
8. POLICY, LEGISLATION AND ORGANIZATION

8.1 Main Characteristics of the National Crime Prevention Strategy

The National Crime Prevention Strategy (NCPS) was initiated by the Government in March 1996 and is primarily a long-term programme aimed at creating conditions in which the opportunities and motivation for crime will be reduced, as well as improving the capacity of the criminal justice system. It is an ongoing programme of action which is being implemented by a wide range of government departments, with the line departments being Justice, Social Development, Correctional Services, Defense, Safety and Security, and Intelligence.

The NCPS has prioritized seven key crime categories, namely: (i) crimes involving firearms, (ii) organized crime, including the organized smuggling of illegal migrants and narcotics, and gangsterism, (iii) white collar crime, (iv) gender violence and crimes against children, (v) violence associated with intergroup conflict, such as political conflicts, taxi violence and land disputes, (vi) vehicle theft and hijacking, and (vii) corruption within the criminal justice system.

While the NCPS remains the overall framework for Government's programmes to counter crime, the reality of day-to-day departmental interventions suggests that the NCPS carries less weight than it did between 1996 and 1999. As public pressure has increased, the focus on crime prevention outlined in the NCPS has shifted to a heavier emphasis on law enforcement. Still, a number of crime prevention initiatives and programmes have been developed among which the following are of particular importance: community policing forums (attached to 90% of police stations), Cooperation with the Business Against Crime (e.g., victim support, commercial crime courts, CCTV surveillance in Cape Town and Johannesburg), the rural safety programme; violence prevention programme and victim empowerment programme, crime prevention development programme and a number of local crime prevention initiatives.

Operations at police stations level are guided by the National Crime Combating Strategy with a focus on the geographical areas with the most serious crime level (145 "crackdown stations" were identified). The Strategic Focus of SAPS consists of: organized crime; serious and violent crime; crimes against women and children, and service delivery at police stations.

8.2 Legislation

Principal laws

The major sets of legislation in criminal matters are:

- The Criminal Procedure Act, 1977
- The Corruption Act, 1992
- The Extradition Act, 1962 and the Extradition Amendment Act, 1996
- The Proceeds of Crime Act, 1996
- The Arms and Ammunition Act, 1969

The recent changes in criminal legislation include:

In 1996, Parliament passed the International Cooperation on Criminal Matters Act. The Extradition Amendment Act of 1996 provides for the designation of foreign jurisdictions where extradition may be effected in the absence of formal agreements.

The Aliens Control Act, 1991, as amended in 1995, together with the Immigration Bill and the Refugees Act, 1998, are of importance in relation to cross-border regional and international trafficking of persons.

The Criminal Procedure Second Amendment Act, 1997, denies bail to those accused of certain serious offences unless they can prove “exceptional circumstances” meriting their release.

The National Prosecuting Authority Act, 1998, centralizes prosecutorial authority in a national office. The National Director of Public Prosecutions (NDPP) is appointed by the President and reports to the Minister of Justice.

The South African Police Service Amendment Act, 1998, enables municipalities to create city police departments outside the authority of the South African Police Service. In addition to Durban, where the city police were a colonial inheritance, Johannesburg, Cape Town and Pretoria have established metropolitan police services, and there are plans for other communities to do so.

The Magistrates Court Amendment Act, 1998, requires the assignment of lay assessors to serve alongside magistrates in the trials of certain offences.

The Prevention of Organized Crime Act, which was “super-fast-tracked” through Parliament in December 1998 and amended in 1999, gives broad powers of civil and criminal asset forfeiture to law enforcement authorities, and it outlaws membership in criminal organizations. It makes provision for new powers for police and prosecutors to seize criminals’ assets on the grounds of “a balance of probabilities” rather than “beyond a reasonable doubt”. It outlaws certain criminal conspiracies and furthers countermeasures against money laundering. Shortly after being enacted, the law was successfully challenged in the court system, requiring the Government to revise it. During 2000, it was used more successfully. Criminal forfeiture is limited to illicit proceeds, while civil forfeiture can be used against “facilitating” property. The management of seized assets is coordinated by the Asset Forfeiture Unit under the National Director of Public Prosecutions.⁷⁷

The Domestic Violence Act, 1998, penalizes the coercion of a sexual act through harassment and intimidation, as well as the coercion to submit to sexual abuse.

The Witness Protection Act, 1998, provides for the establishment of an office for the protection of witnesses.

⁷⁷ The Asset Forfeiture Unit became a full division of the NPA in 2001 and since 1999 it exhibited constant growth in its operations. Over the past three years, it has frozen assets valued at over R370 million in terms of 150 orders that have been sought. As of March 2002, 55 forfeiture applications involving R22 million have been completed. Following an initial period of the “test cases” and numerous litigations of some 30 different legal and procedural issues (most not yet resolved), the AFU focused on processing cases among which economic and corruption as well as drug-related figure prominently.

The National Prosecuting Authority Amendment Act, 2000, makes provision for the establishment of the Directorate for Special Operations (DSO, the “Scorpions”) and provides for the investigating directorates established under the National Prosecuting Authority Act, 1998, to become part of the DSO. The DSO was established by the Directorate of Special Operations Act, 2001, for the effective investigation and prosecution of certain specified offences and the gathering of intelligence relating to such offences. On DSO matters, the NDPP reports directly to the President.

