

SOUTH AFRICAN LAW COMMISSION



RESEARCH PAPER 18

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

PROJECT 82

SENTENCING

(A NEW SENTENCING FRAMEWORK)

COMMISSIONED BY



German Technical Co-operation

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INTRODUCTION

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

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PREFACE

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

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

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

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

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

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

Professor Dirk van Zyl Smit

Project Leader: Sentencing Committee

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2 Acknowledgements

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

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

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

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

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

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

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3 Introduction

3.1 Background

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

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

3.2 Aims of this study

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

3.3 Structure of the report

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

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

3.4 Comparative research

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

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

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

⁴ See section 5.2.2 on page 21.

4 Methodology

4.1 Overview of methodology

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

4.2 Tracking of individual cases

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

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

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

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

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

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

4.3 Convictions in relation to cases tried or cases reported?

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

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

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

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

4.4 Sample

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

The sample consisted of the following crime categories:

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

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

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

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

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

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

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

4.5 Ways in which cases progress to finalisation

Crimes that are reported to the police are finalised at different points in the criminal justice system. These points are depicted in Figure 1 and the terms used are described in more detail below. This report uses these various stages to describe how the sample cases progressed and were finalised.

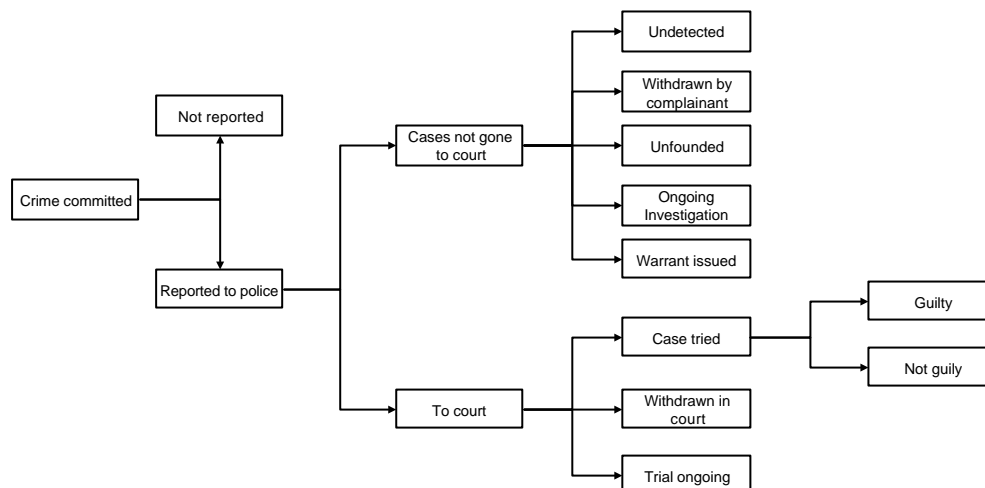


Figure 1 Progress and finalisation of cases. The main outcomes of crimes as indicated by the point in the criminal justice system where it is pending or closed. (SAPS classification system)¹¹

Most crimes reported to the police do not end up in court. The reasons that such cases **do not go to court** and are left in the hands of the police (shown in Figure 1) are given below.

- **Undetected** Most cases that do not go to court are closed as “undetected” which means that the police have not identified a suspect. Although, some crimes are unsolved because the police have inadequate or no leads to follow up (though no fault of their own), other cases are undetected because of incomplete or poor police investigation. In some cases, lack of community or public co-operation makes it more difficult for police to solve crimes.
- **Withdrawn by complainant** The police and prosecution authority have discretion to withdraw a case upon request by the complainant. Withdrawals in this category happen before the first appearance of the accused in court. This may happen for example where a victim of an assault lays a charge with the police but later decides not to press charges because they have reconciled with or been intimidated by their assailant or for some other reason. Cases finalised as undetected reflect more negatively on the police than cases withdrawn by complainant. For this reason, the police sometimes persuade complainants to “withdraw” in cases where there is little evidence and no hope of finding a suspect rather than having to classify those cases as undetected.

-
- **Unfounded** A small number of cases are considered “unfounded” where it becomes clear that no crime was ever committed, for example where a complainant finds a misplaced item that was previously reported as stolen.
 - **Ongoing investigation** Even years after the report of the crime to the police, the police investigation in some cases is still ongoing. These cases are not considered finalised.
 - **Warrant issued** Another group of cases that are not finalised is where the police have identified a suspect and issued a warrant for their arrest.

Some crimes reported to the police **go to court**. The ways in which such cases progress or are finalised (shown in Figure 1) are discussed below.

- **Guilty** A finding of guilty denotes a case where an accused has been tried and convicted.
- **Not-guilty** An acquittal of all accused after a trial in court is recorded as a finding of not-guilty. The accused are also acquitted where the state stops prosecution for want of evidence after the trial has started.
- **Withdrawn in court**¹² The prosecution authority may withdraw the case at any time before the accused has pleaded and the trial has started. This frequently happens when there is insufficient evidence to warrant prosecution.
- **Trial ongoing** Some trials remain “part-heard” years after the case was reported to the police.

4.6 Reliability of data from the CAS system

Concern exists about the appropriateness of using the CAS system as source of the data contained in this report. CIAC, in its written comment on an earlier draft of this report, said:

“The CAS system is not the appropriate tool, as it was not developed for research purposes. The reason for this is that the Standing Order pertaining to CAS is extremely complex. Without a clear understanding of the latter, it is difficult to arrive at valid findings regarding the information captured on the system. A certain degree of error, especially as far as the finalisation of cases on the CAS system is concerned, also exists. The result is that a more negative picture in respect of the successes achieved by the police is depicted than is warranted by the real situation. The issue of data integrity on the CAS system is currently enjoying serious attention by police management, as it may also have a negative impact on operational matters.”¹³

In response to this concern, it needs to be acknowledged that the CAS system is not 100% reliable and that there are issues of data integrity on which the police are currently working to improve. However,

¹¹ Diagram adapted from Martin Schönteich (see note 3) at his p5.

