World Factbook of Criminal Justice Systems

South Africa*

Wilfried Scharf and Rona Cochrane
University of Cape Town

This country report is one of many prepared for the World Factbook of Criminal Justice Systems under Bureau of Justice Statistics grant No. 90-BJ-CX-0002 to the State University of New York at Albany. The project director was Graeme R. Newman, but responsibility for the accuracy of the information contained in each report is that of the individual author. The contents of these reports do not necessarily reflect the views or policies of the Bureau of Justice Statistics or the U. S. Department of Justice.

*Note: This report was written prior to the National Elections in April, 1994, which changed substantially the Constitutional basis of South African law. However, because it will be some time before the changes affect the actual operations of the criminal justice system, we have included the report as it was written, with some minor alterations.

GENERAL OVERVIEW

1. South Africa's political system.

South Africa has three branches of government: legislative, executive and judicial. The doctrine of parliamentary supremacy and the absence of a Bill of Rights limits the degree to which there are checks and balances. As of August 1993, the country has undergone a major transition from a racial oligarchy to a non-racial democracy. Multi-party negotiations between most political parties (both those represented in parliament and those excluded from parliament) are in progress.

(Dugard, 1978: 53-201).

The two most powerful political parties are the African National Congress and the National Party. Universal adult statutory privileges were introduced by the end of 1993. Elections for a Constituent Assembly, the body that will draft the new Constitution, were planned for April 1994.

The responsibility for legislating and enforcing most criminal laws falls on the national legislature and national infrastructure of courts, police and correctional institutions. The judiciary makes law by setting precedents through its interpretative functions over legislation and common-law principles. Provincial administrations have the power to legislate traffic laws and have their own traffic police, but use the national infrastructure of courts to prosecute violations. Local authorities are entitled to enact by-laws, the violation of which is also prosecuted in the national courts.

2. South Africa's legal system.

The criminal justice system is administered nationally. It is an adversarial system in which state prosecutors present cases against the accused, who has a right to be represented by a lawyer. (McQuoid-Mason, 1990:198).

One of the vestiges of the process of indirect rule during colonial times is the urban equivalent of the chief's courts in the African townships. Under the Black Administration Act no. 38 of 1927 (as amended) certain Africans can acquire the right to convene courts and hear matters in which customary law features. Since customary law does not distinguish between criminal and civil law, they may hear certain criminal matters. The system has, however, been so discredited through its close association with the apartheid administration that hundreds of competing non-state courts have been set up and operate in the townships (Hund and Kotu-Rammopo, 1983).

During the emergency years these competing courts were an oppositional system of justice, but

now are gradually profiling themselves for inclusion into the adjudicative hierarchy in the post-apartheid era (Burman and Schaerf, 1990).

3. History of Criminal Justice System.

South Africa became a Union of four Provinces and a member of the British Commonwealth in 1910. Its criminal justice system has a mixed heritage of Roman-Dutch law and common law. In 1948, the policy of Apartheid was embedded in legislation by the dominant party in the legislature, the National Party of the Afrikaner nationalists.

The system of apartheid refers to a race-based hierarchy of privilege among four main races, in which the whites occupied the top position and Africans occupied the bottom position of the hierarchy. Persons of mixed race (coloured) and Indians (descendants of citizens from India) occupied intermediary positions while the Chinese were classified as coloured and Japanese were classified as 'honorary whites'. Until 1982 full franchise for the national legislature was only enjoyed by whites. Apartheid controlled every aspect of life on the basis of racial classification: separate residential areas, education, health, welfare, local government, employment opportunities, the right to collective bargaining, the franchise, access to land, business licences, credit, graveyards, public amenities, the right to marriage and sexual liaison. (Brewer, 1988:157).

Apartheid laws created numerous status offenses and crimes based on racial classification. In 1961, South Africa became a Republic and severed its ties with the British Commonwealth. In 1982, an amendment to the Constitution gave a limited franchise to coloureds and Indians and created a tricameral parliament in which three of the four main 'races' (whites, Coloureds and Indians) occupied separate legislative chambers. Coloureds and Indians were allowed to legislate only on issues that concerned their "own affairs" on matters affecting their 'race'. Whites, therefore, dominated the legislative process despite their numeric

minority.

Until the first democratic election in April, 1994, Africans could not vote in the national legislature. Africans were supposed to live out their political aspirations in a number of ethnically exclusive 'homelands' called "self-governing states" and "independent states". In these enclaves they acquired citizenship and franchise, and the right to purchase land.

The "independent states" have established their own criminal justice systems and statistical data bank. The "self-governing states" acquired partial independence only, and still retain an accountability to the apartheid state. The criminal justice statistics of "self-governing states" are reflected in the national statistics.

The "self-governing states" accommodate 35% (10.7 million) of the South African population of 30.9 million (Population Census, 1991: table 1, p.1). None of these apartheid creations are recognized by the international community. They are almost exclusively dependent on the central state for their financial survival. Their re-incorporation into the post-apartheid South Africa is a heavily debated issue in the current multi-party negotiations. (Marais, 1992:1-2).

The political struggle against apartheid resulted in successive states of emergency being declared between 1985 and 1992, giving the armed forces extensive powers of detention without trial; search, seizure and entry; and declaration of curfews. Consequently, the criminal law is a highly politicized terrain. In addition, the law in general, and the armed forces in particular, do not carry much legitimacy among the majority of the population. (Albertyn and Davis, 1990; Faculty of Law UCT, 1986; Vander Vyver, 1988; Corder, 1989).

CRIME

1. Classification of crimes.

*Legal classification. Criminally punishable

conduct is sometimes referred to as a "crime" and sometimes as an "offense". Crimes are not divided into treason, felonies and misdemeanors. The layperson may use the term "crime" to refer to the more serious forms of criminal conduct such as murder, theft and rape, and the term "offense" to refer to less serious forms of criminal conduct such as contraventions of municipal by-laws. However, there is no technical difference between a "crime" and "offense". (Snyman, 1984: 4).

*Age of criminal responsibility. A child below the age of 7 years is presumed to lack criminal responsibility. A child between the ages of 7 and 14 is also presumed to lack criminal responsibility; the onus is on the state to rebut this presumption beyond reasonable doubt. (Snyman, 1984: 131).

*Drug Offenses. The Drugs and Drug Trafficking Act (No. 140 of 1992) provides for the prohibition of the use or possession of or the dealing in drugs, and of certain acts relating to the manufacture or supply of certain substances. A drug is defined as any dependence-producing substance: any dangerous dependence-producing substance, for example, coca leaf, opium, or any undesirable dependence-producing substance, for example, dagga, heroin, LSD, etc.

2. Crime Statistics.

The following data on the number of crimes reported are taken from the the 1992 Annual Report of the Commissioner of Police (hereinafter 1992 Annual Report) which covers the period between January 1 to 31 December 1992.

*Murder. In 1992, there were 16,067 murders reported to the police. The rate of reported murders per 100,000 population was 176 in Natal, 110 on the Witwatersrand and in Soweto, and 61 in the Western Cape. (1992 Annual Report: 60).

*Theft. In 1992, there were 78,677 cases of reported robbery. The rate per 100,000 population, was 7 on the Witwatersrand and Soweto,

5 in Natal, and 2 in the Western Cape. (1992 Annual Report: 60).