The Protected Disclosures Act, 2000, makes provisions in terms of protecting employees in both the private and the public sectors who disclose information regarding unlawful or irregular conduct by their employers or fellow other employees (whistleblower protection).

The Promotion of Access to Information Act, 2000, was enacted in order to foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information and actively promoting a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect their rights.

The Firearms Control Act, 2001, establishes a comprehensive and effective system of firearms control by introducing competency certificates, licenses and permits, as well as regulations for storage and transport of firearms. It envisages an effective central firearms registrar. The Act has not yet come into effect, but the Minister of Safety and Security decided to implement two sections thereof dealing with the police powers to take body prints and bodily samples without warrant as well as to create the firearms free zones.

In October 2001, Parliament adopted the Finance Intelligence Centre Act, and it became law in November 2001. It envisages the creation of a financial intelligence centre which would receive financial information and statistics and analyse them in connection with anti-money laundering operations, thereby underpinning cases brought to trial. In the main, the law seeks to place certain obligations on institutions that may be used as channels for money laundering, and it attempts to create an institutional framework for the effective implementation of legislation. It requires specific financial institutions to combat money laundering from within their operations. Examples of “accountable institutions” include attorneys, estate agents, banks, investment brokers, public accountants, traders in financial instruments, management companies under the Unit Trusts Control Act, and those involved in the long term or short term insurance industry. The obligations imposed on these institutions are three-fold: (a) the duty to identify clients, (b) the duty to keep records, and (c) the duty to report cash transactions and suspicious transactions.

The following legislation is under development:

- The Child Justice Bill: Once enacted, it would focus on the diversion of children in conflict with the law away from the criminal justice system. It foresees the establishment of special child justice courts to offer a range of alternative, non-custodial sentences.
- The Interception and Monitoring Prohibition Bill: Once enacted, this would strengthen the powers of law enforcement agencies in the combating of serious crimes. It would bring the legislation dealing with the interception and monitoring of communication in line with latest telecommunications technology.

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- The Anti-Terrorism Bill: This bill foresees the enactment of specific legislation based on international instruments against terrorism. The accompanying discussion paper strongly recommends that South Africa signs, ratifies or accedes the respective international instruments.
 - The Prevention of Corruption Bill: It is intended to replace the Corruption Act of 1992 in order to provide for a more comprehensive coverage of corrupt practices.

Conventions, Extradition and Mutual Legal Assistance Agreements

South Africa is a signatory to the United Nations Convention against Transnational Organized Crime and two of the three Protocols thereto⁷⁸ as well as to the SADC Protocol against Corruption and the SADC Protocol on the Control of Firearms, Ammunition and Related Materials.

South Africa became a member of the Commonwealth in June 1994 and accordingly is now part of the London Scheme on Extradition and the Harare Scheme on Mutual Assistance. This provides potential coverage of over 50 countries.

South Africa has extradition agreements with the following countries: Australia, Botswana, Canada, Lesotho, Malawi, Swaziland, the United States and Zimbabwe. Negotiations on the conclusion of extradition treaties have been finalized with Argentina, Egypt, Hungary and Zambia. Further, South Africa has designated Namibia, the United Kingdom and Zimbabwe in terms of its Extradition Act.

South Africa has negotiated mutual legal assistance treaties with Canada and the United States. Other negotiations concluded are with Brazil, Egypt and Zambia.

The country is currently negotiating extradition and/or mutual legal assistance treaties with a number of countries, including Algeria, France, Nigeria, the United Arab Emirates and several countries in Latin America.

Domestic legislation also provides for extradition or the rendering of legal assistance in the absence of a treaty.

⁷⁸ South Africa has signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against Smuggling of Migrants by Land, Sea and Air; it has not signed the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

8.3 Anti-Terrorism

Urban terror: a domestic scene

Cape Town was rocked by a series of bomb blasts during the past few years, with over 100 attacks and three people having been killed and over 100 injured. With no group claiming responsibility for the planting of the devices, the phenomenon was difficult to explain (Shaw 2000). However, People against Gangsterism and Drugs (PAGAD), a vigilante group that originated in response to high levels of crime, is suspected of conducting these recurring bouts of urban terrorism. While originally targeted at drug dealers, the leadership of PAGAD was increasingly usurped by a radical Islamic group, which felt threatened by the state (US Department of State 2000). This resulted in a shifting of the targets of the bombing campaign from the homes of drug dealers in the Cape Flats to state buildings in central Cape Town, particularly police stations, and prominent tourist areas, as well as in the killing of a judge handling a case against a PAGAD member. PAGAD is believed to have masterminded the bombing on 25 August 1998 of the Cape Town Planet Hollywood restaurant (US Department of State 2000). Its strength is estimated at several hundred members. In an attempt to counter the bombings, "Operation Good Hope" was implemented by the South African Police Service in January 1999 (Boshoff, Botha, Schonteich 2001). It was intelligence-driven in focused areas, well coordinated, investigative, protective of specific targets, and in liaison with communities. It resulted in a major decrease in acts of urban terrorism in Western Cape and in over 4,000 arrests as well as the recovery of vehicles, firearms and ammunition (Boshoff, Botha, Schonteich 2001).

