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**FIREARM FATALITIES EXAMINED AT SALT RIVER MEDICO-
LEGAL LABORATORY IN 1999**

AND

THEIR INVESTIGATIVE OUTCOME BY 2004

by

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Glossary

CAS number:	A specific number assigned to any criminal case by the responsible police station to register a reported crime in the Crime Administration System. e.g.: Sea Point CAS 123/January/2004
CIAC:	Crime Information Analysis Centre of the South African Police
CWM:	Cape Western Metropole
Definitions:	"Prevalence" refers to the number of occurrences in a certain population in a certain period of time, whereas "incidence" is a comparative indication of the increase or decrease of occurrences when one time period is measured against another.
Docket:	A documentary compilation of witness statements, technical reports and affidavits collected as evidence by a police investigating officer and pertaining to a specific CAS number. This docket, at completion, is laid before a court of law for judicial opinion and forms the foundation of the State's case against an accused in a criminal trial.
DR number:	A specific death register number sequentially assigned to each body admitted to Salt River Medico-legal Laboratory
FAD:	Firearm death
IO:	Investigating Officer
ISS:	Institute for Security Studies of UNISA
MRC:	Medical Research Council of South Africa
NIMSS:	National Injury Mortality Surveillance System
SALC:	South African Law Commission
Shot wound(s):	Referring to fire-arm injuries
SRMLL:	Salt River Medico-legal Laboratory

FOREWORD

It was never the author's idea to rewrite the manual about the history, social structure and criminal justice system of the Western Cape or the Republic of South Africa.

During the period of research, however, it became evident that many factors which have shaped this country over previous decades as well as more recently are inextricably linked to the outcomes of the research data of this document.

Therefore, many references will be made to these factors. The writer finds it sensible to communicate some details of the setting in which the fire-arm death research was done, in order to provide perspective on the importance and interpretation of the research findings.

These "background" social and criminal justice system factors are in no way meant to be a comprehensive study. They are better seen as an intricate interplay of threads forming a spider's web. Disturbance of one thread inevitably creates a ripple effect throughout the others.

ABSTRACT

SALT RIVER MEDICO-LEGAL LABORATORY: 1999 FIRE-ARM DEATHS AND THEIR INVESTIGATIVE OUTCOME BY 2004

Objectives: Victimology profile of fire-arm death victims in Cape Town, 1999
To ascertain the status of police docketts of these cases by 2004

Methods: Data collection from:

SRMLL autopsy reports and South African Police Service Crime Information Administration Centre
Quantitative analysis of population and police presence per police precinct
Qualitative factors at play according to literature review

Results:

Victims: There were 532 victims of FAD
57 of these deaths were deemed suicidal, including victims of extended suicide
475 were thus homicidal deaths, of which 25 were perpetrated by police during the course of their duties
The demographic profile of victims is discussed

Investigation: By 2004:
35% of docketts were still being investigated
30% had reached the court system
35% had reached a dead end or could not be traced in the system
Only 7% of all cases resulted in a guilty verdict and sentencing

Conclusions: Firearm deaths have reached epidemic proportions in Cape Town. Police investigation and court procedures are unable to deliver any acceptable standard of criminal justice

CHAPTER 1A: INTRODUCTION AND STATISTICS :FIRE-ARM DEATHS

Background: South Africa in 1999, 5 years after democratization.

The Republic of South Africa has one of the most liberal and human rights based constitutions worldwide, with a very idealistic vision of individual freedom, alleviation of poverty, access to education and health care and safety. Many of the ideals are in direct redress of the previous regime, where only select strata of the populace had easy access to what are now constitutional rights for all.

It stands to reason that these ideals should come to fruition in a healthy, productive, cohesive population where equality would erase the white, privileged oppressor versus black, impoverished oppressed distinction and violent crime should diminish along with more equitable distribution of resources.

"The chief reason why the State devotes so much time and effort to the administration of justice is to promote the cause of peace and tranquility in the community." (Taft)¹

However, seen in the context of the first annual report of NIMSS² regarding approximately 25% (14 829) cases of an estimated 60 000 fatal injuries over the whole of South Africa in 1999), there is a deeply disturbing trend of violent death in this 5-year old "tot" democracy. NIMSS calculates homicide as the leading cause of unnatural death countrywide (NIMSS Ch.3), at 46% (n=6 859), with firearm injuries accounting respectively for 26% (n=3 906) of all unnatural deaths (n=14 829) and 51% (n=6 859) of homicides.(NIMSS Ch.5)

Setting: Cape Town ,1999

"The fairest Cape of them all" according to Da Gama, Cape Town is situated at the south western tip of South Africa, where Table Mountain watches over the very scenic Cape Peninsula. Renowned for its natural beauty, fine wines and cultural diversity, Cape Town is an international tourist magnet. However, a large area is covered in informal settlement shacks and names like Guguletu ("our pride"), Langa ("sun"), Nyanga ("moon") and Khayelitsha ("new home") belie the dismal poverty and overcrowding in these suburbs of this beautiful city.

Equally distressing, is the darker undercurrent of a high homicide incidence in this seemingly idyllic setting. Cape Town's homicide rate (88 per 100 000 population) and firearm homicide rate (40 per 100 000 population) were amongst the highest of five South African cities that were assessed by NIMSS.

In the award winning Miramax movie "City of God" ("Cidade de Deo")³ released in 2002, the director Fernando Meirelles depicts what to this researcher's mind is the absolute blueprint of homicide trends Cape Town has seen in her poorer suburbs. The movie is based on a semi-autobiographical novel by Paulo Lins, and situated in the ironically named "City of God" slum suburb of Rio de Janeiro. In an almost documentary style, the

CHAPTER 1A: INTRODUCTION AND STATISTICS FIRE-ARM DEATHS

documentary style, the escalation of gang and drug related firearm homicides is depicted in a way that very strongly echoes the findings in this report.

Prevalence and incidence of firearm deaths: The Republic of South Africa, with specific reference to Cape Town.*

**See definitions of "prevalence" and "incidence" in glossary.*

Pre-democratization homicide figures for Cape Town in 1986

Duflou⁴ reports the homicide rate in Cape Town for 1986 as 56,9/100 000, compared to the 7,7/100 000 incidence for the United States of America as a whole. Homicide accounted for 23,3% of unnatural deaths, of which 19% (4,47% of unnatural deaths) was incurred by fire-arm injury. Using Duflou's information, the prevalence of fire-arm related fatalities in Cape Town in 1986 was 10,9/100 000 population.

In 1996, the prevalence of murder in South Africa was 61/100 000 compared to an international prevalence of 5,5/100 000⁵(Smith C)

Contrast this to the scenario in 5 year post-apartheid Cape Town, 1999

The non-natural autopsy caseload in Cape Town for the year 1999 was 4498⁶: 2483 for Salt River Medico-legal Laboratory and 2015 for Tygerberg Medico-Legal Laboratory. The total Salt River Medico-Legal Laboratory DR cases for that year was 3167, some of which would be diagnosed as "natural" deaths and thus not included in the NIMSS study.

According to Prinsloo⁷, homicide deaths, at 88 per 100 000 population, accounted for 2221 (49,4%) of unnatural deaths. Firearm-related homicides totaled at 945 cases, which accounts for 42% of homicide deaths in Cape Metropole area in 1999 and 40 deaths per 100 000 population.

Thus, since Duflou's 56,9 per 100 000 in 1986, the homicide incidence has climbed to 88 per 100 000 in 1999, an increase of 55% over a period of 13 years. At the same time, use of firearms as preferred instruments of death has increased fourfold (10,9/100 000 in 1986 to 40/100 000 in 1999).

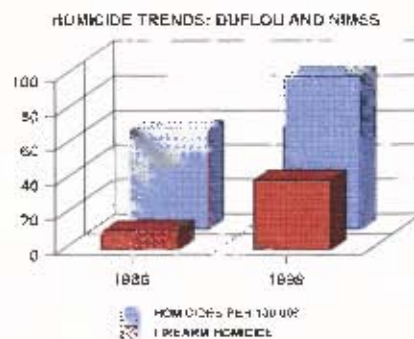


Figure 1

CHAPTER 1A: INTRODUCTION AND STATISTICS :FIRE-ARM DEATHS

Conflicting reports from the South African Police Service records

In stark contrast to the abovementioned research findings generated from mortuary data as encapsulated in the NIMSS report, stand the published reports from the Crime Information Analysis Center⁸ of the South African Police Service, compiled from crimes reported to the South African Police Service. The initial officially published report statistics will be referred to, but keep in mind that there has been an interesting development since 1999.

The figures quoted for Murder (read homicide) per 100 000 of the population, were:

Year	1994	1995	1996	1997	1998	1999
Incidence	56,5	54,3	51,5	48,2	47,4	45

Figure 2

This apparently reflects a steady decline in homicide incidence by a total of 21% over a five year period.

ISS⁹ echoes this with "With the exception of 1998, the actual number of murders recorded declined consistently after 1994. This is significant, as murder is the most reliable crime type to measure, as virtually all murders are uncovered by the police. Between 1994 and 2001 (for the January-September) period the number of recorded murders decreased by 4,618 (/100 000) or 24%".

But the media disagreed: "It is estimated that murders in the province (Western Cape) have increased by 27% between 1994 and 1999 and 81 of every 100 000 persons in the Western Cape are being murdered" (Die Burger, 2001/02/22)¹⁰

It is clear that the conclusions reached from mortuary data (where actual deceased people are examined and documented) and reported police statistics for 1999, are in complete conflict, especially as far as homicide incidence trends are concerned.

What could be creating this phenomenon of escalating violent death?

Van der Spuy¹¹ "Comparative analysis suggests that in transitional contexts the "equilibrium" rate of crime breaks down and that sharp increases in the rates of violent criminality ... occur. A critical question in the current debate is whether despite very different social settings, there are common causes fuelling patterns of violent criminality rates in transitional societies across the continents (Latin America, Eastern Europe, Africa)."

Van der Spuy mentions that "Discussion on crime trends in transitional societies are complicated by the fact that in such societies the margin of error built into official crime statistics is much greater than in stable democratic societies." (P168)

CHAPTER 1A: INTRODUCTION AND STATISTICS :FIRE-ARM DEATHS

The reality dawning on this researcher during literature review , confirmed a statement by Benjamin Disraeli: " There are three kinds of lies: lies, damned lies and statistics"

At first, around 1999, there was a moratorium imposed on release of any police statistics, by the then Minister of Safety and Security, Steve Tswete. The official motivation for this was that statistics were incorrect due to defects in reporting and data capturing. This announcement caused an uproar in the media, with accusations of "whitewashing", political intransigence and more along those lines.

The introductory paragraph to the CIAC¹² website now (2004) reads:

"Please note that the crime statistics, including those for the year 2000 and the first quarter of 2001, are data that was collected before the South African Police Service implemented measures to improve the integrity and reliability thereof. The validity thereof can therefore not be guaranteed. Only crime statistics gathered from 1 July 2001 onwards will be seen as statistics with a higher degree of validity."

Act 2 of 2000, the "Promotion of Freedom of Access to Information"¹³ Act, countered this moratorium and persons with a valid interest in police case dockets could apply to access them. However, victims and suspects also have a constitutional right to privacy and this privilege cannot be overruled by this new Act. The information in mortuary files and police dockets are therefore still strictly confidential and protection of the individual's privacy at a prime.

At least, if a valid reason for the access to information, such as scientific research, could be presented, these confidential sources of information could be accessed.

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CHAPTER 1A: INTRODUCTION AND STATISTICS :FIRE-ARM DEATHS

10 Die Burger: Article dated: 2001-02-22

11. Van der Spuy, Eirena: "Crime and its Discontent: Recent South African Responses and Policies" Available at <http://www.kas.org.za/Publications/SeminarReports/Crimeandpolicingintransitionalsocieties/vanderspuy.pdf> Accessed in January 2004

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University of Cape Town

CHAPTER 1B: INTERNATIONAL CORRELATION OF HOMICIDE FIGURES

What was happening internationally over this period?

The Federal Bureau of Investigation, USA, estimated that 65% of the 15 533 murders in 1999 were committed with firearms.¹ This is in contrast to:²In the USA, 1993-97 (23) :
 "For firearm-related fatalities, 44% were homicides."

The most comprehensive study comparing firearm statistics and regulations in selected countries was unfortunately compiled on statistics predating this study by several years. However, it gives an indication of homicide, firearm homicide and firearm suicide trends elsewhere in the world in the early 1990's.³

INTERNATIONAL HOMICIDE/SUICIDE FIGURES EARLY 1990'S

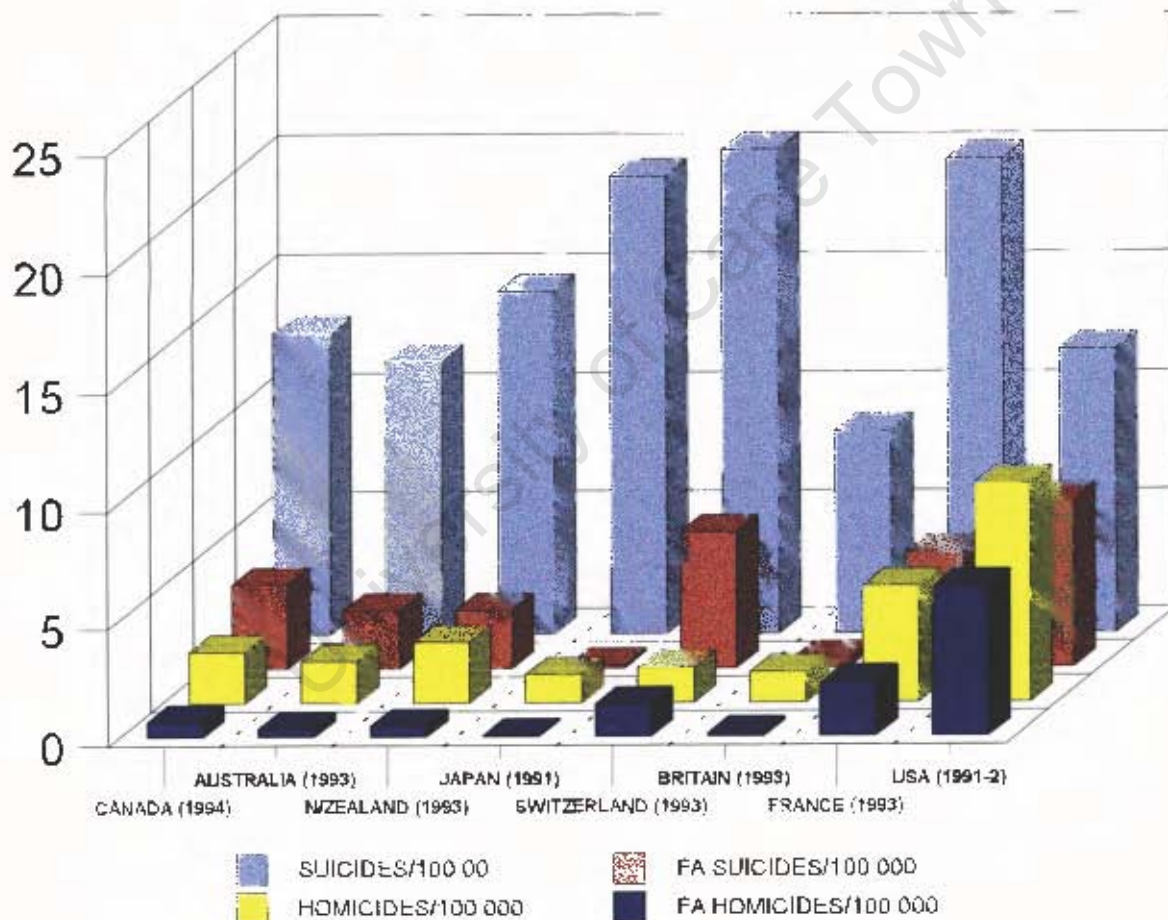


Figure 1

CHAPTER 1B: INTERNATIONAL CORRELATION OF HOMICIDE FIGURES

In the **United States of America**, it was found that homicides are most often committed with guns, especially handguns. The FBI's report on Crime in the United States estimated that 65% of the reported 15 533 murders in the USA in 1999 were committed with firearms. Interestingly, this fire-arm related homicide trend increased sharply in the late 1980's before falling dramatically in the late 1990's.⁴

In a review article for the **Australian Institute of Criminology**⁵, an examination of fire-arm related deaths between 1991 to 2001, found a 47% decrease in numbers, with a fall in the number of (firearm) suicides accounting for the largest part of the decrease. Persons between 24 and 34 years of age accounted for the greatest number of FAD's.

Specifically fascinating is the difference from South Africa's experience when the Australian experience is contrasted to this researcher's data. Australia had a reported 5 083 firearm related death toll during the 11 year period reviewed, of which suicides accounted for 77%.

Another difference was that the largest number of suicidal fire-arm deaths in Australia occurred among white males 65 years and older, whereas firearm suicides in Cape Town occurred amongst a much younger age group, the bulk of which was contained in the 21 - 30 years of age group (47%), 31-40 years of age (21%) and dropping in the 41-50 and 51-60 year groups (each contributing 10,5%) out of a total of 57 suicidal FAD's in 1999.

The monitor on firearm related deaths in Australia was done by a program established in 1997 by the Australian Police Minister's Council to note the effects of firearm controls introduced by the Australian Government in 1996.

A study done in America, seems to have public health concerns similar to NIMSS and the MRC's Trauma review issues.

As documented in the 3rd Annual Statistical Report from the Firearm Injury Reporting System of Wisconsin (FIRS)⁶ : 1999 Wisconsin Firearm Fatalities.

Statewide (in Wisconsin) data collection began in 1999 and this was the first annual statistical report with comprehensive linkage of data sources from medical examiners, coroners, law enforcement agencies, the State Crime Laboratory, the State Department of Justice and Office of Justice Assistance, Wisconsin Department of Health and Family Services, Bureau of Alcohol, Tobacco and Firearms and the Firearm Injury Center of the Medical College of Wisconsin.

In this report, trended data for Southeastern Wisconsin (1994-1999) and Milwaukee County (1991-1999) was provided. It was found that FAD's had declined in the USA since

CHAPTER 1B: INTERNATIONAL CORRELATION OF HOMICIDE FIGURES

1993, reaching a rate of 4,6 per 100 000 in 1997. Wisconsin, which ranked 38th among 50 states in 1997, experienced a decline of FAD's 10,2/100 000 in 1993 to 8,2/100 000 in 1997, a a a 20% reduction. Firearm suicides outnumbered firearm homicides 2 to 1 in this state. (FIRS) In Milwaukee County, however, firearm homicide rates increased between 1998 and 1999 from 9,3 to 11,7 per 100 000.

And elsewhere in the world in 1999?