*Rape. In 1992, there were 24,360 cases of rape reported to the Police. According to specialists, a large percentage of rapes are never reported to the Police. Estimates of the proportion of rapes that are reported to the police in this country range from one in every two cases, to one in every twenty cases. This suggests that between 24,360 and 462, 840 rapes were not reported in 1992 (Hansson and Russell, 1993:14). Of all rapes reported, 18.90% took place on the Witwatersrand, 17.48% in the Western Cape, 14.54% in Natal, 10.72% in the Eastern Cape, and 8.30% in Soweto. The rate per 100,000 population was 146 cases in Natal, 139 in the Eastern Cape, 120 in the Western Cape, and 90 on the Witwatersrand. (1992 Annual Report: 61).

*Drug offenses. A total of 20,071 persons were arrested in 1992 in connection with the drug trade. (1992 Annual Report: 62).

*Crime regions. Of the serious crimes committed in 1992, 24.12% were on the Witwatersrand and in Soweto (61 serious crimes per 1,000 population), 17.75% in the Western Cape (66 per 1,000 population) and 16.83% in Natal (91 per 1,000 population). (1992 Annual Report: 54).

VICTIMS

1. Groups Most victimized by crime.

Africans constitute the largest group of violent crime victims (per capita), while whites are the most frequent victims of monetary or property crimes. A 1981 survey revealed that of those persons interviewed, 8% of blacks, 7% of coloured, 5% of Indians and 2% of whites were affected by robbery with violence. In addition, 20% of the black respondents, 10% of coloured, 5% of Indian and 2% of white respondents reported being victims of assault. Finally, 4% of the black and 2% of the coloured respondents reported

being rape victims. (Lotter, 1992: 145). As South Africa is a highly patriarchal society, African women suffer high levels of domestic violence and sexual assault.

2. Victims' Assistance Agencies.

With the exception of a recent victim compensation and victim protection scheme provided for in the 1991 amendment to the Criminal Procedure Act No. 51 of 1977 [hereafter CPA], not much attention has been given to victims of conventional crime. There is hardly any state-initiated victim support infrastructure, although the Goldstone Commission is exploring the creation of a witness protection and victim compensation scheme (National Peace Accord [hereinafter NPA], 1991:33).

There is a vast network (14,000) of foreign-funded private victim support groups for the victims of the apartheid state, for instance, the National Committee Against (forced) Removals, support and counselling groups, human rights organizations, psychological trauma centers, advice offices, pre-school and other educational institutions, skills training groups, etc. For victims of "conventional" crime and neglect, there are Rape Crisis Centers (in six towns and cities), street children's shelters, and welfare agencies for released prisoners.

3. Role of victim in prosecution and sentencing.

The victim role in a trial is primarily that of a witness. A legislative amendment has enabled child witnesses to testify in more congenial surroundings in front of cameras. There have also been limited efforts at victim-offender mediation by a welfare organization in a few cities.

In addition, a pilot project has been launched in Cape Town to establish a special rape court in which the police, the prosecutor, the district surgeon staff, and the magistrate will all have received special training, sensitizing them to the potential for a secondary victimization to occur during case proceedings. A special recovery room has been established at a

local hospital so the victim does not have to be brought to the police station to submit a statement. The project also emphasizes ongoing counseling for rape survivors. (Hansson, forthcoming 1993).

4. Victims' rights legislation.

There is no specific victims rights legislation.

POLICE

1. Administration.

A national police force has been created through legislation and under the authority of the Ministry for Law and Order, the most important statute being the Police Act (No. 7) of 1958. In addition to the national police force, the city of Durban has a municipal police force of its own, comprising 750 staff members (Chief Constable Taylor August 30, 1993; Visser, 1984).

The South African Police (SAP) is a paramilitary force in which most of the white personnel have served as military fighters in counter-insurgency wars in the former Rhodesia, and more recently (until 1990) in Namibia and Angola. The SAP is considered to be part of the Law and Order Community and currently works in conjunction with the military. The SAP has command over the South African Defense Force, thus both SAP and the military help to patrol some of the more violent African townships. (Dippenaar, 1988: 431,442; Williamson, 1984).

Provinces have their own traffic police, as do the towns and cities. For example, the Cape Province has 8,000 traffic officers (Botha, August 30, 1993).

2. Resources.

*Expenditures. The Annual Expenditure on the SAP for the year 1992-1993 was 5,645,143,000 Rand, an increase of 21.9% over the previous year. (1992 Annual Report: 16).

*Number of police. According to the 1992 Annual Report (p. 19), as of December 31, 1992, there were 83,764 permanent SAP members. In addition, there were also 30,038 civilian employees, temporary members, police assistants and national servicemen, rendering a total of 113,802.

Other sources compute the figures in a different manner by including the "self-governing" states (Kwazulu 4,000; Gazankutu 1,059; Kangwane 507; Qwaqwa 725; Lebowa 1,315; and Kwandebele 592) up until June 1992. This would increase the total number of police personnel to 119,624, including the civilian staff. One could add to these figures even more by including the independent states (Bophuthatswana, Venda, Transkei, Ciskei) which have 12,200 members with 60 additional personnel from the SAP.

Racial breakdowns only include SAP statistics. Self-governing states' members are excluded from this figure. With the exception of the 60 additional members of the SAP assgned to these self-governing states, all of the 8,198 staff members are non-white. (Policing Research Project, 1992).

Of the 4,946 SAP officers, 4601 (93%) were white, 157 (3.2%) were Asian, 90 (1.8%) were coloured, and 98 (2%) were African. Of the 69, 806 SAP NCO's, 35,530 (51%) were white, 3,274 (4.7%) were Asian, 6,712 (9.6%) were coloured, and 24,290 (35%) were African.

As of May 31, 1990, the Minister of Law and Order reported that the black population (in the broad sense) comprised 56% (45,845) of the police force. There were a total of 2,818 Indian police officers, of which 2,581 were men and 237 were women; a total of 5,819 coloured police officers, of which 5,415 were men and 404 were women; and a total of 37,208 black police officers, of which 35,736 were men and 1,472 were women. (Rauch, 1992:27).

Women comprised 7% (5,666) of all police. In addition to the data above, a total of 3,553 policewomen were White. (Rauch, 1992: 28).

In 1992, 224 members of the police were killed in the line of duty and 94 committed

suicide. (Annual Report: 58, 27).

3. Technology.

*Availability of police automobiles. There are 1,330 motorcycles, 9,377 patrol vehicles, 12,734 motor vehicles, 446 riot vehicles and 493 "sophisticated/effective urban riot vehicles" (1992 Annual Report: 5). There is an unequal ratio of police to vehicles; however there are no published detailed statistics on this.

Black police personnel and the stations serving black townships tend to have fewer vehicles than stations and personnel serving other race groups. For example, "One police van for the township is simply not adequate to police 80,000 to 120,000 people. The new Rini [African township] satellite police station had no telephone when we visited. Police radios are reportedly often out of order." (Rauch and Simpson, 1993: 31).

*Electronic equipment. Data are unavailable from the official statistics and reports.

*Weapons. According to Brewer (1988: 170) every policeman and woman, black and white, is issued a side-arm and an R-1 rifle. In 1992, 12,450 R-5 rifles and 9,218 Musler shotguns were purchased; 13,755 complete sets of body-armour and 36,900 additional outer garments were made available to members of the SAP. (1992 Annual Report: 10).

4. Training and Qualifications.

Basic training is 6 months. Most of the training takes place within the six training colleges and the police academy. The academy is linked to the University of South Africa, which in turn accredits the academy's degrees and offers correspondence degrees of its own. Technicon RSA offers correspondence courses which are obligatory for the promotion of lower ranking officers. The minimum entrance requirement for new recruits is a matriculation certificate. (Van der Spuy, 1989:284).