This, urban terror indicated that the existing anti-terrorist legislation in South Africa was inadequate, and preparations for the promulgation of a new Anti-terrorist Bill are well underway. The Report on Review of Security Legislation prepared by South African Law Commission clearly identified a need for such legislation (Law Commission 2002).⁷⁹ These legislative efforts were further intensified with the terrorist attacks of 11 September 2001 on New York and Washington D.C. and with the obligations of the South African Government ensuing from various international anti-terrorist instruments.

International cooperation

The 11 September terrorist attacks in the United States also brought about the intensification of the efforts on the part of the international community to provide for effective prevention and cooperation in the fight against international terrorism.

The United Nations has long been active in the fight against international terrorism dating back to 1963, with the adoption of a number of important legal instruments, many of which have been ratified by the majority of countries around the world, and only the most recent one of which is not yet in force. Such agreements have been developed by the United Nations General Assembly, the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), and the International Atomic Energy Agency (IAEA).

⁷⁹ It should be noted that during the apartheid era a dozen of anti-terrorism laws were promulgated, aimed at suppressing any legitimate political protest and dissent within the framework of the freedom struggle for a democratic South Africa.

South Africa has acceded to some but not all of the international instruments listed below although there are a number of important domestic laws that address some of the issues dealt with by the UN conventions and protocols (Law Commission 2002). The list of these important instruments and South Africa's status vis-à-vis them is as follows:⁸⁰

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, adopted in Tokyo in 1963; 171 States Parties; authorizes the airplane commander to impose reasonable measures on any person who has committed or is about to commit such acts, and requires States parties to take custody of offenders; developed by ICAO; *South Africa ratified on 20 May 1972.*
- Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 1970; 174 States Parties; requires parties to punish hijackings by “severe penalties”, and either extradite or prosecute the offenders; developed by ICAO; *South Africa ratified on 30 May 1972.*
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 1971; 175 States Parties; requires parties to punish offences by “severe penalties”, and either extradite or prosecute the offenders; developed by ICAO; *South Africa ratified on 30 May 1972.*
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Montreal, 1988 (supplementing the 1970 Montreal Convention); 107 States Parties; extends the provisions of the Convention to encompass terrorist acts at airports; *South Africa ratified.*
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 1973; adopted by the General Assembly; 107 States Parties; requires parties to criminalize and punish attacks against State officials and representatives; *South Africa has not signed.*
- Convention against the Taking of Hostages, New York, 1979; adopted by the General Assembly; 96 States Parties; parties agree to make the taking of hostages punishable by appropriate penalties; to prohibit certain activities within their territories; to exchange information; and to carry out criminal or extradition proceedings; *South Africa has not signed.*
- Convention on the Physical Protection of Nuclear Material, Vienna, 1980; 68 States Parties; obliges parties to ensure the protection of nuclear material during transportation within their territory or on board their ships or aircraft; developed by IAEA; *South Africa signed on 18 May 1981.*
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 1988; 52 States Parties; obliges parties to either extradite or prosecute alleged offenders who have committed unlawful acts against ships, such as seizing ships by force and placing bombs on board ships; developed by IMO; *South Africa has not signed* (but the South African Law Commission considers that adequate provisions are contained in the Merchants Shipping Act of 1951 to provide for the enforcement of the Convention).

⁸⁰ Based on the Note No. 5679 of 19 September 2001 “United Nations Treaties against Terrorism” and the Report of the South African Law Commission on Security Legislation, August 2002.

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- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf Rome, 1988 (supplementing the 1988 Rome Convention); 48 States Parties; extends the requirements of the Convention to fixed platforms such as those engaged in the exploitation of offshore oil and gas; *South Africa has not signed.*
 - Convention on the Marking of Plastic Explosives for the Purpose of Detection, Montreal, 1991; 67 States Parties; seeks to curb the use of unmarked and undetectable plastic explosives; developed by ICAO; *South Africa ratified.*
 - International Convention for the Suppression of Terrorist Bombings, New York, 1997: adopted by the General Assembly; 26 States Parties; seeks to deny safehavens to persons wanted for terrorist bombings by obligating each State Party to prosecute such persons if it does not extradite them to another State that has issued an extradition request; *South Africa signed.*
 - International Convention for the Suppression of the Financing of Terrorism, New York, 1999; adopted by the General Assembly; obligates States Parties either to prosecute or to extradite persons accused of funding terrorist activities, and requires banks to enact measures to identify suspicious transactions; will enter into force when ratified by 22 States; *South Africa signed.*

The UN Security Council as the principal international organ dealing with international peace and security has immediately after the 11 September terrorist attacks, adopted several Resolutions: 1368 (2001), 1333 (2001) and 1373 (2001) which condemn the terrorist attacks and call for an effective Cooperation in bringing the perpetrators to justice as well as in the prevention and suppression of the financing of terrorism.