Interpol ⁷ statistics are compiled from police recorded data supplied to this international body by member countries. The Interpol data for 1999 for a random group of countries from various continents looked like this:

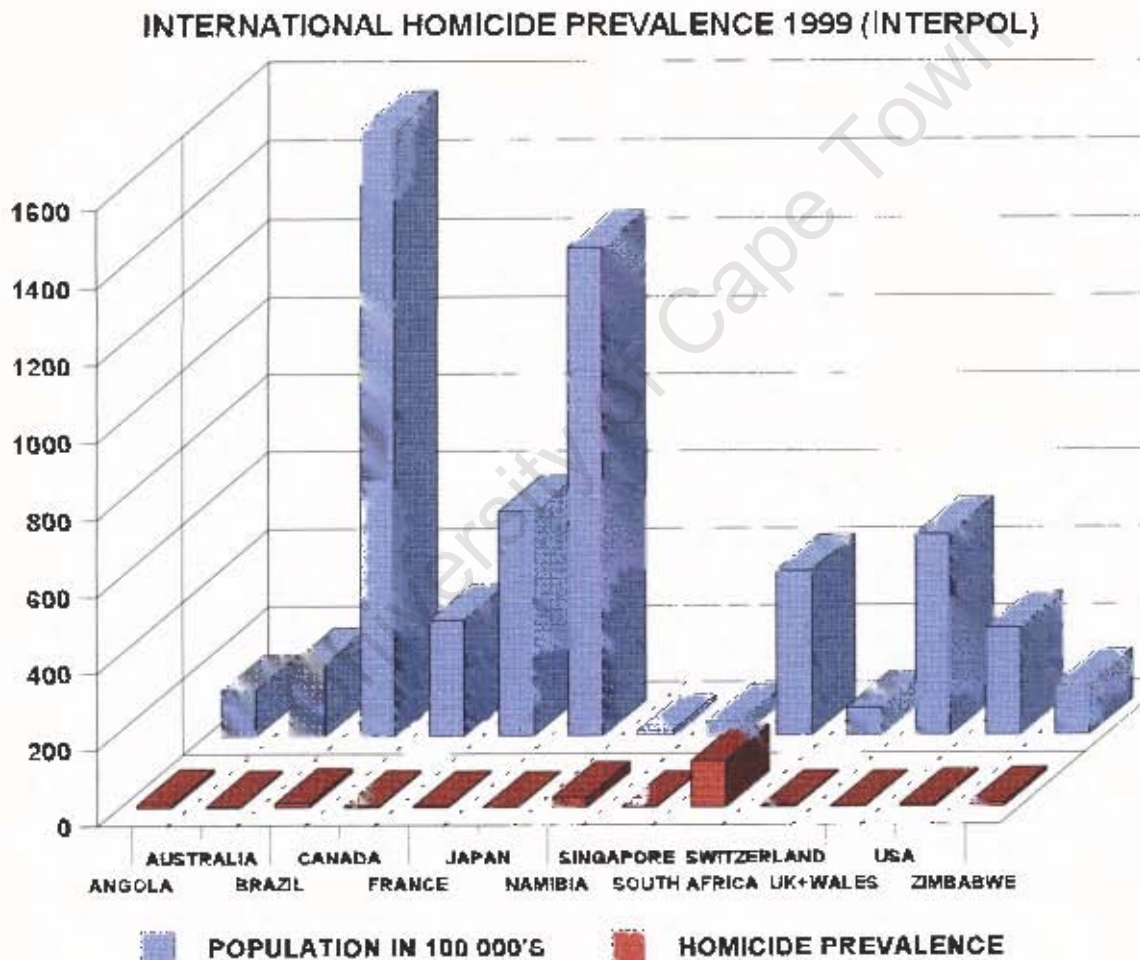


Figure 2

CHAPTER 1B: INTERNATIONAL CORRELATION OF HOMICIDE FIGURES

"The only country with a higher murder rate than South Africa is drug-ridden Colombia."⁸

The Nedcor project⁹ concluded that " South and Southern Africa are probably the most murderous societies on earth, even with probable under-reporting".

Seeing that the **South African** homicide incidence figure is at variance with the CIAC figure of 45 for 1999, it was decided to take a look at Interpol data for the years preceding 1999 and to also compare this with trended data from three other countries.

One of these is a neighbouring country (**Namibia**), which also has a diversified population composite and which went through the process of becoming independent and democratic circa 1990.

Two other "developed" countries on different continents which also have widely divergent population composites were chosen:

Australia with Maori's, Aborigines and people of Caucasian extraction as one example and the **USA** as the other, with its mixed Caucasian, African/American and Latin/American population as the other. (Interpol)

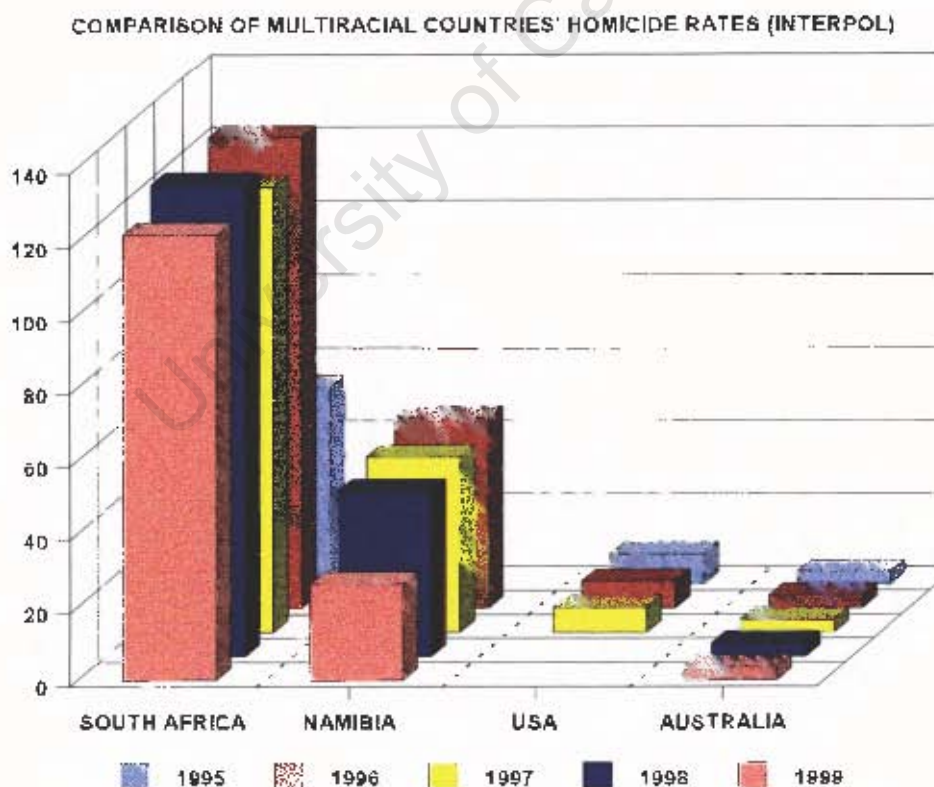


Figure 3

CHAPTER 1B: INTERNATIONAL CORRELATION OF HOMICIDE FIGURES

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CHAPTER 2: RESEARCH: AIMS, OBJECTIVES AND METHODOLOGY

AIMS

1. To study the victimology of 1999 FAD's in the area of Cape Town serviced by the Salt River Medico-legal Laboratory, also referred to as the Cape Western Metropole.
2. To study the investigative outcome of these FAD cases early in 2004.

OBJECTIVES

1. To identify specific victim and perpetrator groups in this group of FAD's with regards to race, gender, age, blood alcohol contents, occupation as well as the police precinct in which the incident occurred.
2. To determine the outcome of the police investigation, court findings, sentencing and time lapse from incident until the outcome was reached.

RESEARCH METHODOLOGY

BACKGROUND:

The procedures to be followed in cases of firearm related deaths are stipulated in the South African Inquest Act, No 58 of 1959:

1.1 Report regarding an unnatural death

In accordance with the South African Inquest Act (No 58 of 1959), all cases of unnatural death in the population must be reported to the police. Unnatural deaths are defined in the Inquest Act as "any person believed to have died due to other than natural causes". This would include deaths which are caused by an act of commission (like firing a firearm at another person), or an act of omission (like an adult neglecting to safely store a firearm and a child accidentally kills him/herself).

1.2 Police case docket creation

A police case docket is opened and registered in the Crime Administration System with a specific CAS number. The unnatural death is reported to the magistrate of the district, who authorises the local district surgeon or pathologist to do a post mortem examination to

CHAPTER 2: RESEARCH: AIMS, OBJECTIVES AND METHODOLOGY

ascertain the cause or likely cause of death.

1.3 Inquest procedure

After the compilation of the docket, including the post mortem examination report and witness statements, the docket is presented to the inquest magistrate again for deliberation. At this stage of the judicial procedure, the court should decide:

1. The identity of the deceased,
2. The date of death
3. The cause or likely cause of death.
4. Whether anybody, by an act or omission which *prima facie* amounts to an offence, caused or contributed to the death.

The final conclusion to be reached by the inquest procedure is whether any person should face criminal charges for either causing, or contributing to the death of the individual.

The medico-legal infrastructure

In Cape Town, autopsies on unnatural death cases are done at the two major Medico-Legal Laboratories, situated respectively at Salt River, attached to the Health Sciences Faculty of the University of Cape Town, and Tygerberg, attached to the University of Stellenbosch. Distribution of cases occur according to police station precincts roughly coinciding with geographically delineated suburbs and municipal divisions.

This study focused on autopsy cases examined at Salt River Medico-legal Laboratory in 1999 and specifically, fire-arm related deaths (FAD"s) were researched.

For this study, a two-pronged approach was necessary due to the nature of information sources.

In literature review the SALC² used methodology much along the lines of this researcher's line of enquiry. The SALC used 15 529 police cases involving five crime categories reported to the police in eight police areas in South Africa.

1. "The outcome of these cases was checked, on average, more than two years after the crime was reported to the police"
2. "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".

CHAPTER 2: RESEARCH AIMS, OBJECTIVES AND METHODOLOGY

Similarly, for this researcher's study, individual cases of a specific type of crime (FAD's) during a specific year (1999) were traced for a specific police reportage area and the follow-up period was in February 2004, thus the time span from incident until case review varied from 50 to 62 months, instead of two years. For reasons of brevity, the time lapse will be viewed as being from 1999 until 2004, more easily quoted as an approximate 5 year lapse rather than a more accurate, but less easily grasped, number of months.

Part 1: Salt River Medico-legal Laboratory data

Gathering of data for descriptive (quantitative) analysis of fire-arm fatalities 1999

A pro forma questionnaire (see annexure A) was drawn up and the researcher retrospectively screened all the autopsy reports of Salt River Medico-legal Laboratory for 1999. Complete copies of the autopsy reports as well as the contemporaneous notes and photographs were studied.

Details of these firearm death autopsies were recorded.

Some of the information required for Annexure A, e.g. the CAS number and occupation of the deceased was sourced from the Salt River Medico-legal Laboratory computer system.

Part 2: Police case docket data

Gathering of data regarding the police investigation contained in police case dockets created for the autopsy cases studied in Part 1.

A pro forma questionnaire (see Annexure B) was drawn up to be completed on perusal of the various police dockets' contents.

The aims of this part of the research were to :

- a. Link DR number and CAS number
- b. Identify the investigating officer
- c. Note demographic details of the accused as well as suspect(s)
- d. Establish details of the firearm used
- e. Establish the circumstances of the firearm incident, e.g. homicide, suicide, accident etc.
- f. Establish locality of the incident, e.g. private home, public venue, etc
- g. Establish the date and time of the shooting incident.
- h. Note the result of the investigation and court proceedings
- i. Note the time lapse from shooting incident until court finding

CHAPTER 2: RESEARCH: AIMS, OBJECTIVES AND METHODOLOGY

Ethical considerations regarding identification of the suspects or perpetrators.

The possibility of breach of confidentiality regarding the suspects involved had to be considered. Once a suspect had been found guilty and sentenced by a court of law, this information would be in the public domain and no longer confidential, except in cases of juvenile offenders. Even so, the specific identity of sentenced perpetrators do not form part of this study. Linkage of the DR and CAS numbers were done on spreadsheet and no reference to identities of deceased or suspects was made.

Avoiding prejudicial assumptions

Selection of cases deemed to be due to suicidal firearm injuries:

Autopsy reports and police information available at the time of autopsy (as noted on the contemporaneous notes (Lab 27)) were perused to identify the cases which in all probability were suicides. These were the only cases to be prejudicially assigned by this researcher as to manner of death, accepted as "most probably suicide".

Furthermore, all deaths due to extended suicide (where a person first shoots a significant other and then him/herself), were counted as suicides although technically the victim (as opposed to the perpetrator) of extended suicide should be seen as a homicide victim. For the purposes of this study, it is more convenient to lump perpetrator and victim of extended suicide under the heading "suicide". Especially in interpretation of the investigative outcome, it stands to reason that one would expect the outcome of the investigation and inquest procedure to result in a "noile prosecu", since there would be no living person to be held liable and to be criminally charged.

Creation of other prejudicial assumptions were considered and avoided, for instance: inferring that "suspect", "accused" and "perpetrator" as alluded to in the police docket would be one and the same even before the court decision has been made.

For example: a case investigation opened as "murder" may end up as:

- suspect status : deceased,
- accused: none and
- case withdrawn

The reasons for a scenario as sketched above may be either because the case was found to be a suicide, or that an actual murderer has died before the court found him guilty.

CHAPTER 2: RESEARCH: AIMS, OBJECTIVES AND METHODOLOGY

How were these issues addressed in the data gathering?

The researcher managed to personally peruse the relevant case dockets of the following police precincts.

Maitland:	7 dockets
Sea Point	7 dockets
Cape Town Harbour	1 docket
Pinelands	7 dockets
Khayelitsha	19 dockets

Thus, only 41 (7.7%) of the FAD cases' dockets of this study were accessed in the manner originally intended for this research. Already, some problematic issues were highlighted with regards to the interpretation of different outcomes.

1. For example, a "nolle prosequi" may mean that the person committed suicide and nobody would be charged. On the other hand, "nolle prosequi" may indicate that there may be a suspect, but due to lack of evidence, the state prosecutor decides not to even commence with a charge - the case is effectively thrown out of court until adequate evidence can be produced to start trying the case. The court procedure details are not consistently documented in dockets.
2. The tracing of physical dockets proved to be a very time consuming and almost impossible logistical effort.

To quote directly from one of the responses the researcher received :

(Office of the Station Commissioner, SAPS, Nyanga, dated 2002-07-04, their reference 25/7/12/1) from a police station commander:

" These dockets (the specific case dockets I requested to see) are scattered between sixteen different stations and units. This office is however in a process of collecting all the case dockets".

This was a typical response, since many of the case dockets had been re-assigned to different investigating officers or to different special task branches, like "Serious Violent

CHAPTER 2: RESEARCH: AIMS, OBJECTIVES AND METHODOLOGY

Crime". The few dockets accessed and referred to above were a drop in the ocean of 532 FAD cases!

WHAT NOW?

Answer:

A pragmatic adjustment had to be made in sourcing information for Part 2

The next attempt was to acquire permission from the Provincial Commissioner of the Police, Western Cape, to access the relevant data captured on secure police computer records.

Conditional permission was granted in January 2004, on terms that a police officer employed at CIAC sourced the relevant CAS number outcome (or "docket disposal" in police parlance) on their system. This data was gathered in February 2004 and February 2004 is subsequently used as the cut-off deadline to determine time lapse from shooting incident until current disposal status of a docket.

The eventual, adjusted version of the Part 2 questionnaire aimed to answer three questions in each case:

- (A) Current status of the docket, e.g.: still being investigated OR in judicial system OR concluded.
- (B) Time lapse from the shooting incident until EITHER conclusion OR, if not concluded, until time of data collection in February 2004.
- (C) Comments regarding the current status of the docket, e.g.
 - Still under investigation
 - Guilty verdict and sentence given
 - At the State Prosecutor or Magistrate or Inquest Court, thus still in the judicial process
 - Closed as undetected murder or "nolle prosequi"
 - any other relevant details

Apart from data capturing, the following research tools were also employed:

Population statistics

Initially, an estimate of population by municipal demarcation rates was considered.³

CHAPTER 2: RESEARCH, AIMS, OBJECTIVES AND METHODOLOGY

These demarcations were however, highly incompatible with the police precinct demarcations and it was impossible to trace which police case belonged to which municipal area. It became clear that, in order to consider establishing any kind of FAD incidence, the cases per police precinct had to be compared to the population served by a specific police precinct.

Enquiries in this regard lead to Director W Viljoen, of Managerial Services, Office of the Provincial Police Commissioner of the Western Cape.⁴ (Director Viljoen)

Quantitative research with regards to the various factors at play in FAD's and their conclusion, including:

1. Police officer factors (Barkhuizen, Insig, own experience)
2. Community factors
3. Criminal justice system factors

Data capture was done on Epi Info® and Microsoft Excel® and statistical analysis was done on Statistica 6®. The document was finally typed in WordPerfect® and graphs and tables were also mainly created with this software.

1. South African Inquest Act, No 58 of 1959

2. South African Law Commission: "Conviction rates and other outcomes of crimes reported in eight South African police areas." Research Paper 18, Project 82 Sentencing (A new sentencing framework) Available at: <http://www.iss.co.za/CJM/main2.html> Accessed on 2004-02-18

3. Western Cape population statistics. Available at: <http://www.demarcation.org.za> Accessed in January 2004

4. Viljoen, WB: "Population Statistics, Police Stations: Western Cape" Personal communication 2002-04-22

CHAPTER 3: RESULTS OF PART 1. VICTIMOLOGY

1. Race and gender of FAD's, 1999

Manner	Wh ♂	Wh ♀	Bl ♂	Bl ♀	Col ♂	Col ♀	Other ♂	Other ♀
Suicide (n=57)	18	6	9	2	19	3	0	0
Homicide (n=475)	10	2	215 (+2)*	18	200	25	3	0

Figure 1

* The (2) refers to two black victims of whom the sex were not stated. For the sake of argument, their most likely gender is assumed to be male.

RACE AND GENDER OF FAD VICTIMS (n=532)

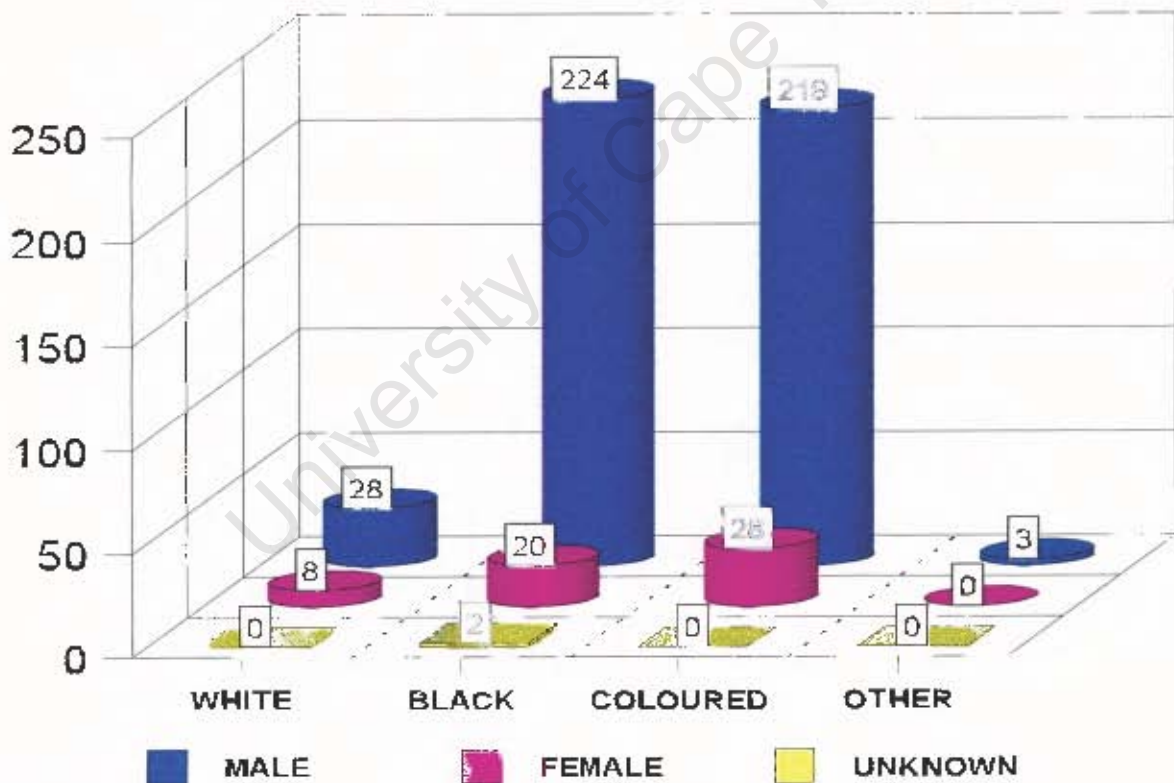


Figure 2

CHAPTER 3: RESULTS OF PART 1: VICTIMOLOGY

2. Age distribution of FAD's

The youngest victim was three years old, the oldest, 69 years. By far most prevalent, were deaths in the third and fourth decades of life.

