingh,[11] raise the thorny issue of the choice that children make in becoming involved with armed groups. Such choices indicate that the alternatives available to them may be limited, unattractive, or unresponsive to their specific needs, and it is these that require further examination.

Strategies for responding: Options for SA

South Africa obviously needs to look at the question of children in organised armed violence both in terms

of policies and programmes. While the policy arena has, for some years, been dominated by the development of the Child Justice Bill, children's rights advocates fear that key provisions in the Bill that could have impacted on this group of children have been removed during the process of deliberations in the Justice Portfolio Committee.

This relates particularly to situations where children aged 16 and 17, who are accused of serious offences, may not have access to diversion and alternative sentences. Under these circumstances, the revised Bill (which has not been made available since these deliberations in July 2003) would be unlikely to respond to the particular needs of these children, and render hard-won law reform efforts only partially of service to children.[12]

Existing programmes for children who may be engaged in gangs are also quite limited, with many more diversion than prevention programmes. Many innovative programme interventions have been specifically developed for children and youth that have been engaged in violence (such as the National Peace Accord Trust's Ecotherapy) and some organisations have developed considerable expertise and models of practice for working with violent young people (such as Khulisa). But these programmes represent only a small fraction of the range of programmes that are required. Most importantly, the programmes most required to help children exit gangs and reintegrate back into homes and neighbourhoods, do not exist.

In terms of prevention, school-based programmes seem to offer the greatest potential, yet there has been little effort to define the best implementation strategies in this context. While 'school safety' interventions have abounded, both nationally and in the Western Cape, few have grappled with the question of how schools may contribute to reducing the vulnerability of children to organised armed groups.

Addressing state failure and/or collusion

Standing has noted that there is considerable evidence to support the contention that corruption, and the collusion of state functionaries with gangs, may promote their continued existence.[13] However, the ten-country study also alerts us to the failure of other government services, such as those related to the social support of children and families. This is not only about the failure to make services accessible to people, but also about the failure of services to specifically orientate themselves to the needs of the particular children, families and others.

Conclusion

The COAV Cities project, which follows on from the ten-country study discussed above, offers a significant opportunity to engage in discussion and debate relating to children's involvement in gangs and in other forms of organised armed groups. As such, it offers the unique opportunity to bring together a range of perspectives including children's rights, child labour, urban renewal, child justice, organised crime and gangs, etc.

Given the youthfulness of South Africa's population, and current trends relating to poverty and unemployment, the risk factors for children's involvement in organised armed groups as recorded by the ten-country study should serve as a resounding early warning to us.

Endnotes

1 L Dowdney (ed), *Neither War nor Peace. International Comparisons of Children and Youth in Organised Armed Violence*, ISER/IANSA/Viva Rio, 2004.
2 Ibid.
3 LT Dowdney, *Children of the Drug Trade: A Case Study of Organised Armed Violence in Rio de Janeiro*, Viva Rio/ISER, Rio de Janeiro, 2003.
4 L Dowdney, 2004, op cit, p 15.
5 The full study may be accessed at <http://www.coav.org.br>
6 Payment for services was noted to take place during times of 'war' with rival gangs, and where hit men were paid a fixed monthly salary of R1,000.00.
7 It should be noted that the analysis provided is based on a relatively small sample (i.e. 120, 111 boys and 9 girls).
8 A Standing, The Threat of Gangs and Anti-Gangs Policy, *Occasional Paper 116,* Institute for Security Studies, August 2005.
9 C Frank and L Muntingh, Designing pilots to address a priority area of child work activities in South Africa: Children Used by Adults to Commit Crime (CUBAC) Child Consultation Research, International Labour Organisation, 2005.
10 Standing, op cit.
11 Frank and Muntingh, op cit.
12 J Gallinetti, Children's Rights Project, Community Law Centre – personal communication, 12 December 2005.
13 A Standing, Reconceptualising Organised Crime, *African Security Review*, 12 (2), 2003.

ASSESSING THE IMPACT

Mandatory and minimum sentences in South Africa

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The legislation passed in 1997 that provides for mandatory minimum sentences for serious crimes was recently extended for another two years. At the time, the aim was to reduce serious and violent crime, achieve consistency in sentencing, and satisfy the public that sentences were sufficiently severe. This article argues that the legislation has achieved little or no significant impact with regard to these goals. Instead, many agree that the provisions have exacerbated the problem of overcrowding in South African prisons.

Sentencing in South Africa has traditionally been the preserve of the judiciary. Judges and other sentencing officers have customarily resisted interference with their discretion to hand down sentence, which they regarded as a fundamental aspect of judicial independence.

A source of fierce public debate soon after 1994 was the perceived leniency in punishing serious offenders, coupled with the perception that offenders were not serving enough of their sentences due to a lax parole policy. The public was also concerned about the nature and severity of sentences for heinous crimes after the abolition of the death penalty.[1]

Minimum sentencing was introduced into law in 1997 by the Criminal Law Amendment Act. The stated intention of the legislature was to reduce serious and violent crime. This deterrent function is attested to in S v Malgas when the Supreme Court of Appeal declared:

> In short, the legislature aimed at ensuring a severe, standardised and consistent response from the courts to the commission of such [serious] crimes…[2]

Other motivations included 'popular punitiveness', the need for government to show its concern with high crime rates, the public perception that sentences are not sufficiently severe, the need to 'be tough on crime', sentencing as a deterrent, and retribution – the argument of just desserts, or proportionality.

The passing of the minimum sentencing legislation took place against the backdrop of a range of other legislative and policy shifts aimed at dealing with the perception that government was not taking the

crime problem seriously. These included harsh new bail laws, legislation dealing with organised crime and the criminalisation of gangs, and eventually (subsequent to the enactment of minimum sentencing laws), the downgrading of the National Crime Prevention Strategy (NCPS) in favour of a tougher, no-nonsense approach to dealing with crime.

The following key questions are examined in this article: Are mandatory minimum sentences constitutional? Have they deterred or prevented crime? Do they afford better protection to victims? What is the relationship between minimum sentences and prison overcrowding? Finally, the article questions whether South Africa needs a more comprehensive sentencing reform strategy.

Has minimum sentencing had the desired impact?

Preventing or curbing crime, especially serious and violent crime

It is routinely noted that the impact of harsher sentencing regimes on general deterrence of crime is difficult to isolate and measure. Writing from an international perspective, Tonry states that:

> The evidence is clear and weighty, that enactment of mandatory penalty laws has either no deterrent effect or modest deterrent effect that soon wastes away. Equally clear and consistent are findings that mandatory minimum laws provoke judicial and prosecutorial stratagems, usually by accepting guilty pleas to other non-mandatory penalty offences or by diverting offenders from prosecution altogether that avoid their application.[3]

In the South African case, despite the repeated extension of the minimum sentences legislation that was originally intended to be in place only for two years, it is difficult to find substantive evidence that the new penal regime has had any general deterrent effect – or even that it has reduced crime.[4] Instead, statistics suggest an uneven change in reported crimes.[5]

According to data analysed by Schärf and Berg from 1997/98,[6] levels of recorded crime rose steadily, beginning to level off in 2000/01, dipping in 2001/02, but then rising again in 2002/03.[7] It must of course be noted that a number of factors mediate the interpretation of this crime data. These factors include the problem of under-reporting of crime to the police, means of data collection and recording, and shifting categories and methods of classification of offences.

Nevertheless, the data appear to indicate a gradual decrease in violent crime rates from 1994/95 to 1997/98, after which a sharp increase was recorded. For the purposes of this analysis, violent crime includes murder, attempted murder, rape, attempted rape, assault with intent to do grievous bodily harm, common assault, aggravated robbery, other robbery, and malicious damage to property. A few of these offences are targeted by the mandatory sentencing laws.

A more nuanced analysis per crime category revealed that in some respects, violent crime had decreased – murder being a case in point. However, aggravated robbery statistics rose, as did cash-in-transit robberies;[8] both offences for which mandatory sentences might well be imposed.

Altbeker comes to similar conclusions with reference to the latest statistics released by the South African Police Service.[9] He notes, however, that methodological problems are inherent in collating and interpreting crime statistics, and that there are widely recognised discrepancies in reporting the rates of different crime categories. Murder is generally accepted as being a highly reported crime (there is a physical body to account for), whereas robbery is viewed as being largely under-reported.

Altbeker notes that between 1996/97 and 2003/04, the incidence of murder per 100,000 of the population decreased steadily from 62.8 to 42.7.[10] Indeed, a continued decline in the incidence of murder from 1994 onwards illustrates that the abolition of the death penalty in 1995 did not contribute to an increase in this offence, contrary to what many may believe. Similarly, since a downward trend was already in evidence by the time minimum sentences were enacted, and the

rate of decline did not accelerate, the subsequent decrease cannot be attributed to any intervening legislative changes.