While South Africa has no specific legislation related to the financing of terrorism in order to comply in particular with Resolution 1373 (2001), the powers given to the Exchange Control Department of the South African Reserve Bank under the Currency Exchange Act and the Exchange Control Regulations were implemented by the issuance of the Exchange Control Circulars on the 12 and 19 October 2001. The Circulars inform all authorized dealers about the content of a Notice by the South African Government (published in the Government Gazette of 12 October 2001) which contains details of the individuals and entities identified as terrorist by the United Nations.

The Organization of African Unity (now African Union) adopted the OAU Convention on the Prevention and Combatting of Terrorism (13 July 1999) which South Africa signed. In addition, in December 2001, the Committee on Defense and Security of the Southern African Development Community (SADC) agreed to take common action against terrorism in the region.

While the new Anti-terrorism Bill is still under preparation “there are a number of statutory provisions that can, to a greater or lesser extent, be used to combat terrorism and related offences” (Law Commission 2002). It is expected that a new Anti-terrorism Bill will provide comprehensive provisions for the prevention and fight against terrorism in compliance with a number of United Nations international instruments (Report of the UN Counter-Terrorism Committee, December 2001).

8.4 Crime Control Institutions

The police

The old South African Police (SAP) served as one of the key instruments of apartheid rule – enforcing laws and controlling often violent political demonstrations against the state. The SAP was supplemented by an additional 10 police forces, one for each of the independent or self-ruling bantustans. Such police forces, however, generally mirrored the approach and training of the SAP, engaging in serious human rights abuses and focusing more on the control of political dissent than crime prevention.

The challenge of police reform in the country since the attainment of democracy in 1994 has been two-fold. First, it has been to incorporate these 11 police agencies into a single police service, the SAPS. Second, the challenge has been to ensure that the newly created police service would respect human rights and then aim to police crime as their primary objective. These two factors, along with the essential requirement of building community support for the ‘new’ police, have ensured that South Africa is undergoing a comprehensive and difficult police reform process.

In the course of this process, a number of key institutions were established within the early period of the new democracy to bolster the system of police accountability. At police stations across the country, community police forums (CPF) were formed, constituting a channel through which community priorities and grievances could be communicated to the police. While not elected structures, CPF have been successful in many areas in making the police account more fully for their actions to the public. Legitimate questions remain, however, about the limited powers of the CPF and the degree to which they are taken seriously both by the police and the communities they are meant to represent.

Two other institutions established at the time are of some importance. The first is the Independent Complaints Directorate (ICD), charged with investigating complaints from the public of cases of police abuse and poor service delivery. Given the history of policing in South Africa, the ICD is an innovative and necessary institution. It would be fair to say, however, that the overall success of the ICD has been constrained by the large number of cases with which the institution has had to process as well as the related problem of limited funding.

Given that police policy had largely been made by police officers themselves, a key component of the reform process was the introduction of a civilian secretariat, reporting directly to a cabinet minister, and charged with policy development and the monitoring of police performance. The Safety and Security Secretariat played a key role in the early days of the new democracy in designing and monitoring the implementation of the new police agency. More lately however, as the police have assumed greater confidence and the fight against crime (as opposed to the redesign and transformation of policing) has assumed higher priority, so the influence of the Secretariat has waned. Nevertheless, the Secretariat remains a potentially important tool in measuring the effectiveness of the police and monitoring their efforts in the fight against crime.

The negotiations on a new political order in South Africa had determined that the country should have a single national police agency, partly so that the reform of policing could be controlled from the centre. Increases in crime, combined with the consolidation of the democracy itself – including most critically the establishment of elected institutions of local government – opened the debate as to the appropriateness of establishing local police agencies outside of the SAPS. Legislation to this effect is now in force, and cities and towns can establish their own police agencies subject to a series of criteria, the most important being that they are confined to crime prevention activities such as police patrol (they do not for example investigate crimes) and must be funded in their entirety by local government. A city police service already existed in Durban, and similar structures have now been established in Johannesburg, Cape Town and Pretoria.

Despite these developments, however, the SAPS remain the primary instrument of state policing in South Africa with a presence throughout the country. There are currently 102,354 police officers and 20,337 civilians working in the SAPS, making it one of the largest police agencies in the world. It is expected that by 2005 the police will reach 147,560 force. The new police agency has undergone a radical transformation in terms of its organization, racial and gender composition.

While police distribution has improved markedly since the early 1990s, the majority of police resources remain focused on former White areas and business districts. The police service is unevenly distributed across the provinces, ranging from the extreme of 313 residents per police officer in Free State to 669 residents per police officer in Limpopo (formerly Northern Province). The civilian to police officer ratio was 461:1 in 2001, and it is expected that it will become 389:1 by 2005/06.

If the first phase of the new democracy saw significant changes in the nature of policing, a second phase of reforms internal to the SAPS itself has been aimed at fighting crime more effectively. The most important of these initiatives has been the reduction in the several hundred specialized units that had been established to police a wide variety of different crime types. Some 500 specialized investigating units will be clustered into three specialized components focusing on organized crime, serious and violent crime, and commercial crime. To date, 208 specialized units were closed down, while the following new units were established:

- 24 Serious and Violent Crime units
- 24 Organized Crime units
- 17 Commercial Crime units
- 45 Family Violence, Child Protection and Sexual Offences units

The overall thrust of these changes appears to be a shift toward more multi-disciplinary policing teams, based on the assumption that, for example, organized criminal groups participate in multiple activities and thus require responses that aim at their organization rather than the specific crime types in which they engage.