¹² It should be kept in mind that the CAS system does not always indicate at which stage of the process a case was withdrawn, although it is possible to tell if a case has been to court (in which case there must be at least one suspect). Cases that had been to court at least once and were indicated on CAS simply as “withdrawn” were classified as “withdrawn in court” in this report because once the case had been to court it must necessarily also be withdrawn in court. This category does not include cases where the case was “withdrawn” at the instruction of a prosecutor before any court appearance. This happens when a “decision docket” is given to the prosecutor before the police make any arrest. The prosecutor may decline to prosecute, for example, because the accused acted in self-defence or because no crime was committed where the deceased died of natural causes.

¹³ Watermeyer, Sr Supt. Crime Information Analysis Centre (CIAC). Personal communication 2000-11-23.

errors in the data are unlikely to **negatively** reflect on police performance for two reasons. Firstly, any random errors are unlikely to have a significant impact on the overall result because of the relatively large sample size. Secondly, the vast majority of cases in this study (88.5% of reported violent crime cases) were recorded on CAS as undetected, withdrawn by complainant, withdrawn in court, guilty or not-guilty. It should be remembered that such statuses required an active entry on the system by police officers who know and understand that the CAS data is used by police management to assess performance. If the police misclassified the reason for finalisation, then it is inherently less likely that they will have done so to adversely reflect on their performance. For example, if an accused was found guilty, it is unlikely that the police would say that they were found not-guilty or that the case was closed as undetected. It is more likely that the opposite is true: that a conviction was recorded when there was none. Hence, in the majority of cases, any operator-related data errors on CAS are likely to paint a more positive picture of police successes.

Another possible source of error could be that some of the remaining 11.5% of reported cases recorded as outstanding on CAS (ongoing police investigations, outstanding warrants or ongoing trials) had in fact been finalised but the status of such cases had not yet been updated on the system. This scenario is discussed in section 5.1.2 on page 16 where an optimistic projection of up to an additional 4% of convictions is provided for.

CIAC suggests that to establish the real factors contributing to the figures reflected in the findings of this study, it is necessary to peruse the specific case dockets for each case in the sample rather than relying only on the CAS system.¹⁴ Such docket analysis would certainly provide a greater depth of information and explanation for the results of this report. Unfortunately, given the large sample size, it was not feasible to physically look through thousands of dockets in the hundreds of police stations around the country where they are stored. Presumably this was also the reason that previous South African studies on finalisation rates (including some by CIAC itself)¹⁵ used data only from CAS.

The CIAC suggestion of a docket analysis of at least a sub-sample of this report's sample of cases is a good one and should be pursued as a line of future research, and is dealt with further in the conclusion of this report. Such research will serve the dual functions of auditing the accuracy of the CAS data and providing further analysis of the results.

The limited reliability and scope of CAS means that this report is confined to describing conviction rates within the accuracy limits of the CAS system while it is not able to fully explain such results.

¹⁴ Watermeyer, Sr Supt. Crime Information Analysis Centre (CIAC). Personal communication 2000-11-23.

5 Results

The results section is divided up as follows:

- Part 1 – Overall outcome of violent crime cases reported to police
- Part 2 – Outcome of cases reported to police by crime category
- Part 3 – Conviction rates of cases reported to police by crime category and police area

5.1 Overall outcome of violent crime cases reported to police

- The status of cases in a combined sample of violent crimes reported to the police is given in Figure 2. The sample crimes comprised murder, rape and robbery with aggravating circumstances (but excluded fraud).

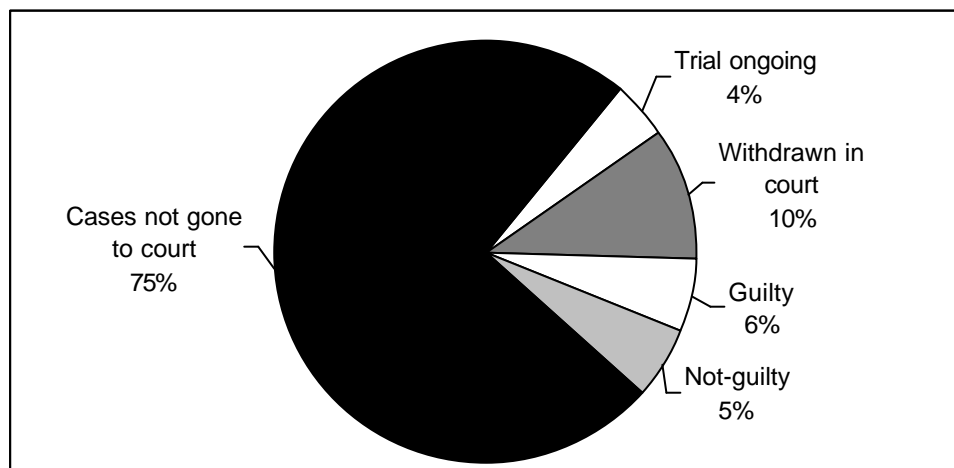


Figure 2 Outcomes of selected violent crime cases. The combined sample comprised murder, rape and robbery with aggravating circumstances cases reported to police. The status of cases is expressed as a percentage of cases reported to the police two years after being reported to police. Table 4 in the appendix sets out the data for the constituent crime categories. $n = 10,776$.

Observations about Figure 2:

- The vast majority of all the sampled cases of violent crime did not even make it to court. Three quarters of cases reported to the police (74.50%) did not make it to court. See the discussion below on cases that do not make it to court.

¹⁵ See section 3.4 on page 7.