During the same time period, however, the rate of aggravated robbery increased from 218.5 per 100,000 of the population to 288.5.[11] Given that only around 30% of robbery victims report this crime to the police, the trend is difficult to interpret.[12] The same is not true of car hijackings (one form of aggravated robbery), however. The majority of these crimes are reported to police, so the statistics indicating that hijackings dropped substantially since 1998 are probably accurate. This offence is specifically included in Part II of Schedule 2 of the minimum sentences laws.[13]

It can therefore be concluded that, at present, there is little reliable evidence that the new sentencing law has reduced crime in general, or that specific offences targeted by this law have been curbed.

A further argument that has been made by Altbeker about the function and outcome of mandatory sentences is that there are three ways in which prison sentences might reduce crime: rehabilitation, incapacitation, and deterrence.[14] He notes that there is little evidence that imprisonment rehabilitates offenders; rather, there is more evidence to the contrary. Indeed, anecdotal evidence from members of the Department of Correctional Services suggests that prisoners serving extremely long terms of imprisonment – such as those prescribed as mandatory sentences – have nothing to hope for. The prospect of release is so far off that they are consequently less amenable to any rehabilitation.[15]

This leads to Altbeker's second point, namely that the use of prison to incapacitate offenders breaks down when prison sentences are too long, as prisoners are kept behind bars well past the age at which most criminologists expect them to continue offending. After this point, they are consuming scarce prison space without doing much to reduce crime, since those behind bars would in any case be less likely to offend.[16]

Altbeker points out that evidence suggests that the preventive effect of a 1% increase in the certainty that an offender will go to prison is far more effective than a 1% increase in the length of a sentence.[17] Thus, from a crime control perspective, it is more efficient to use prison space for more people sentenced to shorter periods, than for fewer people sentenced to longer terms.[18]

Promoting consistency in sentencing

Eliminating inconsistent and apparently widely diverging sentencing practices was a key objective underlying the introduction of minimum sentences. As Terblanche has pointed out:

> [t]he lack of consistency in sentencing is a major problem in South Africa, as it is in other countries where sentencers have largely unfettered discretion in imposing sentence.[19]

Terblanche asserts, however, that the minimum sentences legislation has, if anything, worsened the disparities and inconsistencies that prevail in relation to the offences targeted by the law.[20] Certainly, despite assertions from judges and magistrates that the prescribed sentences require them to treat all those guilty of a particular type of crime in the same way, irrespective of differing circumstances, newspaper reports abound of apparently severe cases in which judges have found room to depart from prescribed minimum sentences.[21]

What about the rights of victims?

The women's rights lobby and victim groups support the extension of the minimum sentences legislation, especially insofar as it targets certain sexual offences and signals the severity of crimes involving sexual violence.

The submission of the Western Cape Consortium on Violence Against Women analysed an array of recent cases in support of their contention that the abolition (or non-extension) of the mandatory sentencing legislation would prejudice women. Among other arguments, the cases they cite reveal that, in their opinion, the following factors are consistently and erroneously used to justify lesser sentences, namely:

- the previous sexual history of the complainant;[22]

- an accused's cultural beliefs about sexual assault;[23]
- an accused's use of intoxicating substances prior to the assault;[24]
- an accused's lack of intention to cause harm to the complainant in committing the rape;[25]
- an accused's lack of education, sophistication or a disadvantaged background;[26]
- a lack of 'excessive force' used to perpetrate the rape;[27]
- a lack or apparent lack of physical harm to the complainant;[28]
- a lack or apparent lack of psychological harm to the complainant;[29] or
- any relationship between the accused and the complainant prior to the offence being committed (including a consensual sexual relationship).[30]

The Consortium noted that the above issues were precisely those that in earlier arguments had been put forward as factors that the courts should not take into account in determining substantial and compelling circumstances. With this in mind the Consortium put forward the following suggestion as one optional reform proposal:

> In light of the problematic jurisprudence on the meaning of 'substantial and compelling circumstances,' it is submitted that Parliament must enact *mandatory* interpretative guidelines for the judiciary, setting out how it is to be interpreted in light of the Constitution and international obligations to protect the rights and dignity of women. Specifically, the legislature should set out circumstances or factors that may not in themselves be regarded as 'substantial and compelling circumstances ... .[31]

Commentators have also drawn attention to the poor drafting of the Act, and the difficulties this has caused the courts as they have had to delve into the details of the offence types set out in Schedule 2.[32] Problems were also encountered in the application of the legislation to district courts, as the law makes mention only of regional courts and high courts. Terblanche argues that this may have been justifiable in the light of the fact that the legislation was introduced as an emergency measure, but he suggests that it is now time for it to go:

> One should not be fooled into believing that the Act is anything but an expensive tool. Just consider the many thousands of judicial officer hours that have been consumed in trying to make sense of its provisions, or trying to get around those provisions that turned out to be patently unfair … These costs might have been worthwhile if the Act had actually achieved its purpose.[33]

The impact on prison overcrowding

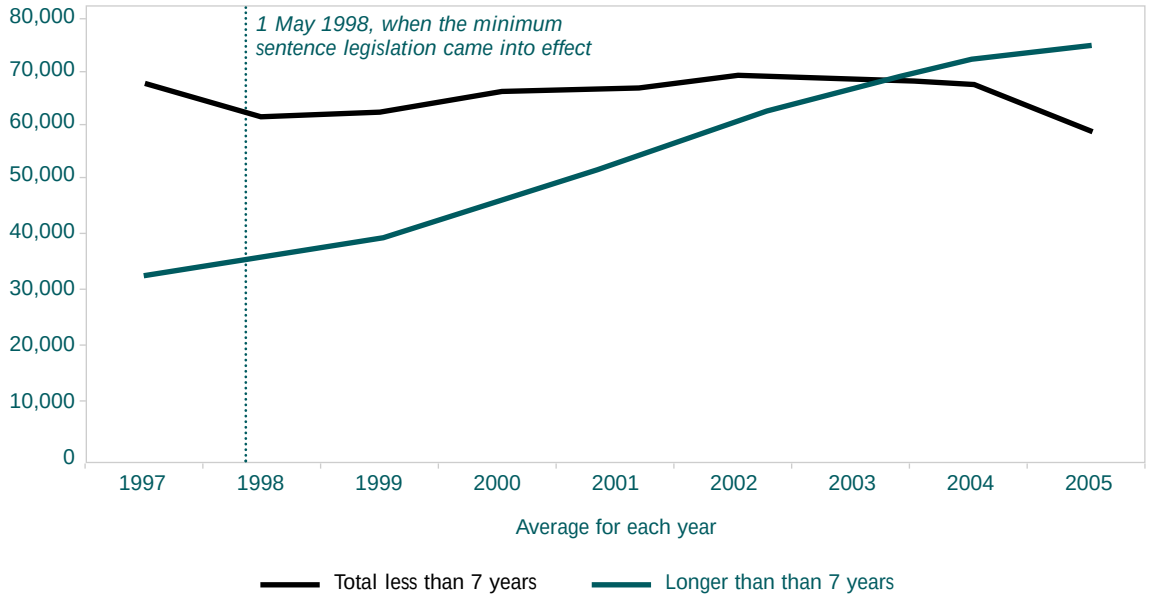
When considering the cost of minimum sentencing, a question that needs to be asked is whether South Africa can afford a prison population of the size that it is now; and one that is bound to escalate as prisoners serve longer and longer terms of imprisonment. Not only are current overcrowding levels alarming, but the circumstances under which prisoners are accommodated may well be unconstitutional.[34] We cannot build our way out of the problem, and the connection between sentencing regimes and conditions of imprisonment needs to be re-established urgently.[35]

Several commentators, notably Judge Fagan, the Inspecting Judge of Prisons, have ascribed worsening prison overcrowding to the impact of minimum sentences:

> The effect of the minimum sentence legislation has been to greatly increase the number of prisoners serving long and life sentences. It has resulted in a major shift in the length of prison terms [see Figure 1].[36]

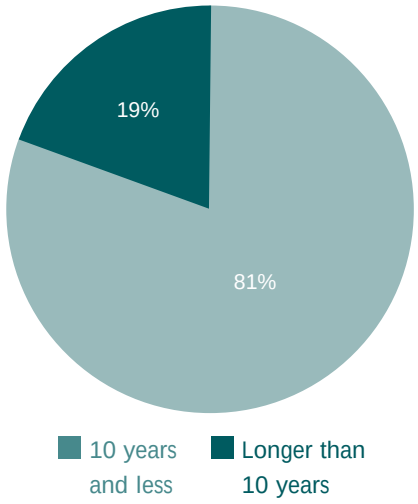
Judge Fagan notes that sentences of seven years and less showed little change from 1997 (67,535) to 2004 (67,483), while sentences of more than seven years increased rapidly from 1997 (29,376) to 2004 (67,081). Life sentences increased from 638 in 1997 to 5,511 on 30 September 2004. He notes that in April 1998 – immediately before the implementation of the minimum sentence legislation – only 18,644 (19%) of the sentenced prisoners were serving a term of longer than ten years. This has since increased to 49,094 (36%) (Figures 2 and 3).