Over time, and as crime has been increasingly perceived to be a serious threat, other agencies have become more actively engaged in traditional policing activities. Thus, the South African National Defense Force has engaged in crime prevention patrols, and the National Intelligence Agency and the South African Secret Service (the internal and external arms of the intelligence community respectively) have engaged in information collection on organized crime groups and activities. This broadening of the mandate of various security agencies into the area of crime has been matched by the burgeoning of the country's private security industry.⁸¹

The prosecution

South Africa's 1996 Constitution mandates the establishment of a national prosecution service. Section 179 of the Constitution outlines the form of the South African prosecution service.⁸² The section provides for a National Prosecuting Authority (NPA). The President appoints the head of the National Prosecuting Authority – the National Director of Public Prosecutions (NDPP).

In 1998, Parliament passed the National Prosecuting Authority Act which provides the legal framework for the prosecutorial system of the country.⁸³ Organizationally, the NPA consists of three specialist components, each headed by a Deputy National Director of Public Prosecutions (National Prosecution Service, Directorate of Special Operations, and Asset Forfeiture Unit).

The NPA is responsible for coordinating and assisting the traditional prosecuting structures throughout the country. There is a Director of Public Prosecutions (DPP) for each of the ten divisions of the High Court of South Africa, and there is one for the Witwatersrand Local Division of the High Court. Directors of Public Prosecutions, Investigating Directors and Special Directors are assisted by Deputy Directors of Public Prosecutions as well as senior and junior state advocates who have a right of appearance in the High Court. The prosecutorial staff at larger magistrates courts is managed by a Senior Public Prosecutor (SPP). At busy courts, SPPs delegate some of their managerial and administrative duties and responsibilities to Control Prosecutors.

The Directorate of Special Operations (DSO), also known as 'the Scorpions', brings together senior investigators, specialist prosecutors and intelligence analysts who work in project teams, with experienced prosecutors directing the investigations to ensure that they will be presented effectively in court.

The Asset Forfeiture Unit (AFU) assists the National Prosecution Service and the DSO in the use and application of South Africa's asset forfeiture legislation.

⁸¹ The private security industry (some 185,000 people as of December 2000) is one of the fastest growing service sectors in South Africa. It provides security services to the residential areas, business and even some government departments.

⁸² Section 179 of the Constitution of the Republic of South Africa Act No. 108 of 1996.

⁸³ National Prosecuting Authority Act No. 32 of 1998.

In addition to these above three components, the NPA is assisted by a number of specialised support services:

- The Specialized Commercial Crime Unit which investigates and prosecutes serious commercial crime.
- The Sexual Offences and Community Affairs Unit, or SOCA Unit, which prosecutes violent crime committed against women and children.
- The Witness Protection Unit which protects witnesses who testify for the prosecution in important criminal trials.
- Specialist Commercial Crime Unit which investigates high level fraud cases.

Over 95% of all criminal trials take place in the magistrates courts (also known as the lower courts). There are two types of magistrates courts: regional courts and district courts.

Only the most serious crimes, such as brutal murders, particularly violent rapes, robbery with aggravating circumstances where someone is seriously injured or killed, and fraud involving large amounts of money, are usually prosecuted in the High Court. The vast majority of murders, rapes and robberies, and crimes such as attempted murder, child abuse, kidnapping, sexual offences, housebreaking where the intention is not only to trespass, fraud and theft where the loss exceeds R40,000, and car theft are prosecuted in the regional courts.⁸⁴ Minor offences such as assault, most forms of theft and fraud, malicious injury to property, most drug-related offences, drunken driving offences, and other driving related offences are prosecuted in the district court. Unless legislation provides otherwise, regional courts have the jurisdiction to impose a maximum period of imprisonment of 15 years (and a fine of up to R300,000), while district courts have the jurisdiction to impose a maximum period of imprisonment of 3 years (and a fine of R60,000).⁸⁵ There is no sentencing limit for the High Courts.

The courts⁸⁶

The Constitutional Court is the highest court in the country, and it deals only with constitutional cases which are heard by 11 Constitutional Court judges.

The Supreme Court of Appeal is based in Free State, and, apart from the Constitutional Court, is the highest court in the country. It only hears appeals from the High Courts, and all cases are heard by three to five judges.

The High Courts can hear any type of criminal or civil cases, although they usually hear cases that are considered too serious for the Magistrates Courts. Cases of treason or murder can only be heard in the High Courts. The Judicial Services Commission recommends who should be appointed as a judge to the President. There are ten High Courts in the country, located in the different provinces, as well as three Local Division Courts.

⁸⁴ National Prosecuting Authority of South Africa Policy Manual, October 1999, Pretoria, pp. B.22 – B.25.