5. Discretion.

*Use of force. If the person being arrested resists or attempts to escape arrest, the police may use such force as is "reasonably necessary" to prevent such actions (CPA, Sect. 49(1)), regardless of whether a warrant is present. If the person resisting or escaping arrest has been arrested for a Schedule One offense, the police may shoot the person if this is the only means to prevent his/her escape. (CPA, Sect. 49(2)).

The principle of minimum and incremental force is prescribed for the break up of unlawful protest marches and demonstrations (Internal Security Act, No. 74 of 1982 sec 48,49 [hereafter ISA]).

Deadly force may be used by policemen under three circumstances: 1) to protect the person or property of another, or onseself; 2) to secure the arrest of a fleeing or resisting suspect; 3) to disperse illegal gatherings (Haysom, 1987: 10).

However, in the past, there were continuing, seemingly systematic, abuse of the legal limitations on the use of force through the torture of political detainees and nonpolitical suspects, the existence of police death squads, the abuse of the rules restraining fatal shootings and the abuse of minimum force rules at protest demonstrations and marches. (Fernandez, 1992; Foster, Sandler and Davis, 1987; Hansson, 1989; Haysom 1987: 22-7; Jeffery, 1991: 23-43; Levine 1990: 130; Pauw, 1991; Van der Vyver, 1988).

*Stop/apprehend a suspect. The police require a warrant issued by the Attorney-General in order to detain a person as a state witness in a trial relating to a serious offense such as arson, murder and kidnapping (CPA, Sect. 185) and to detain a person as a state witness in a political trial (ISA, Sect. 31). The police do not require a warrant to arrest and detain a person for interrogation as a suspect in terrorist or subversive activities (ISA, Sect. 29). Where the police believe that a person is active in public disturbance, disorder, riot or public violence and his/her detention is necessary to stop such activities, (ISA, Sect. 50) a warrant is not

required for an arrest, provided the arrested person is not held for longer than 48 hours.

When an area has been declared an "Unrest Area" a person can be arrested and detained without a warrant if the arresting officer believes the person's detention is necessary to prevent public disorder or public violence (Regulations under the Public Safety Act No. 3 of 1953, Sect. 5a).

*Decision to arrest. The police can arrest a suspect with a warrant issued by a magistrate in order to take the suspect to court on a criminal charge or as a suspect in a criminal investigation. (CPA, Sect. 39). The police can arrest a person without a warrant if the police witness a crime or are acting upon a "reasonable suspicion" that the person has committed an offense referred to in Schedule I, which includes generally traditional crimes ranging from murder to breaking and entering (CPA, Sect. 40).

*Searches and seizures. The police derive their general powers to enter, search and seize from the CPA as well as numerous other statutes (e.g. the Police Act No. 7 of 1958, Publications Act No. 42 1974, Internal Security Act, and the Public Safety Act No. 3 of 1953). The CPA makes it possible to enter any premises for the search and seizure of persons and objects. (CPA, Sect. 19). Articles may be seized under the following conditions: 1) there are reasonable grounds to believe the article was involved in the commission or suspected commission of an offense; 2) the article may afford evidence of the commission or suspected commission of an offense; 3) the article is intended to be used or, by reasonable grounds, is believed to be intended to be used in the commission of an offense. (CPA, Sect. 2; Hiemstra, 1977: 7).

Goods which may be seized are articles, documents or substances. Money in the form of coins, notes or negotiable instruments in an article or document may be seized. Privileged documents which are not admissible as evidence may be seized and used to trace an offender. (Hiemstra, 1977: 7).

A warrant is required for a seizure to take place, although there are certain exceptions. (CPA, Sect. 21). The warrant may be issued by a Magistrate or Justice of the Peace before the commencement of a trial. The police requesting the warrant must provide information which creates a reasonable basis for the belief that the article is under the control of a person within the jurisdiction of the court. The warrant describes the person and place to be searched and the particular article to be seized (CPA, Sect. 21(2)). During a trial, a seizure may be ordered by the presiding judicial officer.

The police may search and seize without a warrant where a) the person gives the police consent to search and seize; b) the officer believes on reasonable grounds that a warrant would be issued if it were applied for and that the delay in obtaining a warrant would defeat the object of the search (sec 22 CPA); c) the police are acting under the Unrest Areas Regulations and believe a search and seizure is necessary to maintain public order or safety of the public or to stop public disturbances or public violence. In this latter case, they may without a warramt enter any building or premises; search any person, premises, vehicle or object; and seize any object which could be used in a crime or could be evidence of a crime.

*Confessions. A confession is a statement made outside of court in which the suspect concedes that he/she has committed the offense. (Hiemstra, 1977: 129-131). In order for a confession to be admissible as evidence the confession must be made without compulsion (Hiemstra, 1977: 129-131).

6. Accountability.

Complaints against the police can be processed through a number of channels. The most long-standing method is laying a charge at a police station, which results in an investigation by the police at that station. In principle, once the investigation has been completed by the

police, the docket is forwarded to the Attorney-General, who decides whether or not to prosecute.

There are also internal disciplinary hearings which can take place within the police force in which a senior officer acts as judge. The general public has viewed this to be a highly unsatisfactory process, particularly if the complainants have been black, illiterate and ignorant of their rights. Typically the vast majority of complaints under these circumstances have not resulted in suspensions, prosecutions, or convictions (Jeffrey, 1991: 149-162).

For instance, if the complainant is a political detainee or suspect, the trend has been for policemen to be promoted shortly after receiving reprimands and criticism from judges during "trials within trials" to establish the admissibility of confessions extracted under conditions of solitary confinement. (Foster and Luyt 1986:297). In response to the shortcomings of this system, the National Peace Accord set up a range of complaint mechanisms which began operation in September 1991. A complaint could now be lodged with the Goldstone Commissioner or his regional representatives, the Police Reporting Officer (a lawyer nominated by the legal profession rather than the police) (NPA, 1991: 11), a Justice of the Peace (NPA, 1991:28), or the Commissioner of Police. Special investigations units of the police have been set up to investigate these complaints. They are accountable primarily to the police hierarchy but also report to the Police Reporting Officer who reports to the Regional Peace Committee. (NPA, 1991: 12).

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of the accused.

*Rights of the accused at trial. The accused has the right to be brought before a court 48 hours after his/her arrest. The accused also has the right to be informed of the charges being brought

against him/her (CPA, Sect. 80), the right to ask for bail (CPA, Sect. 60), the right to question any witnesses (CPA, Sect. 166), the right to subpoena witnesses for the defense (CPA, Sect. 179) and the right to legal representation from the moment of arrest (CPA, Sect. 73(2)). However, there is no provision to prevent the suspect from being questioned without a legal representative present. Rather, only in rare cases does a suspect have legal representation at the questioning stage.

If the accused alleges that an admission or confession was made under conditions of duress or torture, a trial is held within a trial to ascertain the admissibility of the evidence (CPA, Sect. 217). The right to legal representation has been severely curtailed by legislation, dealing with state security, which denies arrested and detained people access to counsel until they are charged or brought to court as witnesses (McQuoid-Mason,1990: 190).

An accused charged with a capital crime is entitled to legal representation free of charge, called "pro Deo" legal representation, provided by the state. (Du Plessis, 1992: 100).

The accused has a right to a speedy and public trial and the right to a trial by an unbiased court. All accused have the right against self incrimination and the right not to be tried twice for the same crime.