Statistical analysis of the age distribution:

Average age:	31 years
Median age:	30 years
25 th percentile:	25 years
75 th percentile:	35 years

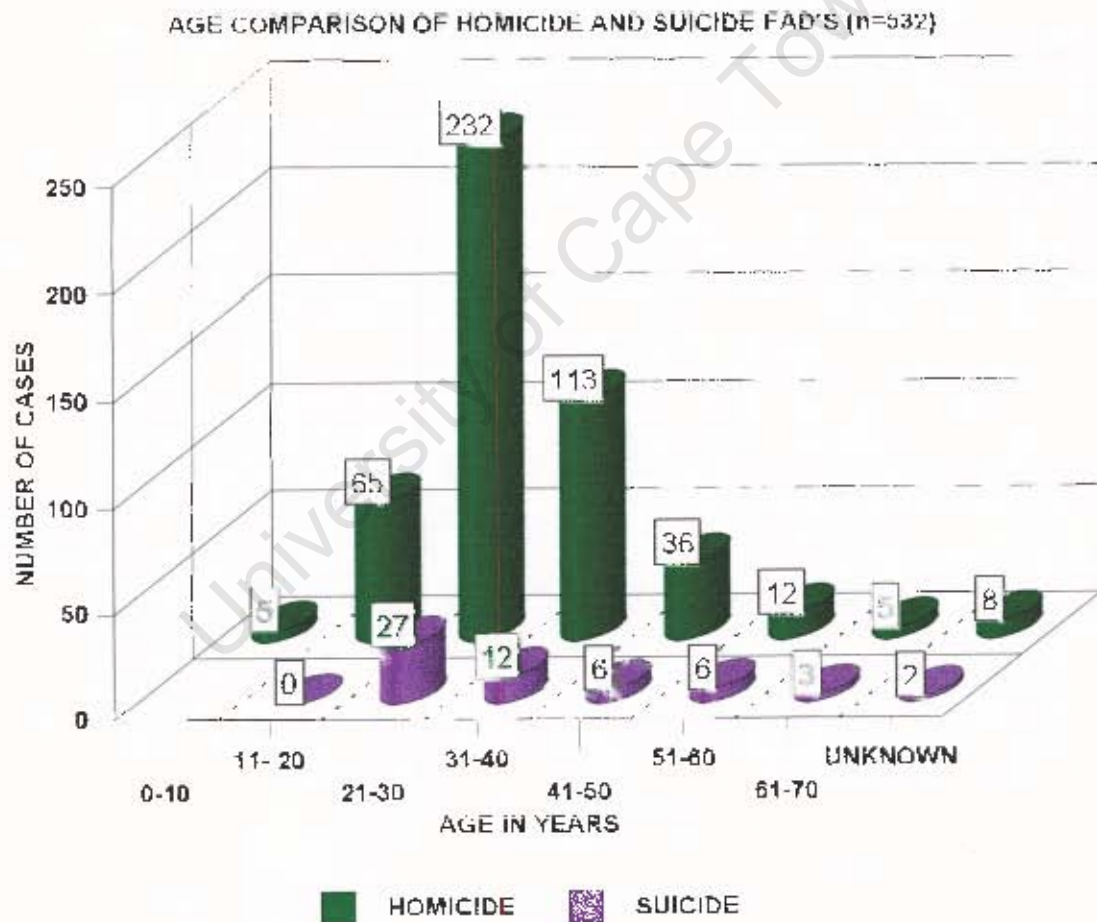


Figure 3

CHAPTER 3: RESULTS OF PART 1: VICTIMOLOGY

Children

The research data pool contains six cases of children under thirteen years of age. NIMSS¹ found that in the 1999-2000 period, 41% of children who died under the age of 19 are murdered, most often with fire-arms. (50% of cases).

Young children often succumb to firearm injuries when: (Van As)²

1. They are caught in the crossfire of, for example, gang battles.
2. Adults use small children as "human shields" in domestic violence.
3. They are killed in circumstances of extended suicide.
4. Accidentally, when firearms are negligently handled or not locked away.

Suicides

The age of two suicide cases were not stated. They are in the "adult" age range according to the SRMLL data.

Age	Unknown, adult	20-30	31-40	41-50	51-60	61-70
Number (n=57)	2	28	11	6	7	3

Figure 4

The average age of the suicide victims was 37 years

3. Blood alcohol concentration of FAD victims

Out of 532 cases, 107 cases (20%) were not tested for blood alcohol concentration. The reason for this may be that the deceased first spent some time in hospital before succumbing and it is then deemed futile to do this test. Very young individuals, especially children, are also not routinely tested for blood alcohol.

A further 244 of the 532 cases (46%) were tested and had a blood alcohol concentration of 0.00g%.

Thus, looking at the various blood alcohol test results amongst different racial groups of **cases which were tested**:

Race	White(n=29)	Black (n=198)	Coloured (n=202)	Other (n=3)
Negative (0.00g%)	18	98	123	2
Positive	11	98	79	1
% positive	38%	50%	40%	33,3%

Figure 5

CHAPTER 3- RESULTS OF PART 1: VICTIMOLOGY

"According to NIMSS, 56% of 2 469 homicide victims sampled for blood alcohol levels tested positive"¹. In this study, 34% of the total of 532 cases tested positive for alcohol.

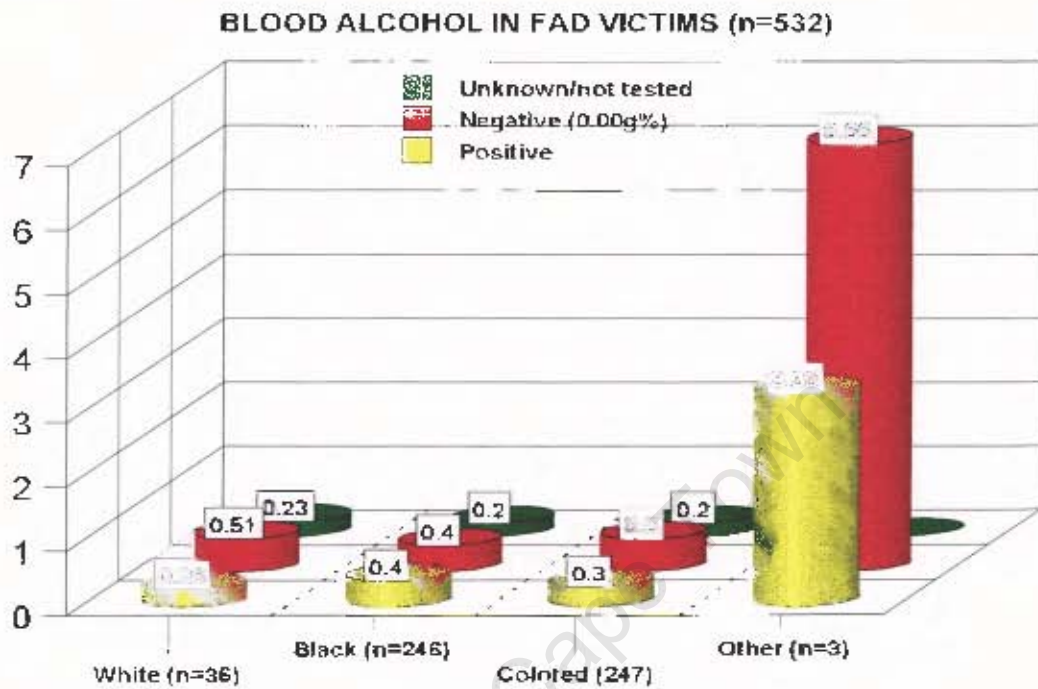


Figure 6

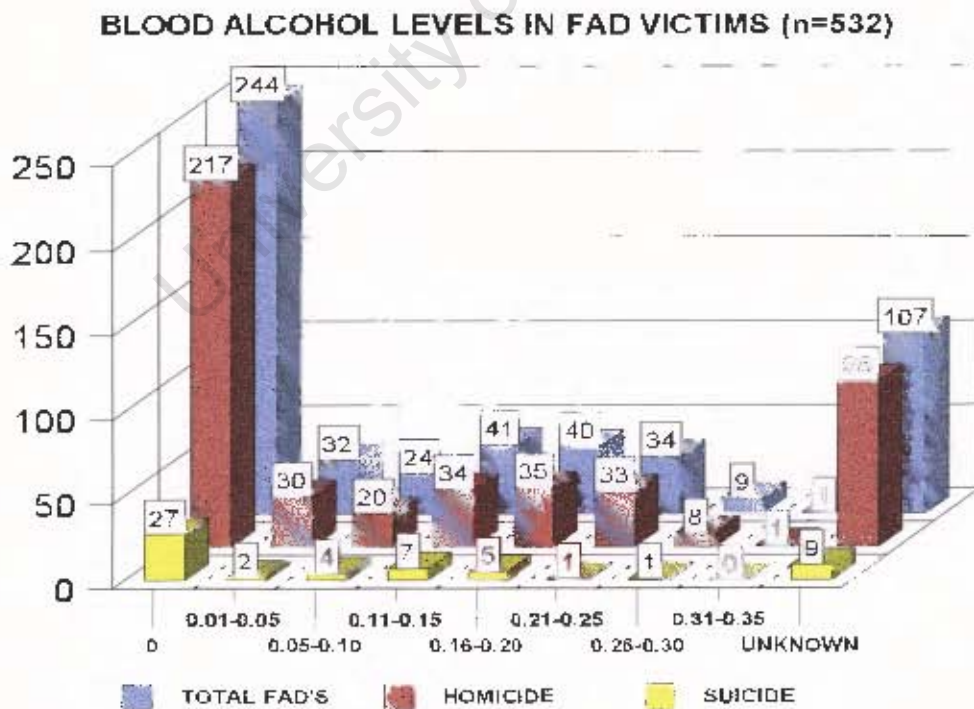


Figure 7

CHAPTER 3: RESULTS OF PART 1: VICTIMOLOGY

DRUGS

In retrospect, the possibility of recreational or other drugs playing a role in FAD's, was a very real factor. However, due to various reasons (inter alia financial constraints), drugs are not routinely tested for in SRMLL autopsy cases. In light of the fact that many of the FAD's allegedly occurred in gang warfare/PAGAD retaliation, this would have been an interesting avenue to have explored.

Victims under the "legal" age of 18 years for drinking alcohol, with positive blood alcohol tests:

In total, there were 26 FAD victims under the age of 18, three of whom tested positive for alcohol.

- 12 were not tested for blood alcohol
- 11 tested negative for alcohol

The 3 who tested positive for alcohol looked like this:

- 1X 14 year old: 0,13g%
- 2X 17 year olds: respectively 0,04g% and 0,15g%

4. Occupation of FAD victims:

The researcher compiled a list of possible occupations (See Annexure A). The reasons for choosing these specific occupation groups were the following:

Unemployed:	Poverty is known to play a role in unnatural deaths.
Self employed:	A "productive" member of the community may have succumbed whilst protecting his/her source of income, e.g. during a store robbery.
Employed:	In contrast to the "unemployed" sector.
Police/security:	At greater risk of exposure to FAD's during the course of their duties.
Pensioner:	Perceived as "soft targets" for robbers, but also potentially at risk for suicide.
Learners:	The future generation of the community, who should be studying to achieve a brighter future, not exposed to fatal violence.
Unknown:	Many times the occupation of the deceased could not be found in the SRMLL electronic data.

CHAPTER 3: RESULTS OF PART 1: VICTIMOLOGY

Occupation	Total FAD's (n=532)	Suicide (n=57)
Unknown	239	15
Unemployed	43	6
Self employed	134	16
Employed	36	12
Police/security	45	4
Pensioner	9	4
Learner	26	0

Figure 8

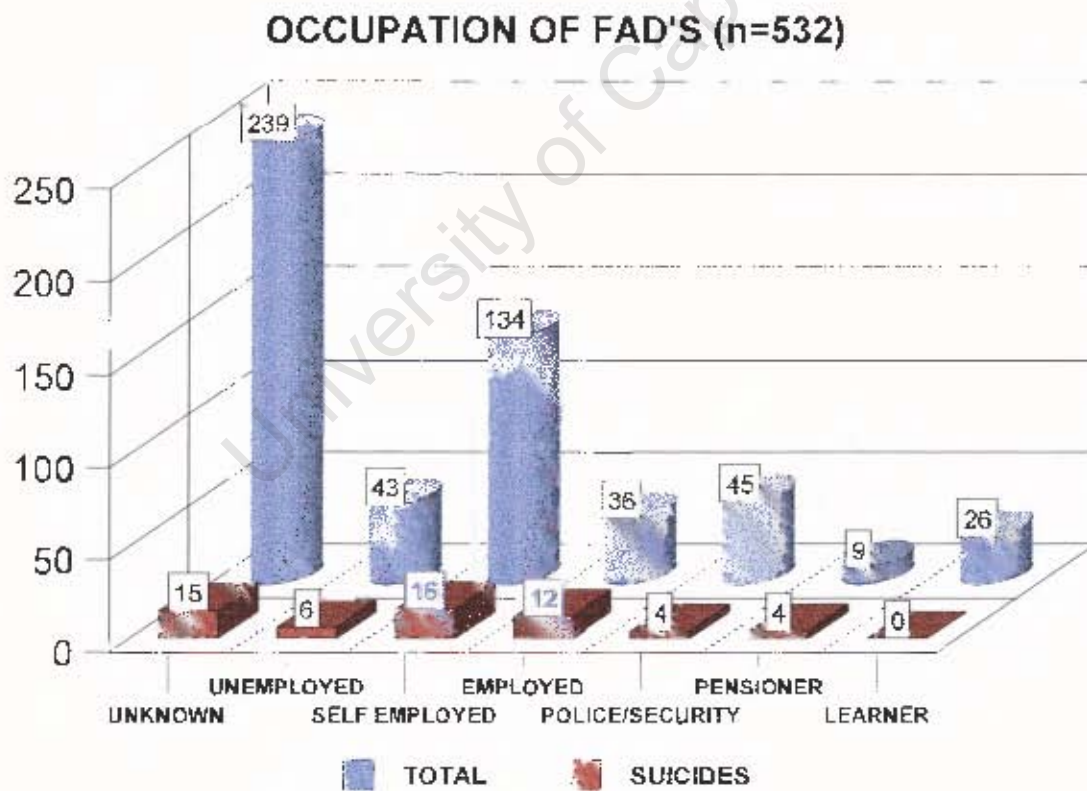


Figure 9

CHAPTER 3: RESULTS OF PART 1: VICTIMOLOGY

Police officials who died due to fire-arm injuries in 1999

Official enquiry from the human resources department of the South African Police Provincial Commissioner of the Western Cape's Office regarding their records as to how many police officers in the Western Cape had died due to fire-arm injury (homicidal or suicidal) in 1999, the following data was released to the researcher.:

(As traced by the FAD CAS numbers already in the researcher's data bank)

According to their information:

In 1999 a total of ten police officials of the Cape Western Metropole were killed during the course of their duties in the specific drainage area of Salt River Medico-legal Laboratory.

- Two of the police officers are cases in the data collection as FAD's.
- Three more police officials succumbed in the Cape Western Metropole in 1999, but since the CAS numbers of these homicides are unknown to the Provincial Commissioner of the Western Cape's Office, it could not be ascertained whether they were FAD's or succumbed by another method (e.g. stabbing).
- The other five cases' CAS numbers are not in the data collection and it is deduced that these five officers died due to methods other than firearm injury.

Source: Provincial Commissioner Auxiliary Services Western Cape Ref 26/2/5⁵.

An alternative route of establishing the number of police or security personnel who succumbed to FAD in 1999, was followed.

Referring to Annexure A, one of the questions completed makes reference to the occupation of the FAD deceased as recorded in SRMLL's records when the deceased was identified by family or friends.

Tracing this information from the researcher's data, rendered the following results:

A total of 45 FAD's had either "police" or "security" registered as their occupation. Thus, it was deduced that people in safety and security positions formed 9% of the total number of FAD's.

Of these 45 police/security cases, 4 cases were in the researcher's data pool as suicide and extended suicide cases.

Out of the total of 57 suicide/extended suicide pool, this constitutes 7%.

CHAPTER 3: RESULTS OF PART 1: VICTIMOLOGY

The police/security suicide victims showed a race and gender profile as follows:

- Three were of the black race group, and one of the white race group.
- The white suicide victim was a white male
- One black male was recorded as a suicide
- Two black females were recorded as being part of "extended suicide".

5. Ballistics details:

Number of shots

Of the 532 FAD cases: (percentages rounded up to nearest number)

- 318 (60%) sustained a single shot wound
- 72 (14%) sustained two shot wounds
- 35 (7%) sustained three shot wounds
- 106 (20%) sustained "multiple" shot wounds*(see below)
- In 1 case, the number of shot wounds could not be deduced from the autopsy report

*Any number greater than three shots were considered multiple. In the study material, the largest number encountered in a single FAD case was 22 shots.

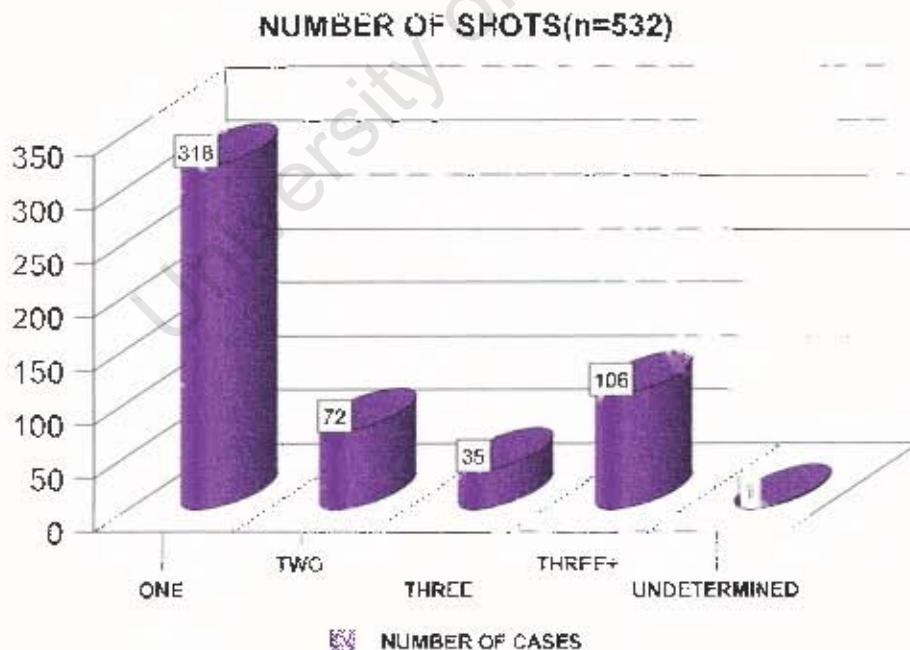


Figure 10

CHAPTER 3: RESULTS OF PART 1: VICTIMOLOGY

Distance from which the shot wounds were sustained

Of the 532 FAD cases, the distance of the shot wounds were deduced from autopsy report description of entrance wounds and perusal of autopsy photographs as follows:

* Please note explanation of terms and cautionary note regarding practical difficulties of interpretation as to distance

Distant: 363 (68%)
Close: 36 (7%)
Contact: 75 (14%)
Undetermined: 24 (5%)
Combination of any of the above: 34 (6%)

If comparison is drawn between the distance of shot wounds in homicidal and suicidal FAD's, the following was found:

	Distant	Close	Contact	Undetermined	Combination
Homicide (n=475)	361 (76%)	31 (6,5%)	31 (6,5%)	19 (4%)	33 (7%)
Suicide (+extended suicide) (n=57)	2 (3,5%)	5 (8,8%)	44 (77%)	5 (8,8%)	1 (1,7%)

Figure 11

*Tertiary, or wound ballistics is a complex science, the description of which falls outside the borders of this study. Suffice it to say that the researcher applied the ballistic configuration of entrance wound specifics to assign distance into the following categories:

- Distant: likely more than 90cm between muzzle of the fire-arm and the skin entrance wound.
- Close: For reasons of brevity, all the ranges between contact/near contact and distance, thus between 1cm and 90 cm from muzzle to skin.
- Contact/near contact: 1cm or less.
- Combination: Self-explanatory, where more than one wound were present and they were of different distance categories.
- Undetermined: In some cases, time lapse from incidence until death had brought healing of the skin wounds, precluding accurate deduction of distance. The same applies if

CHAPTER 3: RESULTS OF PART 1: VICTIMOLOGY

wounds were sustained through clothing and the clothing was not available for inspection by the pathologist.