Figure 1: Effect of minimum sentence legislation on prisoner numbers



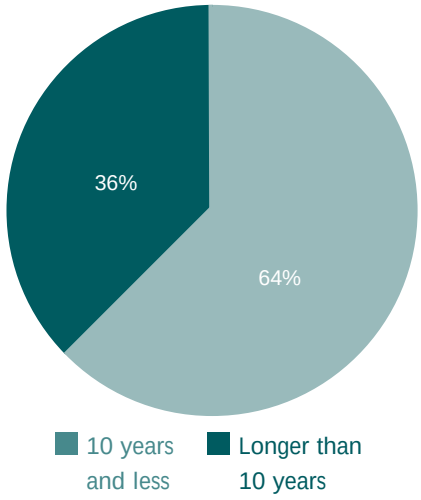
Source: H Fagan, Our bursting prisons, The Advocate, April 2005

Figure 2: Sentenced groups, 30 April 1998



Source: H Fagan, Our bursting prisons, The Advocate, April 2005

Figure 3: Sentenced groups, 30 September 2004



Source: H Fagan, Our bursting prisons, The Advocate, April 2005

According to the Inspecting Judge, the sentenced prisoner population has increased by 28,801 prisoners since April 2000, despite the fact that about 7,000 inmates were released on parole in September 2003. Fagan argues that with a growth rate of more than 7,000 prisoners a year, the resulting inhumane conditions will necessitate periodic mass releases.

Concerns about prison overcrowding and the impact of minimum sentences are not limited to the Inspecting Judge. The Department of Correctional Services has identified the problem as a key priority, and the Democratic Alliance has also publicly linked the minimum sentencing laws to overcrowding of prisons.[37] Writing on prison overcrowding, Steinberg notes that:

> …[it is] somewhat baffling that parliament passed the minimum sentencing provisions apparently without thought to the effect on prison volumes…[and that there is] abundant international evidence that a sudden and sustained increase in sentences for serious crimes will inevitably lead to an…increase in prison numbers.[38]

Steinberg cites the example of the US where mandatory minimum sentences were introduced in the late 1970s and early 1980s. From 1980 to 1995, the US prison population grew by 242%. The generally accepted reason for this growth is the lengthening of prison sentences, the decreased possibilities of parole, and policies mandating incarceration for growing numbers of offences.[39]

It is an unassailable reality that the sentenced prison population in South Africa has increased rapidly since 1998. Moreover, the evidence is overwhelming that a significantly larger proportion of inmates are serving long terms of imprisonment – with the number of prisoners serving sentences of more than ten years having quadrupled from 10,000 to 40,000 in the past nine years.[40]

Nevertheless, critics argue that it cannot be conclusively shown that the increase in long-term and life sentences is *necessarily* due to the implementation of the minimum sentences legislation. It could, they assert, simply be due to a general increase in the prevalence of serious crime, or to a generally more punitive and intolerant mood among judicial officers. It could even be the result of better police clearance rates for serious offences.

A case-by-case analysis would be needed to establish conclusively the link between the implementation of the legislation and the statistics discussed above. A study of this nature was done five years ago during the South African Law Commission's investigation into sentencing, but the results are now outdated.[41] Furthermore, analysis of police dockets would be required to assess whether better quality investigations can account for the increased numbers of prisoners serving long-term or life sentences.

Conclusion

The legislature's aim, when introducing the minimum sentencing provisions in 1997, was to reduce serious and violent crime, to achieve consistency in sentencing, and to address public perceptions that sentences were not sufficiently severe.

Although the impact of minimum sentencing is difficult to quantify, the information presented in this article suggests that there has been little or no significant impact with regard to any of the above goals. It is unclear that the legislation has served a deterrent function, and the criminal justice system seems no closer to achieving consistency in sentencing than in 1997.

It is difficult to determine whether the legislation has addressed public perceptions that sentences are not sufficiently severe, because specific research on this issue has not been done. However, survey data does indicate that public fear of crime – which is no doubt related to opinion about how the justice system deals with offenders – has increased dramatically over the past five years. The 2003 Institute for Security Studies (ISS) victim survey found that significantly more people felt unsafe in 2003 than they did in 1998.[42]

Although unrelated to its intended goals, the one clear consequence of the minimum sentencing regime is that it has exacerbated the problem of overcrowding in South African prisons.

There is, however, no guarantee that if the minimum sentences contained in Act 105 of 1997 were abolished, the sentencing tariff would drop. Indeed, ever sensitive to the public mood, magistrates and judges are by and large unlikely to shift sentence terms measurably downwards. This means that a more comprehensive sentencing reform initiative should be a matter of priority. Such an initiative

could take the form envisaged in the SA Law Reform Commission's Report (2000) or some other form, such as via the guideline judgments of the Supreme Court of Appeal.

Endnotes

1 *Sunday Tribune*, 30 January 2005, quoting Democratic Alliance Spokesperson on Justice, Sheila Camerer. The death sentence was ruled unconstitutional in 1995 in *S* v *Makwanyane and another* 1995 2 SACR 1(CC).
2 S v Malgas 2001 (1) SACR 469 (SCA) par 25.
3 M Tonry, *Sentencing, judicial discretion and training*, 1992, quoted in SS Terblanche, Mandatory and minimum sentences: Considering s 51 of the Criminal Law Amendment Act 1997, *Acta Juridica* 194, 2003, p 137.
4 The National Assembly and the National Council of Provinces have by resolution, on 12 and 13 April 2005, voted to support a further extension of the Act until 30 April 2007. The Proclamation by the State President to give effect to this resolution has been signed. It is perhaps worthy to note that the parliamentary extension was supported by all political parties.
5 A three-year moratorium (imposed in July 2000) on the release of crime statistics was lifted on 22 September 2003.
6 W Schärf & J Berg, Crime statistics in South Africa 1994–2003, 17(1), *South African Journal on Criminal Justice*, 2004, pp 57–78.
7 Ibid, p 61.
8 Ibid, pp 72–73.
9 A Altbeker, The impact of the introduction of the minimum sentencing legislation on levels of crime and crime prevention, presentation at the OSF-SA workshop report on minimum sentencing, January 2005, pp 6–7.
10 Ibid.
11 A Altbeker, Puzzling statistics: Is South Africa really the world's crime capital?, *SA Crime Quarterly* 11, 2005.
12 P Burton, A du Plessis, T Leggett, A Louw, D Mistry, H van Vuuren, *National Victims of Crime Survey: South Africa 2003,* Institute for Security Studies monograph series no 101, Pretoria, July 2003.
13 Part II (b) of Schedule 2.
14 See *OSF-SA Minimum sentences roundtable report*, March 2005, <www.osf.org.za>.
15 The point was also made by a member of the Department of Correctional Services at the Open Society Foundation Roundtable workshop on minimum sentences legislation that such prisoners have nothing to lose and are more willing to use violence and weapons in attempting to escape.
16 *OSF-SA Minimum sentences roundtable report*, op cit, p 7.
17 Referring to A Blumstein, Prisons, in JQ Wilson & J Peterseia (eds), *Crime*, ICS Press, California, 1995, p 408.
18 *OSF-SA Minimum sentences roundtable report*, op cit.
19 SS Terblanche, Sentencing guidelines for South Africa: Lessons from elsewhere, *South African Law Journal*, 120(4), 2003, p 858.
20 Ibid, p 881. See also *OSF-SA Minimum sentences roundtable report*, op cit, p 12.
21 See *Sunday Tribune*, 30 January 2005 for allegations in this regard. It has been rumoured, further, that all of the judge presidents of the various provincial divisions of the High Courts provided submissions to the Department of Justice and Constitutional Development prior to the extension of the legislation, expressing their (and their benches') opposition to the continuation of the life of Act 105 of 1997.
22 *S v Mahamotsa*, op cit.
23 *S* v *Mvamvu* (case 350/2003 (SCA)).
24 *S* v *Njikelana* 2003 (2) SACR 166 (C).
25 *S* v *Mvamvu,* op cit.
26 *S* v *Njikelana,* op cit.
27 *S* v *G,* op cit and *S v Shongwe* 1999 JDR 0473 (O).
28 *S* v *G*, op cit, *S* v *Njikelana,* op cit and *S* v *Shongwe,* op cit.
29 *S* v *Mvamvu,* op cit and *S* v *Shongwe,* op cit.
30 *S* v *Mvamvu,* op cit and *S* v *Abrahams,* op cit.
31 Submission of the Western Cape Consortium on Violence Against Women (copy on file with authors), 2005, p 7.
32 Terblanche, 2003, op cit, p 194.
33 Ibid, p 220.
34 Steinberg, op cit.
35 Steinberg (ibid, p 13) notes that this link appeared to have fallen off the judicial map, and refers in this regard to a study in 2002 in which 42 magistrates and High Court judges were asked whether the capacity of the correctional system to carry out sentences should be considered when sentence is imposed: 80% of the respondents said never or almost never, and only 10% said always or almost always (M Schonteich, D Mistry & J Struwig, *Qualitative research report on sentencing: An empirical, qualitative study on the sentencing practices of the South African criminal courts, with a particular emphasis on the Criminal Law Amendment Act 105 of 1997,* South African Law Commission, Discussion Paper, May 2000).
36 H Fagan, Our bursting prisons, *The Advocate,* April 2005. See too H Fagan, Curb the vengeance: laws on minimum sentencing and parole spell worsening prison conditions, *SA Crime Quarterly* 10, December 2004.
37 *Sunday Tribune*, 30 January 2005. It has also been asserted that an increase in the sentencing jurisdiction of the lower courts has played a contributory role in escalating prison terms, and consequently overcrowding. The jurisdiction for district courts was increased to three years, and that of regional courts

from 10 to 15 years. However, proper case-by-case studies would be required to ascertain whether the tariff has indeed escalated as a consequence of increased sentencing jurisdiction.