The above rights may be severely curtailed by security legislation which creates a series of political crimes and gives the authorities sweeping powers to ban, arrest and detain political opponents. Most of these powers are contained in the ISA and the Public Safety Act.

*Assistance to the accused. If an accused cannot afford the representation of counsel he/she may apply for legal aid to the Legal Aid Board. (Legal Aid Act 22 of 1969, Sect. 3). A financial means test is used to determine whether an accused qualifies for legal aid. A single person whose "disposable" income is less than R500 per month (plus R150 per child) and a married person where the joint monthly income is less than R1000 per

month (plus R150 per child) can receive legal aid (McQuoid-Mason, 1990: 200). If the accused qualifies for an attorney, the Legal Aid Board pays an attorney to represent the accused in court (Legal Aid Act 22 of 1969; Sect. 3).

The Legal Aid Board will pay for an attorney or advocate to defend an accused in the Regional Court on a charge of murder, but not in the Supreme Court, where the "pro Deo" system operates. Appointment of pro Deo counsel is made by the bar on the instruction of the State. Pro Deo counsel are paid a fixed tariff.

The Legal Aid Board has limited resources. Due to a shortage of funds experienced by the Legal Aid Board, it is impossible for it to provide legal aid for every indigent accused who is in danger of being sentenced to a term of imprisonment. The state is under no obligation to provide legal representation. As a result, probably 85-90% of persons charged with crimes in the magistrates' courts are unrepresented by lawyers and 85% of people in all criminal cases are unrepresented. (McQuoid-Mason, 1990: 198; 202-203).

At present the feasibility of introducing a public defender system is being explored. Public defenders will be jurists supplied by the State to represent an accused who cannot afford a legal representative in criminal matters (Du Plessis, 1992: 100). A pilot project for public defenders was begun on January 2, 1992 in Johannesburg (Department of Justice Annual Report, 1992: 20). The office is staffed by 4 advocates and 6 attorneys. Three of the staff members are black. In the first 10 months, 2,212 cases were handled. There was a 57.25% acquittal rate in cases where the accused pleaded not guilty and a success rate of over 90% in bail applications. (Asmal, 1993). While the country needs an expansion of the public defender system, it is currently not possible due to the lack of funds. (Department of Justice Report, 1992: 20).

2. Procedures.

*Preparatory procedures for bringing a suspect to

trial. Charges are brought up with the police by a person (the complainant) or the police may investigate a matter on their own initiative. The police open a case docket (or file) in which statements of witnesses and other documentary evidence is kept.

The police file is then transferred to the Attorney-General, or the public prosecutor authorized by the Attorney-General. The Attorney-General then decides whether there is sufficient evidence to prosecute the accused. (Du Plessis, 1992: 100). Where the State declines to prosecute, the complainant may institute a private prosecution (Hiemstra, 1977: 4). Where the State decides to prosecute the matter, the suspect may be brought before court by way of summons, warrant or indictment (CPA, Sect. 38). In cases of serious offenses, the police have the right to detain suspects for 48 hours before bringing them to court in order to investigate the matter further (CPA, sect. 50).

Except in security law cases, people arrested must be charged before a court within 48 hours. During this stage of the proceedings, the accused may request bail and request a postponement of the proceedings in order to find an attorney, to prepare his/her case, or to contact witnesses. The prosecution may request a postponement to give the state more time to prepare its case. The accused may oppose the prosecutor's request for a postponement and may request that the case be finalized without delay.

Once the prosecutor has put the charges to the accused, the accused is asked to plead. In cases of less serious offenses where the accused pleads guilty and the prosecutor accepts the plea, the accused may be found guilty without any further evidence. (CPA, Sect. 121(2)(a)). Where the offense is of a more serious nature, the court must first ascertain that the accused acknowledges all the material allegations against him/her before the court may find the accused guilty without hearing further evidence. The magistrate will question the accused with reference to the alleged facts of the case to satisfy himself/

herself that the accused is guilty of the offense to which he/she has pleaded guilty (CPA, Sect. 112(b)). Depending on the accused's reply the magistrate may accept the plea of guilty or he/she may change the accused's plea to not guilty so that the court may hear evidence.

Where the accused is to be tried in the Supreme Court, a preparatory examination may be held in the magistrate court. The purpose of the examination is to place on record certain particulars, in order to enable the Attorney-General to decide whether to proceed with the trial in the Supreme Court (CPA, Sect. 123-143).

*Official who conducts prosecution. The State President appoints an Attorney General for each provincial division and for the Witwatersrand Local Division of the Supreme Court of South Africa. The Attorney General makes decisions regarding the institution or criminal proceedings in lower and higher courts, which includes the consideration of evidence, consultation with witnesses, instructions to police and public prosecutors, and advice and guidance to public prosecutors. (Department of Justice Report, 1992: 102).

An Attorney General may delegate his/her powers to public prosecutors in lower courts (Hiemstra, 1977: 3). Further, in districts where the amount of work does not justify appointing a full-time public prosecutor, the power to prosecute is delegated to the police officers. (Department of Justice Annual Report, 1992: 102). State Advocates and public prosecutors are employed by the Department of Justice and are under the control of the Attorney General. Prior to January 1993, the Attorneys General were in principle subject to possible interference in their functions on the part of the Executive. However, since January 1993, the Attorney General has been made independent of the Minister of Justice and he/she is now only responsible to Parliament (the Attorney-General No. 92 of 19 92, Sect. 5) which came into operation in January 1993.

*Alternatives to going to trial. Although it is not officially acknowledged prosecutors and attorneys engage in the process of plea negotiation. The power to prosecute is directly controlled by the prosecutors, and negotiations over charges are allowed to take place prior to the trial without the consent or approval of the judge (Van Zyl Smit and Isakow, 1986: 10). The plea negotiations between the prosecutor and defense counsel may concern questions of law but more commonly center around questions of fact. Once there is an agreement that a plea will be offered and accepted, a written statement is drafted by the defense counsel (CPA, Sect. 112(2)). The facts contained in the statement are an explanation of the accused's plea and the basis on which the court finds the accused guilty. (Van Zyl Smit and Isakow, 1986: 11).

Community service orders and correctional supervision have been established as alternatives to prosecutions. The prosecutor may at any time prior to judgement, after receiving a written admission from the accused for the charge brought against him/her or a lesser charge, arrange for the accused, with his/her consent, to do community work or to be placed under correctional supervision. Before an accused is placed under correctional supervision, the prosecutor has to consider the report of a probation officer. The Commissioner of Correctional Services and the police official investigating the case must be consulted (sec 36 of Correctional Services and Supervision Matters Amendment Act No 2E 122 of 1991).

If at any stage of the criminal proceedings the court finds that the accused is by reason of mental illness or mental defect not capable of understanding the proceedings, the court shall have the accused detained in a mental hospital or prison pending the signification of the decision of the State President (CPA, Sect. 77). An accused may be sent for 30-day observation and assessment to ascertain whether he/she is mentally fit to stand trial (CPA, Sect. 78-79). A juvenile court (criminal) may convert the trial of an

accused under the age of 18 into a children's court enquiry (welfare tribunal) if it appears to the court that the child is in need of care. The children's court then investigates the background and circumstances of the child. The child is removed from the criminal justice system and no criminal conviction is recorded (McLachlan, 1984: 26).

*Proportion of prosecution cases going to trial. The total number of prosecutions in South Africa for 1991/1992 were 485,099. There were 373,590 convictions, 111,119 discharged, 263 of the accused died and 127 were found to be mentally disordered. (Central Statistical Report 1991/1992 Table 4). Figures on the number of cases dealt with by means of plea bargaining are not available.