- Only 5.70% of the sampled violent crime cases had resulted in a conviction two years after the report of those cases to the police.
- Almost as many of the sampled cases of violent crime resulted in acquittal (5.40%) as opposed to conviction.
- There were almost as many withdrawal of the sampled cases of violent crime in court (9.98%) as convictions and acquittals combined. Forty percent of cases that went to court were withdrawn before trial. The State may withdraw a case for a variety of reasons, but it frequently does so when there is insufficient evidence to warrant prosecution. This includes situations where there was inadequate police investigation or where the police docket has been “lost”, stolen or otherwise not at court. Cases are also withdrawn when state witnesses are not at court on the trial day, many of whom simply give up with being subjected to the numerous postponements that are common in the lower courts.
- After two years, 4.43% of sampled cases of violent crime reported to the police had not yet been finalised and were part heard.

5.1.1 Cases that do not make it to court

An analysis of violent crimes reported to the police but which had not gone to court is provided in Table 1. Due to time constraints, this data was only checked for the Cape Town police area of the Western Metropole. The profile of cases that have not gone to court may differ in the other seven police areas sampled.

Table 1 Status of selected violent crime cases from the Western Metropole that had not gone to court. The combined sample comprised the crimes of murder, rape and robbery with aggravating circumstances. The status of cases is expressed as a percentage of cases reported to the police but which had not gone to court two years after being reported to police.

Status of case	Percent
Undetected	74.1%
Withdrawn by complainant	16.5%
Ongoing investigation	7.2%
Warrant issued	2.3%
TOTAL	100%
n	964

In the Western Metropole, the major reason that cases did not go to court was that they were closed as “undetected”. A total of 74% of cases that did not go to court were “undetected” which means that the police were unable to identify a suspect. A smaller number of cases (17% of cases that did not go to court) did not make it to court because the complainant withdrew the complaint. In a further 7% of

cases that did not go to court, the police investigation was still ongoing and in a further 2% a warrant of arrest for the suspect had been issued but was still outstanding when the study was done. In these last two categories, there is a chance that some of them may have gone to court or may still go to court upon completion of the investigation or apprehension of the suspect.

Assuming that the pattern of police activity in the Western Metropole is similar to other police areas, then this means that nationally the police closed as undetected most cases of violent crime reported to it. In fact, the police were unable to identify a suspect in 55% of reported violent crimes. This result suggests a problem at the level of police investigation of violent crime. However, there are many factors that have a serious impact on conviction rates that are beyond the control of the police and prosecutors. This report is intended to describing conviction rates and the available data does not permit it to fully explain such results.

5.1.2 Effect of non-finalised cases on conviction rate calculations

The results presented above reflect the progress and status of the sample cases after an average of more than two years since the report of those cases to the police. As indicated, not all of those cases had yet been finalised. Once the ongoing trials have been completed, the number of convictions (and acquittals) will be boosted. Similarly, among the cases that have not gone to court, some cases that are still under police investigation or where a warrant is outstanding may eventually go to trial and result in convictions. Hence the conviction rate of the sample cases reported to the police could be slightly higher than the rates after two years reflected in this report. Assuming that all the outstanding cases go to court and complete their trials and follow similar patterns to those already finalised, then at most a further 4% of reported violent crime cases will result in convictions.¹⁶ However, this projection is very optimistic as cases delayed for this amount of time are likely to result in fewer successful prosecutions than those already finalised. This is so for a number of reasons, including:

- Cases where it is difficult to obtain evidence, resulting in fewer convictions, are likely to involve more lengthy police investigations (and hence feature more prominently in the non-finalised cases);
- Some fugitives who have not been apprehended after two years will never be found and in such cases with outstanding warrants will never result in convictions;

¹⁶ Assuming that the 4% trial ongoing cases are disposed of in the same ratio of 6:5 guilty to not-guilty, then these cases will yield a further 2.2% convictions as a proportion of reported cases. 7% of the cases not gone to court in the Western Metropole were still under police investigation and 2% had outstanding warrants. Cases not gone to court constituted 75% of reported cases and thus cases under police investigation and cases with outstanding warrants constituted an estimated 6% of reported cases $([7 + 2] \times 0.75)$. Assuming that this 6% of cases (comprising cases under police investigation and cases with outstanding warrants) all go to court and are disposed of in the same ratio of guilty, not-guilty and withdrawn cases (6:5:10), then this group of will contribute a further 1.7% convictions as a proportion of reported cases. The total projected convictions from the ongoing trials (2.2%) and the ongoing police investigations and cases with outstanding warrants (1.7%) is 3.9% of reported cases.

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- The prosecution's prospects of success are generally reduced by lengthy delays as fewer State witnesses are available and able to give reliable testimony; and
 - Contested cases generally take longer to finalise and result in fewer convictions than cases where the accused pleads guilty.

5.2 Outcome of cases reported to police by crime category

- The status of cases in specific crime categories reported to the police is given in Figure 3.

