

Paying for crime: South African spending on criminal justice

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INTRODUCTION

Most people would agree that criminal justice is among the most important functions of government. Indeed, the central place of government in the provision of justice is perhaps the only commonality between modern democracies, feudal kingdoms, totalitarian states, and traditional chieftaincies.¹ In each and every case, the pursuit and punishment of wrongdoers has been conceived of as a function of the society's rulers rather than of its citizens. That, after all, is pretty much the standard definition of what makes a state.² At the same time, whatever their responsibilities with respect to the provision of justice, states have mandates that are a good deal wider, and often more controversial: they defend the borders, they build roads, they educate children, they treat the sick, they uplift the poor. The list is near limitless.

States are not abstractions, however. They are real institutions that employ real people and do real work. For that reason, they require resources if they are to deliver on the functions that lie in their preserve, however widely or narrowly conceived. Those resources are also not abstractions. They come from citizens and subjects, extracted in the form of taxes or loaned to government in return for a promise of later repayment. Government is therefore constrained in what it can do by how much tax it can raise and how much people are willing to lend it: the poorer the society and/or the more indebted the state, the less money government will be able to raise sustainably. The result is that resources are inevitably inadequate to deliver all conceivable services as widely, as deeply, and as effectively as would please everyone.

Given these constraints, precisely what a government chooses to fund – and how it allocates its scarce resources between its various functions –

can tell us a great deal about where its priorities lie. Indeed, there can be no better indication of the relevant importance government accords various functions and services than the pattern of resource allocation. Quite literally, the budget is the place where policy makers put their money where their mouths are.

All of this is commonplace. Its statement is essential, however, because it sets in context the question that this paper seeks to ask: what does the budget, as opposed to any number of other statements of policy intent, tell us about government's preferences and intentions in relation to criminal justice? Before we try to answer that question, however, it is necessary to expound a little on what South Africa's budget looks like and how it is to be read.

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Basic budget reading

In 1998, government introduced a new approach to budgeting, the Medium Term Expenditure Framework (MTEF). In terms of the MTEF, allocations for any financial year were accompanied by guideline allocations for each of two subsequent years. Thus the 2005/06 budget (which is conventionally called 'Y1') also sets out details about what government's spending plans are for 2006/07 (Y2) and 2007/08 (Y3).

There were two principal motivations for the shift from annual budgeting, which was the approach which preceded the introduction of multi-year budgeting, and which involved making only annual allocations without providing any indication of spending plans in the future. The first of these is increased transparency, the thinking being that if details about future spending are signalled early, markets will have more certainty about government's tax and borrowing plans. In addition, and perhaps more importantly, citizens will be in a

better position to engage government on its policy trajectory. The second is that by offering departments clear guidance about the size of their medium-term spending envelopes, Cabinet helps to put them in a better position to plan their activities. This, in turn, should help them become more strategic and therefore more effective and efficient.³

Although the transition to multi-year budgeting has had some profound effects on the budget process, one thing that has not changed has been the focus of attention of the budget process in any one year on the budget of the next. One might not have expected this. After all, if budgets for Y2 and Y3 are allocated in Y1, one might expect that any debate over the allocation of future budgets would focus on Y4. In reality, however, despite the fact that guidelines for Y2 are published in Y1, budget processes throughout Y1 continue to focus on Y2 rather than Y4. The reason for this is an important nuance about multi-year budgeting that must be grasped: while the budget for Y1 is the real budget of the department concerned and sets the legal limits on spending in that financial year, the guideline amounts set out for Y2 and Y3 in any given MTEF cycle have no legal significance. There are three reasons for this:

The guideline amounts for Y2 and Y3 are based in part on projections about the state of the economy, and therefore the level of taxation and the rates of inflation and interest that will obtain when the next financial year rolls around. There is thus some level of uncertainty about whether the figures envisaged in Y1 for Y2 and Y3 will, in fact, be allocated when those years' budgets are drawn up. In fact, more often than not, adjustments are made. Most adjustments are upward revisions made because the figures for growth or inflation or, most commonly, tax-take, projected in Y1 for Y2 and Y3 have underestimated the amount of money in the fiscus in those years. The availability of additional, unexpected funds means that initial budget guidelines can be revised upwards when the next MTEF comes around. The only exceptions to this rule were in 1999 when the effects of the Asian financial meltdown in 1998 meant a sudden decline in expected tax revenues. More recently, downward revisions to the Defence budget have been made as a result of the unexpectedly strong rand's knocking down the financing costs of the arms deal.

In addition to the impact of macro-economic uncertainty on the realisation of projected budget numbers, there is another reason why adjustments

are made: some funds that government intends to spend in Y2 and Y3 are not allocated to departments in Y1. Instead they are left in reserve to allow adjustments to be made on the basis of any changes to public policy or as a result of any unexpected developments. Thus a reserve budget of R2bn for Y2 might be announced in Y1 and those funds can be allocated to government departments when the budget for Y2 is announced at the end of Y1.

The final reason for the non-binding character of the guideline amounts for Y2 and Y3 is the most obvious: it allows government the flexibility to change tack when political or other circumstances dictate that it must.

The upshot of all of this is that although the introduction of a three-year budget cycle is intended to create certainty about government spending plans, in reality there is often a great deal of space for departments to seek to influence spending decisions for Y2 during the course of Y1. That, in turn, means that the contest over policy priorities – and, more importantly, the resources required to execute them – is not settled by the announcement of an individual set of three-year spending plans. Thus, although every MTEF brings some budgetary certainty to departments, there is still scope for them to seek to obtain additional funds for Y2 and Y3. Policy-making and prioritisation are not closed off after the announcement of the MTEF. Instead, every year sees budgetary processes run both for the next financial year as well as for the outlying years of the next MTEF.

The contest over policy priorities is not settled by the announcement of three-year spending plans

Reading budget documentation

Government's budget documentation is extensive and includes broad overviews of fiscal policy as well as detailed, department-by-department budgets. It is these latter, gathered together in the *Estimates of National Expenditure*, that provide the figures setting out government's spending plans. Since departments can only spend money lawfully if funds are allocated to them by an act of parliament, these figures are also reflected in the annual Appropriation Act once it is voted into law.

In terms of South Africa's public finance management regime, although budgets are allocated to departments through the passage of the relevant legislation, departments are not free to spend the money as they see fit. The first limitation is that every department has a stated purpose defined in



law. Funds can only be spent in pursuit of that purpose. A second limitation is that departments are not allocated a global amount which their management is then free to spend any way they wish. Instead, budget legislation allocates funds to departments on the basis of a set of departmental programmes, each of which will have its own legally defined aim. Funds can be shifted between programmes, but shifting more than 8% of a programme's budget requires parliamentary approval and an amendment to the relevant legislation through the Adjusted Appropriation Act that is passed late in every financial year. This constraint on managerial discretion has the effect of forcing departmental managers to plan ahead. It also serves the more important function of giving parliamentary control over the shape of the services offered by all government departments. In effect, parliament tells public service managers what they can and cannot do with the money allocated to them.⁴

As a result, a department's budget will set out its total allocation as well as allocations to the programmes through which the department will pursue its legal mandate. In most departments, programmes are divided into a number of sub-programmes. There are no rules preventing a department's management from shifting funds between sub-programmes within a single programme, so the purpose of listing these sub-programmes and their budgetary allocations is simply that of increasing transparency.⁵ Some departments, like Correctional Services, however, do not list many sub-programmes within their programme structure. In these cases it is impossible to document, much less analyse, any shifts in spending below programme level.

Budget documentation also disaggregates allocations to departments and programmes between capital expenditure and current expenditure. The former captures spending on items that are expected to last longer than a year – anything from a building to a car or a computer – while the latter captures spending on items which will be wholly consumed in the current financial year and which must therefore be repurchased in subsequent years if the service is to be provided again. The most important element of current expenditure is that spent on personnel. Public finance rules prevent managers from shifting funds from capital expenditure into personnel expenditure to prevent managers raiding capital budgets to pay for staff and because current expenditure, which must be repurchased every year, should not be

purchased with funds intended for capital expenditure since these may not be available in subsequent years. It is, however, possible to shift funds in the opposite direction.