*Pre-trial incarceration conditions. The security laws give the police wide powers of detention without trial. People can be detained as state witnesses in political trials involving terrorism or subversion. A person can be held for 6 months or longer if the trial is still in process. If the trial does not commence within 6 months, then the detainee must be released (sec 31, ISA). A person can be detained for short-term preventive detention for a total of 14 days (sec 50, ISA). Persons can also be detained for interrogation.

A person accused of a serious offense can be held for a maximum period of 48 hours. After 48 hours, the accused must be brought before the court where the magistrate, on application by the public prosecutor, may extend the period of detention, pending further investigation of the case. (Hiemstra, 1977: 22-23).

In addition, pre-trial incarceration may result when the accused is denied bail or is financially unable to post bail. A person may be detained as a state witness in a trial involving a serious offense such as arson, murder or kidnapping. The maximum period for which a person may be detained as a state witness is 6 months (CPA, Sect. 185).

People arrested and detained in areas which have been declared "Unrest Areas" can be held for

as long as the Unrest Regulations are in force. The Minister of Law and Order has to write an order for a person to be detained for longer than 30 days. However, there is no maximum period of detention (Public Safety Act, Sect. 5a).

Where an offense is one of a serious nature, an accused can be held for a maximum period of 48 hours, after which the accused must be brought before the court where the magistrate, on application by the public prosecutor, may extend the period of detention, pending further investigation of the case (Hiemstra, 1977: 22-23).

Where the accused is denied bail or where he/she is financially unable to post bail, this results in pre-trial incarceration.

*Bail procedure. Bail is granted to ensure that the accused will appear in court. If the accused is in custody for an offense not listed in part II or III of Schedule 2 of CPA, he/she may be released on bail before the first court appearance by a police official with the rank of sergeant or above. Release would be granted providing that the accused pays the sum of money decided by the police official at the police station. (CPA, Sect. 58(1)(a).

If the offense is serious, the accused must wait in custody until his/her first appearance in court. The accused may request bail at any time on or after the first court appearance (CPA, Sect. 60). There are three general principles according to which the question of bail is decided: a) the risk that the accused will evade trial; b) the possibility that the accused will commit a crime before trial; c) the possibility that the accused will interfere with the course of justice. (Hiemstra, 1977: 28-29).

The court is obligated to refuse the bail application if the Attorney-General informs the court that the accused has information in his/her possession which cannot be revealed without prejudicing the public interest or administration of justice and which indicates the release of the accused would probably frustrate the administration of justice or could jeopardize public safety. (Hiemstra, 1977: 30; CPA, Sect.

61).

*Proportion of pre-trial offenders incarcerated. As of December 31, 1992, there were 20,029 persons held in prison while awaiting trial. (Department of Correctional Services Report, 1992: 23, Table 3).

JUDICIAL SYSTEM

1. Administration.

Higher Courts. The Higher Courts, such as the Supreme Court, have various divisions. For instance, the Supreme Court of South Africa consists of an Appellate Division, provincial divisions, and local divisions. The Chief Justice heads the Appellate Division; Judge Presidents, the various provincial divisions. Each Supreme Court goes on Circuit to hear cases in towns and cities away from the seat of the division. (Du Plessis, 1992: 86-87).

Lower Courts. Magistrates Courts may be divided into two main groups, district courts and regional courts. There are 269 magisterial districts. The criminal jurisdiction of a magistrate's court is limited to all crimes other than murder, rape and high treason. The maximum sentence which a magistrate's court can impose is limited to 2 months imprisonment or a fine of R20 000 per charge. (Du Plessis, 1992: 88-89). Ninety-nine percent of all the criminal cases in the Republic of South Africa are tried in the lower courts. (The Department of Justice Annual Report,1992: 98).

Regional Courts. Regional courts hear more serious criminal cases in which heavier sentences can be imposed. They can also hear rape cases and murder cases, except where the death penalty is a possible sentence. They can impose a maximum jail sentence of 10 years and a maximum fine of R200,000, per charge. (Department of Justice Annual Report, 1992: 11).

2. Special Courts.

Under the NPA of 1991, provision is made for the constitution of Special Criminal Courts. These special courts will deal with cases related to "unrest," cases of public violence and cases involving intimidation. In order for these courts to be effective, special procedural and evidentiary rules need to be applied. The idea is to establish mobile courts in certain geographic areas to bring justice closer to the people. (NPA, 1991: 33). At the time of writing no such courts have been established.

A Commission of Inquiry regarding the Prevention of Public Violence and Intimidation was appointed on 24 October, 1991, by the State President (Sec 3 of the Prevention of Public Violence and Intimidation Act No. 139 of 1991). Offices were set up in Pretoria and Cape Town. In order to ensure that steps are taken against perpetrators of violence and intimidation, the Commission may refer any evidence constituting an offense to the relevant Attorney-General and to the Special Criminal Courts (NPA, 1991: 24).

Dispute Resolution Committees. The National Peace Secretariat has established 11 regional dispute resolution committees and approximately 85 local dispute resolution committees since 1992 (Department of Justice Annual Report, 1992: 2).

Special Superior Courts. If an accused is arraigned before a superior court for a charge relating to the security of the State or the maintenance of public order, the State President may constitute a special superior court to conduct the trial upon the recommendation of the Minister. (Sect. 148 of CPA).

Juvenile Courts. Juvenile Courts handle cases in which persons under 18 years-old are charged with criminal offenses. In Juvenile Courts the cases are heard in camera.

Non-state Courts. Judicial powers may be conferred upon any African Chief or headman for trying and sentencing any African person who has

committed any offense under Common Law or under Black Laws and customs (except for any offense referred to in the third schedule (sec 20) of the Black Administration Act). The same judicial powers may be conferred upon an African in an urban area (sec 21(A) of Black Administration Act 38 1927 as amended by Act 94 of 1980).

Non-state courts in the Black townships arguably hear more criminal cases than the formal courts, but they tend to turn murder and rape cases over to the police. (Burman, 1989: 154).

3. Judges.

*Number of judges. There are 146 Judges of the Supreme Court. There is only one woman Judge. There is one Indian Judge. All other judges are white males. (Hansard Parliamentary Debates [hereinafter Hansards], 1993: 816).

Excluding the "Self-Governing" territories, there are 867 white magistrates, 9 black magistrates, 12 coloured magistrates and 16 Indian magistrates, for a total of 904 magistrates.

There are 169 white Regional Court magistrates and 2 Indian Regional Court magistrates, for a total of 171 Regional Court magistrates. There are no coloured or black Regional Court magistrates. (Hansards, 1993: col 1178).

*Appointments and qualifications. Judicial officers in the Supreme Court are called "judges" and in the lower courts, "magistrates". The State President appoints judges on recommendation of the Bar Councils. The only legal requirement for being appointed a judge is that the appointee be a "fit and proper person"; no formal academic or professional qualifications are required.

In practice, however, judges are appointed primarily from the ranks of senior advocates in private practice. In some exceptional cases senior civil servants with legal qualifications are also appointed as judges. In practice, thus, all judges have at least the LLB 5 year degree (Bacallareum Legum). (Du Plessis, 1992: 105).

Magistrates, unlike judges, are civil

servants. The Minister of Justice appoints magistrates for specific districts or regions. Magistrates are appointed from within the Department of Justice personnel, usually from amongst the ranks of prosecutors. Magistrates must hold a degree in law or have passed the Civil Service Higher examinations (Sec 10(a) Magistrates Court Act No.32, 1944). Seminars are held for criminal court magistrates during which the criminal law, law of evidence, law of criminal procedure and assessment for sentence are discussed.