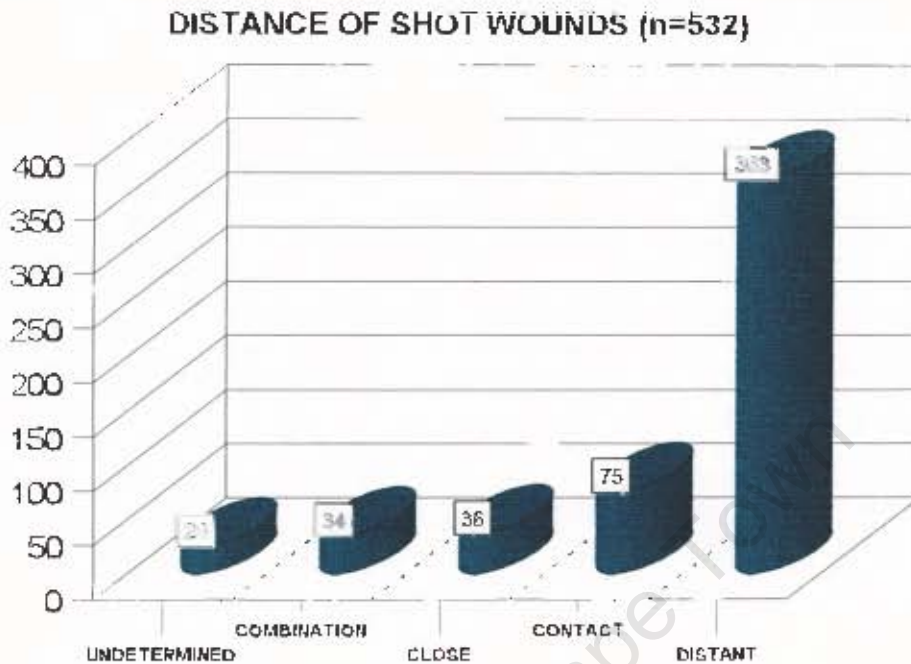


Figure 12

Bullets found

At autopsy of these 532 cases, a bullet and sometimes bullets, were found in 291 cases (55%), and none were found in the other 241 cases (45%).

This means that, in theory, more than half of the cases could be scientifically traced to specific firearms. If a suspect's firearm could be found, test shots and ballistic "fingerprinting" of these test shot bullets could be compared to bullets retrieved from the bodies of deceased individuals.

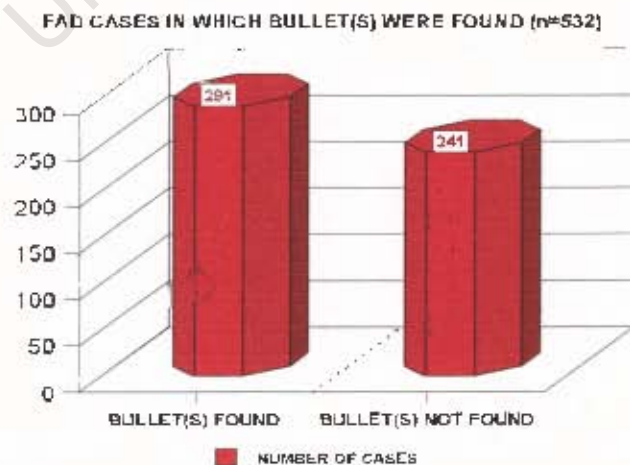


Figure 13

CHAPTER 3: RESULTS OF PART 1. VICTIMOLOGY

This particular branch of forensic science was successfully applied to solve 11 out of the 532 FAD's in this study (See elsewhere - The success story of 1999)

As part of Annexure A, the body sites of bullet wounds were recorded. For this study, it was decided to exclude that information from the data pool. Although interesting from a surgical or emergency medical rescue point of view, it is deemed to fall outside the objectives of this study.

6. Month of the year of the shooting incidents:

Homicidal shootings occurred throughout 1999, with a peak (51 cases) in June and a constant high from October to December (46, 45 and 46 per month respectively).

Suicidal shootings were more randomly distributed through the months, with low levels around midyear (1 in May, 1 in June, and a sudden rise to 7 in July and 8 in August.)

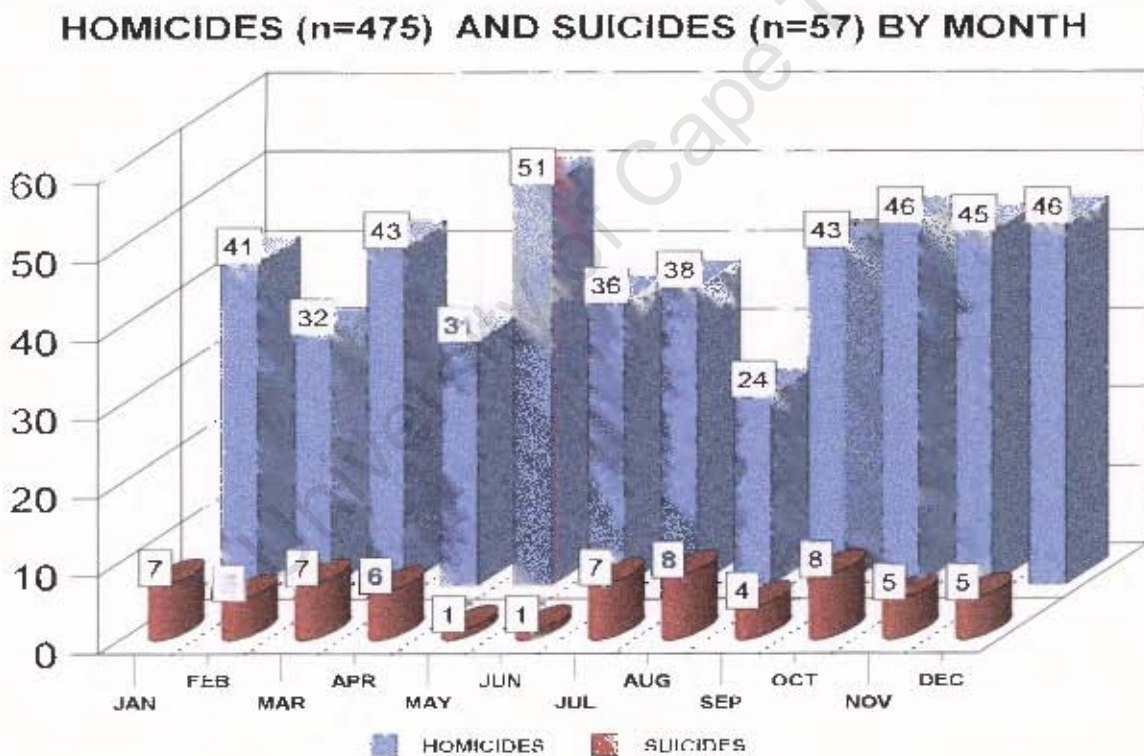


Figure 14

CHAPTER 3: RESULTS OF PART 1: VICTIMOLOGY

7. Shootings by day of the week

Homicidal shootings were at their lowest on Tuesdays (41 cases), then steadily rose through Wednesday(44), Thursday(51) and Friday(61), to almost triple Tuesday's incidence over the weekend days: Saturday(122) and Sunday(113) and subsiding on Monday (56).

Suicidal shootings clustered over weekends and Mondays (31 out of 57 cases occurred during Saturday, Sunday and Monday) and a secondary peak at Wednesday (9 cases).

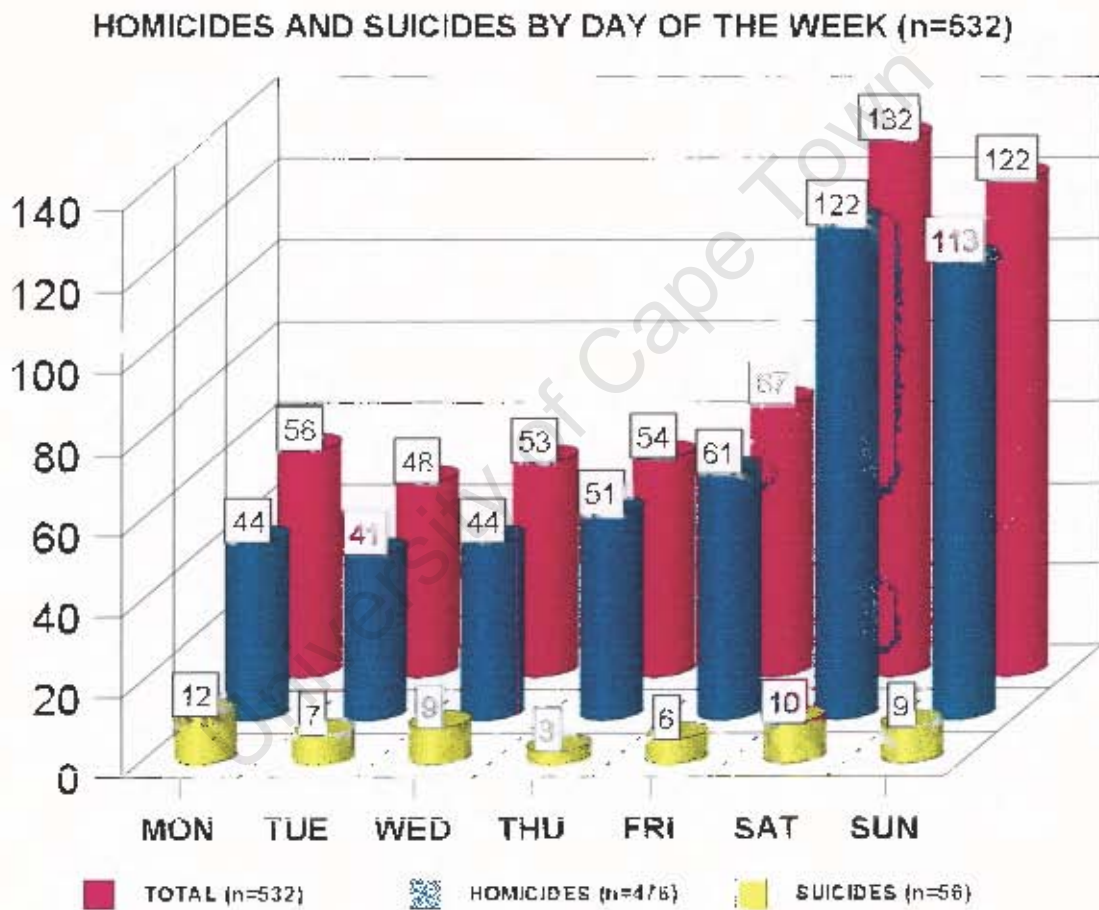


Figure 15

CHAPTER 3: RESULTS OF PART 1: VICTIMOLOGY

8. Time of day of shooting incident

Cover of night veiled many of the homicidal shooting incidents, but as depicted in Figure 16, a surprising peak around midday shows that fear of daylight is not necessarily a deterrent to perpetrators. The suicide shootings showed a much more even distribution throughout the day.

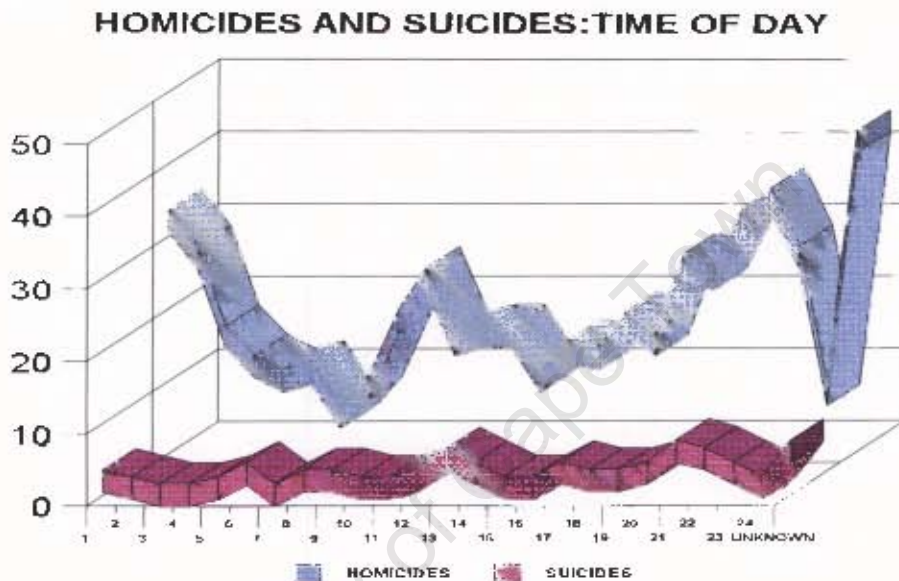


Figure 16

1. NIMSS

2. Van As AB, Hult J, Wallis L et al: "Guns, children and accidents" Child Accident Prevention Foundation of Southern Africa. Paper given at international conference entitled "Towards a Child Safe South Africa", October 2003

3. Error: repetition of 2

4. Mc Cafferty, R, Communications Director United Christian Action : "Murder in South Africa: a comparison of past and present, first edition" © 2003, 1997-04 by Gun Owners of America Available at <http://www.gunowners.org/fs0304.htm> Accessed on 2004-03-19

5. Provincial Commissioner Auxiliary Services Western Cape Ref 26/2/5.

CHAPTER 4: RESULTS PART TWO

For the second part of the study, specific case docket disposals of the police precincts served by Salt River Medico-legal Laboratory were traced. The five FAD autopsy cases which originated from areas outside of the Cape Western Metropole, were excluded from this part of the study, since these cases would be investigated in the police areas where the shooting incidents occurred (e.g. Delmas).

Thus, for part two $n=527$.

The docket disposal status were noted as falling into one of the following five categories:

1. Still with the investigating officer
2. Cases which had reached a dead end.
3. Cases which had to be excluded from the study.
4. Dockets which were still in the judicial process. (JUSTICE)
5. Dockets which had completed the judicial process, noting the court's decision.

INVESTIGATIVE OUTCOME (n= 527)

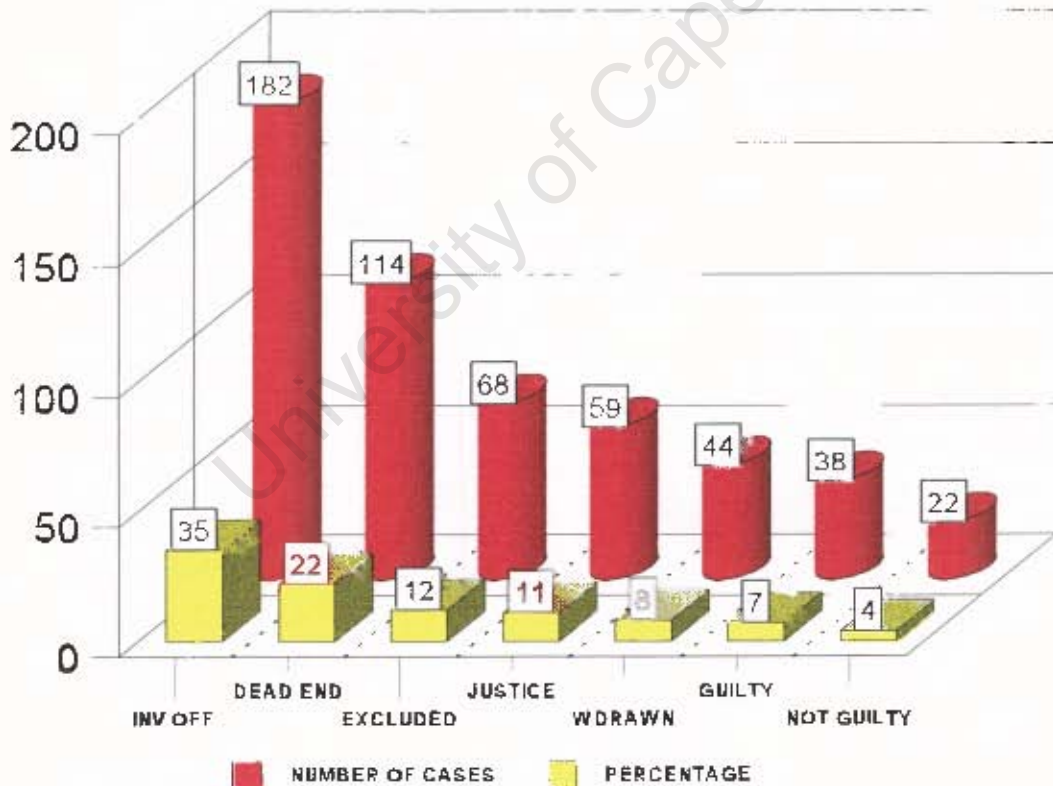


Figure 17

CHAPTER 4: RESULTS PART TWO

Apart from disposal status, the time lapse from date of death of the victim until the case reached one of the above phases in February 2004, was noted and statistically analysed.

As the author finds that a picture is worth a thousand words, it was deemed better to use graphs first to give an impression of the overall outcome, followed by the more cryptic explanation of the data analysis.

TIME LAPSE FOR INVESTIGATIVE OUTCOME (n=345)

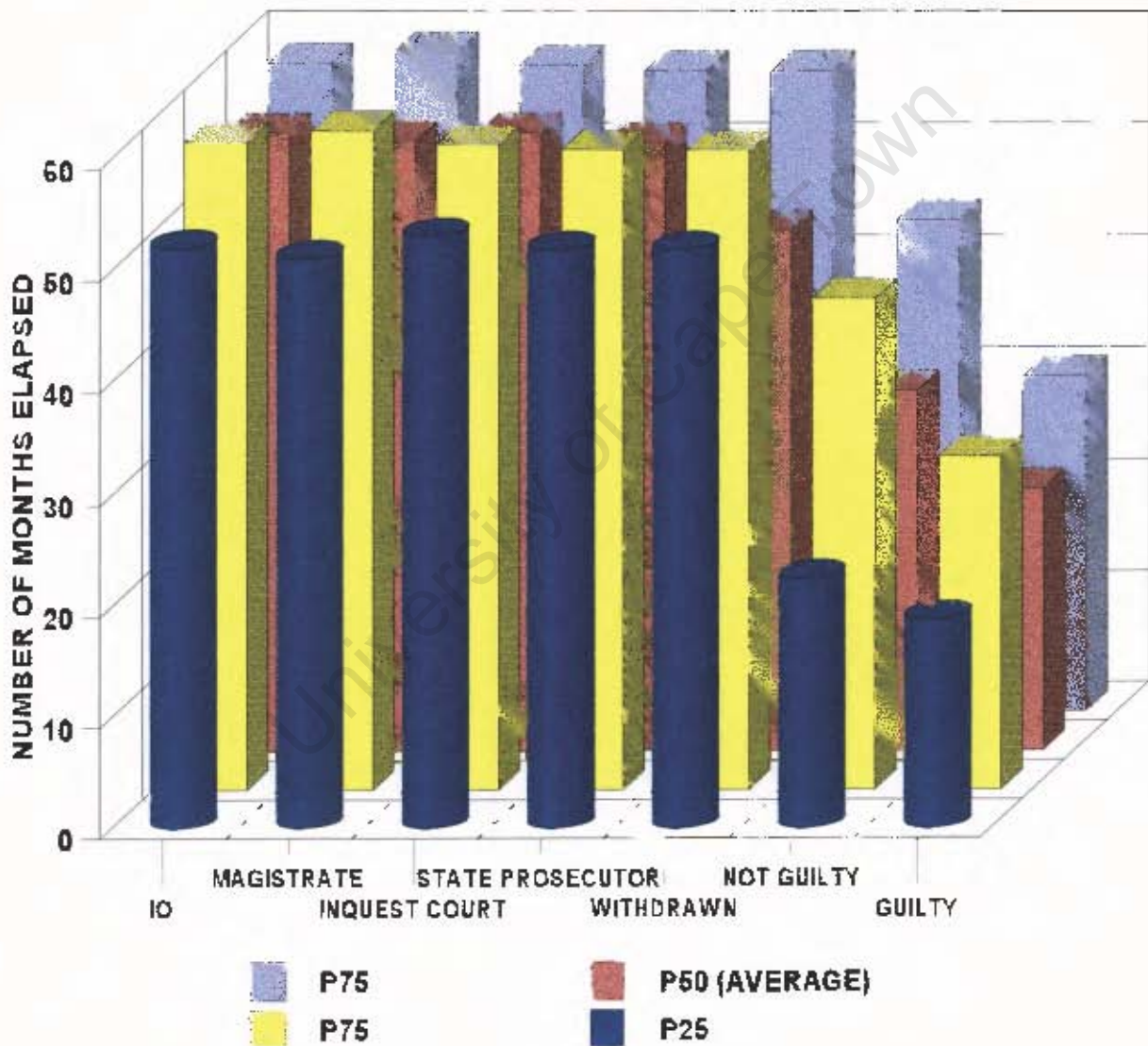


Figure 18

CHAPTER 4: RESULTS PART TWO

Obviously not included in the foregoing chart, are those cases deemed to fall into the 'dead end' or 'excluded' categories, since there is no investigative outcome to speak of.