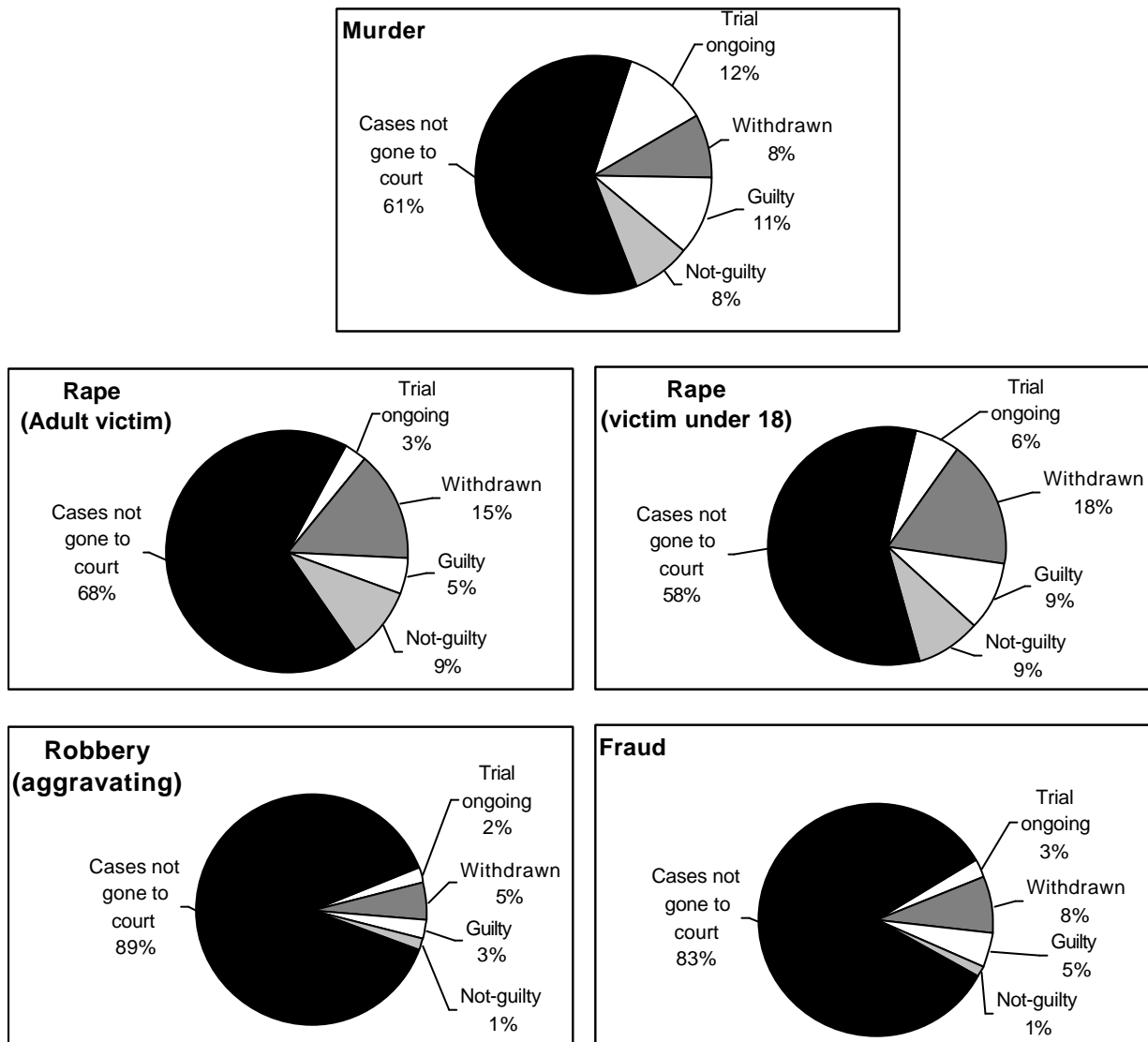


Figure 3 Outcome of cases reported to police by crime category. The status of cases is expressed as a percentage of cases reported to the police and indicate the status two years after being reported to police. The sample sizes are provided in the appendix in Table 5.

Observations about Figure 3:

- Across all sample crime categories, most reported cases did not go to court. The highest rate of cases not going to court was for robbery with aggravating circumstances (88.70%). This means that after two years only one out of every ten reported robberies involving a dangerous weapon was brought to court. Similarly, most reported cases involving fraud (83.74%), rape of adults (68.06%), murder (61.63%), and reported rape of girls under 18 (“child rape”) (58.72%) did not go to court.

-
- Out of all the violent crimes surveyed, reported child rape had the highest level of cases going to court (42%), followed in third position by reported cases of adult rape (32%). This may be because rape survivors are less likely to report the matter to the police where there is little prospect of obtaining a conviction in order to avoid unnecessarily prolonging their trauma. Conversely, higher levels of reporting for murder, aggravated robbery and fraud may mean that for non-sexual crimes relatively more evidentially-weak cases are reported. This “pre-selection” by rape survivors means that if all rapes were reported to the police (including those difficult to prove), the conviction rate for rape would be even lower than these results indicate.
 - Of the cases that did not go to court, some were withdrawn by the complainant. With rape cases, this may happen where the rape survivor is intimidated by the perpetrator, particularly when known to the survivor, or if the rape survivor is afraid of the possible reaction of unsupportive partners or parents. In some cases, the complaint is withdrawn because there was never a crime in the first place and the complainant had laid a false charge. In other cases, the police persuade the complainant to withdraw the charges where the evidence is weak.¹⁷ Insufficient data was available for this report to fully analyse the reasons for the withdrawal of cases by complainants. Whatever the reason for the withdrawal of the charge, these factors have a serious impact on conviction rates but are often beyond the control of the police and prosecutors.
 - The percentage of cases resulting in convictions ranged from 2.99% for robbery with aggravating circumstances to 10.57% for murder two years after the report of those cases to the police. In relation to reported cases, a considerably higher proportion of accused people were convicted of raping girls under 18 years old (9.06% of reported cases) than adult victims (4.95% of reported cases). A comparison with Figure 2 shows that the conviction rate for fraud (4.69% of reported cases) was similar to the aggregate for the violent crimes sampled.
 - For rape of adults, more tried cases resulted in acquittal than conviction. For murder and for child rape there were almost as many convictions as acquittals. This ratio of guilty to not-guilty court decisions was higher for robbery with aggravating circumstances (3:1) and fraud (5:1).
 - The ratio of convictions to acquittals is influenced by a number of factors, including:
 - The prosecution authority tends to try only those cases where there is “a reasonable prospect of obtaining a conviction” in order to focus prosecution resources on the most promising cases. The extent to which weaker cases are withdrawn before trial directly determines the ratio of convictions to acquittals;
 - Nature of the offence (for example a drunken driving case is generally easier to prove in court than a rape case);
 - The quality of the police investigation;

¹⁷ See further discussion of this under the heading “withdrawn by complainant” on page 11.