38 J Steinberg, *Prison overcrowding and the constitutional right to adequate accommodation in South Africa*, Occasional Paper, Centre for the Study of Violence and Reconciliation, 2005.

39 Ibid, p 10 quoting D Gilliard & A Beck, *Prisons and jail inmates*, 1995 and Bureau of Justice Statistics, Washington DC, 1996; J Woolredge, A state level analysis of sentencing policy and inmate overcrowding, *Crime and Delinquency* 42(2), 1996, p 456; T Gabore & N Crutcher, *Mandatory minimum penalties: Their effect on crime, sentencing disparities and criminal justice expenditure,* Canadian Department of Justice, Research and Statistics Division, Ottawa, 1997.

40 W Hartley, Jails may soon turn away prisoners, *Business Day*, 14 April 2005.

41 See South African Law Commission, *Conviction rates and other outcomes of crimes reported in eight South African police areas*, Research Paper 18, 2000. This study concluded, somewhat bleakly, that crime does indeed pay, with only six convictions after more than two years for every 100 violent crimes (murder, rape and aggravated robbery). Less than one in 20 perpetrators of reported adult rape (5%) or aggravated robbery (3%) is convicted. Moreover, South Africa's figures did not appear to fare well compared to other countries for which comparable data was available. In those jurisdictions, approximately 50% of reported murders result in convictions, compared to 11% in South Africa. The conviction rate for reported rape is 19% in the US and 10% in England and Wales, compared to 7% in South Africa (Research Paper 18, p 26).

42 P Burton, A du Plessis, T Leggett, A Louw, D Mistry, H van Vuuren, *National Victims of Crime Survey: South Africa 2003,* Institute for Security Studies monograph series no 101, Pretoria, July 2003.

AN UNKNOWN QUANTITY

Kidnapping for ransom in South Africa

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The kidnapping and murder of both Leigh Mathews and Frances Rasuge in 2004, and the criminal trials of their respective killers, have heightened awareness and concern about kidnapping for ransom in South Africa. Several media articles have suggested an increase in the number of kidnappings, or at the very least that kidnapping for ransom is a significant problem that South Africans ignore at their peril. This article examines the evidence for such claims as well as issues that should lead to caution in describing kidnapping for ransom trends.

Kidnapping for ransom is not a new problem, but has become a growth industry worldwide, to the extent that there are now several international insurance companies providing personal and corporate kidnapping insurance policies. Risk insurance, and the provision of related risk and crisis management services, has become an established industry and it is estimated that as much as $100m is paid each year in premiums globally.[1]

Kidnapping for ransom is a diverse and evolving phenomenon, but is most common in countries with high levels of crime and corruption, poorly resourced or trained police personnel, a weak judiciary, and/or a history of political or social instability and conflict.[2] In these countries kidnapping is often more profitable and less likely to lead to conviction than other generally high-yield crimes like bank robbery,[3] and the growth of the phenomenon can be seen "as the logical outcome of [criminals] seeking new avenues to make quick profits from unlawful activities".[4] It is estimated that as many as 80% of all kidnappings for ransom occur in Latin America, but kidnapping appears to a growing problem in sub-Saharan Africa, Eastern Europe, Central Asia, the Balkans and the Middle East.[5]

Motivations and modus operandi vary, but generally speaking there are two main kinds of kidnapping for ransom. These can be roughly categorised as:

- *Criminal kidnapping*, where the main motive is to obtain a ransom from the family or business of victims. This category includes instances where criminals take hostages as a shield to help them escape from the scene of a crime, or use them to obtain money or valuables, or the keys or secret codes needed to access areas where these are stored.
- *Political kidnapping*, where the foremost objective is to further the political aims of a particular political group or movement. In this case, a ransom is usually demanded to obtain money for the group to fund their activities – tactics used by the Abu Sayyaf group in Pakistan and the Philippines, for example.[6]

Such kidnappings are distinct from emotional or pathological kidnapping, which involves, for instance, the kidnapping of children by estranged parents or relatives or, in the case of the latter, kidnappings motivated by individual pathologies, such as kidnapping for the purposes of rape or other sexual aberration.[7] They also differ from unlawful

detentions, where people are held illegally by law enforcement personnel; or political blackmail, which involves holding individuals against political ends, such as the release of comrades from prison.[8]

Globally, criminal and political kidnappings are a multi-million dollar enterprise. The British Foreign Policy Centre, for example, estimates that kidnappers take up to US$500m annually in both local and expatriate kidnappings;[9] while companies such as American Insurance Group (AIG) South Africa – the only company in South Africa to offer dedicated kidnap for ransom insurance – provide their clients with cover up to $50m.[10]

Yet, kidnappings are not confined to millionaires and their families, or to business executives from large, international companies. As the Leigh Mathews case illustrates, although the rich and well-connected are often targeted, many victims are often simply in the wrong place at the wrong time. 'Express kidnappings' - where victims are briefly held and are forced to withdraw cash from an ATM - and certain types of hi-jacking have also diversified the profile of kidnapping victims.

Ransom demands also vary widely, ranging from millions of dollars to a few hundred dollars, and may even take the form of goods and services. A recent kidnapping in Nigeria, for example, was resolved with the exchange of a computer and fax machine, while kidnappers in Yemen routinely release hostages in return for the construction of a new road or well for a rural village.[11]

Defining kidnapping under South African law

Under South African law, kidnapping consists of unlawfully or intentionally depriving a person of their liberty of movement or, in the case of a minor, depriving a parent or recognised guardian of their control over the child.[12] The emphasis is on the individual's right to personal freedom and the violation of this right through force, threats or fraud. In the case of children, the crime is also committed against the child's parents or guardians, so that even where a child consents to being taken, the act remains criminal due to the unlawful interference with the custodial rights vested in their legal guardians.

Kidnapping need not involve a ransom for a victim's release, and a ransom demand – extortion – only influences the severity of the crime's punishment. It also need not last for a long time; although there has been some legal debate about this, current interpretations of the law maintain that holding someone against their will for only a few hours still constitutes kidnapping. In South Africa, kidnapping is a separate crime from abduction, although there are definitional similarities between the two. Abduction is defined as the unlawful taking of a minor from the control of their parent or guardian *for the purpose of marriage or sexual intercourse*.[13] As in the case of the kidnapping of a minor, abduction is a crime against parental authority. It is chiefly concerned with parents' right to determine if a minor daughter will marry, and has its origins in a time and society in which women were considered an important economic asset to the family. As with kidnapping, the child's consent is irrelevant, but unlike kidnapping, abduction occurs with the express purpose of marriage or intercourse and may or may not involve force or deception.

The view from the ground

Several professionals involved in investigating and resolving kidnapping for ransom cases believe that although the number of kidnappings for ransom in South Africa is currently fairly low compared to other serious and violent crimes, it is on the rise. As elsewhere in the world, the modus operandi of kidnappers in South Africa varies, and their methods are constantly changing and evolving, making it difficult to say with certainty what the trends are. There are, however, some broad patterns.

Like in many other countries, wealthy individuals or business executives and their families are targeted for large ransoms anywhere between R100,000 and several million rand. These involve both local and expatriate victims. Smaller-scale kidnappings are also becoming common, where children are kidnapped from upmarket schools and held for fairly short periods for relatively low ransom demands of between R20,000 and R30,000. These kidnappings tend to go unreported, as parents prefer to simply pay up and get their child back.

'Express' kidnappings appear widespread, with victims either held and driven to an ATM to withdraw cash, or held at home while some of the

kidnappers drive to a nearby cash-point to withdraw money, after which they are released. Kidnappings of foreign businessmen in connection with 419 scams have also been reported, although they have not yet involved local executives.[14]

Kidnapping for ransom appears most prevalent in South Africa's main cities, with Gauteng and Cape Town experiencing the most kidnappings.[15] This may be due to the concentration of wealth in prosperous urban centres, but could also reflect to some degree higher levels of reporting, insurance coverage and access to specialised assistance in these areas.

Unlike the situation in many Latin American countries, where kidnapping has developed into a mature and highly professional money-making industry, it is not yet very professionalized in South Africa, and is often motivated by commercial manoeuvring and revenge as much as greed. According to one industry insider, kidnapping for ransom is prevalent within sectors such the taxi industry, where ransoms are demanded but the primary objective is to intimidate or blackmail competitors into relinquishing coveted routes.[16]

Local and international crime syndicates have been linked to some kidnappings, but kidnapping and extortion are not confined to organised groups. A private investigator argues that many kidnappings are planned and instigated by people known to the victim, who then contract others to carry out the crime.[17] Kidnappers usually study the movements and routines of their victims, but are generally less experienced and less sophisticated than their Latin American counterparts. Despite this, most kidnappings in South Africa are resolved without harm coming to the hostage.