In-year changes to budgets that require parliamentary approval are effected through another annually passed act, the Adjusted Appropriation Act. Some of these changes involve the shifting of funds between programmes (or, indeed, between departments), but most involve the allocation of additional funds to departments. This is required if a department incurs expenditure that was both unforeseen at the time that the budget was allocated and was also unavoidable. Thus a flood may require the allocation of funds to the relevant department if disaster management expenses exceed existing budgets.⁶

In addition, funds might be allocated to all departments if some of the macro-economic assumptions made when the budget was voted turn out to have been erroneous. Thus, if inflation is higher than expected, or public sector wage negotiations result in a higher than expected settlement, funds might be allocated to all departments to help them cope with the effects without having to reduce the quantum or quality of the services they offer or goods they produce.

Parliament tells public service managers what they can and cannot do with money allocated to them

Dealing with adjustments

The fact that adjustments can be, and are, made to departmental budgets, and that spending seldom matches precisely the plans initially set out when the budget is constructed, raises some important questions for the kind of analysis attempted here. These revolve around how to interpret government's policy intentions. Simply stated, the key question is this: which is the most sincere expression of government's policies and priorities, the stated budget estimates released at the start of a financial year (with guidelines for Y2 and Y3), or the actual spending patterns that emerge after all the adjustments have been effected? Is the initial intention, unclouded by the decisions of departmental management and undiverted by the course of events, the definitive expression of government's will? Or, are the preferences revealed in the final spending outruns more meaningful?

Plausible arguments might be made for either answer to these questions. Nevertheless, for the purposes of this paper, it seems more reliable to take actual spending as a guide to government policy

rather than to rely on intentions stated at the start of a financial year. The reason why this approach seems superior here is implicit in the approach to analysing a budget with which this paper started: spending patterns will reveal whatever gaps might exist between stated policy preferences and actual government resource allocations. Since these patterns are affected by in-year decisions about the shifting of resources or by their supplementation, these changes should be incorporated into the data used to analyse government policy.

For this reason, in the sections dealing with the criminal justice budget below, the figures used for years prior to the present reflect the most up-to-date estimates of *actual* spending in the relevant year, rather than the budgets indicated at the start of those years. This means that for years before 2003/04, audited figures are used, while for 2003/04 the preliminary, but unaudited, figures appear, and for 2004/05 the figures from the Adjusted Appropriations are used. The initial budget numbers for 2005/06 are used for that year, while guideline numbers that appear in the 2005 MTEF are used for 2006/07 and 2007/08. This is unavoidable since the actual spending patterns for this and the next two financial years cannot be known now.⁷

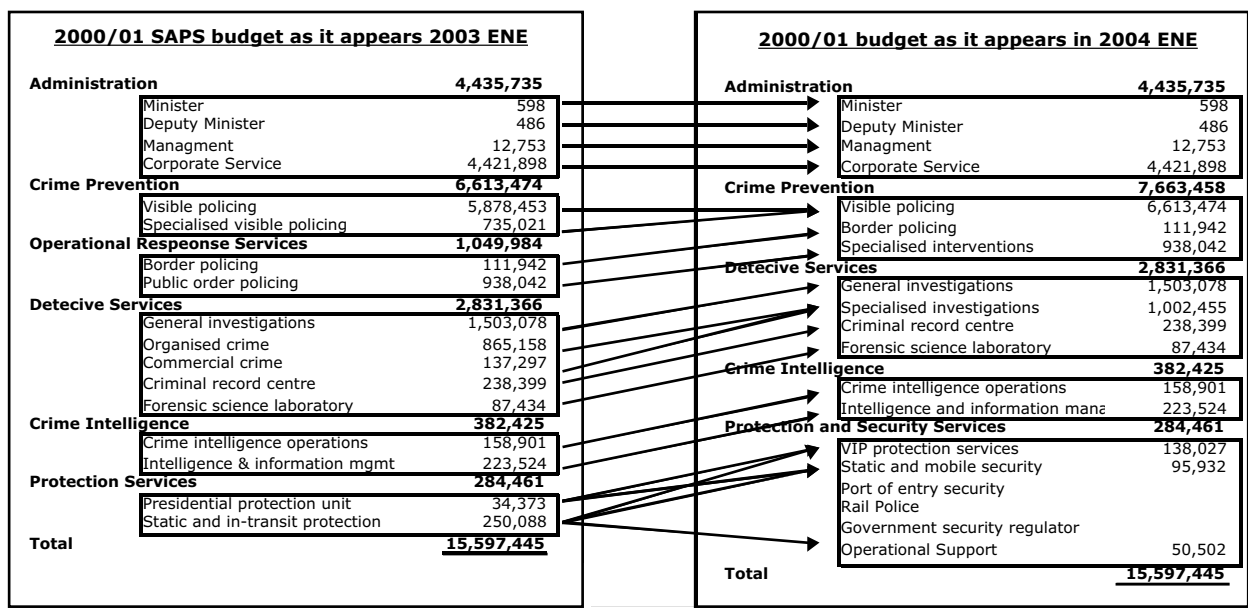
Another set of adjustments with which this report must grapple are those that relate to the manner in which departments change their programme and sub-programme structures over time. An example will explain the problem. Until 2003/04, the police used a six programme structure, with their budget divided between Administration, Crime Prevention, Operational Response Services, Detective Services, Crime Intelligence and Protection Services. In that year, however, they changed to a five programme structure: Administration, Visible Policing, Detective Service, Crime Intelligence, and Protection and Security Services.

The changes that underpinned this adjustment in reporting format involved moving two sub-programmes from the programme previously called Operational Response Services to the a programme called Visible Policing. A third sub-programme, 'public order policing', became 'specialised interventions'. These sorts of changes, particularly if they are relatively frequent, make longitudinal analysis very difficult since it is not always clear that like is being compared with like. This is even more complicated when departments have few sub-programmes, making it difficult to establish if shifts in the budgets of programmes are due to the shifting

Figure 1: Reconciling changes to programme structures

Reconciling changes to a department's programme structures can be challenging:

- In 2004/5, the SAPS changed from a six programme structure to one with five programmes
- This involved closing the Operational Response Services programme and incorporating its sub-programmes into Visible Policing.
- Other changes, made at the same time, included changes to the names of programmes and sub-programmes, the combination of some (see Specialised visible policing and Visible policing) and the re-division of expenditure between others (see Presidential protection unit and Static and in-transit protection).



of functions (and, therefore, sub-programmes) from one to another – as happened in the South African Police Services (SAPS) when it adjusted its programme structure – or because policy changes have meant that one programme is to grow faster than another. (See Figure 1.)

In what follows, we have sought to maximise the comparability of data across time. Unfortunately, the effect of some changes to budget structure cannot be accounted for completely. Having said that, we now turn our attention to the allocations that government has made to the criminal justice system, and, by looking at the patterns that have emerged over the past ten years, to ask what these imply about government's strategy in relation to the provision of criminal justice.

The criminal justice budget

This section seeks to trace what has happened to spending on criminal justice over the past ten years. In order to do that, some basic facts about the budget need to be set out.

What is the criminal justice system's budget?

Criminal justice in South Africa is almost exclusively the preserve of the national government, and resources for its provision are deployed through three government departments: Safety and Security (hereafter, SAPS), Justice and Constitutional Development (Justice) and Correctional Services (DCS).⁸

In the 2005/06 budget, these three departments were allocated R43.6bn, or about 10.4% of the national budget. This equates to about R900 for every man, woman, and child in the country. Of this, about 65% (R28.5bn) went to the SAPS, 14% went to Justice (R5.9bn) and 21% to the DCS (R9.2bn).

These figures require one important qualification: about 3% of the Justice budget (or about R198 million in 2005/06) is allocated to services that play no role in the criminal justice system. This figure is made up of allocations that are parked in the Justice budget but handed over directly to three Chapter Nine institutions, the work of which is not related to the provision of criminal justice.⁹ It also includes funds allocated by law to political parties represented in Parliament.

In previous years, the proportion of the Justice budget spent on 'non-core' items was sometimes as high as 11%. This was when allocations to the Truth

and Reconciliation Commission and to the reparations fund were made through the Justice budget. For the bulk of this paper, non-core spending has been stripped out of the figures for the Justice department unless the context makes clear that this is not the case. This is to ensure that changes to non-core spending are not mistakenly interpreted as reflections of policy changes or of changes to the prioritisation of the Justice budget.