-
- The experience of the prosecutor and their ability to effectively present the State's case;
 - The extent of co-operation by witnesses, including the complainant, with the State;
 - The likelihood that accused will plead guilty; and
 - The quality of the accused's defence counsel.
- The fact that more tried cases of adult rape resulted in acquittal than conviction possibly reflects the inherent difficulties in obtaining a conviction in sexual offences cases. This is particularly so when the complainant in a rape case is a single witness. A comparison with the results for child rape shows that more reported cases of child rape resulted in conviction (9%) than reported adult rapes (5%). In contrast with adult rape cases, child rape cases that went to trial were almost twice as likely to result in conviction.
 - With the exception of murder, more cases were withdrawn in court than had completed trial. After two years, 15% of adult rape cases had been withdrawn in court compared with 14% that closed with a verdict (finding of guilty or not-guilty). Although “only” 5% of reported aggravated robbery cases were withdrawn in court, this should be seen in light of the fact that 11% of all reported cases made it to court and of these a mere 4% resulted in a verdict. Similarly for fraud, the 8% of reported cases withdrawn in court compares with verdicts in 6% of cases out of a total of 17% of cases that made it to court. An equal number of child rape cases were withdrawn and finalised with a verdict (each 18%). Murder can be distinguished in that 8% of reported murder cases were withdrawn compared with verdicts in 19% of cases with a further 12% of cases incomplete (which will ultimately also result in a verdict). See the discussion above on withdrawn cases.¹⁸
 - Some trials were still ongoing after two years since the report of the cases to the police. The conviction rates are likely to increase once these trials are completed (see the discussion regarding this in section 5.1.2 on page 16). This is particularly so for murder which had a relatively high percentage of ongoing trials (11.58% of reported cases). This probably reflects that murder trials generally take longer to complete than those of other crimes.

5.2.1 Conviction rates by crime category: South African yearly-review comparison

The results presented above indicate the status in late 1999 of cases reported during 1997 and early 1998 using the individual case tracking method. This provides for an interesting comparison with 1998 data showing the number of convictions in relation to the number of cases reported during the same year (“yearly review method”).¹⁹ This comparison is shown in Table 2.

¹⁸ At page 15.

Table 2 Comparison of selected conviction rates calculated using the individual case tracking method and the yearly review method.

	Individual case tracking method	yearly review method
	Percentage of cases reported two years previously resulting in convictions by 1999 (8 police areas)	Convictions in 1998 as percentage of cases reported in 1998 (South Africa) ²⁰
Murder	10.6%	15.7%
Rape (all ages)	6.6%	8.9%
Robbery with aggravating circumstances	3.0%	2.6%

Observations about Table 2:

- The two studies reinforce each other given that they produced similar results despite using very different methodologies.
- The individual case tracking method results probably slightly underestimated the final conviction rates given that some cases still had not been finalised when this survey was done.²¹ This is particularly so for murder which could account for the 5% difference between the two sets of results.
- Differences are also attributable to the different timing, sample sizes and geographic sample areas of the two studies. For example, police areas with lower crime rates may have higher conviction rates.

5.2.2 Conviction rates by crime category: international comparisons

To place the findings of this study in perspective, comparable results from United States and England & Wales were obtained.²² The South African conviction rates for murder, rape and robbery are compared with latest available²³ conviction rates for these two jurisdictions in Figure 4.

¹⁹ See section 4.2 on page 8 for a discussion of these two methodologies.

²⁰ Schönreich, M (see note 3) at 13

²¹ See the discussion on this in section 5.1.2 on page 16.

²² Langan, PA and Farrington, DP. 1998. *Crime and Justice in the United States and in England and Wales, 1981-96*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Available online at: <http://www.ojp.usdoj.gov/bjs/abstract/cjusew96.htm>

²³ 1994 data for the United States and 1995 data for England & Wales.