1. Cases still with the investigating officer n=182 (35%)

These cases have never been brought to court and purportedly the investigating officer is still collecting evidence and following up clues to bring the perpetrator(s) of the shooting incident to book

Time lapse from incident until February 2004:

Average:	55,3 months
Mode:	61
p25:	52
p75:	58

2. Cases which had reached a dead end: n=114 (22%)

The following cases were considered to have reached a dead end, because there was no trial and there is most likely never going to be a trial:

a. A "nolle prosequi" decision by a state prosecutor or magistrate. This means that the court decided that no prosecution is to be instigated, for any of a number of reasons. Quite commonly, the reason is that the case evidence is not strong enough to charge anybody with the crime. On the other hand, in a suicide case, the perpetrator would be deceased and automatically a "nolle prosequi" would follow.

Total: 29 cases(5,5%)

b. The suspect has died.

Total: 8 cases(1,5%)

c. Undetected murder - when no suspect could be identified at all

Total: 76 cases(14,4%)

d. Warrant out for arrest for a suspect who is known, but still at large, whereabouts unknown

Total: 1 case

CHAPTER 4: RESULTS PART TWO

3. Cases excluded from the study n=68 (12,9%)

Some cases could not be concluded on as to docket disposal status, for the following reasons.

a. No result found in the CIAC data base on the relevant CAS number

Total: 32cases(6%)

b. No CAS number traced or registered

Total: 28 cases(5,3%)

c. Closed as a duplicate docket, initial CAS number unknown to this study

Total: 3 cases(0,5%)

d. Transferred and new CAS number unknown to this study.

Total: 5 cases(9,5%)

4. In the judicial process n=84 (16%)

a. Magistrate

Total: 25 cases(4,7%)

Time lapse:

Average: 54,6 months

Mode: 51 months

p25: 51 months

p75: 59 months

b. Inquest court

Total: 18 cases(3,4%)

Time lapse:

Average: 55,3 months

Mode: 53 months

p25: 53 months

p75: 57,8 months

c. State prosecutor

Total: 16 cases(3%)

Time lapse:

Average: 54,4 months

Mode: 57 months

p25: 51,8 months

p75: 57,3 months

CHAPTER 4: RESULTS PART TWO

5. Judicial process completed n=104 (19,7%)

a. Withdrawn

Total:	44 cases(8,3%)
Time lapse:	
Average:	46,6 months
Mode:	57 months
p25:	51,8 months
p75:	57,3 months

b. Guilty

Total:	38 cases(7,2%)
Time lapse:	
Average:	23,6 months
Mode:	24 months
p25:	18,8 months
p75:	30 months

c. Not guilty

Total:	22 cases(4,2%)
Time lapse:	
Average:	32,3 months
Mode:	31 months
p25:	22,5 months
p75:	44 months

CRIMINAL JUSTICE SUCCESS STORY OF 1999

Special mention must be made regarding the 38 cases which ended in a "guilty" verdict, since there is an artificial skewing effect which was detected in whilst noting the verdict and sentencing.

Of these 38 cases, 11 involved a single accused, who was found guilty and sentenced to 99 years imprisonment.

Success story of 1999

The police received an anonymous tip-off by telephone, stating that two suspicious looking individuals were spotted in a car outside a shebeen (unlicensed bar). A police car was despatched to the scene and the vehicle and individuals were searched, locating registered (legal) firearms on the persons of the occupants. However, an unlicensed

CHAPTER 4: RESULTS PART TWO

firearm was also found under the driver's seat. A search warrant and house search later, unlicensed amateur cartridge filling paraphernalia proved that the firearms in position of this person could be ballistically linked to a total of eleven (11) of the FAD's in this study!! This accounts for 29% of the guilty verdicts.

This is the best demonstration of the essential interplay among community (anonymous tip-off), police reaction (car search, search warrant), use of special techniques (ballistic linkage of cartridges found at suspect's house to previous homicide cases) and the long arm of the law flexing its muscle (99 years imprisonment!).

If one removes these 11 cases from the data pool completely, the following calculation would apply:

27 cases out of 516 FAD cases ended in a guilty verdict: 5,2%

CONCLUSIONS FORTHCOMING:

The fact that a homicide investigation is never closed, is of scant consolation in the bitter truth that, after five years, 35% of the FAD investigations are still "being investigated". In electronic data collection from the CIAC, it was disconcerting to the author to see how few of the "being investigated" CAS numbers had an entry of b/f (brought forward, or meaning that the case was still being reviewed once in a while to check for any new evidence which may lead to a solution). This may indicate administrative tardiness in updating of the records while the cases are still actively under surveillance, but the distinct possibility of this (huge) number of cases just being left in limbo, seems to be a very real one.

In medical terms, "the golden hour" of saving a trauma patient's life means that if medical attention is administered within the first hour after the trauma is incurred, the chances of saving the patient's life are best. With every minute ticking by after the "golden hour", the patient's chances of survival dwindle.

It appears to the author that the same principal may be applicable to FAD investigations, since the number of "solved" cases in the study reached a conclusion at a much earlier point than those still dawdling with the investigating officer. See Figure 2.

Common sense also predicts that, the longer the time lapse since the incident and the following investigation, the staler the trail, the weaker the quality of evidence collected.

CHAPTER 5: VICTIMOLOGY

Cognisance is taken of the fact that victim, perpetrator and the society whence they originate from are inextricably linked in any violent crime. In this study, for reasons to be explained, the perpetrator profile does not form part of the discussion and the role of society is only touched upon. The spotlight of the first part of the study falls squarely on the victims.

Criminologists have realized that victims are a group of persons worthy of scientific study (Karmen)¹. Studies have proven that the ability of victims to supply detectives with leads and clues is the single most important factor in solving cases. Seeing that this study is concerned with deceased victims, **mostly non-verbal information** had to supply leads and clues. To know the victim and the victim's circumstances is often to know the perpetrator, even if only by inference.

In this study, the ethnic origin of cases have been assigned as "white" (Caucasian), "black", (Negroid), "coloured" (mixed Caucasian/Negroid/Khoisan/Malay/Indian) and "other" e.g. Asian. In a democratic South Africa the inference of possible racial slurring must immediately be addressed. In this study, these distinctions were used for several reasons:

1. In forensic medical terms, race is scientifically used as a means of identification of an individual.
2. Due to the way in which mortuary data is recorded, race is noted on the contemporaneous notes and forms part of the available data on the death register.
3. From a socio-political viewpoint, the few years since democratization have not been enough to obliterate distinctions of colour, cultural differences and income brackets to a significant degree. If one wants to examine factors at play in victimology of FAD's in 1999, the ethnic groups do have distinct inhomogenous qualities.

Cape Metropolitan Area

In the August 1998 edition of Trauma Review² it is stated that "black and coloured males between the ages of 15 and 34 years make up 69% and 62% respectively, of all the homicides in their respective groups.

Trauma review also reports that ten geographic areas generated more than two-thirds of the homicide mortality in the Cape Metropole in 1995. In the table denoting these top ten

CHAPTER 5: VICTIMOLOGY

International victimology of FAD's

Race and gender

Coloured and black males form the bulk of FAD's in this author's study (443 out of 532 : 83%)

Compare this to a report by the United States Department of Justice³ (23) on Firearm Injury and Death from Crime, 1993-97. "Almost half of the victims of both fatal and nonfatal gunshot wounds from crime were black males"

Another report by the USA Bureau of Justice Statistics for 1976-2000⁴ reports: "Blacks are disproportionately represented as both homicide victims and offenders. In terms of rates per 100 000, blacks are six times more likely to be victimized and about eight times more likely to commit homicides than are whites."

2. Sociological reasons for this finding did not specifically form part of this research, but have been amply addressed and publicized in academic and popular media releases.

A deadly progression of disadvantaged circumstances → poor schooling → unemployment → poverty → peer pressure → gangsterism → drug dealing and pimping. Alcohol and drug abuse just fan the flames under this powder keg where violence is a part of everyday life.

Another slant is put onto the causation of victimology profile by an explanation from the CIAC as quoted by McCafferty⁵: The concept of **compacted internal urbanization** was painted as one of the chief reasons for the escalation of crime committed to and by the formerly disenfranchised black population group after cancellation of the "Group Areas Act".

This restriction on where citizens may live, was lifted in 1986, resulting in a massive urbanisation process which under "natural (sic)" circumstances would have started 3 to 5 decades earlier. A "compacted" (artificially accelerated, as understood by the researcher) urbanisation happened in the following ±13 years. This urbanisation is continuing rapidly, uprooting urban, poorly educated, young (15-29 years old) black people from rural and more "simple" circumstances to live in urbanised regions.

Inevitably, experiencing unemployment and disconnection from close ties with the usual extended family circle, many of these newcomers face starvation. The logical next step would be a new type of subsistence earning: steal to survive, or; kill or be killed. (Researcher's view)

CHAPTER 5: VICTIMOLOGY

1. Karmen, A. "Crime victims - An introduction to victimology, California" 1984, Wadsworth Incorporated.
2. Marais, S, National Trauma Research Programme: "Violence in South Africa" Trauma Review, South African Medical Research Council Vol 6, No 2, August 1998, p6
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CHAPTER 6: CRIMINAL JUSTICE SYSTEM: POLICE INVESTIGATION AND COURT PROCEDURES

As so eloquently put by crime novelist PD James:

“Detection requires a patient persistence which amounts to obstinacy”

Barkhuizen² wrote his portfolio for a UNISA BTech in Policing qualification on:

“An analysis of specific problems and shortcomings in the investigation of murder cases.”

“The solving rate - and also convictions in cases where persons arrested for murder go on trial - is unacceptably low in the Western Cape” (p3)

He looked at murder case solving rate in the Western Cape for the first quarter of 2002 and compared that to the Boland and Southern Cape regions. (P19) The criteria used for “success” rate and “solved” were:

- (1) That an arrest was made and
- (2) that a person or persons(s) had been charged and brought before the court in the same month that the case was reported (p15)

The statistics for The Western Metropole showed a total of 401 cases, of which 127 (31,7%) were “solved” per definition, and the Eastern Metropole had 419 cases, of which 148(35,6%) were solved.

The statistics for the Serious Violent Crime Unit: Western Cape over the same period of time looked as follows: 283 cases, of which 30 (10,6%) were solved.

Barkhuizen believes that serious and violent crimes can only be addressed if professional investigations are conducted by investigators who have the necessary resources and are committed to their task.

The abysmal lack of resources available to South African police came to this researcher's attention in a personal interview (2004-05-04) with Barkhuizen at the Unit for Serious Violent Crime, Bishop Lavis.

This supposedly elite, top class, select group of fifty four officers investigating cases all over the Western Cape, had on that day only sixteen vehicles at their disposal. It boggles the mind how they are supposed to attend murder scenes, attend autopsies, get statements from witnesses, transport detainees to court, inter alia, with such a dearth of transport!

CHAPTER 6: CRIMINAL JUSTICE SYSTEM: POLICE INVESTIGATION AND COURT PROCEDURES

Barkhuizen points out relevant police factors which contribute to the poor solving of homicide cases:

- Serious staff shortages "It is common cause that there is a serious staff shortage in the SAPS (at present)" Die Burger 2002 - 06 - 01
- Ill-trained officers
- Basic mistakes during investigation
- Failure or inability to attend post mortem proceedings
- Failure or inability to follow up leads immediately
- Failure to safeguard crime scenes
- Unavailability of support services to conduct investigations
- Investigators receive crime scenes where clues have either been contaminated, damaged or destroyed
- Lack of critical support services

According to Barkhuizen many (South African) detectives overlook the importance of routine tasks when investigating murder cases. A typical example is the failure of investigators to take proper fingerprints and photographs of persons detained for questioning. This is crucial to build up a crime information data base, which contributes to early detection and arrests in cases still to be investigated. He suggests inter alia that homicide investigators specifically should be equipped and trained to use computers to assist them in their investigations.

The last point appeared especially important to the author in view of difficulties encountered in data collection for this document.

What about the other role players in the South African criminal justice system?

Research paper 18 by the South African Law Commission, under leadership of Professor D van Zyl Smit deals with "**Conviction rates and other outcomes of crimes reported in eight South African police areas.**"⁵ This study was unique in the way it tracked the outcome of individual cases approximately two years after the crime was reported to the police. Other available studies tend to only enumerate the number and outcome of cases during a specific time period without taking the date of origin of each case into account.

(P9) : made this researcher smile wryly in retrospective concurrence with:

" 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 (n=964)"

They tracked the outcome of a random selection of violent crime cases comprising

CHAPTER 6: CRIMINAL JUSTICE SYSTEM: POLICE INVESTIGATION AND COURT PROCEDURES

murder, rape and robbery with aggravating circumstances from 1997/1998 (n=10 776) and checked these cases two years later to see how many of those specific cases had actually resulted in convictions.

Their results for outcome of these cases two years down the line looked like this:

- | | |
|-----------------------------|-----|
| 1. Cases not gone to court: | 75% |
| 2. Withdrawn in court: | 10% |
| 3. Guilty: | 6% |
| 4. Not guilty: | 5% |
| 5. Trial ongoing: | 4% |

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 is 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.

The SALC report then specifically looked at violent crime cases from the Cape Town police area of the Western Metropole that had not gone to court (n=964).

The reasons stated for the cases not having reached court were:

- | | |
|-------------------------------|-------|
| 1. Undetected: | 74,1% |
| 2. Withdrawal by complainant: | 16,5% |
| 3. Ongoing investigation: | 7,2% |
| 4. Warrant issued: | 2,3% |

Assuming that the Western Metropole is a fair representation of what goes on investigation-wise in South Africa, this means that nationally the police closed as "undetected" most cases of violent crime reported to them. In fact, the police were unable to identify a suspect in 55% of reported violent crimes!*

Supporting Barkhuizen's findings, the SALC report airs views similar to his and even more strongly worded, listing under-trained and overworked detectives and prosecutors who have inadequate support staff and services as partly to blame for South Africa's low conviction rate.

*"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."*

CHAPTER 6: CRIMINAL JUSTICE SYSTEM: POLICE INVESTIGATION AND COURT PROCEDURES

Further aspects which may complicate police investigation, involve the law itself.

Section 35 (5) of the Constitution of the RSA provides that evidence obtained in a manner that violates any individual's rights according to the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.⁴(Van der Merwe)

This means that, apart from other laws, police officers have to be quite *au fait* with the stipulations of the Bill of Rights⁵. Sections 12, 14, 21, 25, 32, 33, 34, 35 all have implications which may impinge on the scope of what a police officer may or may not legally do whilst investigating a crime or otherwise dealing with suspects. The most damning, case-clinching evidence may be deemed as inadmissible if obtained in an unconstitutional manner.

In similar vein the SALC comments "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".

Van der Merwe⁴ expanded on this theme in his article "The "good faith" of the police and the exclusion of unconstitutionally obtained evidence."

If the situation of under-trained and even illiterate police officers is taken into account, it seems an unattainable ideal that these officers should be so well informed on the intricacies of the Bill of Rights. (Researcher's view)

Unbeknownst to this researcher at the time of data collection, the SALC report also had the following comments to make, some of which were painfully experienced during my data collection:

(p27)" 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 the 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."

The above raised concerns were summarised in a report by McCafferty⁵:

"The failure of the criminal justice system is portrayed by the following statistics:

For every 1 000 crimes committed in South Africa, only 430 criminals are arrested.
Only 77 are convicted

Despite the huge numbers of serious violent crimes committed, only 8 of the above number are sentenced to 2 and more years of imprisonment.

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To further darken the picture, McCafferty continues with:

It is estimated that South Africa has a 94% recidivism rate (that means that 94% of all persons released after serving a sentence immediately become involved in crime again).

Only 1 out of the 8 sentenced inmates actually gives up criminal activity.”

What is the situation regarding criminal justice in other regions?

Namibia

As previously mentioned, Namibia shares some of the circumstances and teething problems of South Africa. What does their homicide case load and solving rate look like since independence from South Africa and democracy was achieved in March 1990?

Personal communication with Namibian Police Chief Inspector MG Sass⁶, rendered the following official Namibian police statistics. Obviously individual case tracking was not done as for the SALC report, but the general idea of incidence and solving can be formed.

	Total homicide cases	Homicide cases solved
1991	325	274 (84,3%)
1992	376	329 (87,5%)
1993	372	291 (78,2%)
1994	393	312 (79,4%)
1995	373	291 (78%)
1996	353	305 (86,4%)
1997	328	250 (76,2%)
1998	296	252 (85,1%)
1999	386	269 (69,7%)
2000	769	516 (67,1%)
2001	722	563 (78%)
2002	768	697 (90,7%)

(The 2002 census estimated the Namibian population at that time at 1,83 million.)

Figure 1

CHAPTER 6: CRIMINAL JUSTICE SYSTEM: POLICE INVESTIGATION AND COURT PROCEDURES

Apart from what appears to be an exceptional success rate in homicide investigation, the most striking feature is the sudden doubling of homicides both reported and solved, between 1999 and 2000.

Alert to the unavailability of computers for day-to-day administrative duties of the Namibian Police (the researcher was employed as a forensic medical officer in Namibia from 1989 until 1999), I enquired whether electronic data capturing resources had been introduced in the meantime. Indeed, Chief Inspector Sass confirmed that this was indeed the case and he agreed that this fact was the most probable reason for the sudden dramatic increase in numbers. Prior to 2000, crime reports occurred by written notices and since 2000, by computer data entries.

This should not be surprising, as this experience is supported by a quote from McCafferty⁷: "In many less developed countries, crime statistics are recorded only on paper which can easily result in the loss of some of the statistics."

International criminal justice problems and comparisons:

SALC (P26): "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..."

According to Ted Leggett⁸, of the Institute of Security Studies (ISS) of Unisa, commenting on the SALC report, this is not a true reflection of the actual state of affairs, seeing that the definition for a crime to be "detected" in England and Wales differs from that used in the SALC report on the South African situation, in that:

- a suspect must be identified and notified of the investigation,
- there must be sufficient evidence to charge the suspect with a crime,
- the suspect must have, in fact, been charged or
- there must be one of a number of clearly specified reasons why a charge should not be brought.

As these definitions differ from those used in the SALC report, it is like comparing apples to pears.

Leggett continues, stating that " Thus, while it is frightening to think that three-quarters of crimes recorded by the police never make it to court, this phenomenon (also called "case attrition") is not unique to South Africa. Indeed, insofar as the comparison is valid, it appears that South African detectives are doing well by international standards."

The one area in which it seems that South African police is not winning the battle, specifically pertains to homicide investigation. Here the British detectives lay claim to an 87% detection (solving) rate against their South African counterparts' 25%.

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Leggett immediately points out that British police over the review period (2001/2002) had 886 homicide cases to deal with, compared to South Africa's 21 000!

The inevitable question to ask is about the available manpower to tackle such a gargantuan task. How does the South African police staff complement compare to those employed internationally?

ISS compared police per 100 000 members of the population amongst several countries and looked into the workload per South African detective.⁹

In 2001, "the ratio of the police to the public in South Africa is better than many countries with similar development (South Korea, Turkey), close to that of countries with similar violent crime problems (Colombia), but somewhat less than that in the US or UK." The accompanying chart supplied in the report depicts South Africa's and Colombia's police complement at 240/100 000 population, England and Wales' at 350/100 000 and Turkey's at 190/100 000.

One has to keep in mind that not all police personnel are active in the field of crime investigation, though. Administrative and other personnel on the payroll aside, the actual detective cohort is much smaller, leaving one with the following estimated workload: "looking at the ratio of detectives to crime, 115 cases per year, or one every other work day, suggests a more realistic workload."⁸

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3. South African Law Commission: "Conviction rates and other outcomes of crimes reported in eight South African police areas." Research Paper 18, Project 82 Sentencing (A new sentencing framework) Available at: <http://www.iss.co.za/CJM/main2.html> Accessed on 2004-02-18

4. Van der Merwe, SE: The "good faith" of the police and the exclusion of unconstitutionally obtained evidence" South African Journal of Criminal Justice, Tenth Anniversary Issue (1998) 11, p462-474

5. South African Constitution, 1996, Chapter 2: Bill of Rights

CHAPTER 6: CRIMINAL JUSTICE SYSTEM: POLICE INVESTIGATION AND COURT PROCEDURES

6. Sass, MG, Chief Inspector, Namibian Police: personal communication on 24 April 2004.

7. Mc Cafferty, R, Communications Director United Christian Action : "Murder in South Africa: a comparison of past and present, first edition" © 2003, 1997-04 by Gun Owners of America Available at <http://www.gunowners.org/fs0304.htm> Accessed on 2004-03-19

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9. ISS: "Safety and Security(police)" Available at <http://www.iss.co.za/CriminalJusticeMonitor/Safety/> Accessed on August 13, 2002.