In relation to an analysis of spending on criminal justice, another problem arises from the fact that South Africa's courts do more than process criminal trials. They hear, in addition, civil matters and facilitate certain related services. Maintenance payments, for instance, are processed through the courts and an extensive infrastructure exists to manage the monies that move through trust accounts needed to ensure that funds flow in from those who must pay maintenance and then flow out to those who should receive them. The Masters' Offices, also linked to the courts, handle insolvencies and deceased estates.¹⁰ Finally, the Justice budget also pays for legal services used by government as well as for a legislative drafting team. The last three items add up to R315 million in 2005/06 and account for more than 5% of the Justice budget. These funds will also be excluded when we develop our discussion of developments in the criminal justice system since they are not spent on the services used by that system.

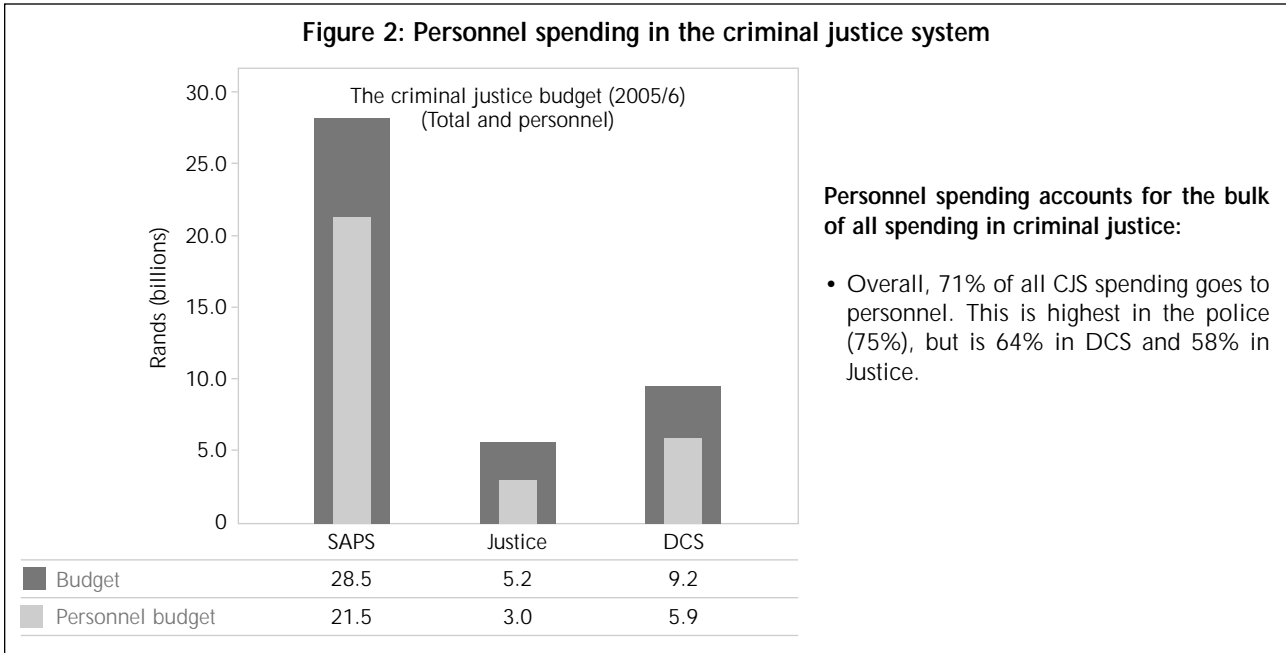
Personnel expenditure pays for the services of just over 210,600 officials, of which 156,000 are in the SAPS

What does criminal justice expenditure buy?

The bulk of the criminal justice budget is spent on personnel, with salaries, pensions and medical aid contributions consuming 71% of the total budget in 2005/06. The proportion of personnel spending in each department, however, varies. In the SAPS it is 75%, while in Justice – which spends a large proportion of its budget on resourcing and computerising the courts – it is 58%. The DCS, which spends much of its budget on its prison-repair and prison-building programmes and on maintaining prisoners, spends 64% of its budget on personnel. (See Figure 2.)

Combined personnel expenditure pays for the services of just over 210,600 officials, of which 156,000 are in the SAPS, 18,200 are in Justice (including about 1,420 who are engaged in work that is not core to the criminal justice system), and 36,300 are in the DCS. Given the high proportion of expenditure on personnel, it should come as no

Figure 2: Personnel spending in the criminal justice system



Source: 2005 Estimates of National Expenditure

surprise that current expenditure will consume 90% of the 2005/06 budget.

The fact that so much of the criminal justice budget is consumed by paying salaries tells us something important about criminal justice itself: unlike infrastructural departments (which build houses or roads), unlike the department of social welfare (which is engaged primarily in the business of transferring income to the poor), and unlike the departments engaged in supporting and/or regulating economic activity, departments in the criminal justice system provide high-volume, labour-intensive services directly to the community. In this sense, they are similar to the departments of education and health.

The services offered by the justice system – which range from police patrols and investigations to prosecutions, the hearing of trials, incarceration and the rehabilitation of offenders – are extremely diverse. Yet, in combination, there is a deeper unity of purpose behind them. More precisely, there are two essential goals for criminal justice. The first is to find wrongdoers and to hold them to account. The second, which is related to the first, is to reduce crime. This goal is pursued through police patrols (and other preventative activities), as well as the deterrence, incapacitative and rehabilitative effects of holding offenders to account.¹¹

The complexity and diversity of the services provided, together with the facts that these are hard-to-measure intangible services, poses a singular challenge for policy-makers in the field of criminal justice. This is that they cannot know with any precision what they get in return for the money that

is spent. The relevant literature is, for example, far from unambiguous about the extent to which the police, courts and prisons prevent crime.¹²

Given the difficulties associated with quantifying the impact of the criminal justice system as a whole, it should come as little surprise that it is even harder to seek to disaggregate the discrete impact of the system's different components. Does a rand spent on police patrols prevent more crime than a rand spent on investigations or rehabilitation or ensuring an effective prosecution? Even if the data were more accurate and comprehensive than they are, it is extremely doubtful that a conclusive answer to these questions could be offered.

The result is that the natural state of policy-makers in government, Parliament, and in the criminal justice system itself, is one of profound, ineradicable uncertainty; and they are seldom offered unambiguous evidence that a particular change in the scale or pattern of resource allocation will have a precise impact or what the scale of that impact will be. This is inherent to the job, and it implies that it would be unfair to expect that all the decisions made about where to deploy resources should be made with the rigour one might expect in a scientific laboratory or on the site of a complex engineering project. In the messy world of criminal justice, policy-making can never meet those sorts of standards.

The criminal justice budget over time

The budget of the three departments of the criminal justice system has grown at an annual average of 11.8% from R14bn in 1995/6 to R38.3bn in



2004/05. It is expected to grow by a further 10.4% per year between 2004/05 and 2007/08 to reach a total of R51.4bn. If we exclude those functions paid for through the Justice budget but which are not really part of the criminal justice system, the base value in 1995/96 would be reduced to R13.9bn, while the totals for 2004/05 and 2007/08, respectively, would be R37.8bn and R50.8bn, with marginally slower growth rates between 1995/96 and 2004/05 and between 2004/05 and 2007/08 of 11.7% and 10.3%, respectively.

Although these growth rates may sound impressive, some point of comparison needs to be provided in order to establish what they mean. And, since we are interested primarily in what the growth of the criminal justice budget signals about government policy preferences, priorities and intentions, one comparison is between the criminal justice system and the rest of government spending.

In this regard, the data suggest that criminal justice has been a consistent government priority because the growth of its budget between 1995/96 and 2004/05 at 11.7% per year exceeded the growth rate of the national budget, which averaged 10.5% over the same period.¹³ At this stage, it is anticipated that budget growth in the criminal justice (10.3% per year) will also be marginally faster than that of the national budget as a whole (10%) over the current MTEF. As pointed out earlier, however, final allocations to these departments have not yet been made and it is still possible that the differential between national spending and criminal justice system expenditure will grow or be reduced.

Another measure of progress made in the resourcing of the criminal justice system is to examine how growth has fared relative to inflation. Here, the picture is extremely positive, but probably unsustainable.