⁸⁵ Section 92(1), of the Magistrates' Courts Act No. 32 of 1944, as amended, read with GN R1411 (Government Gazette 19435) of 30 October 1998.

⁸⁶ This section is drawn directly from Chapter 3, Court Cases, in the Paralegal Manual, on the Paralegal advice website: www.paralegaladvice.org.za.

The Magistrates Courts are the lower courts and deal with less serious civil and criminal matters. There is usually one Magistrates Court in each town, and each court is presided over by a magistrate who is appointed by the Minister of Justice. Magistrates can be assisted by two lay assessors who are respected members of the community.

There are two types of Magistrates Courts: criminal courts and civil courts. Criminal courts are further divided into two types: Regional Magistrates Courts and District Magistrates Courts. The Regional Courts deal only with criminal cases and, as such, with more serious crimes like culpable homicide, rape, armed robbery and serious assault. These courts can hear all criminal cases except treason and murder. They can sentence a person to a maximum of 10 years in prison or a fine of R200,000.

The District Courts try less serious crimes and can sentence a person to a maximum of three years in prison or fine of R60,000. They also try civil matters, but they do not deal with matters such as divorce. Such matters are dealt with by Maintenance Courts which are located in the Magistrates Courts. Similarly, there are Children's Courts and Divorce Courts.

The Small Claims Courts were started in 1984. These courts aim to make access to justice easier, cheaper and faster. The courts deal with civil claims of up to R3,000. They are presided over by a Commissioner rather than a judge or a magistrate. Complainants are assisted by paralegals rather than the professional lawyers.

There are also several specialized courts that deal with particular kinds of cases:

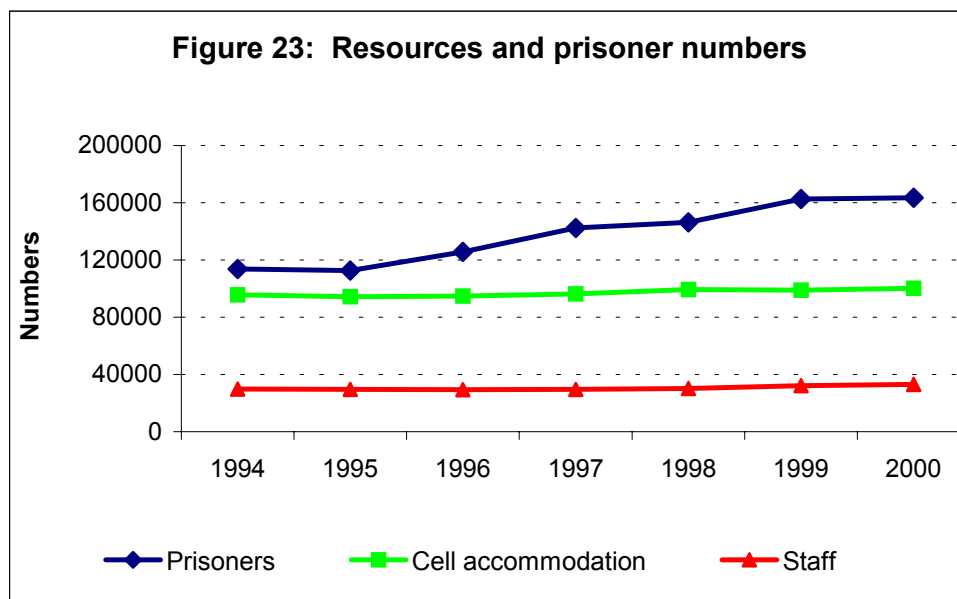
- Labour Appeal Court, which deals with appeals from the Labour Court
- Labour Court which, deals with disputes under the Labour Relations Act
- Land Claims Court
- Family Courts, which deal with family matters like divorce
- Tax Courts
- Water Courts
- Commercial Crime Court (at this stage only one exists in Pretoria, supported by the business community), and
- Sexual Offences Courts (at the end of 2000, 19 such courts had been established across the country).

The corrections

In 2001, the country's 238 prisons, designed to hold 105,000 people, were housing 176,000 inmates, and 33,093 officials were employed to manage the prison population. The available facilities consist of:

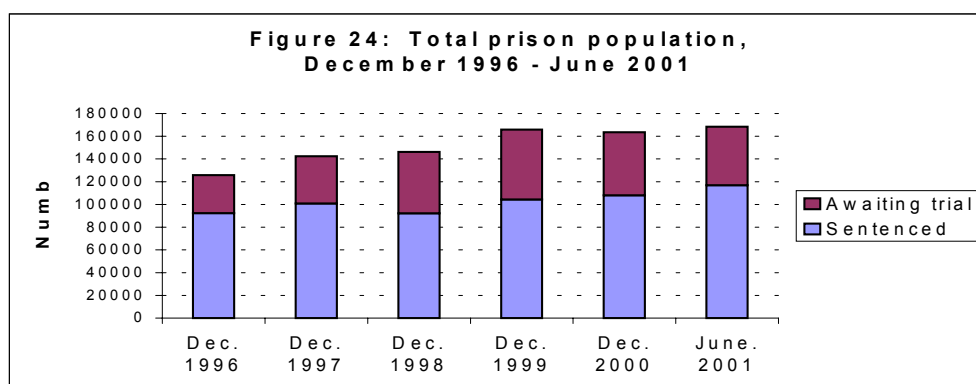
- 8 facilities for women
- 13 for youth
- 114 for men
- 99 for men and women
- 4 which are temporarily closed
- 2 private prisons.