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CHAPTER 7: CRIMINAL JUSTICE DELAYS

Internationally:

Apparently, delays in the criminal justice system is internationally perceived to be a problem, taking into account the report by Thomas Feltes¹ to the Ninth Criminological Colloquium, Council of Europe, 1989. He quotes Garner (1986) that "Delay in the Criminal Justice System has long been perceived as a serious problem "not easily controlled by executive, legislative or judicial branches of government"

Feltes comments that: " Delay influences the effectiveness of the system and especially the effectiveness of the punishment by postponing the sanction and putting off the punishment of the guilty and the vindication of the innocent."

"Justice delayed might be justice denied"

In **Malawi**², where the legal system follows the English common law, homicide trial delay is reported as a serious problem. Despite funding from the Department of International Development (DFID) of the UK government, the trial backlog in 2000 was still in excess of 800 cases. At that time, 265 of the awaiting trial prisoners had been in custody since 1998, with 2 cases going back as far as 1992.

This delay is ascribed to various factors which sometimes share similarities with those in South Africa (budget, staff shortages in the police and legal fraternity) but also significant differences, for instance the sudden instatement of the cumbersome and expensive jury type system in 1995.

This brings to mind a front page article in the Cape Times, 2003-06-06:³

"Woman released after spending 21 years in jail awaiting trial"

This was a **Kenyan** case, where the judge Ndeda invoked a rarely-exercised clause in the Kenyan Criminal procedure Code that allows presiding judges or magistrates to free accused persons in circumstances that they deem fit.

In most countries, 21 years in prison would already be seen as a life sentence, so even if the person was guilty, release would be due. On the other hand, it is unconscionable to think that a possibly innocent person serves an unwarranted life sentence due to criminal justice delays!

The **Namibian Constitution**, Article 12 (Fair trial), par 1(b)⁴ reads: " A trial....shall take place within a reasonable time, failing which the accused shall be released." Specifically

CHAPTER 7: CRIMINAL JUSTICE DELAYS

what would constitute such a "reasonable time" is not defined within this Constitution.

According to Feltes the decisions by the European Court of Human Rights decided that "reasonable time" begins with the charge and ends with the sentence. The "reasonable time" may be judged on variables such as the complexity of the case, inter alia. This vague definition is echoed in many of the previous studies researched by Feltes, with virtually every study giving a lengthy exposition of the problems explaining the term "delay".

Feltes defines delay as follows:

"A procedure is delayed whenever it takes more time than necessarily required by the penal system, considering all procedural, constitutional and other rights of defendant, victim and witness."

This boils down to: "delay occurs whenever the next step can be taken but is not taken for whatever reason".

One quick example in the South African set-up as experienced on several occasions by the author: the trial is about to start, when a remand is called for because the summoned witnesses did not appear, or the police vehicle transporting an awaiting-trial accused from place of incarceration to the court, is unavailable/broken down/otherwise unavailable. According to Feltes' definition, this may be considered a true delay.

Once again quoting Feltes, the various actors at play from beginning to end of a criminal justice system who may cause a delay, may look like this: (abridged)

1.State Prosecutor

As the state prosecutor has the relative "leisure" (ISS)⁵ of deciding which case to take on, or when a case is ready to take to court, the prosecutors play a vital role in accepting and remanding cases.

The judges and court roll are usually booked months in advance, causing many half-heard trials to be remanded to several months further on.

On a lighter note: Taft⁶ reported in 1908 that a system used in the **Philippines** "had a marvellously good effect in keeping the dockets of the court clear". This system denied a judge his regular monthly salary unless he filed a certificate in which he declared that he had disposed of all the business submitted to him within the previous sixty days.

CHAPTER 7: CRIMINAL JUSTICE DELAYS

2. Expert witnesses

Sometimes intricate technical reports and evidence has to be compiled and reported on by an expert witness. For example, in the current (2004) situation in the Cape Western Metropole, toxicological analysis results are notoriously tardy, for reasons which fall outside the premises of this study.

3. Police:

Reasons for police contribution to delay playing a pertinent role in the study were for instance:

- When a case has to be dealt with by special police departments and if those departments have a case over-load at that particular time.

Comment from the author.

In personal communication with Sen Sup Barkhuizen , April 2004, he very aptly and in a very South African manner described the situation of the Serious Violent Crime Unit of the Western Cape (of which he is Acting head at the time of this study) as follows:(paraphrased)

"We (investigating officers) are like baboons in a corn field; we grab each new case deposited on our desk every day and stick it under our arm, to "carry another docket" as it is known in police terms. As we stash a new case under our arm, several previous ones drop out, as there is just no space for any more cases."

Shuttling of cases to and fro between special task forces happens all the time. Referring to the special circumstances at play in the Western Cape concerning various FAD's and their investigation:

PAGAD was at their most active - and these cases were referred to "Crimes against the State Unit" when PAGAD was known to have been involved in a crime.

Another example: Taxi warfare for turf was well established, recognised as a specific type of crime and referred to another unit.

- **Problems in communications systems** and communication between uniformed police, criminal police, and detectives might cause delays. A regular complaint from the special task force units is that so-called "chain-of-evidence statements" from the routine police officers who first attended a crime scene are so tardy that the whole case is being held from appearing before court due to this routine administrative detail being lacking. (Personal communication, Insp. Van den Heever, Serious Violent Crime Unit, Western Cape, 27 May 2004.)

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• **Short and negligently handled inquiries.** For instance, the necessary evidence is available in the docket to initiate court procedure and lay charges to an accused. However, the chain-of-evidence documentation is lacking. The state prosecutor is forced to refer the docket back to the investigating officer, to pre-empt the case being thrown out of court on technical details. These cases are the type which has reached court, but is withdrawn before the accused pleads. Further investigation is necessary before another court appearance is warranted. After a number of such remandments, the case may be completely thrown out of court as "withdrawn" even though available evidence strongly militates for a "guilty" finding.

South African courts are not blind to the current situation

In a judgement pronounced in *S v NDHLOVU AND OTHERS* 2001(1) SACR 85 (W)⁷ it was stated:

"We have no doubt that the image projected by the criminal justice system is one of inadequacy of resources and therefore one of relative powerlessness. The prevalence of this image does more than heighten the alarm and disquiet of the law-abiding; we have no doubt that it encourages and emboldens the criminal, and increases the scourge of crime which threatens everyone and everything worthwhile in our society".

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2. Malawi: "The quality of Justice: Trial observations in Malawi" Available at: <http://www.penalreform.org/english/dp-malawi.htm> Accessed on 2004-06-21

3. Cape Times: "Woman released after spending 21 years in jail awaiting trial" Front page article June 6, 2003. Available at <http://www.capetimes.co.za/index.php?> Accessed on September 4, 2003.

4. Namibian Constitution: Article 11 (Arrest and detention) and Article 12 (Fair trial) Available at <http://www.oefre.unibe.ch/law/icl/wa00000 .html> Accessed on October 30, 2003.

5. ISS: "National Prosecuting Authority" Available at: <http://www.iss.co.za/CriminalJusticeMonitor/Justice.html> Accessed on August 13, 2002.

6. Taft, William H. (1908-1909). The Delays of the Law. Yale Law Journal Vol. XVIII, pp 28-39

7. *S v Ndhlovu and others* 2001 (1) SACR 85 (W)

CHAPTER 8: CORRECTIONAL SERVICES

This research is not focused on the penal aspect of the criminal justice system. However, the very salient and shocking findings revealed by this researcher regarding time lapse from criminal incident until eventual closure in court, brings the fate of arrested suspects strongly into the spotlight.

The problem of awaiting-trial prisoners in South African prisons was extensively discussed in a briefing document by The International Society for the Reform of Criminal Law¹ addressing the 14th International Conference on: HUMAN RIGHTS AND THE ADMINISTRATION OF CRIMINAL JUSTICE - 2000-12-05. (Justice JJ Fagan)

It is shocking to hear their statistics: "Whilst the **sentenced prisoner** population slowly increased (from 92 581 in January 1995 to 108 307 on 30 April 2000, i.e. 17% growth), the number of **awaiting-trial prisoners almost tripled** (from 24 265 in January 1995 to 63 964 on 30 April 2000, i.e. 264% growth.)"

Contentious suggestions regarding management of this problem were tabled at this workshop, suggesting ways of addressing this problem:

1. Reduction of inflow of detainees (using more circumspection and "common sense" as to who **should** be detained and who could be released on bail)
2. Getting them out (expediting trials of awaiting-trial prisoners, or releasing those who do not pose a threat to society), in order to await their trial outside of prison. In view of the fact that accused are "innocent until proven guilty", it is a gross injustice to incarcerate suspects for months on end simply because they do not have the (sometimes paltry amounts like R50) bail money.
3. Earlier release of sentenced prisoners onto parole.

The average period that awaiting-trial prisoners remained in prison increased even more dramatically. At the time of the enquiry, "**almost half of all awaiting-trial prisoners had been held in prison for longer than three months.**"

The closing paragraph of this document certainly makes one think:

"The huge backlog of cases in the courts is causing awaiting-trial prisoners to wait inordinate periods for the trials to be disposed of. A recent suggestion that the cases of such prisoners be withdrawn, certainly merits serious consideration"

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In an article in "Die Burger", Wednesday 2004-06-16, Anesca Smith² quotes the Deputy Minister of Correctional Services, Cheryl Gillwald (as translated into English):

The courts (of South Africa) releases about 16 500 people per month who had been detained unnecessarily. Many other are frequently released after three months once it becomes clear that they are not going to be prosecuted." Ms Gillwald, a previous Deputy Minister of Justice, suggests that the criminal justice system be required to issue a statement that it is ready to proceed with a criminal case before a suspect is charged with the crime.

Children in incarceration

The body of this research does not include information about the perpetrators of the fire-arm death perpetrators, but it stands to reason to assume that some of the perpetrators fall into the category of "children". The Child Justice Bill³, which was introduced into Parliament in 2002, would apply to any person under the age of 18 years who has allegedly committed an offence. It is the vision of this Bill that, in order to keep children out of police cells and prisons, that it should be encouraged that such children be released into the care of their parents and that imprisonment should be a measure of last resort only. The Bill provides a wide range of sentencing options for children as alternatives to serving prison sentences..

It is commendable to adhere to this line of thinking, if one takes into regard the almost inevitable "criminalisation" of any, and especially youthful offenders, who are exposed to the hardened criminal cohort of prison inmates.

Correlation to similar problems elsewhere in the world

Research by the Human Rights Watch organization has produced a series of reports on various human rights infringements in a variety of countries. Specifically, they have reported on prison conditions in a number of countries and one such report. Compiled from findings after visits to eleven Venezuelan prisons⁴. Their description of conditions in Venezuela's social infrastructure and the repercussions it has on correctional services, can be brought into interesting comparison with the Republic of South Africa.

1. Venezuela used to be an extra-ordinarily rich country when measured against some of its South American neighbours. Oil wealth and foreign investment kept it afloat, but in 1989, the President Carlos Andrés Pérez's regime rang in stringent structural adjustment policies. Public subsidies, especially for food, education, transportation and energy, were slashed - poverty increased - unemployment reached new heights, inspiring social unrest.

This situation culminated in a time of social unrest and even a specific time in February 1989 with such rioting and brutal military repression that it warranted its own name: the

CHAPTER 8: CORRECTIONAL SERVICES

"Caracazo".

2. Political instability meant that several attempted *coups de e'tat* occurred during the early 1990's.

"During the late 1980s and early 1990s, declining incomes and deteriorating living conditions led to an explosion in the crime rates."

"Indeed, opinion polls consistently single out crime as Venezuelan's primary concern, even above their concern for declining living standards."

Not surprisingly, Venezuelan conditions produced a number of situations which are also South Africa's experience:

"Robbery, often accompanied by violence, is a frequent event, as is murder."

"A 1995 Gallup poll found that approximately one third of Caracas residents had been victims of crime over the course of the year"

"The situation has gotten so out of hand, and public confidence in the criminal justice system has ebbed to such a degree, that citizens sometimes resort to lynching. Mobs of people, particularly in poorer areas of the city where inhabitants feel most unprotected by police, have attacked and killed suspected criminals with sticks, stones and other rudimentary weapons. Despite the brutal character of these acts of vigilante justice, opinion polls show that they have broad public support." (Refer to Chapter 9)

This crime epidemic lead to public pressure to incarcerate people. "Venezuelans are more concerned with keeping prisoners locked up than with ensuring that they are locked up in humane conditions." One magazine article asserted with indignation: "People believe that it would have been more fitting for the Pope to meet with all the people mistreated by the prisoners, than with the prisoners."

Remember many disgruntled comments airing similar sentiments about South African prisoners being allowed to vote in the general election in April 2004, as, indeed, they were allowed to do in 1999? Law abiding citizens in Venezuela also feel that they have become the disenfranchised, living in fear of criminals who get "preferential" treatment behind bars.

Yet, the conditions within Venezuelan prisons are hardly something to be envious of. "The conditions of Venezuela's prisons violate both Venezuelan law and international human rights standards. One fundamental problem is that the country's prisons are dangerously overcrowded, housing over 24 000 inmates in facilities designed for just over 15 000. "(160% occupancy - slightly better than the conditions at Pollsmoor prison at the time of

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research!)

Compare the above to conditions in South African prisons:

Prisoners' rights are entrenched in the Bill of Rights and were also expanded upon in the Correctional services Act, no 111 of 1998.⁵

Overcrowding of South African prisons are often lamented, so this researcher enquired directly from Mr RC Fortuin⁶ with regards to the status quo at Pollsmoor prison on 2004-03-30. The figures speak for themselves:

Pollsmoor Correctional Facility's capacity for detainees according to internationally accepted standards is supposed to be 4336.

Actual number of detainees: 7708, comprising:

- Awaiting-trial: 3976
- Sentenced: 3732

This means that Pollsmoor is at 178% occupation, which compared with the Venezuelan situation (at 160%) inmate population, brings us to conclude that the situation is even worse than the often jokingly referred to abysmal "South American" prison milieu.

The International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, prohibit torture and cruel, inhuman or degrading treatment or punishment. Both these bodies require that "the reform and social re-adaptation of prisoners" be an "essential aim" of imprisonment.⁴ They also mandate that "all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person".

In prison conditions as described for the Pollsmoor situation (a typical situation in many South African correctional facilities), the ideals of re-adaptation, never mind rehabilitation, are just not feasible.

A heartrending letter to the "Cape Times" in "The Debate" by Liz Cowan⁷, a social worker, has the following to say:

"I am a social worker who spent more than a year working in the juvenile section - Medium A - in Pollsmoor Prison. I learnt a few things about gangs during my time there.

CHAPTER 8: CORRECTIONAL SERVICES

Most inmates told me they joined a gang when they were 12 to 14 years old, in Grade 7 or 8. The gangs gave them a sense of belonging and importance. (Their role models are the gang bosses who drive BMW's and who rule supreme through fear and violence.)

They are not helped in Pollsmoor. There is no real rehabilitation in Medium A."

Despite the gruelling prison situation, public indignation with the way crime seems to go unpunished, has often raised a call to "reinstate the death penalty!".

In South Africa, the death penalty was suspended in 1989 and abolished in 1996. While the people may militate for re-instatement of capital punishment, "their desires are suppressed by the Constitution and a ruling elite averse to its re-instatement".⁸

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2. Smith, A. "Howe moet sê voor verdagtes vervolg word" Die Burger, Wednesday 2004-06-16, p2

3. Child Justice Bill: Tabled in RSA Parliament in August 2002 Department of Justice and Constitutional Development: "Children awaiting trial in Prison" Media release. Available at: <http://www.doi.gov.za/docs/2002-09-17.htm> Accessed on 2003-09-04

4. Mariner, J and Bochenek, M. "Punishment before trial" Report for Human Rights Watch regarding prison conditions in Venezuela. Available at : <http://www.hrw.org/reports/1997/venez/> Accessed on 2004-06-21

5. Correctional Services Act, No 111 of 1998

6. Fortuin RC, Warden at Pollsmoor Prison, Cape Town, Department of Correctional Services Personal communication April 1, 2004.

7. Cowan, L : "Target gangs to save a generation" Cape Times", "The Debate" 2003-06-19

8. Mc Cafferty, R, Communications Director United Christian Action : "Murder in South Africa: a comparison of past and present, first edition" © 2003, 1997-04 by Gun Owners of America Available at <http://www.gunowners.org/fs0304.htm> Accessed on 2004-03-19

CHAPTER 9: COMMUNITY RESPONSES

“ 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”¹

To a victim of crime it makes no difference if the system fails them at the stage of police investigation, or at the prosecution in court or because of the disjointed action between these two.

“It is therefore important to measure the effectiveness of the criminal justice system as a whole rather than artificially isolate its constituent elements.”¹

“Crime victims are less likely to report crime in a country with an oppressive or incompetent police force than in a country where the police are helpful and trustworthy.”²

As understood by the author:

The chain that binds crime is only as strong as its weakest link: be it community information, police investigation, forensic evidence or criminal justice procedures.

Painted against the recent history pre-democratization, South Africa's community grew up in a war-like mode. The legacy of South Africa's turbulent past is still present, seeing that during the 1980's and 1990's, many members of the former security forces and liberation armies were trained in guerilla warfare skills like intelligence gathering, ambush techniques and the handling of fire-arms and explosives. Many of these combatants are now out of work and many of these skills can be used to commit hijackings, house and business robberies, bank and cash-in-transit robberies.³

Negative reactions from the community

Mr Bonyane Tshehla⁴ (*see footnote*)¹ of the University of Cape Town summarised the public perception very well. Quoted in “ Die Burger” , 11 May 2002, he states: “ Die mense het vertroue in die regstelsel verloor. “n Persepsie is gevestig dat die staat nie vir hulle omgee nie en die Grondwet misdadigers se regte meer as hulle s'n beskerm.”

In English: “The people have lost their trust in the criminal justice system. A perception has been created that the government does not care for them and that the Constitution protects the rights of criminals more than theirs (common society).”

Footnote1: Bonyane Tshehla completed his Master at Law degree at UCT in 2001. His master's dissertation, September 2001, was: “Non-state ordering in the post-apartheid South Africa.” Available at: <http://www.uct.ac.za/depts/sjrp/publicat/boyathe.pdf> A more extensive interview with him was published in “Die Burger” on 8 May 2002, heading: “Westerse regspleging vind nie aanklank” by Bernie Louw.

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Fear and insecurity

The Nedcor Project⁵ claimed that the result of the surveys "underscore the fact that crime has become South Africa's pre-eminent sociological problem. It now eclipses even unemployment in concerns of all South Africans." (The Nedcor project, 1996:10)

Members of the public have lost their faith in the criminal justice system. They mistrust the police and are unwilling to become involved, even if they were eye witnesses to crimes and can give vital clues to solve a murder.

Apart from mistrusting the police, they also fear retribution from accused people who, soon after being apprehended or even sentenced, are back on the streets and looking for vengeance. The murder in 2002 in the Western Cape of a couple whilst supposedly in a place of safety under the "witness protection program", underscores the justification of these fears.

Even if the actual suspect or perpetrator is not at liberty, gang members may retaliate against the informants.

In poverty stricken areas where crime may be the lifeblood sustaining the dependants, the conflict of interest may result in people turning a blind eye and even actively aiding and abetting perpetrators.

Alcohol and drug abuse is rife in the crime stricken areas, so that witnesses are often memory impaired. The time lapse from incident until eventual court hearing also does not favour crystal clear recall of events.

Repeated remands necessitating witnesses to take time off work and arrange transport to and from court more than once, results in cases being thrown out of court because witnesses do not turn up.

A general apathy seems to exist amongst people battling from day to day to survive in a hand-to-mouth existence. Crime and murder has become such a part of everyday life that another fire-arm death is an almost commonplace occurrence which does not warrant particular action or co-operation even from those most closely involved.

Brain drain

Lack of personal safety and fear of violent crime are oft quoted reasons for deciding to emigrate. Fire-arms are frequently used in motor hijackings, robberies and interpersonal conflicts. The more privileged, highly skilled and professional cadre who could afford to do so, started a massive efflux, emigrating to other countries where they could live in safety. This phenomenon became known as the "brain drain", causing South Africa immeasurable losses in skill, experience and capital investment.