Between 1995/96 and 2004/05, nominal growth of the criminal justice system's budget average 11.7% per year. Over the same period, inflation averaged just 6% per year, implying that real growth averaged 5.7% per year. If population growth were factored into this calculation, real per capita spending on criminal justice will have grown by more than 3% per year between 1995/96 and 2004/05.¹⁴

Personnel spending

Personnel spending has always been the largest item in the criminal justice budget, and, with an

allocation of R30.6bn, personnel will consume about 71% of total spending in 2005/06. This may seem high, but this ratio is actually quite low by historic standards, with the highest proportion of the budget being devoted to personnel spending being recorded in 1997/98 when it accounted for nearly 80% of the budget. Given the falling proportion of the budget spent on personnel, it is obvious that the personnel budget has not grown as quickly as has criminal justice spending in general. Indeed, personnel spending in the criminal justice system grew nearly a full percentage point slower than the budget as a whole every year between 1995/96 and 2004/05. This differential was greatest in Justice (where the annual average rate of growth of the budget as a whole was nearly three percentage points higher than the growth in the salary bill), and smallest in the police (where the differential was a mere 0.3% per year).

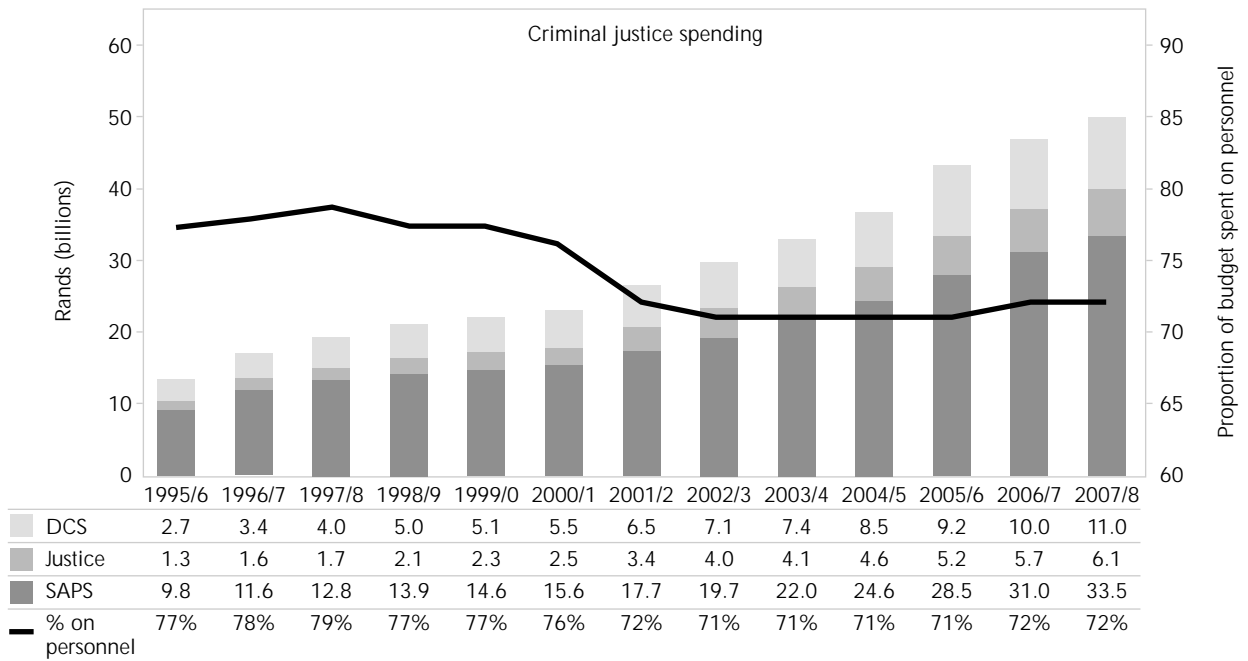
In DCS, the differential was 2% per year. These trends are expected to be reversed over the course of the current MTEF, with personnel spending set to grow at 0.8% per year faster than spending as a whole. The result will be that by 2007/08, personnel spending will account for 73% of the criminal justice budget.

Between 1998/99 and 2005/06, growth in the personnel budget for the criminal justice system as a whole averaged 9.5%.¹⁵ This growth can be broken down between the growth in personnel numbers (2.3% per year) and the growth in average salaries (7.1% per year).¹⁶ In other words, three-quarters of any increase in the personnel budget has historically gone to increasing average salaries, while a third has gone towards increasing the capacity of the criminal justice system by recruiting more personnel.

Interestingly, however, between 1998/99 and 2001/02, personnel numbers in the criminal justice system actually fell from about 175,500 to about 164,700. This was entirely due to a decline in police numbers over that period from nearly 132,000 to less than 119,000.¹⁷ For this period, average compensation levels grew 40% faster than the SAPS's personnel budget. The result was that police management was forced to place a moratorium on police recruitment until the establishment had shrunk to the point where the personnel budget could comfortably cover the salaries of those who were in the SAPS's employ. (See Figure 3.)

Between 1998/99 and 2001/02, personnel numbers in the criminal justice system actually fell

Figure 3: Growth of the criminal justice system's budget since 1995/6

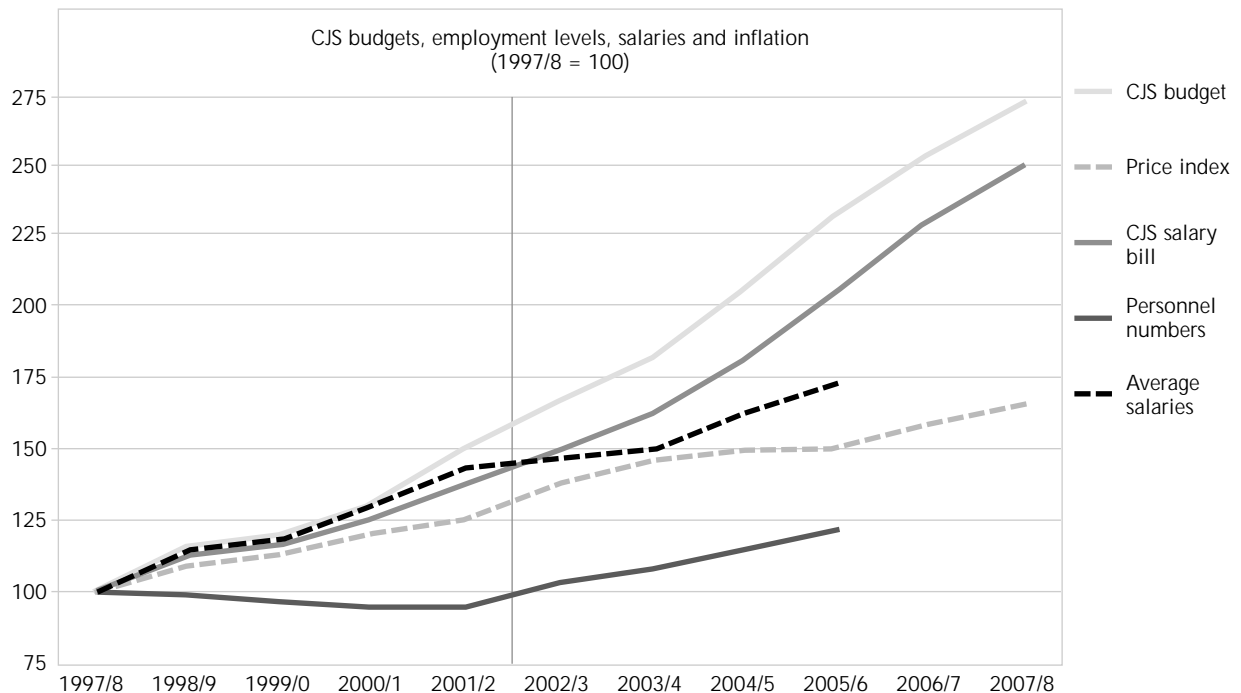


The CJS budget has grown over time, with its trends driven by spending on personnel:

- The budget of the CJS has grown from R13.9bn in 1995/6 to R43.1bn in 2005/6. It is expected to grow to R50.8bn in 2007/8.
- The CJS budget will have grown at about 6% a year in real terms between 1995/6 and 2007/8.
- Although currently about 71% of expenditure, personnel spending has been as high as 79% of the budget.
- Growth in personnel spending has been driven by

the upward growth in wages (average salaries in CJS have grown by 1.8% per year in real terms since 1997/8) and by increases in the number of employees in the CJS.