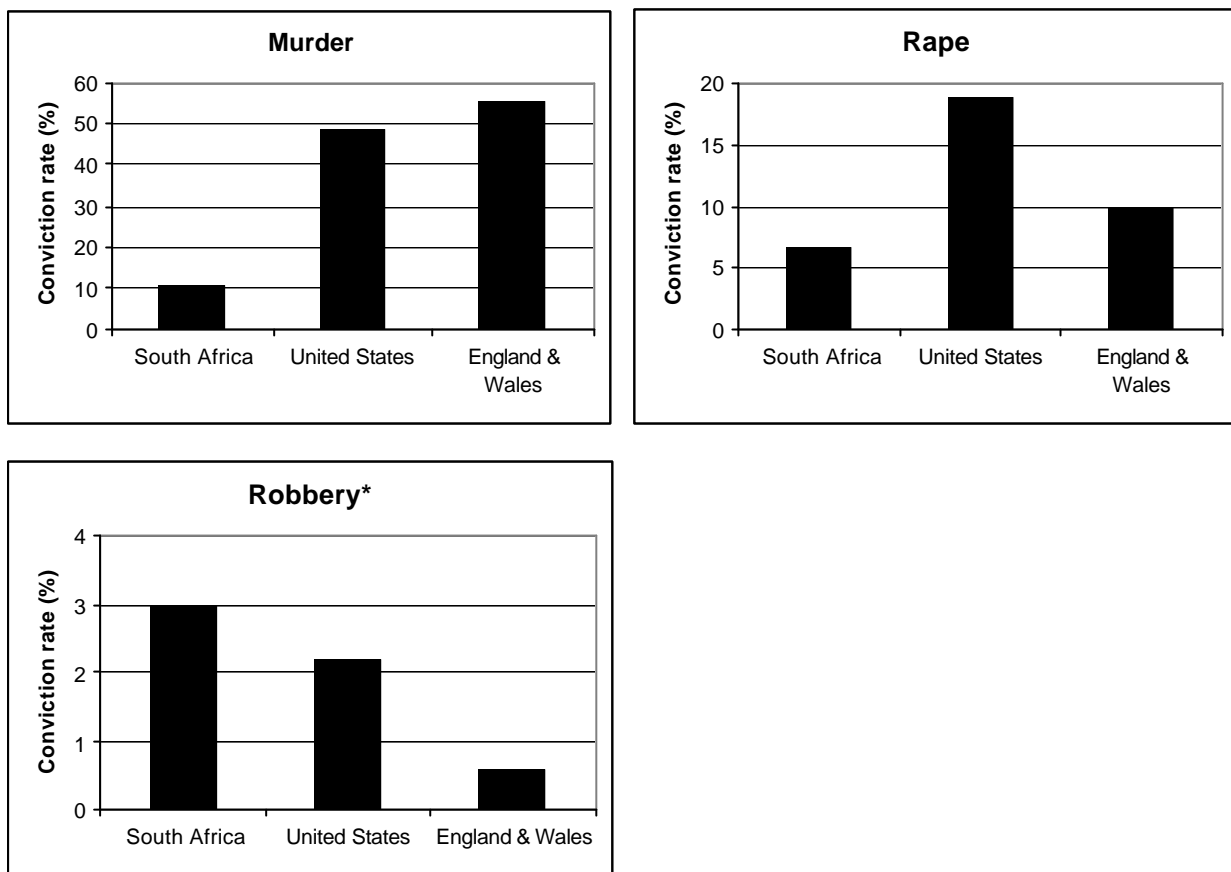


Figure 4 International comparisons of conviction rates. Convictions are expressed as a percentage of cases reported to the police calculated using the individual case tracking method in South Africa and the yearly review method in the United States and England & Wales. *The data for robbery in South Africa represents only robbery with aggravating circumstances while the other two jurisdictions include all types of robbery.²⁴

Observations about Figure 4:

- For **murder**, the conviction rate in South Africa is considerably below that in both the United States and England & Wales. Only 11% of murders reported in South Africa had resulted in a conviction after two years compared with 49% convictions in the United States and 56% in England & Wales.
- Similarly for **rape**, the South African conviction rate lagged behind the other two jurisdictions. Only 7% of reported rapes in South Africa had resulted in a conviction after two years compared with 19% convictions in the United States and 10% in England & Wales.
- For **robbery**, South Africa appears to have higher rates of conviction. A total of 3% of robbery with aggravating circumstances cases reported in South Africa had resulted in a conviction after two years compared with conviction rates of 2% in the United States less than 1% in England & Wales. However, this difference may be explained by the fact that the South African data represents only

robbery with aggravating circumstances, rather than all kinds of robbery as with the other two countries. So different sub-categories of crime are being compared. This is significant because police and prosecutors are likely to devote more resources to solving more serious robberies. Hence the American and English performance in obtaining convictions for the more serious robberies may have been diluted by reporting all robberies under one category.

- It is clear that in all three countries, conviction rates are the highest for murder, very few robberies result in convictions and the conviction rates for rape are in between those for murder and for robbery.
- These comparisons should be interpreted bearing in mind that the South African conviction rates were calculated using the individual case tracking method whereas the yearly review method was used in the United States and England & Wales.²⁵

5.3 Conviction rates of cases reported to police by crime category and police area

The conviction rates vary both according to the crime category and the police area concerned. Figure 5 below compares these various conviction rates and Table 3 ranks the police areas according to their conviction rates.

²⁴ Source for the United States and England & Wales data is Langan and Farrington (above at note 22) at their pages 18-19.

²⁵ See section 4.2 on page 8 for a discussion of these two methodologies.