The problems of severe overcrowding, a very high number of suspects awaiting trial in prison, and a high incidence of HIV/AIDS, pose a major challenge for the Department of Correctional Services (DCS) in South Africa. They also undermine the rights of those accused and convicted of crime who are held in custody, and they have serious negative effects on the implementation of the rehabilitation programmes.



Source: Department of Correctional Service Annual Report, 2001.

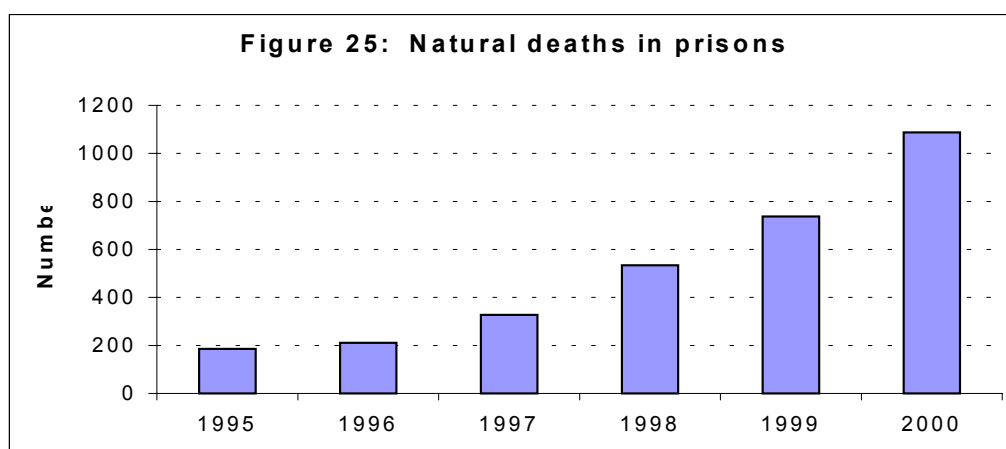
The high level of overcrowding arises from blockages in the criminal justice system. This is evidenced by that fact that the increase in the prisoner population since 1996 is largely attributable to a rise in the number of unsentenced prisoners held in correctional facilities. Between 1996 and June 2001, the total number of prisoners increased by 34%. The number of sentenced prisoners increased by 27%, compared to unsentenced prisoners, which, in turn, increased by 54%.



Another indicator of blockages in the criminal justice system is the increase in the number of days that the accused await the completion of their trials. In February 2002, the average figure was 139 days – up from 76 days in June 1996. Some suspects are held in prison awaiting a sentence for over four months and in some cases even several years.

One of the reasons for the large number of people held in prison while awaiting the completion of the trial is the inability to pay a bail. In June 2001, a total of 17,589 (34%) unsentenced prisoners were being held because they could not afford to pay bail. Over 11,000 of these had bail set at less than R1,000 (Masuku 2001).

Another major challenge facing the Department of Correctional Services is the control of communicable diseases and viruses, particularly HIV/AIDS and tuberculosis (TB). The current problem of overcrowding facilitates the spread of communicable diseases among the inmates. This problem is highlighted by the substantial increase in the number of “natural” deaths in prisons since 1995. Between 1995 and 2000, the number of natural deaths increased by 484%. According to post-mortems conducted, most of these deaths are believed to have been the result of HIV/AIDS.



Source: Judicial Inspectorate of Prisons Annual Report, 2001.

Organized crime control measures

As elsewhere, the expansion of organized crime and the need for international cooperation were the main driving forces to change the nature, scope and functions of law enforcement agencies and the legislative framework in South Africa. While South Africa’s 1994 transition gave rise to organized crime, it did not at the same time give rise to state institutions immediately in a position to counter the phenomenon.

From 1991 onwards, when the threat of organized criminal groups became apparent, police investigative methods changed from targeting customers, street level drug pushers and similar types of criminals to increasingly aiming at syndicate leaders and crime bosses, so called “targeting upwards”. However, insufficient detective skills and a weak system of crime intelligence remained stumbling blocks for the South African Police Service (Gastrow 1998).

In 1996, the Proceeds of Crime Act was passed, but problems were encountered in its implementation. Proceeds of crime have only recently been the target of organized crime prosecutions.

The Prevention of Organized Crime Act, 1998 as amended in 1999 makes provision for the following: (i) offences related to racketeering activities, money laundering and criminal gang activities, (ii) the restraint, confiscation and realization of the proceeds of unlawful activity, (iii) civil forfeiture of property which is either an instrumentality of an offence specified in the Act or is the proceeds of unlawful activity, and (iv) the establishment of a criminal assets recovery account and associated mechanisms which, *inter alia*, make provision for the allocation of moneys from the account to law enforcement.