What the statistics say

Interpreting crime statistics is difficult worldwide. Police statistics tend to undercount crime levels, either because offences are not reported or are not recorded. Some crimes, such as murder, car theft, car hijacking and burglary, are more consistently reported than others, but it is likely that the real levels of most crimes will never be known. The definitions of crime also vary and change, which may reduce the reliability of comparisons over time or between countries.[18]

Statistics on kidnapping share these problems, and it is impossible to know the true extent of this crime in South Africa or elsewhere. Experts agree that most kidnappings go unreported, either because victims and their families are afraid of getting the police involved or, in the many countries where the police are complicit in the crime, mistrust the authorities.

However, available statistics suggest that, contrary to popular perception, levels of reported kidnapping in South Africa have declined over the last decade. According to SAPS figures, 3,004 kidnappings were reported during the 2003/04 financial year – quite substantially less than the 4,101 kidnappings recorded in the 1994/95 financial year.[29] Calculated by population size, kidnapping rates have declined from 10.6 per 100,000 of the population in the 1994/95 financial year, to 6.5 in the 2003/04 period.[20] According to 2002 statistics from the United Nations Office on Drugs and Crime (UNODC) Survey of Crime Trends and Operations of Criminal Justice Systems, a figure in this region gives South Africa the fourth highest kidnapping rate globally after Kuwait, Belgium and Canada (Figure 1).[21]

It is likely that South Africa in actual fact ranks even lower in the international kidnapping stakes. The UNODC survey is sent to all the countries represented in the United Nations, but as a rule less than half respond, leaving gaps in the published data.[22] In this case, the figures do not show kidnapping rates for Latin American countries, such as Colombia, Mexico, Argentina, Venezuela and Ecuador, or many of the former Soviet Union countries, which are all thought to have very high levels of kidnapping. Statistics from these countries are hard to come by, and it is unclear how reliable the available statistics are. Statistics for 2002 are unavailable, but Kroll Security International (a high-risk security group) estimates that in 2003 there were 4,000 kidnappings in Colombia, 3,000 in Mexico and 2,000 in Argentina.[23] Calculated per 100,000 of the population, this places Colombia second to Kuwait (at 9.1 kidnappings per 100,000), relegating South Africa to at least fifth place in the global rankings.[24]

Such broad comparisons are, however, misleading as they fail to distinguish kidnapping for ransom from other types of kidnapping, like emotional or

pathological kidnapping or unlawful detentions – and, in the case of the UNODC figures, it is unclear exactly how kidnapping is defined. As already discussed, under South African law, kidnapping need not involve a ransom demand. Police statistics adhere to the common law definition of the crime, meaning that kidnapping for ransom is only one of several sub-categories of crime included in their statistics, and that statistics are subject to conceptual confusion over the differences between cases of kidnapping and abduction.

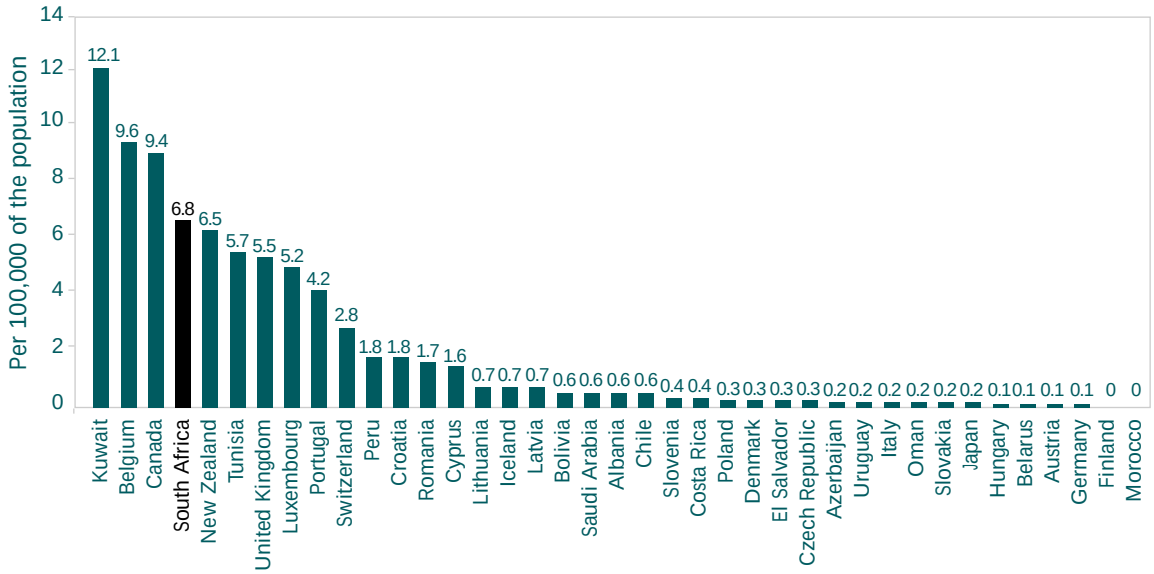
The overlap between kidnapping and abduction is visible in the police statistics. As shown in Figure 2, while the number of kidnappings reported to the police has declined since 1994, the number of abductions has increased, particularly since the beginning of 2002. Police statisticians argue that this shift is primarily a result of more accurate categorisation of abduction and kidnapping cases by frontline staff as a result of training drives, rather than real shifts in the prevalence of these crimes.[25] This suggests that in the past many recorded kidnappings have actually been abductions, and it is likely that these definitional issues still result in an over-estimation of the number of kidnappings each year.

Such ambiguities make it impossible to know precisely how many of the kidnappings recorded by police statistics are for ransom, but it is likely that these make up only a small proportion of all cases. Again, the data are sketchy and of questionable accuracy and comparability. The international Hiscox insurance group estimates that there were 11 kidnappings for ransom in South Africa between 1992 and 1999 – although they argue that only about 10% of kidnappings for ransom are reported to the authorities, potentially making the true figure somewhere in the region of 110.[26]

According to the Hiscox group figures, this still places South Africa amongst the ten countries with the highest kidnapping rates in the world, but leaves it well behind several Latin American countries and those making up the former Soviet Union (Table 1). A study by the insurance company AIG South Africa indicates that there were 32 kidnappings for ransom in South Africa between 1998 and 2003, although AIG too believes that the actual figure is likely to be higher.[27]

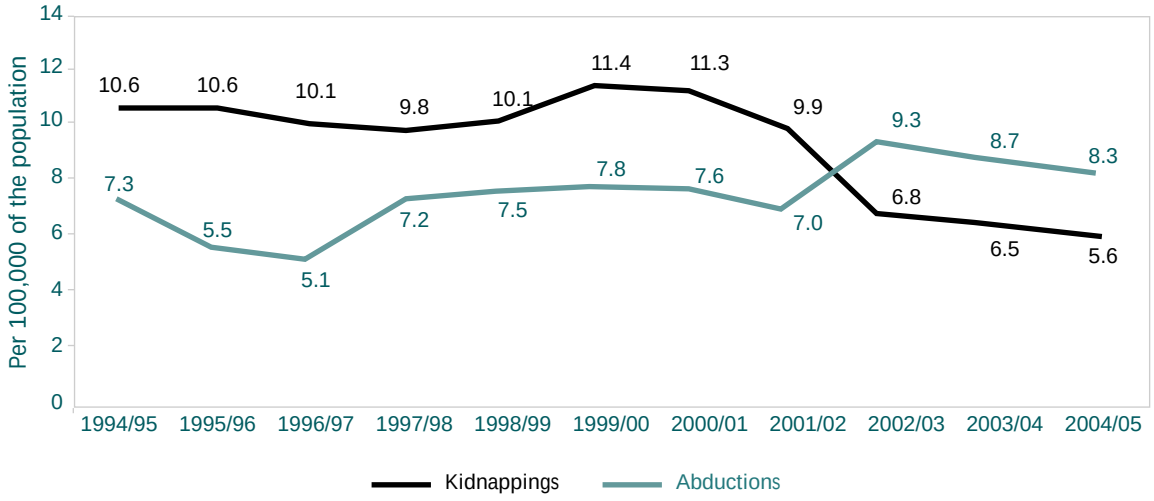
The take-up of kidnapping for ransom insurance in South Africa is still relatively low, however, and insurance industry-based statistics probably under-estimate the extent of the problem. Risk insurance is a highly secretive area, and owing to fears that revealing specifics about take-up trends and purchasers could place clients at risk, kidnapping

Figure 1: International kidnapping rates in 2002



Source: 8th United Nations Survey on Crime Trends and the Operations of the Criminal Justice System

Figure 2: Kidnappings and abductions reported to the SAPS, 1994/95 – 2003/04



Source: Crime Information and Analysis Centre (CIAC), 2005

Table 1: Kidnappings for ransom reported by the Hiscox insurance group, 1992 – 1999

Rank	Country	1992	1993	1994	1995	1996	1997	1998	1999	Total
1	Colombia	464	244	217	469	947	908	960	972	5,181
2	Mexico	46	87	31	48	109	275	436	402	1,434
3	Former Soviet Union[28]	5	5	13	3	21	41	57	105	250
4	Brazil	94	66	73	56	65	67	43	51	515
5	Philippines	53	56	78	61	113	61	51	39	512
6	Nigeria	1	0	0	1	0	2	6	24	34
7	India	9	10	13	9	5	8	5	17	76
8	Ecuador	1	10	15	11	7	5	5	12	66
9	Venezuela	15	6	7	7	28	24	10	12	109
10	South Africa	0	0	0	1	0	0	0	10	

Source: The Hiscox insurance group, 2000

insurance is even more so. A local risk management consultant estimates that fewer than half of all South Africa's large corporations have kidnapping insurance, with most cover confined to senior executives working in the local branches of large multi-national companies.[29] Private insurance too appears restricted primarily to a relatively small number of high- profile, high-worth individuals. Reporting issues aside, it is thus likely that industry-based statistics are only illustrative of trends in a very specific segment of the population.