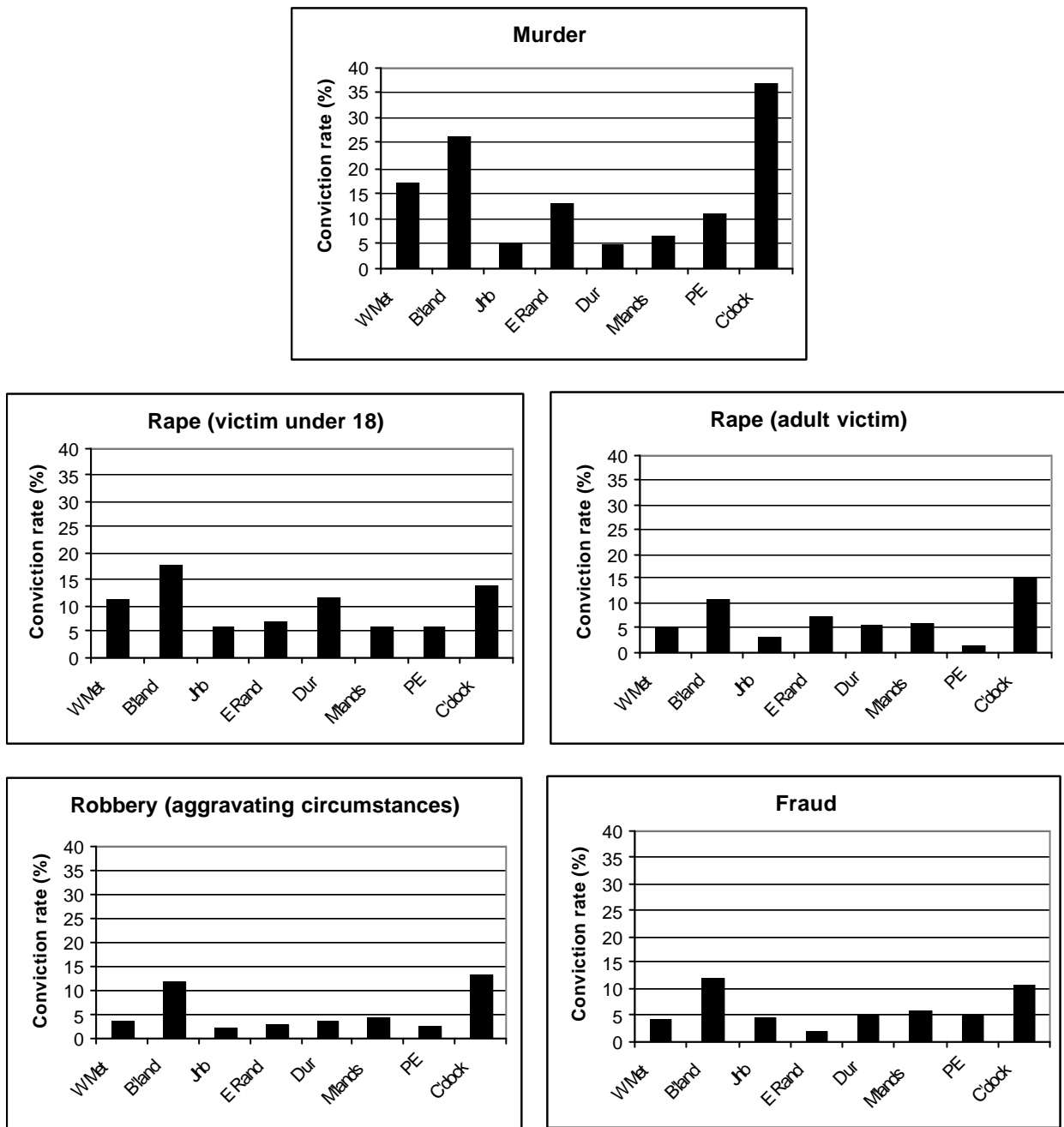


Figure 5 Conviction rates by crime category and police area. Conviction rates are expressed as convictions obtained after two years since the reporting of the cases to the police as a percentage of cases reported to the police. The data is provided for crime categories indicated and the following police areas: Western Metropole (W Met); Boland (B'land); Johannesburg (Jhb); East Rand (E Rand); Durban (Dur); Midlands (M'lands); Port Elizabeth (PE); and Cradock (C'dock). Absolute numbers and percentages are set out in Table 5 in the appendix.

Table 3 Rank of police areas by conviction rates. A rank of “1” means that, relative to the other police areas, this is the highest proportion convictions out of reported crimes while “8” indicates the lowest rank. The ranking is given for each crime category and overall for all sample crimes.

	Murder	Rape - U18	Rape - Adult	Robbery (aggravating)	Fraud	Overall
Cradock	1	2	1	1	2	1
Boland	2	1	2	2	1	2
Midlands	6	7	4	3	3	3
Western Metropole	3	4	6	5	7	4
Durban	8	3	5	4	5	5
Port Elizabeth	5	8	8	7	4	6
East Rand	4	5	3	6	8	7
Johannesburg	7	6	7	8	6	8

Observations about Figure 5 and Table 3:

- Certain police areas had consistently higher conviction rates across all crime categories. Cradock and Boland had either the highest or second highest conviction rates in all five crime categories.
- By contrast, Johannesburg was ranked in the lowest four positions for all crime categories. Johannesburg also had the lowest overall conviction rate.
- The best performer overall, Cradock, had more than seven times the murder conviction rate than Johannesburg. Cradock exceeded Johannesburg’s conviction rate for aggravated robbery by seven-fold, adult rape by five-fold and by more than double for fraud and rape of girls under 18 years.
- The rural police areas generally showed higher conviction rates than the urban police areas in the same provinces. (The only exceptions were rape of girls under 18 in the Midlands and fraud in the East Rand.)

6 Conclusion

Crime pays. South African criminals, even violent criminals, tend to get away with their crimes. For every 100 violent crimes (murder, rape and aggravated robbery) reported to the police, perpetrators in only six cases had been convicted after more than two years.

This proportion of convictions in relation to the reported cases two years after the report is similar for different crime categories. There is a conviction in approximately one in ten reported cases of rape of a girl under 18 (9%) and in a similar proportion of reported murder cases (11%). Less than one in twenty perpetrators of reported adult rape (5%) or aggravated robbery (3%) are convicted. Three-quarters of cases involving murder, rape and robbery with aggravating circumstances have not even made it to court after two years.

The conviction rates for murder and for rape are considerably higher in the other countries for which comparable results were available. The conviction rates for murder in both the United States and England & Wales were five times higher than South Africa. Approximately 50% of reported murders result in convictions in those two jurisdictions compared to 11% in South Africa. Internationally, it appears that fewer rapes result in conviction compared with murder. The conviction rate for rape is 19% in the United States and 10% in England & Wales, although both are higher than South Africa (7%). Comparisons show that in all countries very few robberies result in conviction with the conviction rates for robbery in the United States and England & Wales even lower than the 3% in South Africa (although this may be because of differences in classification).

Although the South African criminal justice system does not seem to be alone in allowing the vast majority of rapes and robberies to go unpunished, it does so to a far greater extent with rape than the other countries examined. As for murder, the South African conviction rate appears woefully low by international comparison.

There are numerous, well documented, problems in the South African criminal justice system that would account for low conviction rates. Such problems include under-trained and overworked detectives and prosecutors who have inadequate support staff and services. There are high levels of illiteracy in the police and problems with discipline and morale. The public also deserves a measure of blame for the poor performance of the criminal justice system with some people failing to co-operate with the police despite being witness to crime or having evidence about a crime or suspected perpetrators.

Special mention should be made of the extent to which the results suggest potentially inadequate police investigation of violent crime. If police activity in the Western Metropole is similar to other police areas, then this means that nationally the police close as undetected most cases of violent crime reported to it. The study showed that police were unable to identify a suspect in 55% of reported violent crimes. This result does not imply that individual police officers are not doing their best with the available resources. They often have to do their work with inadequate resources, such as a lack of vehicles and insufficient access to modern policing technology. High case loads are compounded by low numbers of experienced, trained detectives.

The limitations of the CAS database (the source of the data for this study) make it impossible to fully explain the results and the reasons for the low conviction rates. The authors of this report endorse the call by CIAC for further research, including the perusal of a sample of police dockets. This is needed to fully understand conviction rates and to examine in-depth the reasons for the findings of this survey. Such a study will also indicate the accuracy of the CAS database.