A seminar is also held for prospective regional magistrates. After the seminar, the regional magistrates are evaluated for a period of 5 months during which their suitability for appointment to regional courts is determined. (Department of Justice Annual Report, 1992: 63).

PENALTIES AND SENTENCING

1. Sentencing Process.

*Who determines the sentence? Except where legislation requires a specific penalty, sentencing is made at the discretion of the presiding officer.

The CPA prescribes the range of sentences generally available. Statutes creating offenses usually specify the type and maximum sentence for each offense. Occasionally, legislation excludes the court's discretion entirely by setting mandatory sentences for specific offenses. (Van Zyl Smit and Taitz, 1987: 221).

There is no jury system. Lay participation does happen in a very limited manner through the assessor system. A magistrate may, once a person who has been found guilty, appoint assessors with a view to imposing community-based sentence. The aim is to give magistrates the opportunity of involving the community, particularly one where the accused resides, in the administration of justice. (Department of Justice Annual Report, 1992: 15-16).

*Is there a special sentencing hearing? Before passing sentence, the court may hear evidence that will inform or assist in developing a suitable sentence (CPA, Sect. 274(1).

*Which persons have input into the sentencing process? The accused has the opportunity to present evidence towards sentence mitigation. The prosecutor, in turn, may present argument for sentencing increases (CPA, Sect. 274(2)).

Expert evaluations may be used in all Supreme Court criminal cases and are obligatory in Supreme Court cases where the death penalty is a possible sentence. The evaluations mainly aid in factual interpretations, while the judge decides the matters of law. To be considered an expert, one must be familiar with the administration of justice, or be a specialist in a particular field relevant to the case (Barrow, 1986: 84-5). Social workers, correctional officers, criminologists, and psychologists play an important role in assisting the court in the sentencing process. They can make recommendations for an appropriate sentence by means of a sworn statement or in-court testimony (CPA, Sect. 212).

2. Types of Penalties.

*Range of penalties. The following penalties are presently in use: a jail sentence with the possibility of a fine, periodic imprisonment, being declared a habitual or dangerous criminal, being placed in an institution such as a juvenile reformatory, a fine, corporal punishment, community service, correctional supervision, caution or reprimand, and the death penalty. (CPA, Sect. 276-297).

*Death penalty. The death penalty may be imposed by the Supreme Court for the following crimes: murder, treason (committed when the Republic is in a state of war), robbery or attempted robbery with aggravating circumstances, kidnapping, child-stealing and rape. The typical form of execution is by hanging. The death penalty cannot be imposed on persons who were under 18 years old at the time of the crime. Once a guilty verdict

has been passed, the death sentence is not mandatory. Since 1991 judges have the discretion to decide on whether the death sentence should be imposed (The Criminal Law Amendment Act 1990). Further, the Appellate Division can change the sentence, or impose an alternative sentence. (Report of the Department of Correctional Services, 1992: 14).

Persons sentenced to death have the automatic right to appeal the conviction or sentence. If the person does not make use of the right to appeal, or does not ask for clemency from the State President, lawyers are be appointed to appeal on behalf of the condemned prisoner. (Sloth-Nielsen et al, 1991: 11-12).

The total number of executions in South Africa for the 10 year period of 1980-1989 (excluding the internal divisions of Transkei, Bophuthatswana, Venda and Ciskei) are as follows: 130 (1980); 95 (1981); 100 (1982); 90 (1983); 115 (1984); 137 (1985); 121 (1986); 164 (1987); 117 (1988); and 53 (1989).

On February 2, 1990, the State President announced a moratorium on executions and said that the government was investigating the matter (Sloth-Nielsen et al, 1991: 33). The number of people sentenced to death in South Africa (excluding the Transkei, Bophuthatswana, Ciskei and Venda) between 1989 and 1992 are as follows: 170 (1989); 89 (1990); 90 (1991); 93 (1992). (Hansard 1993: 679).

PRISON

1. Description.

*Number of prisons and type. There are 11 maximum security prisons, 1 minimum security prison, 16 prison farms, 2 juvenile prisons, and 8 female prisons. Prison farms can include maximum security, medium security and juvenile facilities. (Captain Gerber, August 23, 1993).

*Number of prison beds. As of December 31, 1992, the prisons had a total cell accommodation for

87,706 prisoners and were occupied by 108,698 prisoners the prisons (Department of Correctional Services Report, 1992: 2). During 1991-1992, 12,000 beds and 14,500 mattresses were purchased. Backlogs remain in the provision of these items. Where certain items are not available substitute items are issued, such as two or more felt mattresses in the place of beds and/or mattresses. (Department of Correctional Services Report, 1992: 3).

*Average daily population/number of prisoners. The total daily average of sentenced and unsentenced prisoners for the period July 1, 1991 to December 31, 1992 was 102,2688. There were 4,225 white prisoners, of which 4,045 were male and 180 were female; 71,811 black prisoners, of which 69,301 were male and 2,510 were female; 721 Asian prisoners, of which 694 were male and 27 were female; and 25,511 coloured prisoners, of which 24,800 were male and 711 were female. (Department of Correctional Services Report, 1992: Table 4).

*Number of annual admissions. During the period between July 1, 1991 and December 31, 1992, the total number of prisoners admitted to the prisons system was 604,706. (Department of Correctional Services Report, 1992: Table 1).

*Actual or estimated proportions of inmates incarcerated:

Violent Crimes	39,177
Economic Crimes	53,977
Other Crimes (includes drug crimes)	19,219

(Captain Gerber, August 23, 1993)

2. Administration.

*Administration. The Department of Correctional Services (DOCS)and its body of correctional officers are responsible for the administration of prisons (Van Zyl Smit, 1992: 115). The DOCS is under the control of the Commissioner of Correctional Services. The Head of the Prison is

the key actor at the operational level in executing the functions of the Department of Correctional Services. (Van Zyl Smit, 1992: 120).

*Prison guards. As of August 23, 1993, there were a total of 22,428 prison wardens. There were a total of 11,380 white wardens, of which 9,682 were male and 1,698 were female; a total of 3,082 coloured wardens, of which 2,886 were male, and 196 were female; 346 Indian wardens, of which 337 were male and 9 were female; and 7,620 black wardens, of which 7,168 were male and 452 were female. (Captain Gerber, August 23, 1993).

*Training and qualifications. To be a prison guard or warden, a person must be a South African citizen, between 18 and 35 years old, physically, mentally and medically fit, have no criminal record, have a 10th grade education, must have successfully completed the basic training course, and must be HIV-negative.

*Expenditure on the prison system. The total expenditure of the Department of Correctional Services for Fiscal Year 1991/1992 was R1,337,777,612.(Department of Correctional Services Report, 1992: 23).

3. Prison conditions.

*Remissions. Sentence remissions are made at the discretion of correctional services officials and involve the reduction of a prisoner's sentence by a specific period of time. Remissions may be allowed conditionally or unconditionally. A maximum remission of one third of a prison sentence may be granted to prisoners sentenced to 2 or more years (Report of the Department of Correctional Services, 1992: 6).

The goal of sentence remission is to motivate prisoners into continual cooperation and good behavior. Sentence remissions are not a right, but rather a concession which must be earned. The prisoners earn credits by observing the rules which apply in the prison and by actively taking part in programmes which are aimed at his/her treatment, training and rehabilitation.