According to a director in the SAPS Johannesburg detective branch, the Gauteng police deal with over a dozen kidnappings for ransom each month.[30] Other sources estimate that there are 12 to 15 kidnappings for ransom in the province each month – mostly involving children.[31] A private investigator, although reluctant to suggest actual figures, argues that he is seeing more kidnappings for ransom than five years ago, with the number of cases having risen steadily over this period.[32]

Looking to the future

Based on these figures it is impossible to determine precisely how big an issue kidnapping for ransom is in South Africa, and without significant changes in the way that police statistics on kidnapping are captured, it will be difficult to even estimate the true extent of the problem in the future. Despite the alarm with which the issue has been met in the media, kidnapping for ransom appears relatively rare compared to other serious and violent crimes. Nevertheless, the indication is that the number of kidnappings is growing and that the crime may develop into more of a problem in the future. This is not a forgone conclusion, but it is plausible that as more and more money is invested in securing property, houses and businesses in South Africa, kidnapping may become an increasingly easy and attractive way of obtaining large financial rewards.

Should this be the case, it will be important for the police to develop a uniform capacity to deal quickly and effectively with kidnapping for ransom cases. One suggestion is that one or two officers at station level be trained specifically to respond to suspected kidnappings. It might be impractical to do this for every station, but given the apparent relationship between wealth and kidnapping, resources could be focused on South Africa's wealthier urban areas.

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THE DANGERS OF DATA

Recognising the limitations of crime statistics

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It is frequently noted that police crime statistics can reflect reality badly because of under-reporting and under-recording. Less frequently noted is the fact that other sources of data can be just as problematic. This article reflects on two sources of statistics on murder – the National Injury Mortality Surveillance System and the MRC's Burden of Disease estimates – and argues that the incautious use of these data can lead to erroneous conclusions.

There are many aspects of criminal justice policy that cannot be decided purely on the basis of empirical data. One example of this is the death penalty: those who believe that putting someone to death is the appropriate response of a society to some forms of criminality will treat the findings of empirical research into whether this reduces crime or achieves any other social good, as irrelevant. Another example is prostitution and narcotics. Here, despite ample evidence that prohibition causes problems which may be greater than the evils caused directly by drugs and the sex industry themselves, many want the police to enforce the law simply because they take a moral stance against these activities.

In these kinds of debate, empirical data about the extent of the problem and the costs incurred by society in seeking to contain it may not be decisive. Conflict about the relative superiority of one approach or another is as much a reflection of contending values as it is a question of which achieves a particular end more effectively or efficiently. Data are not irrelevant to these debates, but they will seldom be decisive.

The need for good data

There are other areas of social and criminal justice policy, however, in which good data are needed if appropriate decisions are to be made. In designing a police strategy, for instance, it would be useful to know where crime is most concentrated, how sensitive it is to changes in the level of policing, and whether or not it is significantly affected by changes to demographic, housing, welfare or any other policies. But saying that good data are needed if sound decisions are to be made means just that: the data need to be good. If they are not, they may serve to confuse matters. Worse still, they can lead to mistakes.

Given this, it is incumbent on researchers to deal faithfully with their data and to avoid stretching them beyond their limits. Perhaps the most obvious problem with data is that their presentation sometimes makes it very difficult to establish how conclusions were reached and how plausible these are. In these cases, the problem may lie with the data, with the calculations performed on them, or with their actual presentation. In other cases, conclusions drawn from data may be unsupported

by the data themselves. In all cases, however, real harm can be done when the limitations of data are not respected.

This article looks at two recent examples of these problems, both arising in discussions relating to murder rates in South Africa, and contends that, in both cases, illegitimate conclusions were drawn. Given that these errors were made on the basis of the crime data conventionally regarded as the most accurate and reliable, it suggests that researchers and policy-makers ought to be even more careful when dealing with data relating to other kinds of crime.

Case one: The MRC's per capita murder rate

In 2004, the Medical Research Council (MRC) released a report on how South Africans die, seeking to establish the rates of death from a wide variety of diseases, as well as from non-natural deaths like traffic accidents, homicides and suicides.[1] (Selected results were published in the *SA Crime Quarterly* No 13 Sept 2005).

The findings suggested that about 1,542 of every 100,000 people in the country in 2000/01 died that year. Of these, 628 (40%) died of communicable diseases (of which 55% were HIV/AIDS-related), 756 (49%) died of non-communicable diseases and 149 (10%) died of injuries including accidents, homicides and suicides.[2]

In all categories, men were more likely to die than women, with the differential being smallest for HIV/AIDS-related deaths and largest for injuries. There were also important variations across the provinces, with the death rate in KwaZulu-Natal being about 50% higher than that of the Western Cape.

Arriving at the data

It stands to reason that estimates of this sort require sophisticated statistical modelling. Nowhere in the world are the data required for these reports – which cover 131 separate categories of cause of death – generated automatically. In a developing country context, these problems are accentuated by the fact that some deaths go unreported to the authorities and, even when they are reported, errors and omissions mean that datasets are not completely reliable.

These estimates, so the writers explain, are, therefore, the result of a number of exercises aimed at calculating the number of people who died in 2000 and from what causes. Sources included:

- the estimates of HIV/AIDS-related deaths computed by the Actuarial Society of South Africa's model of the epidemic, a model that also predicts overall death rates;
- historical data on the causes of non-HIV/AIDS-related deaths based on data compiled from official sources, including a review of 12% of all death certificates submitted to the Department of Home Affairs between 1997 and 2001;
- data from the National Injury Mortality Surveillance System (NIMSS) on the causes of non-natural deaths.

Each of these sources of data provides only a partial and, therefore, flawed picture of reality. As a result, statisticians and demographers have to hammer the data into shape before it will produce the kinds of results that are needed. It is in this process, one in which assumptions must inevitably play a large role, that dangers lurk. And it is here that the MRC's efforts led to a large overstatement of the number of murders that took place in South Africa in 2000/01.

Counting death

The MRC's estimate of the number of murders that took place in 2000/01 is derived from three sources. The first is the estimate of the number of all deaths in the country, which is derived from the Actuarial Society's model, ASSA2000, with some modifications. This produced an estimate of about 557,000 deaths.

Then, to calculate the number of deaths as a result of non-natural causes, an estimate of the proportion of all deaths resulting from these causes, established in a separate study, was used.[3] This study looked at a sample of 12% of all death certificates issued between 1997 and 2001, and found, coincidentally, that in 12% of these cases, the cause of death was non-natural. Thus, we have a conclusion that about 12% of all 557,000 deaths was non-natural. This resulted in an estimate of about 67,000 non-natural deaths.

Having established that figure, the MRC then calculated the number of deaths attributable to homicide on the basis of NIMSS data. These are compiled every year on the basis of a survey of all bodies arriving at about 35 mortuaries around the country and include data on the time, place and cause of death as well as various demographic details.