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The more financially privileged who stayed behind, started imprisoning themselves with high security walls, floodlights, fancy alarm systems and pricey private security watches. Although one could see this as a good job creation opportunity for private security firms, it is hardly a positive sign of ambient security.

Vigilante action

"Vigilantism is a sign of public frustration. It indicates that to the vast majority the police and courts have failed to deliver security and justice and cannot be relied upon when criminals strike" ⁶ and

"Rooting out vigilante movements once they are established is never easy."

Lynchings

The less privileged community especially, started taking the law into its own hands. A "traditional" practice found especially in the black (in Cape Town, mostly Xhosa-speaking) communities, members of the public would summarily arrest suspects who committed a crime in their suburb.

This amateur counter-crime action has become formalised in groups such as Umfelandawonye in the Eastern Cape, Mapogo-a-Mathamaga in the Northern Province and Pagad, PEACA and taxi associations in the Western Cape.⁷

Without consideration for the seriousness of the crime, whether petty, such as theft, or of a more serious nature, such as rape, the suspect would be punished by the community. The punishment usually takes the form of sjambok whipping, stoning, sometimes even burning the person alive. Those who try to run away have their achilles tendons cut.

The most haunting aspects of these all too frequent mob lynchings are:

- They often occur in broad daylight, in full view of impressionable children, who learn that this is the norm.
- The community clams up and eye witnesses simply plead ignorance, either because they support the sentiments of the assaulters, or out of fear for retribution.
- It is such a complete vote of no confidence in the criminal justice system that it bears testimony to the disenchantment of these communities in the outcome of their hard earned

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democratic citizens' rights.

PAGAD

Supposedly initiated as a "people against drugs and gangsterism" initiative, this vigilante group features very prominently in the research, since their territory is par excellence in the Western Cape and especially in "Gangsterland" of the Cape flats. They grew to such a virulent extreme, that the police established a special task force to deal with them. Their favourite method of execution is by the use of fire-arms and they are undaunted by the police. In fact, within the research data are the details of the fire-arm death of one of the most successful PAGAD police investigators, a victim of a Pagad assassination which enjoyed widespread media attention. It is also a PAGAD assassin who was captured in 1999 and who stars as a one-man crime wave in this research data, with eleven fire-arm deaths attributed to him in 1999 only.

Economic repercussions

Tourism generates a lot of income in Cape Town. Internationally, the crime problems in this region have been noted and although specific figures are difficult to gauge, this surely has a negative impact on potential visitors.

The number of cash-in-transit and other robberies, usually committed with the use of fire-arms, sent security guard and insurance costs into the stratosphere. Now the ordinary citizen actually has to pay when depositing cash into a bank!

The international financial impact speaks for itself: investor confidence is shaky, to say the least.

Pro-active reactions from the community:

Business Against Crime[®] has had a phenomenal success story in recent years. This project is funded by the metropolitan councils and law enforcement agencies in respect of capital infrastructure and operational costs and the Business Trust Funds Development of Standards for ISO certification. The hub of this crime-fighting initiative is situated in the central business district (CBD) of Cape Town, where a state-of-the-art video camera network makes constant, 24/7, video monitoring of the streets of this region possible.

Specially trained teams of surveillance personnel do intense constant scrutinizing of all the goings-on. In this way, real-time video footage of crimes, from automatic teller

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Specially trained teams of surveillance personnel do intense constant scrutinizing of all the goings-on. In this way, real-time video footage of crimes, from automatic teller machine con artists at work to murder, is captured and responded to immediately. During a personal visit paid to the center by the author in 2000, it became amply clear how the phenomenal 80% decrease in crime in the areas under surveillance could be achieved. The police response times when alerted by these hawks, have been reduced to less than a minute! Not only can the suspect be apprehended on the spot, but damning video evidence with time recordings makes for pretty good proof in a court of law!

A city center which had become a dead zone due to crime, flourished once more and this success has been used as motivation to extend this service to areas of Cape Town further afield.

This unheard of success lead to a second pilot project started in Johannesburg, where at the time of writing, a 50% decrease in crime had already been achieved.

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2. Mc Cafferty, R, Communications Director United Christian Action : "Murder in South Africa: a comparison of past and present, first edition" © 2003, 1987-04 by Gun Owners of America Available at <http://www.gunowners.org/fs0304.htm> Accessed on 2004-03-19

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4. Tshehla, Bonyane UCT. Quoted in "Die Bylae tot die Burger" Saturday, 2002-05-11. Heading: "Laat mens dink"

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CHAPTER 10: POLICE PERSONNEL COMPARED TO POPULATION AND FAD PREVALENCE IN 1999

Lack of police personnel is one of the most frequently encountered complaints when one enquires about problems regarding crime investigation.

This researcher acquired the statistics regarding the number of investigating officers employed at the 35 different police precincts studied in this research. From the same source ¹, the population numbers of those precincts were obtained. The more frequently encountered use of municipal and census statistics was attempted, but the researcher soon realized that

(1) the population estimation quoted by inter alia MRC sources ², was not satisfactory for this research, as specific police precinct areas do not coincide with the municipal demarcation areas.

(2) The research specifically dealt with FAD's from particular police precincts serving the Cape Western Metropole area. The borders of police precincts does not co-incide with the municipal demarcations as found on the municipal demarcation website³.

In order to be able to compare police presence and population density, the figures used are those supplied by Director WB Viljoen, SAPS Management Services, office of the Provincial Commissioner, Western Cape (personal communication, 2004-04-22) This communication is attached as Annexure D in order to explain the way in which these figures were calculated.

From the start, it has to be said that the number of investigating officers per se is not a clear reflection of the number of these officers who were actually carrying (investigating) fire-arm death docketts. All other crimes, from petty theft to fraud would also be part of their portfolio. Nevertheless, one can form an idea of the manpower and the precinct distribution of these officers.

To achieve an overview of the police presence as compared to the population density, the full data pool has to be viewed. Then one can have a comparative look at the results of FAD victimology (Part 1), and the investigative outcome (Part 2) as seen against population/police presence.

**CHAPTER 10: POLICE PERSONNEL COMPARED TO POPULATION AND FAD
PREVALENCE IN 1999**

Best displayed in tabulated form, the results were as follows:

Figure 1

POLICE STATION	POPULATION	IO'S	IO PER 100 000
1. Athlone	66 883	19	30
2. Atlantis	67 658	28	40
3. Bishop Lavis	99 081	24	20
4. Camps Bay	5 329	4	80
5. Claremont	32 763	19	60
6. C/T Harbour	639	7	1000
7. Cape Town	38 548	54	100
8. Diep River	32 269	12	40
9. Fish Hoek	19 991	8	40
10. Grassy Park	95 992	21	20
11. Guguletu	118 375	29	20
12. Hout Bay	20 364	8	40
13. Kensington	27 385	8	30
14. Kirstenhof	27 403	11	40
15. Khayelitsha	349 227	47	10
16. Langa	48 793	15	30
17. Lansdowne	49 839	17	30
18. Maitland	14 003	12	90
19. Manenberg	81 656	23	30
20. Melkbos	6 827	4	60
21. Milnerton	36 536	15	40
22. Mitchell's Plain	278 360	74	30

**CHAPTER 10: POLICE PERSONNEL COMPARED TO POPULATION AND FAD
PREVALENCE IN 1999**

20. Melkbos	6 827	4	60
23. Mowbray	12 241	12	100
24. Muizenberg	28 486	11	40
25. Nyanga	120 703	31	30
26. Ocean View	21 497	6	30
27. Phillippi	47 755	15	30
28. Pinelands	18 836	9	40
29. Rondebosch	19 244	12	60
30. Sea Point	24 441	20	80
31. Steenberg	68 068	17	30
32. Strandfontein	21 200	4	20
33. Table View	32 195	10	30
34. Woodstock	29 519	22	80
35. Wynberg	28 802	10	40

It is abundantly clear that there is a wide diversity of police personnel per population. The seemingly inappropriately high police presence in, for instance Cape Town Harbour, has to be interpreted against the fact that this police station services one of the busiest harbours in our country, rather than the low number of residents. Similarly, Cape Town police station services the area in which both the Parliament and the Cape High and Regional Courts are located.

On the other hand, Khayelitsha, Guguletu, Grassy Park, Strandfontein and Bishop Lavis were obviously not catered for sufficiently.

CHAPTER 10: POLICE PERSONNEL COMPARED TO POPULATION AND FAD PREVALENCE IN 1999

Taking the previous table (figure 1) into consideration, it was decided to have a look at what these numbers would mean in terms of workload on investigating officers purely where FAD's are concerned. Obviously, not all investigating officers would be sharing in this burden equally even at one police precinct, so it is logical to deduce that the average murder investigating officer would in fact have accumulated more FAD dockets in 1999 than reflected here.

Also note that there is an apparent discrepancy regarding Khayelitsha: whereas this precinct had the lowest police presence of the lot, now suddenly the FAD/IO is unexpectedly low. The reason for this skewing is as follows: Since 1998, unnatural deaths from Khayelitsha are autopsied at Tygerberg Médico-legal Laboratory. Since the vast majority of shot wound victims die at the scene of death, most of Khayelitsha's FAD's for 1999 would have gone to Tygerberg and would not form part of the research data for SRMLL.

A significant number of fire-arm victims would, however be transported to a hospital before demising. Such victims who die, for instance in Groote Schuur Hospital, would be autopsied at SRMLL and be included in the research data. The same would apply for Bishop Lavis's FAD cases.

For a true reflection of the FAD case loads per IO in these precincts, Tygerberg's statistics will have to be taken into account.

Figure 2

Precinct	FAD's 1999	FAD's/100 000 POP	FAD's/ IO
1.Athlone	25	37	1,3
2.Atlantis	15	22	0,5
3. Bishop Lavis	6	6	0,25
4.Camps Bay	1	19	0,25
5. Claremont	2	6	0,11
6. C/T Harbour	1	156	0,14
7. Cape Town	13	34	0,24
8. Diep River	2	6	0,17
9. Fish Hoek	6	30	0,75

**CHAPTER 10: POLICE PERSONNEL COMPARED TO POPULATION AND FAD
PREVALENCE IN 1999**

10. Grassy Park	22	23	1,05
11. Guguletu	84	71	3
12. Hout Bay	3	15	0,38
13. Kensington	9	33	1,13
14. Kirstenhof	2	7	0,18
15. Khayelitsha	19	5	0,4
16. Langa	22	45	1,5
17. Lansdowne	5	10	0,3
18. Maitland	7	50	0,58
19. Manenberg	28	34	1,22
20. Melkbos	4	59	1
21. Milnerton	13	36	0,87
22. Mitchells Plain	98	35	1,32
23. Mowbray	12	24	0,25
24. Muizenberg	6	21	0,55
25. Nyanga	67	56	2,16
26. Ocean View	3	14	2,16
27. Phillippi	19	40	1,27
28. Pinelands	7	37	0,88
29. Rondebosch	2	10	0,17
30. Sea Point	7	29	0,36
31. Steenberg	8	12	0,47
32. Strandfontein	2	9	0,5
33. Table View	4	12	0,4
34. Woodstock	7	24	0,32
35. Wynberg	5	17	0,5

CHAPTER 10: POLICE PERSONNEL COMPARED TO POPULATION AND FAD PREVALENCE IN 1999.

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2. Prinsloo, M, Matzopoulos, R., Sukhai, A. (2003): "The Magnitude of Firearm Homicide in Cape Town, 2001. African safety Promotion: A Journal of Injury and Violence Prevention; 1(2), 19-25
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University of Cape Town

CHAPTER 11: POLICE ASPECTS

The perception which a community has of its police service, is difficult to measure with accuracy, as pointed out in a final report to the International Association of Chiefs of Police, titled "The Public Image of the Police"¹

The report, compiled qualitative research done in American, points out that, where public dissatisfaction and negativity about the police image exist, there may be at least three sources creating this negative image:

1. True , objective shortcomings in police performance as measured by crime control in both detection and prevention.
2. Subjectively created negative opinions by skewed media representation and sensationalism.
3. Where the public's rising expectations of the abilities of the police service outstrips the actual increase in police performance. "Rising expectations are hard to meet, especially if they rise fastest among precisely those people who are worst off."

This last source of dissatisfaction finds especial resonance in South Africa's situation post-apartheid, where the previously disadvantaged are still statistically proven to be the worst affected by crime and its consequences.

Negative effects:

The South African Police Service has been hard hit by two factors since democracy in 1994:

- (1) Affirmative action meant that many of the top cadre of police personnel bowed out by accepting a severance package. Those who remained, have dismal hopes of career advancement and no real motivation to apply themselves. New members from the previously disadvantaged sectors of society were appointed in positions for which they have sub-optimal training, experience and skills.
- (2) The increase in serious violent crime meant that more investigations had to be dealt with, with less experienced police personnel and an increasingly stringent budget. The dearth of basic facilities (e.g. vehicles) was mentioned earlier as a negative factor experienced by the Western Cape serious Violent Crime unit.

The less tangible but very significant negative psychological effects on the police *esprit d'corps* are discussed in an article by Elsabè Britz in "Insig" magazine, October 2002². Quoting professor Jan Robbertze, a Stellenbosch psychiatrist, it is disturbing to hear that up to 25% of the SAPS personnel displays symptoms of post traumatic stress syndrome. Numerous members are booked off daily due to stress. The suicide rate is high, very often

CHAPTER 11: POLICE ASPECTS

committed with their service fire-arms. He mentions that especially those in the "inspector" rank, with little or no hope of promotion, often suffers from depression.

Long working hours, stressful working conditions, with the danger of being killed on the job, low pay and very little opportunity for psychological support affect police personnel daily.

Figures released by Safety and Security Minister Charles Ngakula reveal the shocking statistics of police being murdered: "One cop shot every 48 hours" in South Africa.³

Many policemen have started "moonlighting" with private security firms to augment their income.

It is shocking to hear that police corruption is also quite rife: " 1996 figures show one in four police officers in the greater Johannesburg were under criminal investigation"⁴

Reactions from the police side:

The current troubled police situation is not unknown to the Government. Indeed, it was anticipated to a certain degree and in 1994, a Green Paper on safety and security emphasised three key areas to be addressed:

1. Democratic conditions were of prime importance. Significantly, the "South African Police Force" became the "South African Police Service".
2. Accountability of the police.
3. Community participation in issues of safety and security.

The Police Service Act of 1995 concretised these objectives, by inter alia, establishing a **Secretariat for Safety and Security.**⁵

In 1996, the government adopted the National Crime Prevention Strategy (NCPS). The intention of this Strategy is to enable government departments to become more involved in crime prevention.

In 1998, Minister FS Mufamadi tabled the White Paper on Safety and Security. This document clearly identified the challenges facing the police, as well as key areas which needed to be addressed.

Quoting directly from the document:

- The detective component of the SAPS are understaffed

CHAPTER 11: POLICE ASPECTS

- Detective training currently lacks practical application and there is little structured mentoring for detectives once appointed.
- Detective management must be enhanced and performance indicators for detectives need to be set and monitored.
- Crime intelligence is very important, one of the areas to be addressed being the accessibility (with due regard to issues of security) to relevant users in the police service

This struck a very relevant chord in findings during this researcher's hunt for information.

A specific American effort to address the same problem, may be taken note of in this regard.

In an effort to improve police performance in Washington State, Keppel et al⁶ produced a report on "HITS", or Homicide Information and Tracking System, a model homicide investigation resource and tool supported by 274 law enforcement agencies in Washington State. This system provides 17 guidelines for the developing and implementing a HIT system in other jurisdictions.

- Special investigation units are required for investigation of a range of complex crimes (such as Serious Violent Crime, etc)
- Sharing of the burden: Some investigations, such as road traffic offences, could be sufficiently shouldered by local governments, so that municipal police are involved in these law infringements, instead of SAPS detectives.

This document also acknowledges the challenges faced by the SAPS, with increased sophistication and organisation of criminals and the influx of international criminality. Police members have a much greater chance of being victimised by violence than people from other career groups. The paper suggests that " the Department must therefore ensure that adequate support systems function effectively to assist police officers in this regard"

According to van der Spuy⁷, within the current era, crime policies are increasingly being shaped by the rough and tumble of a highly politicised public debate and not by sound criminal justice or criminological expertise. Government responses are increasingly driven by popular demands and the police is the object of considerable restructuring.

In this vein, the police has identified seven national priority crimes: those involving fire-arms, organised crime, white-collar crime, gender violence, violence associated with inter-group conflict, vehicle theft and corruption within the criminal justice system. The important and growing role of community policing is also highlighted.

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Implementation of policies to address these high priority crimes often falter due to certain common denominators in the fields of managerial limitations, bureaucratic intransigency, weak information management systems and bad budgeting. (Van der Spuy, quoting findings of the Presidential Review Commission of 1998)

For instance, "Operation Crackdown", started in March 2000 and entailed the deliberate, high intensity focusing of police attention on 140 "hot spots" of organised crimes. By September 2000, this operation had depleted all projected police personnel overtime costs set aside for the rest of the financial year (ending in February 2001).

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CHAPTER 12: CONCLUSIONS AND RECOMMENDATIONS

CONCLUSION 1

International and national comparison of homicide figures as weighed against the results of this research, confirms that fire-arm deaths had reached epidemic proportions in the Cape Western Metropole in 1999.

Recommendations:

This author strongly supports the "State of emergency call" which was raised in March 2003 (see footnote) by Community Safety MEC Leonard Ramatlakane when he made an urgent call on the national government for military help to clamp down on gangster violence in the Cape. Some "extraordinary interventions" which may be employed in a state of emergency, bestow upon police extraordinary authority to search and detain suspects, or to conduct targeted law enforcement operations.¹

The specific preference of fire-arms as murder weapons, would appear to support the sentiments of the Gun Free South Africa movement, as also committed to by Prof GJ Knobel in a letter written by him in 2000¹.

It is, however, overly idealistic to envisage fire-arms as disappearing completely, since the number of fire-arms lost and stolen in South Africa in the period 1994-1999 (as quoted from the SAPS Central Firearm Registry) was a stunning 112 692. Even this figure is believed to be a substantial under-representation of actual "lost" or "stolen" fire-arms doing the rounds with unlicensed "new owners".²

CONCLUSION 2

Follow-up data on each of the FAD cases in the study proves that, after 5 years, the majority of case investigations was still in limbo. It seems a foregone conclusion that police investigation and judicial procedures are unable to deliver any acceptable standard of criminal justice.

Recommendations:

1. POLICE

The police contingent as measured against the population of in the Cape Western Metropole was seriously understaffed in 1999, especially when seen in the light of the scourge of FAD's. Most seriously understaffed were the "hot spot" police precincts like

Footnote: According to the Bill of Rights of the South African Constitution, this researcher juxtaposes section 11 (Right to Life) and Section 37 (States of Emergency) against the epidemic proportions of fire-arm deaths in the Cape Western Metropole. Referring to the conditions of "general insurrection" and "disorder" which may warrant a state of emergency and that "Life" is viewed as a non-derogable right in Section 37, there seems to be definite merits in this conclusion.

CHAPTER 12: CONCLUSIONS AND RECOMMENDATIONS

Guguletu.

Authorities should pay attention to the discrepancy in police deployment versus crime prevalence in the community they serve, as well as the population density.

Investigating officers are in need of support in the form of supervision, mentoring and training.

Adequate **logistical supply** in the form of computer equipment for data capture and vehicles is essential.

This author can wholeheartedly support the findings as stipulated by **Barkhuizen⁴**. The lack of personnel, the overload of cases, the abysmal lack of logistical support systems and the slapdash way in which many investigating officers handle crime investigations cannot be better described. Authorities are advised to take note of this document.

Evidenced by the lack of follow-through on CAS numbers (b/f cases rarely feature in the CIAC data base, although most cases are still "being investigated") is the scarcity of control and supervision of cases.

Supervision and mentoring of junior investigators by more senior police officials are mandatory in, especially, homicide cases.

Training of investigators show severe deficiencies. Although the author believes that many schooled and experienced investigators are employed by the SAPS, many of them are now employed in management positions. Another huge chunk has been grabbed by the private security sector. A suggestion would be that serious and hands-on training of police "rookies" be contracted out to these individuals on a sessional base, freeing the more experienced police personnel to attend to homicide investigations instead of having to train newly appointed, insufficiently trained new police recruits.