What is clear is that the failure of the criminal justice system to effectively hold perpetrators of crimes accountable for their actions fuels a perception by criminals of impunity from the law. In turn, this is one of the principal causes of crime. In the landmark 1995 Constitutional Court decision declaring the death penalty to be unconstitutional the President of the Court, Justice Chaskalson, wrote that:

“the greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished. It is that which is presently lacking in our criminal justice system; and it is at this level and through addressing the causes of crime that the State must seek to combat lawlessness.”²⁶

Crime is a multi-faceted phenomenon and successful deterrence of serious crime also involves the need for substantial redress in the socio-economic conditions of those ravaged by poverty, debilitated by disease and malnutrition and disempowered by illiteracy.²⁷ However, without effective policing and prosecution, crime is bound to flourish. Very low conviction rates are an incentive to criminals. We cannot expect to see a significantly lower incidence of crime in South Africa until investigation and prosecution improves dramatically.

²⁶ S v Makwanyane and Another 1995 (3) SA 391 (CC) at 443H

²⁷ Mahomed J (as he then was) in S v Makwanyane and Another (note 26) at 495E – 496A (para [291]).

7 Appendix

Table 4 Outcome of violent crime cases reported to police by crime category. The results are for four violent crime categories (excluding fraud) and indicate the status of cases on average more than two years after being reported to police.

Crime	Cases not gone to court	Trial ongoing	Withdrawn in court	Guilty	Not-guilty	Totals
Murder	1155	217	159	198	145	1874
Rape -U18	966	99	289	149	142	1645
Rape – Adult	1747	76	377	127	240	2567
Robbery with Aggravating Circumstances	4160	85	250	140	55	4690
TOTALS	8028	477	1075	614	582	10776
Percentages	74.50 %	4.43 %	9.98 %	5.70 %	5.40 %	100.00 %

Table 5 Outcome of cases reported to police by crime category and police area. The status of cases is expressed as a percentage of all cases of a particular crime category and in that police area. The results are for five crime categories in eight police areas and indicate the status of cases on average more than two years after being reported to police. "n" indicates the total number of cases reported to the police.

Crime	Police area	Cases not gone to court (%)	Trial ongoing (%)	Withdrawn in court (%)	Guilty (%)	Not-guilty (%)	Total (%)	n
Murder	Wn Metropole	50.36	19.42	4.32	17.27	8.63	100.00	139
	Boland	31.82	18.18	6.82	26.14	17.05	100.00	88
	Johannesburg	76.80	6.93	8.27	4.80	3.20	100.00	375
	East Rand	71.00	3.50	3.50	13.00	9.00	100.00	107
	Durban	76.71	7.22	8.48	4.69	2.89	100.00	554
	Midlands	62.50	11.76	12.50	6.62	6.62	100.00	272
	Port Elizabeth	36.46	26.56	7.29	10.94	18.75	100.00	192
	Cradock	19.05	14.29	11.56	36.73	18.37	100.00	147
	TOTAL							1,874
Rape - U18	Wn Metropole	50.32	14.19	19.35	10.97	5.16	100.00	155
	Boland	37.31	4.48	28.36	17.91	11.94	100.00	134
	Johannesburg	74.09	3.66	11.28	5.79	5.18	100.00	328
	East Rand	78.00	2.00	4.00	7.00	9.00	100.00	288
	Midlands	47.03	4.86	18.92	11.35	17.84	100.00	280
	Durban	71.07	3.57	15.36	5.71	4.29	100.00	185
	Port Elizabeth	43.59	16.92	21.03	5.64	12.82	100.00	195
	Cradock	43.75	3.75	27.50	13.75	11.25	100.00	80
	TOTAL							1,645
Rape – Adult	Wn Metropole	58.84	3.05	28.35	4.88	4.88	100.00	328
	Boland	43.43	2.86	30.86	10.86	12.00	100.00	175
	Johannesburg	76.98	2.34	2.99	2.99	14.69	100.00	769
	East Rand	75.40	0.70	10.60	7.30	6.00	100.00	360
	Durban	69.75	1.63	19.07	5.45	4.09	100.00	367
	Midlands	61.74	4.70	19.46	6.04	8.05	100.00	149
	Port Elizabeth	62.93	8.50	20.75	1.36	6.46	100.00	294
	Cradock	37.60	1.60	29.60	15.20	16.00	100.00	125
	TOTAL							2,567
Robbery with Aggravating Circumstances	Wn Metropole	87.25	2.10	6.16	3.36	1.12	100.00	714
	Boland	68.63	5.88	7.84	11.76	5.88	100.00	51
	Johannesburg	92.88	0.79	3.61	1.93	0.79	100.00	1,137
	East Rand	93.60	0.55	2.70	2.60	0.55	100.00	891
	Durban	88.37	1.09	6.05	3.57	0.93	100.00	645
	Midlands	84.77	2.03	8.12	4.06	1.02	100.00	394
	Port Elizabeth	83.62	4.43	7.39	2.46	2.09	100.00	812
	Cradock	63.04	4.35	13.04	13.04	6.52	100.00	46
	TOTAL							4,690
Fraud	Wn Metropole	80.00	5.49	8.78	4.15	1.59	100.00	820
	Boland	67.13	1.40	13.29	11.89	6.29	100.00	143
	Johannesburg	88.83	1.52	4.73	4.55	0.38	100.00	528
	East Rand	90.10	0.95	6.34	2.00	0.61	100.00	1,152
	Durban	83.65	1.77	8.37	4.94	1.27	100.00	789
	Midlands	76.62	2.99	13.68	5.72	1.00	100.00	402
	Port Elizabeth	85.26	3.01	5.71	5.07	0.95	100.00	631
	Cradock	74.65	3.47	7.99	10.76	3.13	100.00	288
	TOTAL							4,753
GRAND TOTAL								15,529