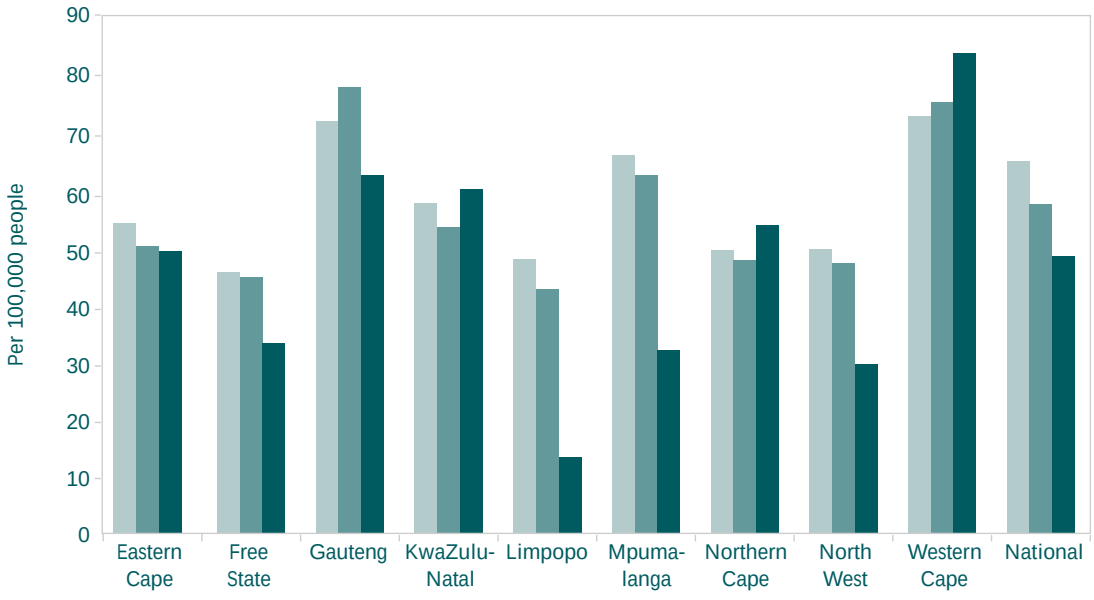
Using these data, which suggest that in 2000/01 murder was the leading non-natural cause of death of bodies presented to NIMSS mortuaries, the MRC calculated that there were 26,683 murders committed in SA in that year at a rate of 59.1 per 100,000 people.[4]

After the age standardisation process, this number became 30,069 murders at the rate of 66.6 murders per 100,000. This is also the figure that appears in the MRC's report. Both figures, however, differ markedly from the number (and rate) of murders reported by the SAPS, namely 21,785 (or 49.8 per 100,000).

One immediate comment about these data is that the MRC's reporting of age standardised rates, as opposed to using the absolute number of estimated cases directly, exaggerates the difference between the MRC calculations and the number of murders reported by the SAPS. The reason for doing this is that South Africa's relatively young population means that when estimates are made of the causes of death, those that affect the young are increased relative to those that affect the old. Even without this adjustment, however, the absolute values of the number and rate of murders predicted by the MRC are, respectively, 23% and 19% higher than those of the SAPS[5] (Figure 1 and Table 1).

One possible reason for the disparity is that the SAPS and the MRC use slightly different definitions of the year 2000/01. For the SAPS, this is from April 2000 to March 2001. The MRC, on the other hand, uses the period July 2000 to June 2001. It is conceivable, in other words, that both the SAPS and the MRC are right.

Figure 1: Per capita murder rates MRC (age standardised) vs MRC (absolute) vs SAPS



	Eastern Cape	Free State	Gauteng	KwaZulu-Natal	Limpopo	Mpuma-langa	Northern Cape	North West	Western Cape	National
MRC AS	56.3	47.4	72.4	59.2	49.5	67.9	50.1	50.4	73.7	66.6
MRC	50.9	46.6	78.2	55.2	43.6	63.1	49.1	49.0	76.4	59.1
SAPS	50.7	33.9	63.1	61.4	14.6	32.0	55.6	30.2	84.0	49.8

Table 1: Comparative murder rates: MRC vs SAPS

	Eastern Cape	Free State	Gauteng	KwaZulu Natal	Limpopo	Mpuma-langa	Northern Cape	North West	Western Cape	National
MRC pop estimate	6,897,865	2,862,088	8,765,262	9,211,922	5,277,432	3,054,973	955,010	3,753,128	4,399,414	45,177,094
SAPS pop estimate	6,846,154	2,787,611	7,871,632	8,982,085	5,500,000	3,040,625	872,302	3,566,225	4,192,857	43,659,491
Per cap: MRC	50.9	46.6	78.2	55.2	43.6	63.1	49.1	49.0	76.4	59.1
Per cap: MRC (Age Standardised)	**56.3**	**47.4**	**72.4**	**59.2**	**49.5**	**67.9**	**50.1**	**50.4**	**73.7**	**66.6**
Per cap: SAPS	50.7	33.9	63.1	61.4	14.6	32.0	55.6	30.2	84.0	49.8
Difference (SAPS v MRC)	0%	37%	24%	-10%	199%	97%	-12%	62%	-9%	19%
Difference (SAPS v MRC AS)	**11%**	**40%**	**15%**	**-4%**	**239%**	**112%**	**-10%**	**67%**	**-12%**	**34%**
MRC murders	3,514	1,333	6,858	5,083	2,303	1,927	469	1,838	3,359	26,684
MRC murders (AS)	**3,881**	**1,356**	**6,342**	**5,455**	**2,614**	**2,075**	**479**	**1,891**	**3,241**	**30,069**
No. murders SAPS	3,471	945	4,967	5,515	803	973	485	1,077	3,522	21,758
Difference (SAPS v MRC)	1%	41%	38%	-8%	187%	98%	-3%	71%	-5%	23%
Difference (SAPS v MRC AS)	**12%**	**43%**	**28%**	**-1%**	**226%**	**113%**	**-1%**	**76%**	**-8%**	**38%**

Conceivable, perhaps, but unlikely. If this difference were to account for the disparity, it would imply that the months April, May and June 2000 (which appear in the SAPS figures, but not in the MRC's) would have had unusually low murder rates, while the April, May and June 2001 rates (which appear in the MRC's figures, but not in the SAPS's) would have been unusually high. While we have no monthly data against which to test this possibility, it seems highly unlikely, since the SAPS records suggest that the number of murders fell in 2001/02 relative to 2000/01.

Irreconcilable differences

If this is not the reason for the disparity, there must be another explanation. One possibility is that the police are mistaken, that for reasons of inefficiency, or of inadequate systems, or of political expediency, they have failed to record all the murders committed in 2000/01. This cannot, of course, be dismissed as inconceivable, especially after the finding, reported in a separate MRC study into intimate femicide, that:

> in 6.9% of probable homicides identified at mortuaries there was no police case number. This conclusion was drawn after many months of exhaustive searching. There was thus no evidence of a police investigation. Attempts to find these numbers revealed that victims of homicide could not be traced via their names or ID numbers in the SAPS computerised database, even when these are known.[6]

If police error or inaccessibility accounted for their under-recording of murders, it might explain why the MRC estimate of murders in Limpopo is nearly three times higher than the number reported by the SAPS. It does not explain, however, why the MRC predicts neatly 40% more murders in Gauteng than SAPS reports, but 8% *fewer* in KwaZulu-Natal. This is the exact opposite of what would be expected if police systems were to blame for an undercount of murders.

Still, even if this were the case, it would only account for a portion of the difference between the MRC's projected figures and those of the SAPS. We must, therefore, explore the possibility that the MRC's approach has led to an overstatement of the

number of murders. This turns out to be a distinct possibility, and for two reasons:

- The first problem with the MRC's calculations probably led to an over-estimation of the number of people who died of non-natural causes.

- Within the category of non-natural deaths, the second problem may have led to an overestimation of the number of murders.

As described earlier, in calculating the number of non-natural deaths that had occurred, the MRC relied on an earlier study of 12% of all death certificates issued between 1997 and 2001. It concluded that 12% of those were for non-natural deaths. A more careful study of the report, however, shows that the 12% is an average for the period, but that the proportion of all deaths resulting from non-natural causes was falling quickly, having made up 16% of 1997 deaths and only 9% of 2001 deaths. In 2000, it made up 10%.[7]

Obviously, if the number of non-natural deaths was calculated at 10% rather than 12%, the figure would fall from 67,000 to 56,000. Since this is the basis against which the proportion of murders within the category of non-natural deaths (45%) was applied, this would result in reducing the estimated number of murders by nearly 5,000. This correction, by itself, may be sufficiently large to bring the MRC's predicted number of bodies down to the SAPS's figure of 21,758.

In addition to this, however, questions must also be raised about the MRC's direct application of the NIMSS findings about the causes of non-natural deaths to the subset of all non-natural deaths.

NIMSS is a mortuary-surveillance programme that tracks the number and cause of death of bodies arriving in morgues around the country. This sounds like a plausible source of data on non-natural deaths. The trouble with NIMSS, however, is that it is heavily biased towards urban areas. This is evident from the fact that 62% of all bodies surveyed by NIMSS in 2001, for instance, were presented at Gauteng and Western Cape mortuaries, despite the fact that only 38% of the population lives in those heavily urbanised provinces. In addition, even in less urbanised provinces, the mortuaries accessed by NIMSS tend to be in urban areas.[8]

This matters because, despite the assurance offered by the MRC that there are similarities between the NIMSS results and observations made at two rural demographic monitoring projects with which they are associated,[9] there is wide consensus in academic literature that murder rates in rural areas are lower than those of urban areas. Indeed, this is apparent in the SAPS statistics, where the murder rate in Limpopo is only about one-third that of the rest of the country. Because the MRC imposes a figure generated by a sample with a strong urban bias, however, their estimates of the number of murders in Limpopo is nearly three times that of the SAPS.

All things considered then, it is hard not to conclude that despite the genuine efforts of the MRC to calculate the murder rate off other data (the number of people who are thought to have died, the proportion of those who die from non-natural causes, and the proportion of non-natural deaths that are homicides), the result is so much greater than the SAPS reported figures, that questions must arise as to its validity. It would seem reasonable, therefore, to continue to rely on SAPS figures unless and until those can be shown to be erroneous.