2. FOLLOW-UP RESEARCH

Follow-up research is necessary to evaluate FAD incidence as well as case outcomes in years subsequent to 1999. Only then can the true picture of the current state of affairs be seen.

3. DATA HOUSEKEEPING

Linkage and follow-through of cases from incident (mortuary data) to CAS number

CHAPTER 12: CONCLUSIONS AND RECOMMENDATIONS

(police investigation) to eventual criminal justice outcome should become part of the data collection routine. The reasoning is that, if one player (e.g. the police) is unaware of a ball (case) being passed on to him (e.g., the case is never reported to/recorded by the police), that ball will be dropped and it will drop out of the criminal justice system.

The MRC's NIMSS data collection forms (Annexure E) contain sections where details of the victim of an unnatural death, perpetrator-victim relationship, as well as information regarding the court record can be recorded. It is this author's opinion that such active surveillance should be supported vigorously. A suggestion would be that the CAS number of police cases also be entered on this form to expedite linkage from victim right through to court case record. At the time of writing, these forms are completed daily by the pathologists of Salt River Medico-legal Laboratory, ensuring that the details are recorded as accurately as possible.

Conflicting official data statistics, encountered both in literature review and in tracking of data, bedevilled this study for a long time. It is thought mandatory that electronic data capture be brought up to speed at the levels of police investigation, mortuary data recording and at CIAC level.

Apart from the conflicts in the collected data, negotiating access to data from CIAC proved to be exceptionally onerous. Although always treated with courtesy, the author experienced many delays in responses to official enquiries regarding official data, even after Provincial Commissioner level approval had been granted for the study in 2002.

CONCLUSION 3

So glaringly portrayed in "The success story of 1999", is that the value of ballistics examination is seriously underrated and under-explored in the investigation of FAD investigation.

Recommendation:

The newly implemented "Firearm Control Act", instated on 2004-08-01, could be amended to have mandatory test fire cartridges and bullets of all registered fire-arms to be kept on record, in order to compile a national data bank of fire-arm "fingerprints", as for humans. This would not address the problem of unregistered fire-arms which are used in crimes, but it could:

1. Expedite tracing and comparing fire-arms from which retrieved bullets in FAD's were fired.
2. Deter the nonchalance with which fire-arms are used in crimes, the perpetrator

CHAPTER 12: CONCLUSIONS AND RECOMMENDATIONS

being under the impression that these instruments of death cannot be traced.

Forthcoming from the research are the following factors which contributed to the dismaying statistics:

JUDICIAL SYSTEM DELAYS

Although discussed in Chapter 7, the cause for delays within the justice system has not been investigated by this researcher and it is considered prudent to rather explore that avenue after further research into this aspect was done.

COMMUNITY

Apathy, fear for their own safety and mistrust in the police are keeping many members of the community caught in a vicious cycle of increasing homicide incidence, less information supplied to investigators and decreasing numbers of solved crimes. The fewer crimes are solved, the worse people fear crime and the less they trust that the police can help them.

The children growing up in gang-plagued communities are being imprinted with confusing messages: The feared and detested violent gangsters and drug dealers are also idolised since they have money and power. This poses a threat to community efforts to counteract gangsterism, since the next generation of gun toting youngsters are already being produced.

CORRECTIONAL SERVICE

Even when "justice is seen to be done" and a perpetrator faces incarceration, this solution is unsatisfactory. Overflowing prisons can barely contain inmates and the chances of rehabilitation are slim. Recidivism is a real problem once an inmate is released.

The oft-heard wish for reinstatement of capital punishment as a better deterrent to murderers is unlikely to be granted. Even experts still hotly debate and disagree about this issue, as described by Radelet.⁵

The more draconian mandatory sentence regulations stipulated in the Justice Bill in 1998, where certain types of crime inevitably carry a life sentence, has caused some South African judges to become more hesitant in finding an accused guilty, depending on the circumstances of the crime.⁶

Future research in this regard was already initiated at the time of writing. The initial *reconnoitre* has been done to interview an inmate who has been sentenced to 99 years'

CHAPTER 12: CONCLUSIONS AND RECOMMENDATIONS

imprisonment for FAD's committed in 1999.

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ANNEXURE A

DATA COLLECTION FORM : VICTIMS OF FIRE-ARM DEATHS

University of Cape Town

FIREARM FATALITIES : SALT RIVER MORGUE

CORP NUMBER	MAS NUMBER	POLICE STATION	INVESTIGATING OFFICER
-------------	------------	----------------	-----------------------

PATHOLOGIST: _____

DATE OF DEATH:	TIME OF DEATH:
----------------	----------------

DECEASED:

RACE				SEX		AGE				OCCUPATION	
<input checked="" type="checkbox"/> BL	<input type="checkbox"/> BR	<input type="checkbox"/> OTHER		M	F	<18	18-25	25-40	40+	NOT EMPLOYED	SELF POLICE

**NO OF SHOTS
DISTRIBUTION
DIRECTION**

HEAD	NECK	CHEST	ABDOMEN
BACK	LIMBS		
FROM FRONT		FROM BACK	
FROM LEFT		FROM RIGHT	
		COMBINATION	

DISTANCE:

DISTANT	CLOSE	CONTACT
UNDETERMINED	COMBINATION	

BULLET FOUND

ANNEXURE B

**DATA COLLECTION FORM REGARDING PERPETRATOR, CIRCUMSTANCES,
FIRE-ARM AND COURT PROCEDURE**

University of Cape Town

FIREARM FATALITIES : SALT RIVER MORGUE

DR NUMBER	MAS NUMBER	POLICE STATION	INVESTIGATING OFFICER
-----------	------------	----------------	-----------------------

ACCUSED

RACE				SEX		AGE				OCCUPATION	
W	BL	BR	OTHER	M	F	<18	18-25	25-40	40+	NOT EMPLOYED	SELF POLICE

FIREARM (S)

Known: Y / N	Calibre	Registered / Not	Homemade ?
--------------	---------	------------------	------------

TYPE OF CASE

Murder	Suicide	Accident	Self-defence
Occupational (Police /	Security)		

LOCALITY

Private home	Public place	Open area	Unknown
--------------	--------------	-----------	---------

DATE

TIME

COURT CASE

Pending	Outcome
---------	---------

ANNEXURE C

**POLICE CORRESPONDENCE REGARDING MURDERS ON POLICE OFFICIALS IN
1999**

University of Cape Town

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak / Private Bag 25004, CAPE TOWN, 8000
Posbus / Post Office Box

Verw / Ref	26/2/05
Kawres / Enq	S/Supt. Gunter Insp.(j) E van Tonder
Telno / Tel nr	(021) 467-6123
Faks / Fax	(021) 467-6138

OFFICE OF THE PROVINCIAL COMMANDER
CIAC
SOUTH AFRICAN POLICE SERVICE
WESTERN CAPE

CAPE TOWN

2004-05-17

Provincial Commissioner
Auxiliary Services
Western Cape

Attention: Insp.(v) Jansen

MURDERS ON POLICE OFFICIALS 1999



1. This office refers to your fax dated 2004-05-06 with the same heading reference number 25/7/21(01/03/04/2002).
2. Attached please find statistics for murders on police officials in 1999 as requested see attached table.
3. This office do not keep the statistics on suicides in the police service. This request should be revered to Human Resources.
4. Should there be any other queries please feel free to contact this office.

CIAC Greetings.

.....: S/SUPT.
PROVINCIAL COMMANDER CIAC
WESTERN CAPE
P. J. GUNTER

MURDER CASES ON POLICE OFFICIALS
PERIOD JANUARY TO DECEMBER 1999
PROVINCE OF WESTERN CAPE

Month	Station	Case number	
January	Mitchells Plain	908/01/1999	✓ DR 120/99
	Nyanga	Unknown	??
February	None	***	
March	Langa	Unknown	??
	Kensington	148/03/1999	→ Not in FAD's
	Oudtshoorn	351/03/1999	→ Not in area
	Nyanga	03/03/1999	→ Not in FAD's
April	Mitchells Plain	Unknown	??
May	None	***	
June	None	***	
July	None	***	
August	None	***	
September	Kuilsrivier	283/09/1999	Not in area
	Khayelitsha	526/9/1999	→ Not in FAD's
October	Mitchells Plain	1048/10/1999	✓ DR 2410/99
	Kraaifontein	603/10/1999	Not in area
	Khayelitsha	518/10/1999	→ Not in FAD's
	Bishop Lavis	676/10/1999	→ Not in FAD's
	Bellville-South	146/10/1999	Not in area
November	Khayelitsha	753/11/1999	Not in FAD's
December	None	***	

Statistics are subject to audit and current and future figures may differ.

Compiled by GIAC

ANNEXURE D

**POLICE CORRESPONDENCE REGARDING POPULATION ESTIMATES AND
INVESTIGATING OFFICERS IN THE VARIOUS POLICE PRECINCTS**

University of Cape Town

SUID-AFRIKAANSE POLISDIEN



SOUTH AFRICAN POLICE SERVICE

AMAPOLISA OMZANTSI AFRICA

Privaatsak / Private Bag 9004
 Posbus / Post Office Box

Verw/Ref :	3/27/1
Navrae/Eng :	Director Viljoen
Tel no :	(021) 417 7106 082 608 4950
aks/Fax :	(021) 417 7194
E-MAIL :	viljoenw@saps.org.za

OFFICE OF THE PROVINCIAL COMMISSIONER
 MANAGEMENT SERVICES
 WESTERN CAPE PROVINCE
 CAPE TOWN
 8000
 2004-04-22

Dr Linda Liebenberg
 Dept of Forensic Medicine and Toxicology
 University of Cape Town

POPULATION STATISTICS : POLICE STATIONS : WESTERN CAPE

- 1 As telephonically explained to you, the following procedure was followed in the compilation of the statistics :
 - 1.1 Stats SA was consulted and provided the population statistics based on 2001 Census per Enumeration Area (EA), Main Place Name (MP), Sub Place Name (SP) and Magisterial District (MD), as well as the official mid-year 2003 estimated population figure for the Western Cape.

Mid-year 2003 estimate : 4 736 399
 - 1.2 In consultation with the four Areas, the statistics were divided into the four Areas. The Area then in consultation with the stations, subdivided the statistics into police station precincts.
 - 2 Attached herewith find the population statistics per police station precinct.
 - 3 Number of Investigating officers will follow as soon as possible.

Kind Regards

DIRECTOR

PROVINCIAL HEAD : MANAGEMENT SERVICES : WESTERN CAPE
 W/ E VILJOEN

1	ATHLONE	66 883
2	ATLANTIS	67 658
3	BISHOP LAVIS	99 081
4	CAMPS BAY	5 329
5	CLAREMONT	32 763
6	CT HARBOUR	639
7	CAPE TOWN	38 548
8	DIEP RIVER	32 259
9	FISH HOEK	19 991
10	GRASSY PARK	95 992
11	GUGULETHU	118 375
12	HOUT BAY	20 364
13	KENSINGTON	27 385
14	KIRSTENHOF	27 403
	KHAYELITSHA	349 227
16	LANGA	48 793
17	LANSDOWNE	49 839
18	MAITLAND	14 001
19	MANENBERG	81 656
20	MELKBOS	6 827
21	MILNERTON	36 536
22	MPLAIN	278 360
23	MOWBRAY	12 241
24	MUIZENBERG	26 486
25	NYANGA	120 703
26	OCEAN VIEW	21 497
27	PHILLIPI	47 755
28	PINELANDS	18 836
29	RONDEBOSCH	19 244
30	SEA POINT	24 441
31	STEENBERG	56 088
32	STRANDFONTEIN	21 100
	TABLE VIEW	32 195
34	WOODSTOCK	29 519
35	WYNBERG	26 802

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

AMAPOLISA OMZANTSI AFRICA

Privaatsak / Private Bag 9004
 Posbus / Post Office Box

Verw/Ref	:	3/27/1
Navrae/Eng	:	Director Viljoen
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E-MAIL :		viljoen1w@saps.org.za

OFFICE OF THE PROVINCIAL COMMISSIONER
MANAGEMENT SERVICES
 WESTERN CAPE PROVINCE
 CAPE TOWN
 8000
 2004-05-20

Dr Linda Liebenberg
 Dept of Forensic Medicine and Toxicology
 University of Cape Town

NUMBER OF INVESTIGATING OFFICERS : POLICE STATIONS : WESTERN CAPE

1. Attached please find the number of investigating officers per police station per month as on 1 9 09-01-12.

Kind Regards


 DIRECTOR
 PROVINCIAL HEAD : MANAGEMENT SERVICES
 VILJOEN W B

1.	ATHLONE	19
2.	ATLANTIS	23
3.	BISHOP LAVIS	24
4.	CAMPS BAY	4
5.	CLAREMONT	19
6.	CT HARBOUR	7
7.	CAPE TOWN	54
8.	DIEP RIVER	12
9.	FISH HOEK	8
10.	GRASSY PARK	21
11.	GUGULETHU	29
12.	HOUT BAY	8
13.	KENSINGTON	8
14.	KIRSTENHOF	11
15.	KHAYELITSHA	47
16.	LANGA	15
17.	LANSDOWNE	17
18.	MAITLAND	12
19.	MANENBERG	23
20.	MELKBOS	4
21.	MILNERTON	15
22.	MITCHELLS PLAIN	74
23.	MOWBRAY	12
24.	MUIZENBERG	11
25.	NYANGA	31
26.	OCEAN VIEW	6
27.	PHILIPPI	16
28.	FINELANDS	8
29.	RONDEBOSCH	12
30.	SEA POINT	20
31.	STEENBERG	17
32.	STRANDFONTEIN	(4)*
33.	TABLE VIEW	10
34.	WOODSTOCK	22
35.	WYNBERG	15

University of Cape Town

* Was at that stage still part of Mitchells Plain but had four (4) detectives (investigating officers) designated to service the area

ANNEXURE E

NIMSS PRO FORMA DATA COLLECTION FORM

University of Cape Town

NIMSS DATA COLLECTION FORM

Mortuary _____ Police No. _____ Officer collecting body (Surname) _____

PM no. _____ PM Date _____ Pathologist (Surname) _____

Date & Time of Injury _____ Race

A	B	C	W	U
---	---	---	---	---

 Sex

M	F	U
---	---	---

 Months _____

Date & Time of Death _____ Age _____ Years _____

Medical treatment of injury prior to death (check only ONE)

1	None	2	Emergency care at scene	3	Hospital care
---	------	---	-------------------------	---	---------------

Province of injury (may differ to province of death) **Scene of injury (may differ to scene of death)**

1 Gauteng	7 Mpumalanga	1 Private house & yard (inc. pool)	9 Medical service area
2 W. Cape	8 Northern Province	2 Residential institute	10 Industrial & construction area, mine
3 K.Z. Natal	9 North West	10 Informal settlement/squatter camp	11 Farm, primary production area
4 E. Cape	10 Unknown	11 Run-over/overrun, U-turn, disco	12 Sea, lake, river, dam
5 N. Cape	11 Other (specify):	4 Amusement park, sports area	13 Open land, beach
6 Free State		5 Road/sidepath/grwy	14 Countryside
		6 Railway track, station	15 In custody, prison
		7 Shop, bank, retail area	16 Place unknown
		8 School, educational area	17 Other (specify):

Town of injury _____

Suburb or district _____

Closest police station to injury scene _____

External Cause or Circumstance of Injury

1 Firearm Discharge	9 Fall/clipping/jump from height	17 Motor vehicle Driver	24 Abandoned baby
2 Sharp Object	10 Other fall/clipping/jump	18 Motor vehicle Unspecified	25 Electrocution
3 Burn Object	11 Crushing	19 Railway casualty	26 Explosive blast
4 Strangulation, suffocation, asphyxia	12 Choking, aspiration	20 Bicycle, motor cycle	27 Natural cause
5 Hanging	13 Drowning, immersion	21 Aviation casualty	28 Unknown
6 Poisoning, ingestion	14 Lightning	22 Medical Procedure	29 Other Specific Cause
7 Poisoning, passing	15 Motor vehicle Pedestrian	23 Sudden Infant Death	
8 Burn	16 Motor vehicle Passenger	23 Abortion stillbirth	

Apparent Manner of Death

1 Homicide

2	Suicide	3	Accident	4	Natural	5	Uncertained
---	---------	---	----------	---	---------	---	-------------

Samples Taken (check all)

1	None	2	Blood	3	Tissue	4	Other fluid
---	------	---	-------	---	--------	---	-------------

Alcohol and Other Substances (for completion by surveillance consortium staff)

Blood Alcohol Level _____ Eyes Fluid Alcohol _____ Other Substances (Specify) _____

Type of Intentional Violence

For completion following court investigation: homicides and suicides only

1 Interpersonal	6 Rape, Sexual	1 Spouse, Partner	5 Friend	9 Unknown
2 Self Directed	7 Child Abuse	2 Parent	6 Official legal Authority	10 Other Specified Person(s)
3 Legal Intervention	9 Unknown	3 Other relative	7 Stranger	
4 Gang, Syndicate	8 Other (specify):	4 Unrelated Caregiver	8 Acquaintance	
5 Wardivil insurance				

Context of Violent Attack (Code from court record)

NIMSS DATA COLLECTION FORM

Mortuary _____

Police No. _____

Officer collecting body
(Surname) _____

PM no. _____

PM Date _____

Pathologist (Surname) _____

Date & Time of Injury

d	d	m	m	y	y	y	y
---	---	---	---	---	---	---	---

Race A B C W L

Sex M F U

Date & Time of Death

d	d	m	m	y	y	y	y
---	---	---	---	---	---	---	---

Age _____

Years

Months

Medical treatment of injury prior to death (check only ONE)

1 None 2 Emergency care at scene

3 Hospital care

Province of Injury (may differ to province of death)

Scene of Injury (may differ to scene of death)

1	Gauteng	7	Mpumalanga
2	W. Cape	8	North West
3	K.Z. Natal	9	North West
4	E. Cape	10	Unknown
5	N. Cape	11	Other (specify)
6	Free State		

1 Private house & yard (inc. pool)

2 Residential - Institute

18 Informal settlement/squatter camp

3 Bar, shebeen, V.C. club, disco

4 Amusement park, sports area

5 Road/streetside gateway

6 Railway track, station

7 Shop, bank, retail area

8 School, educational area

9 Mad cal services area

10 Industrial & construction area, mine

11 Farm, primary production area

12 Sea, lake, river, dam

15 Open land, beach

14 Countryside

15 In custody, prison

16 Place unknown

17 Other (specify): _____

Town of injury _____

Suburb or district _____

Closest police station to injury scene _____

External Cause or Circumstance of Injury

1	Firearm Discharge	9	Fall/push/jump from height
2	Sharp Object	10	Other fall/push/jump
3	Blunt Object	11	Crushing
4	Strangulation, suffocation, asphyxia	12	Choking, aspiration
5	Hanging	13	Drowning, immersion
6	Poisoning, ingestion	14	Lightning
7	Poisoning, gassing	15	Motor vehicle Pedestrian
8	Burn	16	Motor vehicle Passenger

17 Motor vehicle Driver

18 Motor vehicle Unspecified

19 Railway casualty

20 Bicycle, motor cycle

21 Aviation casualty

22 Mad cal Procedure

23 Sudden infant Death

25 Abortion, still birth

24 Abandoned baby

25 Electrocution

26 Explosive blast

27 Natural cause

28 Unknown

29 Other Specific Cause

Apparent Manner of Death

1 Suicide

2 Accidental

3 Natural

4 Undetermined

Samples Taken (check all)

1 Name

2 Blood

3 Tissue

4 Other fluid

Alcohol and Other Substances (for completion by surveillance consortium staff)

Blood Alcohol Level _____

Eyn Fluid Alcohol _____

Other Substances (Specify): _____

Type of Intentional Violence

For completion following court investigation: homicides and suicides only
Perpetrator – Victim Relationship

1	Interpersonal	6	Rape, Sexual
2	Self Directed	7	Child Abuse
3	Legal Intervention	9	Unknown
4	Gang, Syndicate	8	Other (Specify)
5	Wartime Insurrection		

1 Spouse, Partner

2 Parent

3 Other relative

4 Unrelated Caregiver

5 Friend

6 Official/Legal Authority

7 Stranger

8 Acquaintance

9 Unknown

10 Other Specified Person(s)

Context of Violent Attack (Code from court record)