- In the late 1990s, wage growth resulted in the need to cut establishments. (In SAPS salary growth was 40% faster than was growth in the personnel budget.)
- Since 2001/2, the personnel budget for the CJS has grown fast enough to both cover the increase in salaries and to allow for the recruitment of more personnel.



Source: Estimates of National Expenditure, various years



In effect, for criminal justice in general (but most noticeably in the police) the rise in salaries in the late 1990s, which was faster than the rise of the personnel budget, meant that staff numbers had to be allowed to fall. This was achieved through natural attrition and by offering voluntary severance packages to senior personnel, a policy that was also aimed at facilitating affirmative action. We will look at the rise of average salaries in the criminal justice system in more detail below, suffice it to say that this was the result of a series of policy decisions which had the effect of both speeding up promotions as well as raising basic salaries.

Before looking at these issues, however, we need to explore how the growth of funding in criminal justice compares to the growing expenditure in other government functions, as well as looking at how growth patterns have changed over time.

Changing rates of growth over time

We have said that criminal justice has been a government priority since the growth of its budget between 1995/96 and 2004/05, at 11.7% per year, exceeded the growth rate of the national budget which averaged 10.5% over that period. We have also noted that spending on criminal justice will grow marginally faster than total spending over the current MTEF. Thus, the proportion of public expenditure devoted to the criminal justice system has risen from about 9.1% in 1995/96 to about 10.1% today. This, however, is off the high of about 10.5% between 1998/99 and 2002/03.

The decline in the share of the budget allocated to criminal justice since 2002/03 implies that although the long-term growth rate of the budget of the criminal justice system is higher than that of the rest of government spending since 1995/96, this has not been the case over the more recent past. Our analysis needs, therefore, to interrogate the relationship between growth in the criminal justice budget and in that of the rest of government spending.

One way of doing this is to note that budget growth in the criminal justice system has not been uniformly higher than growth in the national budget as a whole over the entire period. Indeed, while it grew more quickly than the national budget between 1995/96 and 2001/02, it grew more slowly than did total government spending between 2001/02 and 2004/05. It is now, once again,

expected to grow more quickly than government spending over the current MTEF.

It is also striking that the growth of the criminal justice budget between 1995/96 and 2001/02 was a good deal faster than growth in the allocation made to provincial governments through the national budget. Since the vast bulk of government's service delivery to the poor is financed through allocations to the provinces – which fund social welfare payments,¹⁸ healthcare, as well as primary and secondary education – this suggests that, in this period at least, criminal justice enjoyed a higher priority than did social services.¹⁹

Another element of the unevenness of budget growth in the criminal justice system relates to the extent to which the three departments' budgets have grown at different rates.

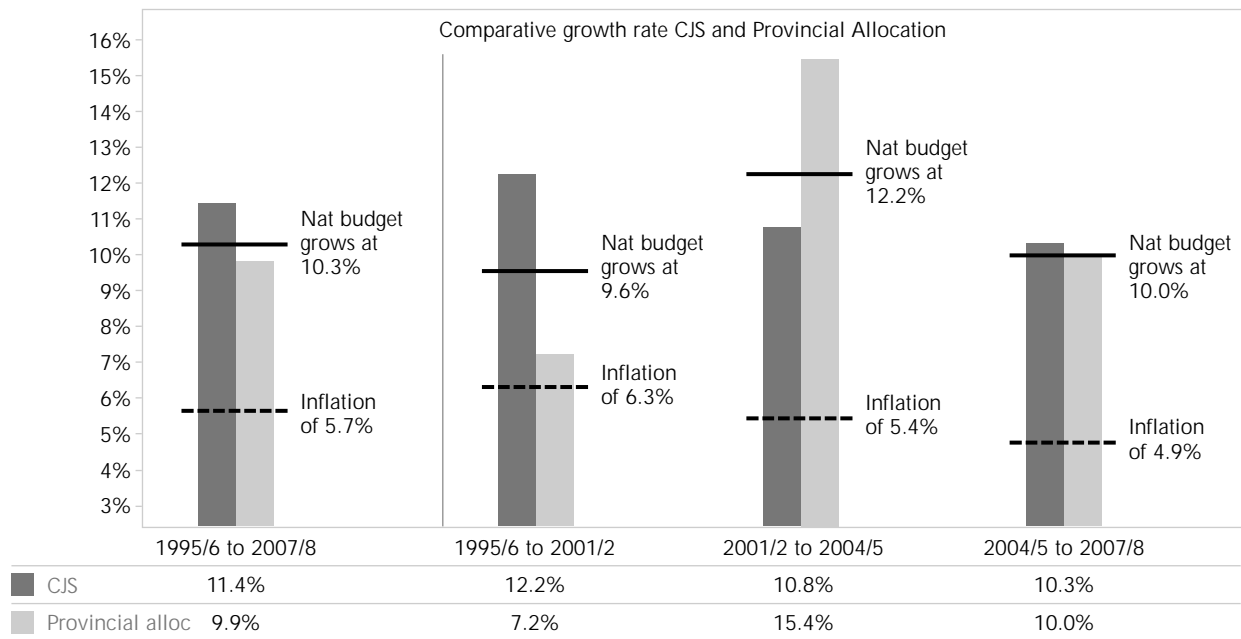
The growth rate of the criminal justice budget between 1995/96 and 2004/05 exceeded the growth rate of the national budget

Until the start of the current MTEF, the Justice budget has been the fastest growing of the three departments, with growth averaging at over 15% a year between 1995/96 and 2004/05 (and nearly 18% per year between 1995/96 and 2001/02). This has been, admittedly, off a much lower base than the other departments. From 2004/05 until the end of the MTEF, however, it is expected that police spending growth will exceed that of the other departments. It should also be noted that the long-term growth advantage enjoyed by the Justice budget is, in part, explained by the creation of the

Directorate of Special Operations (DSO) in 2001/02 and 2002/03. This added about 6% to the Justice budget at a stroke. Without this, its long-term growth trajectory – though still faster than that of the other two departments – would not have looked as different as it does to those of the police and DCS.²⁰

Relative to the budget as a whole, the priority accorded policing has remained reasonably constant and the SAPS budget has grown only a little faster or a little slower than has national spending. In comparison to the relative stability of police expenditure growth in relation to government spending, the prioritisation accorded Justice and DCS has been much more volatile. Justice, for instance, grew at almost twice the rate of the national budget between 1995/96 and 2001/02. This, as already pointed out, is partly an effect of the creation of the DSO, which amounts to the creation of a new capability in the department and, therefore, a change in the mix of services offered by it.²¹ After 2001/02 – once the DSO was bedded down and its