The number of days and months earned by a prisoner as credits may be taken into account in determining when a prisoner may be paroled (Correctional Services Amendment Act No. 68 of 1993, Sect. 22A).

Prisoners may also be released on parole into society under certain conditions and supervision requirements. Prisoners may be considered for parole after they have completed one third of their sentence. If the parolee violates any of the conditions of parole, he/she can be readmitted to prison to serve the remainder of the sentence. (Report of the Department of Correctional Services, 1992: 6).

*Work/education. Sentenced prisoners in South Africa have a duty to work. Prisoners can be paid a small gratuity at the discretion of the authorities (Van Zyl Smit, 1991: 548). However, prisoners awaiting trial do not have to work except to clean the areas in which they are detained (Van Zyl Smit, 1991: 218, 548).

Prisoners do not have a "right" to study. Permission to study is subject to the discretion of the commissioner. The commissioner may encourage the prisoner to study in his/her spare time if it is believed the prisoner's deficient or inadequate schooling, or lack thereof, could possibly have been a factor in causing the crime. (Van Zyl Smit, 1992: 211).

The Department of Correctional Services has established education and training programmes to equip prisoners with the knowledge and skills that are necessary to obtain a job after release from prison (Report of the Department of Correctional Services, 1992: 14). Vocational and skills training programs are offered to prisoners in a variety of fields, such as the construction industry, furniture industry, steel industry, and hairdressing. A minimum sentence of 2 years is generally required before a prisoner can be considered for admission to a training programme. The determination of whether a prisoner would be eligible for training is determined provisionally shortly after admission.

Training can take 3 forms: a) vocational

training which would allow the prisoner to obtain a nationally recognized diploma or certificate; b) specialized training in which a prisoner would be given at least one month's intensive training before being put to work; and c) constructive unskilled labour (Van Zyl Smit, 1992: 221-222).

All education and training programmes involve literacy training. These literacy programs are offered free of charge and are available to all prisoners who are unable to read or write (Report of the Department of Correctional Services, 1992: 15).

*Amenities/privileges. Medical services are provided by medical officers who are assigned to a prison or group of prisons. Prisoners are routinely examined on admission, prior to transfer, prior to release (when possible), at their own request, when they have been injured, or when the district surgeon's attention is drawn specifically to a case.

Psychological services are also provided directly by the Department of Correctional Services to sentenced prisoners or persons under correctional supervision. (Van Zyl Smit, 1992: 161). The following target groups fall under the care of psychologists: Prisoners identified as having suicidal tendencies, prisoners referred by psychiatrists and district surgeons for treatment, prisoners for whom the court recommended treatment, prisoners who were found guilty of serious aggressive and sexual misdeeds, prisoners who are referred for treatment because of problem behaviour, prisoners who have previously received psychological or psychiatric treatment, and prisoners who personally request to see a psychologist.

Individual psychotherapy, group therapy, married couples and family therapy, and therapeutic milieu programmes are provided.

Psychiatric services are provided by the Department of National Health at a few major centers. In cases where prisoners cannot receive psychiatric treatment in prison, medical officers may refer prisoners from smaller centers to prisons near a suitable hospital. (Van Zyl Smit, 1992: 161).

Prisoners who require special treatment are referred to specialists who conduct clinics within the prison, or, where clinics are not available, they are referred to specialist outpatient departments of public hospitals or any health care facility outside the prison. All persons detained in prisons are entitled to the comprehensive health care system. (Report of Department of Correctional Services, 1991: 3-4).

Individual prisoners are allocated to privilege groups A, B, C, and D. They are then granted the package of privileges that are specified for each group (Van Zyl Smit, 1992: 193). Prisoners are interviewed within 3 months of admission and at monthly intervals at which time their privilege group is upgraded or downgraded. The following areas are considered privileges: visitation from outsiders, delicacies during visits, letters and cards, photo albums, telephone calls, access to radios, television sets and reading matter, private musical instruments, writing and poetry, library, hobbies, wearing of jewelery, pets. (Van Zyl Smit, 1992: 195).

EXTRADITION AND TREATIES

*Extradition. Under the terms of the 1870 Extradition Act of the United Kingdom, the Union of South Africa signed extradition treaties with the United States (Proclamation R.91/51 dated April 20, 1951) and with Israel (Proclamation R14/60 dated February 5, 1960).

Under the 1962 Extradition Act No. 67, extradition treaties have been established between South Africa and the following countries: Botswana, Transkei, Swaziland, Bothuthatswana, Venda, Malawi, Ciskei, and China (Amanda Haasbroek, 3/09/1993).

Agreements entered into by the United Kingdom prior to South Africa becoming a Republic are deemed to be legitimate treaties involving South Africa and the following countries: Argentina, Austria, Hungary, Belguim, Bolivia, Brazil, Chile, Colombia, Denmark, Ecuador, France,

Guatemala, Haiti, Italy, Liberia, Luxemburg, Mexico, Monaco, Netherlands, Paraguay, Romania, Russia, El Salvador, San Marino, Spain, Switzerland, Thailand, Tonga, Uruguay, and Greece. (Amanda Haasbroek, September 3, 1993).

*Exchange of prisoners.

*Specified conditions. A request for the extradition of persons from certain countries is usually made through diplomatic channels. The channels through which a request is advanced may depend on the extradition agreement in question. For example, the extradition convention with Bophuthatswana, Ciskei and Venda and the extradition agreement with Transkei, provide for a shortened procedure which negates the necessity of diplomatic channels.

If an extradition request is received from a country that does not have an extradition agreement with the Republic, the State President may consent in writing to surrender the specific person. At present negotiations are being held with Australia, Namibia, Germany and the United Kingdom to establish extradition agreements. (Department of Justice Report, 1992: 82).

SOURCES

Albertyn, C. and Davis, D., "Censure of 'Communism' and the Political Trial in South Africa" in Sumner, C. (ed) Censure, Politics and Criminal Justice. Milton Keynes: Open University Press, 1990.

Annual Report of the Commissioner of the South African Police. January 1 to 31 December 1992, RP 67 - 1993, Cape Town.

Asmal, Louise, South African Legal Defense Fund. Personal interview: August 12, 1993.

Barrow, O.J., Handbook on the Criminal Procedure Act 51 of 1977. (Wetton: Juta), 1986.

Botha, Stan. Chief Personnel Officer, Cape Provincial Administration. Telephone call: August, 30, 1993.

Brewer, J.D. "South Africa" in JD Brewer, Adrian

Guelke, Ian Hume, Edward Moxon-Browne and Rick Wilford. The Police, Public Order and the State - Policing in Great Britain, Northern Ireland, the Irish Republic, The USA, Israel, South Africa and China. (Houndmills, Basingstoke, Hampshire: The Macmillan Press), 1988.

Burman, S. and Schaerf, W. "Creating People's Justice: Street Committees and People's Courts in a South African City", Law and Society Review. Vol. 24, No. 3, 1990.

Burman, S., "The Role of Street Committees: Continuing South Africa's Practice of Alternative Justice", Democracy and the Judiciary, Corder, H (ed), Cape Town: IDASA, 1989.

Central Statistical Service Crimes: Prosecutions and Convictions With Regard to Certain Offenses CSS-Report No. 00-11-01(1991/92), Government Printer: Cape Town.

Corder, H., "Crowbars and Cobwebs: Executive Autocracy and the Law in South Africa" South African Journal on Human Rights. Vol. 5, part 1:1-26, 1989.