Case two: murder rates in the 'Coloured' community

Last year, the *SA Crime Quarterly* published two articles that suggested that the homicide rate in the Coloured community was significantly higher than that of the rest of the country.[10] The problem with both these pieces is that for the years after 1990, they are premised on the NIMSS data regarding the race of the victims of murderous violence.

Leggett, after citing Thomson's data for 2003, summarises the premise of both pieces, writing that "figures from the National Injury Mortality Surveillance System (NIMSS) … 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."

The trouble with this argument, however, is that NIMSS reports only raw data. It does not seek in any way to extrapolate from the data collected at its 30-odd mortuaries to the population as a whole. Thus, the only way in which the racial breakdown of victims in the NIMSS sample might correspond to that of the country as a whole would be if the catchment areas for the mortuaries participating in NIMSS were representative of the country as a whole. Unfortunately, this is very far from the case. In fact, the NIMSS data, as already pointed out are biased towards urban areas (Figure 2).

In addition, and more importantly with respect to the question of the murder rate in the Coloured community, it is also biased towards areas where Coloured people live. This is partly an effect of the urban bias, since Coloured people tend to be more urbanised than the rest of the South African population, but it is also an effect of the fact that the urban areas that dominate the NIMSS sample are also those with a large Coloured population.

Partial evidence of the effect of this distortion is revealed by calculating the number of Coloured victims one would have expected to find in the NIMSS sample, by taking the number of homicides in the provinces in which NIMSS mortuaries exist and multiplying those by the proportion of the population made up by the Coloured community. This would imply that the murder rate in that community was precisely that of the rest of the population and it would help set a par value above which we might say that Coloured people are, indeed, over-represented in the NIMSS sample. In fact, if we do this for the NIMSS sample for 2001 we get an expected number of Coloured victims of 1,684. NIMSS, however, found only 1,551 Coloured victims. Coloured people were, if anything, under-represented.

However, this test is only partial: because NIMSS has an urban bias, the proportion of the *provincial* population that is Coloured should not be used to calculate this par value. To be more accurate, it is necessary to look at the proportion of the population made up by Coloured people in the catchment area of the mortuaries concerned. For a number of reasons, this is not possible. Still, in the absence of this, it is impossible to conclude on the basis of the NIMSS data that the murder rate in the Coloured community is higher than that of the rest of the country. Indeed, when we set par values for all South African race groups, it turns out that the NIMSS sample suggests an over-representation of African victims and under-representation of all other groups (Figure 3).

Figure 2: NIMSS bodies vs SA population by province, 2000/01

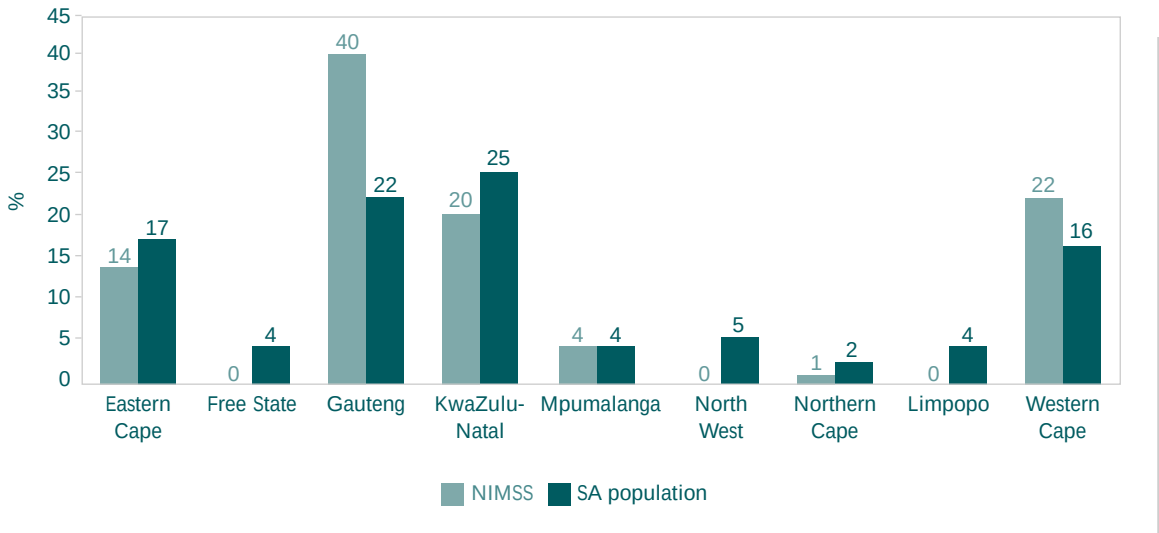
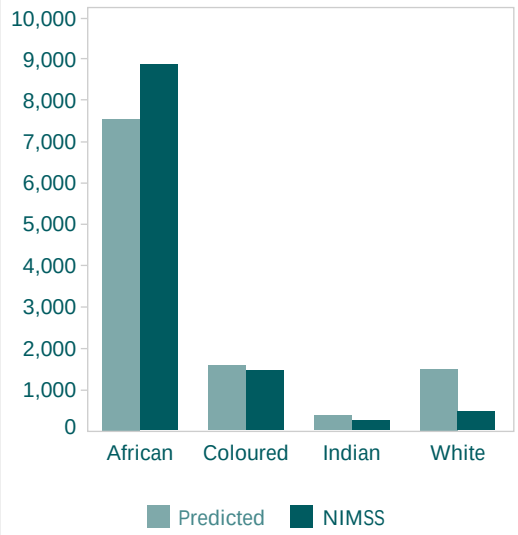


Figure 3: Par values for population representation vs NIMSS sample, 2001



As has already been suggested, this is *not* to say that the murder rate among Africans is significantly higher than the national average or that the opposite is the case for other groups. It is to suggest very strongly, however, that it is impossible to establish how risk is distributed among population groups merely on the basis of NIMSS. To do so would require far more information about the demographics of the catchment areas for the mortuaries covered by NIMSS.

Conclusion

This article has sought to show how the failure to pay sufficient respect to the limitations of data, however seemingly solid, can result in quite serious misjudgements about the level of crime and, indeed, the distribution of risk.

It offers no answers to the questions of how much murder there really is or whether some communities are more at risk than others. All it offers is the suggestion that, in the absence of more compelling data, we ought to accept police statistics as reflective of reality and that NIMSS data cannot be used to estimate the burden of risk without much more data about the population from which its samples are drawn.

Acknowledgement

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Endnotes

1 D Bradshaw, N Nannan, R Laubscher, P Groenewald, J Joubert, B Nojilana, R Norman, D Pieterse and M Schneider, *South African National Burden of Disease 2000*, South African Medical Research Council, Cape Town, 2004.

2 These figures are based on a spreadsheet provided by the MRC on their website at <http://www.mrc.ac.za/bod/Age%20standardised%20rates.xls>. They do not precisely match the figures provided later in this article because the rates here have been standardised to the age structure of the South African population. In essence, that process makes our death rates comparable with those of other countries whose populations' age structures differ from our own. Thus, because ours is a relatively young population, causes of death that disproportionately affect the young are adjusted relative to the absolute number of such deaths estimated by the model. In the rest of this paper, as far as possible absolute numbers and rates are used, rather than these age-adjusted rates. Unfortunately, these absolute figures are not provided in all cases and some have been made available only through personal communication.

3 D Bradshaw, P Groenewald, R Laubscher, N Nannan, B Nojilana, R Norman, D Pieterse and M Schneider, *Initial Burden of Disease Estimates for South Africa, 2000*, South African Medical Research Council, Cape Town, 2003.

4 D Bradshaw, personal communication, August 2005.

5 The reason for the difference between SAPS estimates and MRC estimates, depending on whether absolute or per capita rates are used, is because the SAPS uses a slightly lower population estimate than does the MRC. This has the effect of making the SAPS's per capita higher than it would be if it used the same population number as does the MRC.

6 S Mathews, N Abrahams, LJ Martin, L Vetten, L van der Merwe and R Jewkes, "*Every six hours a woman is killed by her intimate partner": A national study of female homicide in South Africa*, South African Medical Research Council, Cape Town, 2005.
7 D Bradshaw, et al. 2003. Op cit.
8 R Matzopolous, *A profile of fatal injuries in South Africa 2001: Third annual report of the National Injury Mortality Surveillance System*, South African Medical Research Council, Cape Town, 2002.
9 Bradshaw, et al, 2004, p 8.
10 JDS Thomson, A murderous legacy: Coloured homicide trends in South Africa, in *SA Crime Quarterly 7*, ISS, Pretoria, 2004 and T Leggett, Still Marginal: Crime in the Coloured community, in *SA Crime Quarterly 7*, ISS, Pretoria, 2004.

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Cover photograph
By Joao Silva / PictureNET Africa.
Children are photographed playing in front of a mural displaying gang art in a Cape Flats neighbourhood which is controlled by the Hard Living gang. Five children had been killed as a result of gang violence in the preceeding week.

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