Figure 4: Growth rates in the criminal justice system over time

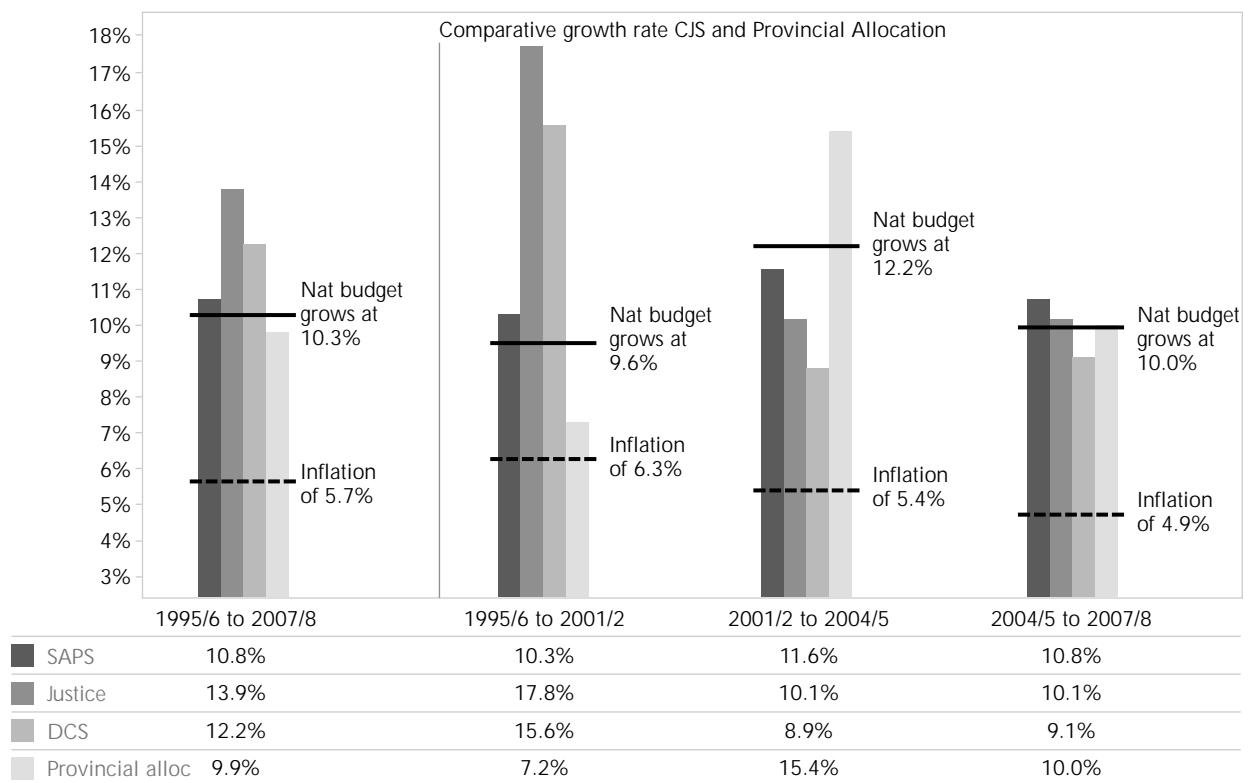


Growth in the CJS budget has not been consistently higher than that of other government functions:

- Although average growth in the CJS budget has exceeded that of the national budget, it has not done so every year. There are also important variations between the three departments.
- Between 1995/6 and 2007/8, all 3 CJS depts will have seen their budgets grow faster than the national budget and faster than provincial allocations.
- Between 1995/6 and 2001/2, all CJS budgets grew faster than the national budget. Justice (because of the

creation of the DSO) and DCS did particularly well.

- Between 2001/2 and 2004/5, all three departments grew more slowly than the national budget as a whole and a good deal more slowly than allocations to provinces.
- Over the course of the MTEF, SAPS and Justice will grow a little faster than the national budget and at about the same pace as provincial allocations. DCS, however, will grow more slowly than both.
- CJS and national budgets have always growth significantly faster than inflation.



Source: Estimates of National Expenditure, various years



budget had been incorporated into the base, budget growth was far closer to that of the national average. (See Figure 4.)

In the case of DCS, by contrast, rapid growth (in absolute terms and relative to the national budget) between 1995/96 and 2001/02 was quickly reversed. Since then, its budget has grown at a rate significantly below that of the national average. Growth in the first period was driven by dramatic (36% per year) growth in spending on capital works. After that period, however, spending growth on facilities – even with the additional expenditure devoted to the public-private partnership prisons – was a much more modest 12% per year. We will return to this issue below.

Provisional conclusion

The fact that criminal justice and its component parts have been a government priority since the mid-1990s is reflected by the fact that both the system as a whole and the individual departments have been allocated a larger share of the national budget than was the case at that time. Nevertheless, between 2001/02 and 2004/05, national spending (driven largely by the very rapid growth of the provincial allocation) expanded far more quickly than expenditure on criminal justice. Since provinces are responsible for the vast bulk of social services expenditure – including most health care and education expenditure and the vast bulk of welfare spending – it is reasonable to conclude that criminal justice has been a lower priority than social expenditure over the past five years. In the mid- and late-1990s, by contrast, criminal justice expenditure grew significantly more quickly than did the allocation to provincial budgets.

There are three important points that emerge from this analysis. The first is that, despite the vociferous public concern about crime, expenditure on criminal justice has never grown dramatically faster than expenditure on the rest of government's mandate and functions. The exception to this is the period between 1995/96 and 2001/02, but even here, expenditure on policing grew only slightly faster than did the rest of government's spending, and growth was concentrated in the Justice and DCS votes. Indeed, police personnel numbers actually fell over the period.

The second is that the increase in spending on criminal justice – though only a couple of points faster than expenditure on the rest of government –

was still significantly faster than expenditure increases on service delivery to the poor (as proxied by the allocation to provinces) in the immediate post-apartheid period. Given the character of South Africa's many social and economic problems, this is, perhaps, unexpected.

The third is how dramatically this differential was reversed after 2001/02 as social spending, especially expenditure on welfare grants, took off.

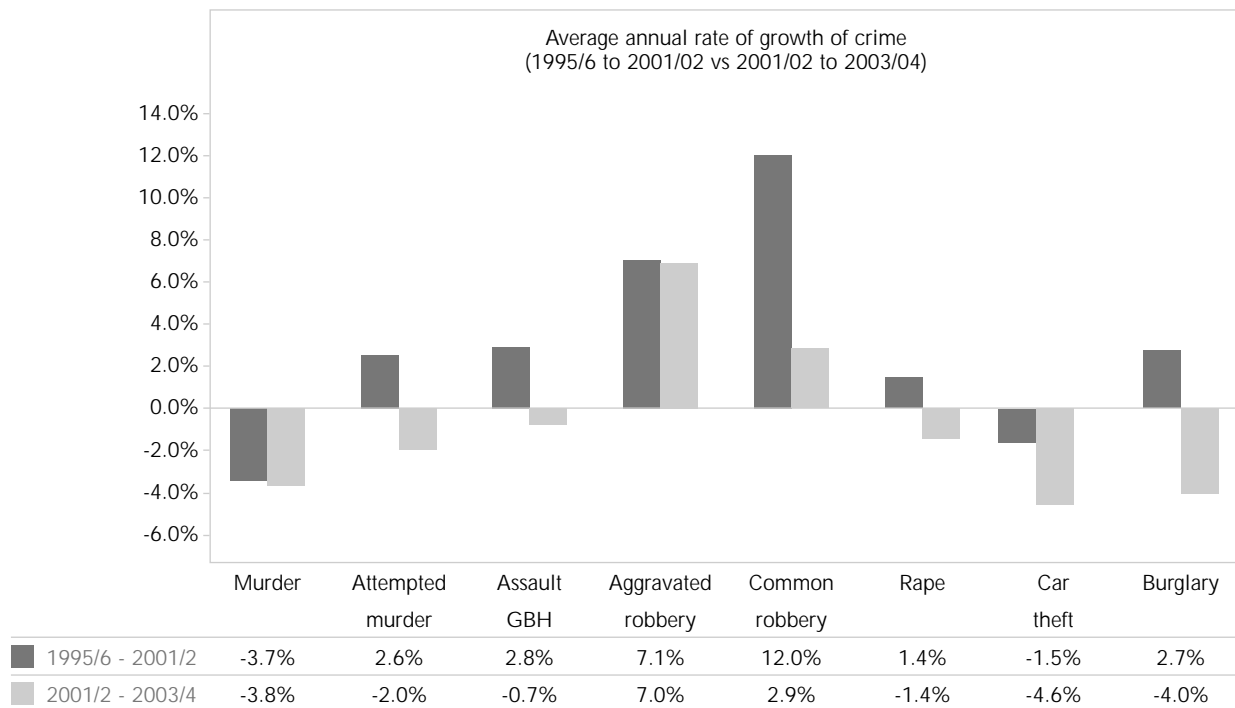
In summary, government's revealed preference during the initial period after the inauguration of democracy was to spend more money on criminal justice, with social services receiving a higher priority than criminal justice only later, after 2001/02. Perhaps surprisingly, if one looks at trends in crime rates, trends in the later period are no worse, and are usually better, than those in the earlier one. Thus, while there was an annual average fall of 3.7% in the number of murders reported between 1995/96 and 2001/02, the comparable rate between 2001/02 and 2003/04 (the latest available figures) was 3.8%. In the case of car theft – probably the best reported property crime – the respective figures are an annual average decline of 1.5% which accelerated after 2001/02 to just over 4.6% per year. In the case of aggravated robbery, on the other hand, there was no change, with growth of about 7% per year reported for both periods; while in the case of burglary an average annual growth rate of 2.7% per year was reversed and the post-2001/02 period saw incidents fall by 4% per year.²² (See Figure 5.)