Most significantly, the Act provides for the seizure of property by the state where “a reasonable suspicion” exists that it constitutes the proceeds of crime and the owner is unable to provide a satisfactory explanation of its origin. The Act also makes it a separate crime to directly or indirectly participate in or assist a criminal organization or gang. The early cases involving asset forfeiture (civil and criminal), prompted legal challenges on the ground that the Act should not extend to the proceeds of unlawful activities which occurred prior to the enactment of the legislation. Parliament has, however, removed all doubts and amended the Act to apply the asset forfeiture provisions to unlawful activities which occurred prior to the enactment.

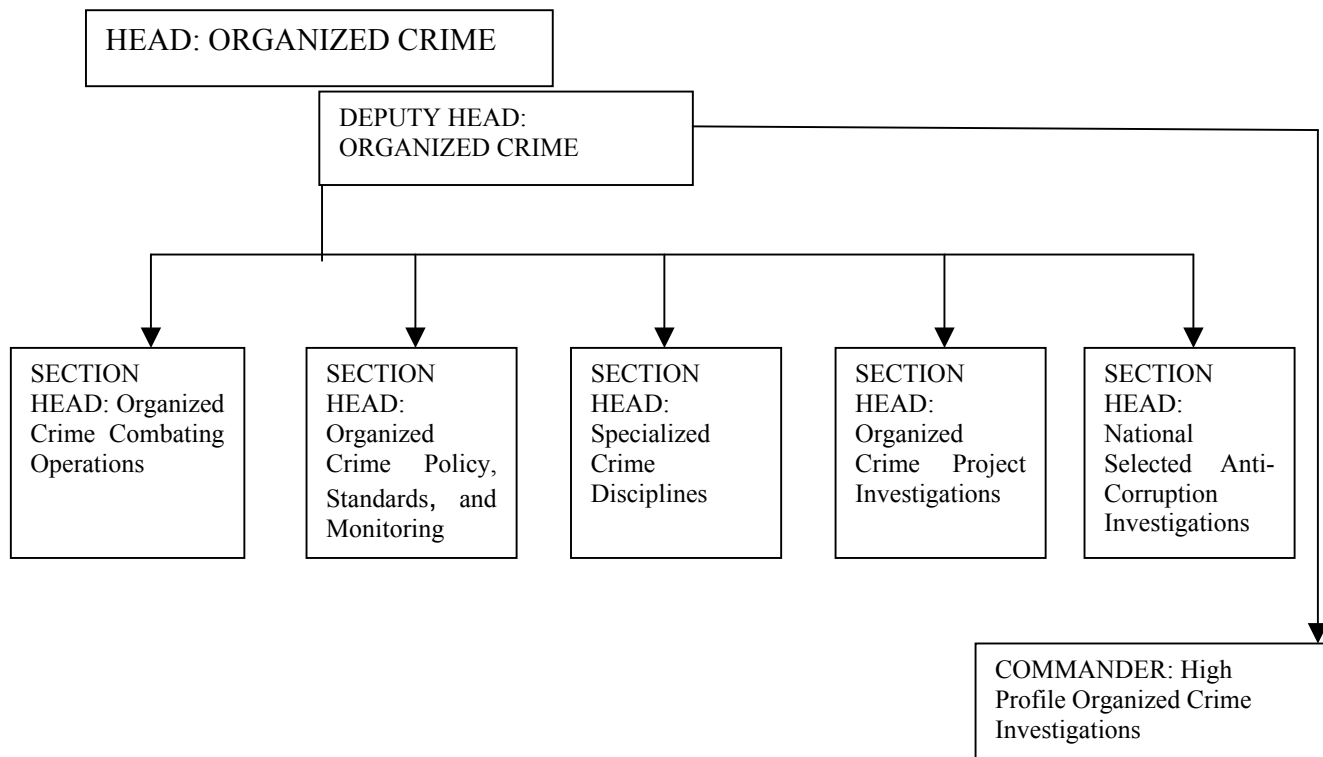
With regard to the implementing bodies, the National Prosecuting Authority Act makes provision for the establishment of three Investigating Directorates and the appointment of Special Directors to exercise powers and functions specified by the President by proclamation.

The National Director of Public Prosecutions established the Investigating Directorates on Organized Crime (IDOC) and Serious Economic Offences. He further established an Asset Forfeiture Unit. In 2000, the National Prosecuting Authority Amendment Act made provision for the establishment of the Directorate for Special Operations (the “Scorpions”). It further made provision for the existing investigating directorates to become part of the DSO. This Act was complemented by the DSO Act of 2001 which establishes the DSO for the effective investigation and prosecution of certain specified offences and the gathering of intelligence relating to such offences. The DSO is built on a three-pronged approach of intelligence, investigation and prosecution. The carrying out of prosecution-led investigations is permissible as the National Director of Public Prosecutions under the National Prosecuting Authority Act exercises powers and functions which are both investigative as well as prosecutorial.

The South Africa Police Service, following its major organizational restructuring in 2001, also established particular structures to deal with organized crime:

SOUTH AFRICAN POLICE SERVICE

ENABLING STRUCTURE FOR THE NATIONAL ORGANIZED CRIME COMPONENT



National Prosecuting Authority