Department of Correctional Services Report, July 1, 1991 - December 31, 1992, RP 64-1993, Government Printer: Cape Town.

Department of Justice Annual Report, July 1, 1991 to June 30, 1992 RP40/1993, Government Printer: Cape Town.

Dippenaar, Marius de Witt, The History of the South African Police 1913 -1988 Silverton: South African Police, 1988.

Du Plessis, L.M. An Introduction to the Law. (Wetton: Juta), 1992.

Dugard, J., Human Rights and the South African Legal Order. (Princeton, New Jersey: Princeton University Press), 1978.

Faculty of Law, University of Cape Town. Brief on the Legal Regime Operative in Areas Subject to a Proclamation of Emergency and Areas to be Declared Unrest Areas Under the Public Safety Act 3 of 1953. 24 July 1986 Preliminary Draft, Issue 2. Cape Town: Faculty of Law., 1986.

Foster, D. and Davis, D. and Sandler, D.R., Detention and Torture in South Africa - Psychological, Legal and Historical Studies. (Cape Town: David Philip), 1987.

Gerber, Captain, Public Relations, Department of Correctional Services, Personal interview: August 23, 1993.

Haasbroek, Amanda, Liaison Division, Department of Justice. Fax received: September 3, 1993.

Hansard, Debates of Parliament, The Government Printer, Cape Town, 1993.

Hansson, D., "Trigger-happy? An Evaluation of Fatal Police Shootings in the Greater Cape Town Area, from 1984 to 1986", Acta Juridica. (Wetton: Juta), 1989.

Hansson, D. "Interim Reflections on the Cape Attorney General's Task Group on Rape", Women Under the Criminal Justice System. Eds. Swik P., Jagwanth, S., and Grant, B. (Pretoria: Human Sciences Research Council).

Hansson, D. and Russell, D., Made to Fail: The Mythical Option of Legal Abortion for Survivors of Rape and Incest. Unpublished Paper, Institute of Criminology, University of Cape Town, 1993.

Haysom, N. "Licence to Kill Part I: The South African Police and the use of Deadly Force", SAJHR, vol. 3 part 1: 3, 1987.

Hiemstra, V.G. Introduction to Criminal Procedure, 1977. (Durban: Butterworths. 1977.

Hund, J. and Kotu-Rammopo, M., "Justice in a South African Township: The Sociology of Makgotla", Comparative and International Law Journal of Southern Africa. Vol. 16, 1983, pps. 179-208.

Jeffery, A.J. Riot Policing in Perspective. Johannesburg: South African Institute of Race Relations, 1991.

Levine, L. "Trojan Horse Prosecution", SAJHR Vol 6, part 1, 1990.

Loetter, J.M., "Criminal Victimization: Some Results from Survey Research", Victimization: Nature and Trends, Eds. Schurink, W.J., Snyman, I., and Krugel. (Pretoria: Human Sciences Research Council), 1992.

Luyt, C. and Foster, D., "The Blue Man's Burden: Policing the Police in South Africa" SAJHR. Vol. 2., 1986.

Marais, E. Policing the Periphery - Police and Society in South Africa's "Homelands". Paper delivered at the 22nd Congress of the Association for Sociology in South Africa. Johannesburg: The Policing Research Project, Psychology Dept. University of the Witwatersrand, 1992.

McLachlan, F., Children in Prison in South Africa. (with additional material by Van Zyl Smit, D.), University of Cape Town, Institute of Criminology, 1984.

McQuoid-Mason, D. "Legal Representation and the Courts", South African Human Rights and Labour Law Yearbook, 1990, Ed. Robertson, M., Vol 1. (Cape Town: Oxford University Press and Durban: Center for Socio-Legal Studies), 1990.

National Peace Accord, (Arcadia: Minit Print), 1991.

Pauw, J., In the Heart of the Whore - the Story of Apartheid's Death Squads. (Half Way House: Southern Book Publishers), 1990.

Policing Research Project, Factsheet. Johannesburg: Project for the Study of Violence and Reconciliation, 1992.

Population Census, Geographical Distribution of Population with a review for 1970-1991. No. 03-01-02, 1991.

Rauch, J., Deconstructing the SAP: The Organisation of Formal Policing in South Africa, Draft research paper, Project for the Study of Violence, Department of Psychology, University of the Witwatersrand, Johannesburg, 1992.

Rauch, J. and Simpson, G. The Grahamstown Police-Community Relations Survey. Commissioned by the Regional Peace Committee, Grahamstown. Project for the Study of Violence and Reconciliation, Johannesburg, 1993.

Sloth-Nielsen, J., Theron, R., and Corder, H. Death By Decree: South Africa and the Death

Penalty. (Cape Town: University of Cape Town), 1991.
Snyman, C.R. Criminal Law. Durban: Butterworths, 1984.
Taylor, Chief Constable, City Police, Durban. Telephone call: August 30, 1993.
Van der Spuy, E. "Literature on the Police in South Africa: An Historical Perspective", Acta Juridica 1989. (Wetton: Juta), 1989.
Van der Vyver, J.D. "State Sponsored Terror Violence". SAJHR. Vol. 4 part 1:55-75, 1988.
Van Zyl Smit, D., South Africa Prison Law Practice. Durban: Butterworths, 1992.
Van Zyl Smit, D. and Duenkel, F. "South Africa", Imprisonment Today and Tomorrow: International Perspectives on Prisoners' Rights and Prison Conditions. Boston: Kluwer, 1991, pps. 537-565.
Van Zyl Smit, D. and Taitz, J., "Sentencing: The Ratio Between a Fine and an Alternative Period of Imprisonment". South African Journal of Criminal Law and Criminology, vol 11:, 1987, pps. 220-225.
Van Zyl Smit, D. and Isakow, N.M., "The Decision on How to Plead: A Study of Plea Negotiation in Supreme Court Criminal Matters", South African Journal of Criminal Law and Criminology. Vol 10, 1986, pps. 3-20.
Visser, P.J. "Policing", The Law of South Africa. Vol. 20, (Durban: Butterworths), 1984.
Williamson, Major Craig, "Law, Order and State Security: The Challenge for the South African Police and the Law-and-Order Community" ("Wet, Orde en Staatsveiligheid Die Uitdaging van die Suid-Afrikaanse Polisie en die Wet-en-Orde Gemeenskap"), South African Journal of Criminal Law and Criminology. Vol. 8, No. 2., 1984.

Legislation Reference List:

Attorney-General Act No. 92 of 1992
Black Administration Act No. 38 of 1927
Correctional Services Amendment Act No. 68 of 1993
Correctional Services and Supervision Matters Amendment Act No. 122 of 1991.

Criminal Procedure Act No. 51 of 1977
Criminal Procedure Amendment Act No. 5 of 1991
Drug and Drug Trafficking Act No. 140 of 1992
Extradition Treaty No. 67 of 1962
Internal Security Act No. 74 of 1982
Legal Aid Act No. 22 of 1969
Magistrates Court Act No. 32 of 1944
Police Act No. 7 of 1958
Prevention of Public Violence and Intimidation Act
No. 139 of 1991
Public Safety Act, No. 3 of 1953
Publications Act No. 42 of 1974

Wilfried Scharf
Professor and Director
Institute of Criminology
University of Cape Town
Private Bag
Ron de bosch 7700
South Africa
Tel: 021-650-2980
Fax: 021-650-3790

Rona Cochrane
Public Relations Officer
Institute of Criminology
University of Cape Town
Private Bag
Ron de bosch 7700
South Africa
Tel: 021-650-2980
Fax: 021-650-3790