Expenditure on criminal justice has never grown dramatically faster than expenditure on the rest of government

This analysis does not amount to a scientific test of the impact of government's changing priorities on the incidence of crime, and its results are not, therefore, conclusive. Indeed, they ought not to be taken as proof-positive that increased social spending reduces crime more effectively than does increased criminal justice expenditure. And this for a number of reasons:

- One reason is that although the increase in spending on criminal justice fell relative to that of government spending generally between 2001/02 and 2004/05, and even more so in comparison with expenditure on social services, the budget for criminal justice is still growing strongly in nominal and real terms. It may, therefore, be that growing expenditure on criminal justice, rather than any increases in spending on delivery to the poor, accounts for the improvements in crime trends.

Figure 5: The rate of growth of crime has declined over time



Comparisons of the rate of growth of crime suggest this was lower in the period 2001/2 - 2003/4 than in the period 1995/6 - 2001/2:

- Murder and car theft both fell in both periods.
- Aggravated robbery and common robbery both rose in both periods, but at a lower rate in the second period.
- Attempted murder, assault GBH, rape and burglary rose in the earlier period and fell in the later one.
- Interestingly, the rate of growth of the criminal justice budget was higher in the earlier period than the later, while the opposite is true of social spending.

Source: www.saps.gov.za

- It is also possible that the growth rates of criminal justice expenditure have helped to push crime down and that somewhere in the late 1990s or in the earliest years of the 21st century, a tipping point was passed after which the rise in crime was moderated and, in some cases, reversed. It may be, for instance, that the principal problems in the criminal justice system were addressed in the late 1990s, in part through the allocation of additional funds. If this were the case, any changes to spending on social services may be irrelevant to the decline in crime over the period.
- Another, related, argument might be that, whatever the trends for the criminal justice system as a whole, the fact that the police budget has done better over the past few years – and, as importantly, that police personnel numbers have rebounded from their lowest points (reached in 2000/01 and 2001/02) – may account for the improvement in crime trends. That this period also coincided with the implementation of the National Crime Combating Strategy may also account for the improvements.

Nevertheless, on the face of it, there is also merit in another conclusion, one which might draw support from the trends reported here: that the increased spending on social services, and, in particular, on direct transfers to the poor through the expansion of the social safety net over the past five or six years, has played a key role in stabilising and reversing crime rates. This argument cannot be conclusively made using these or, indeed, any other conceivable data. Still, it is an argument that should pique the interest of those involved in criminal justice and crime prevention.

Having said that, it must be pointed out that allocations to provinces are more than four times greater than the allocation to criminal justice. It follows from this that any declines in crime achieved by raising social spending may well be more costly than similar declines obtained by increasing the criminal justice budget. This is because the marginal benefit in terms of crimes prevented of a 1% increase in the social services budget would need to be more than four times greater than the marginal benefits of a 1% increase in the criminal justice budget for this to be a rational approach to

combating crime. Of course, reducing crime is only one of government's objectives and, when the other effects of increased social expenditure are weighed, it is likely that the fact that they also may play a role in reducing crime will not be the prime reason for their being allocated increased public funds.

In any event, since it is impossible to know how much of the fall in crime to allocate to increased criminal justice spending and how much to increased social spending, it is, unfortunately, not possible to estimate the relative cost-effectiveness of the two approaches. Still, this is perhaps the most obvious example of the problem that confronts policy-makers (and which was discussed earlier), namely, the extraordinary difficulty in making rational decisions about the allocation of resources in the fields of crime prevention and justice, particularly when presented with potentially conflicting and incommensurate demands for resources elsewhere. It does, however, pose a crucial question: do we devote enough resources to criminal justice and just how much *should* we spend?

How much should South Africa spend on criminal justice?

The allocation of public resources by government is perhaps the most quintessentially political question confronting any society. How much should government spend? How should these funds be divided between the numerous programmes and services that government offers? These are questions that admit of an infinite variety of answers, each dependent on the view one takes of the relative priority of government objectives, programmes and activities.

Conceivably, some would say that funding for the criminal justice system should be slashed and the resources be redeployed to alleviating poverty, for example, by building houses or by funding an increase in welfare payments. Nor is there any reason why such a view would need to be justified on the basis of any alleged impact of this kind of spending on levels of crime, even if it could be justified in this way. Others might argue that poverty alleviation is either not as important as providing safety and security, or that the provision of the latter is a precondition for alleviating poverty. They might say that spending on social welfare and house-building should be cut in order to fund increases in the criminal justice system budget.

The implication of this is that there is no 'right answer' to the question of how much a government should spend on criminal justice (or, indeed, any

other public service). Reasonable people might disagree on precisely where the balance between these competing needs should be struck. The title of this section of this paper is, therefore, somewhat misleading since there is no way to answer definitively the question it poses. That, unfortunately, is the tragic reality of public sector planning: it is impossible to determine a basis for ensuring that what funds a government has at its disposal are allocated in a way that is socially optimal because it is not possible even to establish what a socially optimal outcome would look like. Indeed, even if it were possible to reach such a consensus, it would still be impossible to measure how the diverse, complex services government offers contribute to the achievement of that goal. How do you compare the social impact of a million rand spent on housing to a million rand spent on policing? There is no common denominator.²³

Impossible as this question may be to answer, there are things one can learn by looking at international benchmarks.

Cross-country comparisons in the field of criminal justice are fraught with methodological difficulties

International benchmarks: spending on criminal justice

Cross-country comparisons in the field of criminal justice are fraught with methodological difficulties. These problems arise both in relation to crime data, as well as to spending, output and impact data.

In relation to crime data, problems arise from differences in reporting and recording rates, as well as difficulties arising from differences in the definition of offences, and many governments' inability or refusal to release data (which are, in any case, often massaged).²⁴

There are equally difficult problems in making comparisons between countries on the basis of their expenditure on criminal justice. One difficulty relates to being sure that like is being compared with like. In some countries, such as the United Kingdom and the United States, the police are responsible for enforcing traffic legislation, while in others, the work of the police service is supplemented by the efforts of different law enforcement agencies when traffic laws are considered. Similarly, in some countries the police are responsible for border control. In others there are specialised enforcement agencies linked to immigration and customs control or even the military. In addition, in some countries the police service plays a quasi-military role, while in others it fulfils only the more traditional bobby-on-the-beat functions.

Then there are difficulties relating to organisational structure. In the US the criminal justice system is radically decentralised, with every municipal, county and state government having its own police, prosecutors and prisons. The result is that compiling accurate national data is almost impossible. In others, like South Africa, policing is centralised at national level. This makes data gathering less complicated, but creates a possibility that administrative expenses are proportionately a good deal higher than those of more decentralised systems.²⁵

The result of all this is that cross-country comparisons will never be comparing like to identical like.²⁶ So complicated were these problems, and so limited was the response to the survey of countries on these matters, the United Nations Survey of Crime Trends and Criminal Justice Systems, that the most recent runs of the survey have not included many of the resource and financing questions they once did.²⁷

Other problems might be created by the ill-considered conversion of expenditure data to a common currency. The first of these is that currencies' values in relation to one another sometimes fluctuate wildly. A dollar-denominated comparison of South Africa's annual expenditure on criminal justice to that of other countries, for instance, would suggest that expenditure sank precipitously between 2000 and 2002, and then rose by about 60% between 2002 and 2005, simply because the rand depreciated steeply before making a

dramatic recovery. A second problem arises from the fact that every criminal justice system in the world spends the bulk of its budget on salaries.²⁸ Since average salaries across the world differ considerably, simply comparing gross expenditure data is unlikely to tell us a great deal about how much work those budgets pay for.²⁹

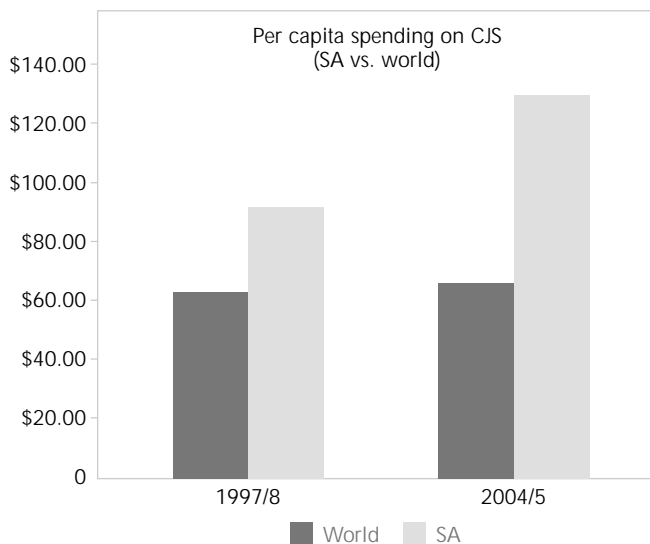
In addition to all of the above, there remains the difficult problem of dealing with expenditure on criminal justice that is not funded through government. How do we quantify and value the work done by traditional courts? Is it correct to compare expenditure on policing in a country with high levels of private security to that of countries with low levels? Ideally, all of these variables would be included before any inter-jurisdictional comparisons are made. In the real world, however, even the data available from central authorities are of variable coverage and quality. Those dealing with private security and customary justice, on the other hand, are non-existent.

Cross-country comparisons of expenditure on criminal justice need to be taken with a hefty pinch of salt

All of which is to say that cross-country comparisons of expenditure on criminal justice need to be offered with a healthy slice of humble pie and taken with a hefty pinch of salt. When some of these comparisons are made, however, South Africa's position in the league table turns out to be quite respectable.

Using data from the United Nations Survey of Crime Trends and Criminal Justice Systems, two British academics sought to estimate how much money countries spend on their criminal

Figure 6: Spending on policing and criminal justice systems in South Africa and the world



How does spending on policing and criminal justice in SA compare with the rest of the world?

- A comparison of spending data for 1997/8 and 2004/5 reveals that on a per capita basis, SA spends significantly more on criminal justice than does the rest of the world. In 2004, for instance, SA spent about \$130 per person on criminal justice while the rest of the world spent only \$66.

Source: Farrell & Clark (2004), UNDP (2004)



justice systems.³⁰ Using econometric techniques to estimate the relationship between gross domestic product (GDP), population and spending on criminal justice, they conclude that total criminal justice spend in 1997 for the world as a whole was just less than \$360bn, a number which they estimate will have grown to \$424bn in 2004.³¹ Although the authors do not convert this to a per capita level of spending, or seek to establish what proportion of world GDP is devoted to criminal justice, it is a matter merely of obtaining population figures and estimates of the value of global production in order to establish these.³²

Using these data we can establish that, for the world as a whole, per capita spending on criminal justice averaged about \$63 a year in 1997 and \$66 in 2004. In South Africa, by contrast, the respective figures are \$91 and \$130. Last year, in other words, South Africa spent roughly twice as much on criminal justice per resident as did the rest of the world.^{33, 34} (See Figure 6.)

Global averages of per capita spending obscure differences between countries. Thus rich countries tend to devote more per capita to criminal justice than do poor countries for the simple reason that they have more to spend. This can be demonstrated with data from 1994 for both policing (for which data are available for a larger number of countries) and for the criminal justice system as a whole.³⁵

These data suggest that in 1994, the 25 countries other than South Africa for which data are available spent, on average, about \$98 per capita on policing. For the criminal justice system as a whole, data were available only for 16 countries and average per capita spending was about \$158. The figures for South Africa in 1995/96, on the other hand, were \$63 and \$79, putting spending significantly below the average. However, using an unweighted average in a small sample of countries in which small, rich countries are relatively over-represented distorts this picture. When weighted by population levels, it turns out that average expenditure on criminal justice was \$74 (as against South Africa's \$79) and average spending on policing (at \$19) was less than a third of South Africa's \$63.^{36, 37} (See Figure 7.)

It appears, in other words, that South Africa's spending on criminal justice – whether one uses Farrell and Clark's estimates for global spending or one uses the raw data on countries as presented by Howard and Newman – exceeds global norms. This is confirmed by a comparison of criminal justice expenditure as a proportion of GDP. In 1997, South

Africa spent 2.7% of its GDP on criminal justice while the rest of the world spent only 1%. By 2004, on the other hand, our spending had increased to 3.1% while global spending, as a proportion of GDP, had not changed significantly. (See Figure 8.)

One way of responding to these data is to ask why South Africa spends so much more on criminal justice than other countries. The most obvious answer is that South Africa has more crime than other countries, and must, therefore, devote more resources to dealing with it. But this response poses another question: if we spend so much more on criminal justice, why do we have so much more crime? There are only two possible answers, one obvious and the second less obvious.

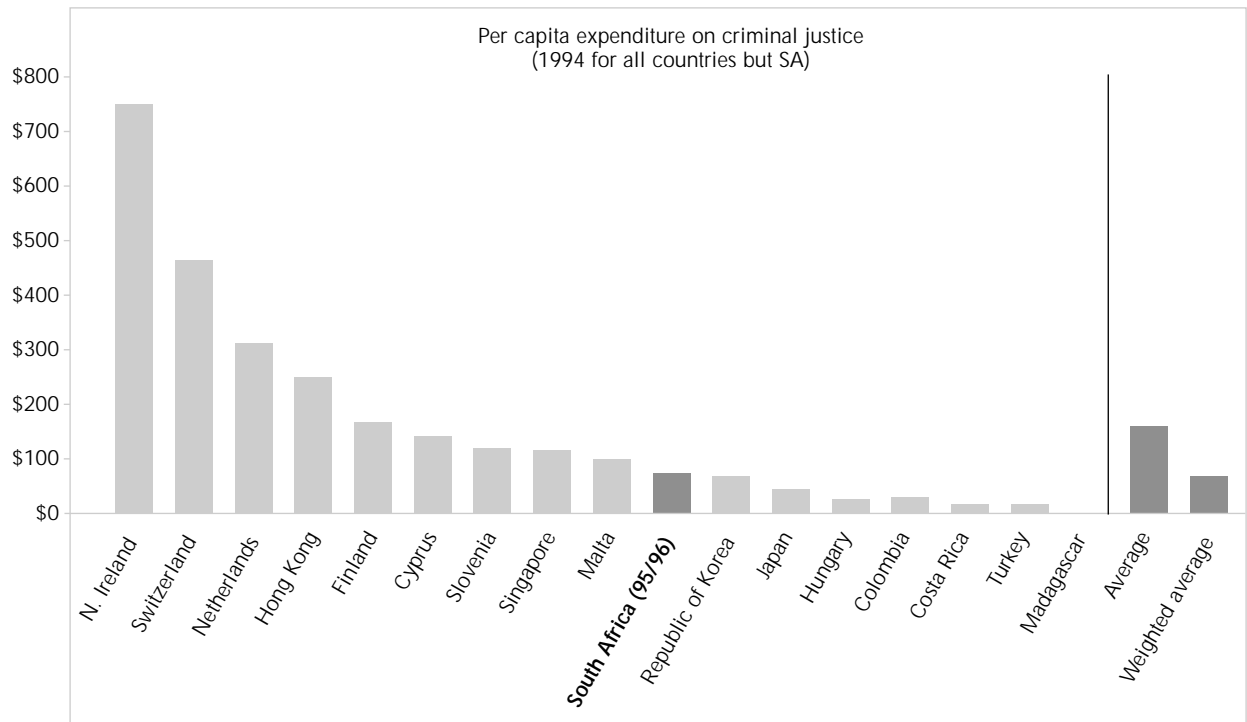
The obvious answer is that expenditure on criminal justice is not the principal determinant of the level of crime in a country. This answer supports the point made earlier when it was shown that the decline of some forms of crime in South Africa coincides more closely with the period when social spending was prioritised relative to spending on criminal justice, rather than when criminal justice enjoyed a higher priority. Reducing crime, it turns out, may require higher levels of social spending rather than criminal justice spending. It may also be true that the level of expenditure on both criminal justice and on social services is relatively unimportant to the level of crime which might be determined by factors – social and cultural – that are beyond the reach of government programmes, however well-resourced. This might explain why some very poor countries appear to have very low levels of crime and, indeed, why the richest country in the world has a higher level of crime, especially crimes of violence, than other developed nations.

But before concluding this section, we must also consider the less obvious (though by no means contradictory) answer to the question posed. This is that although we spend more on criminal justice, something about the cost structure of delivering the services provided by the criminal justice system means that we get less bang for our buck than is the case in other countries.

It was pointed out earlier that the objective of the criminal justice system is not just to prevent crime but to process offenders and cases. The extent to which the system can do this depends on the resources available to it. Unfortunately, the amount of cases that have to be processed depends on how much crime occurs. It is, therefore, possible that

Expenditure on
criminal justice
is not
the principal
determinant of
the level of
crime in a country

Figure 7: Per capita spending on criminal justice and policing

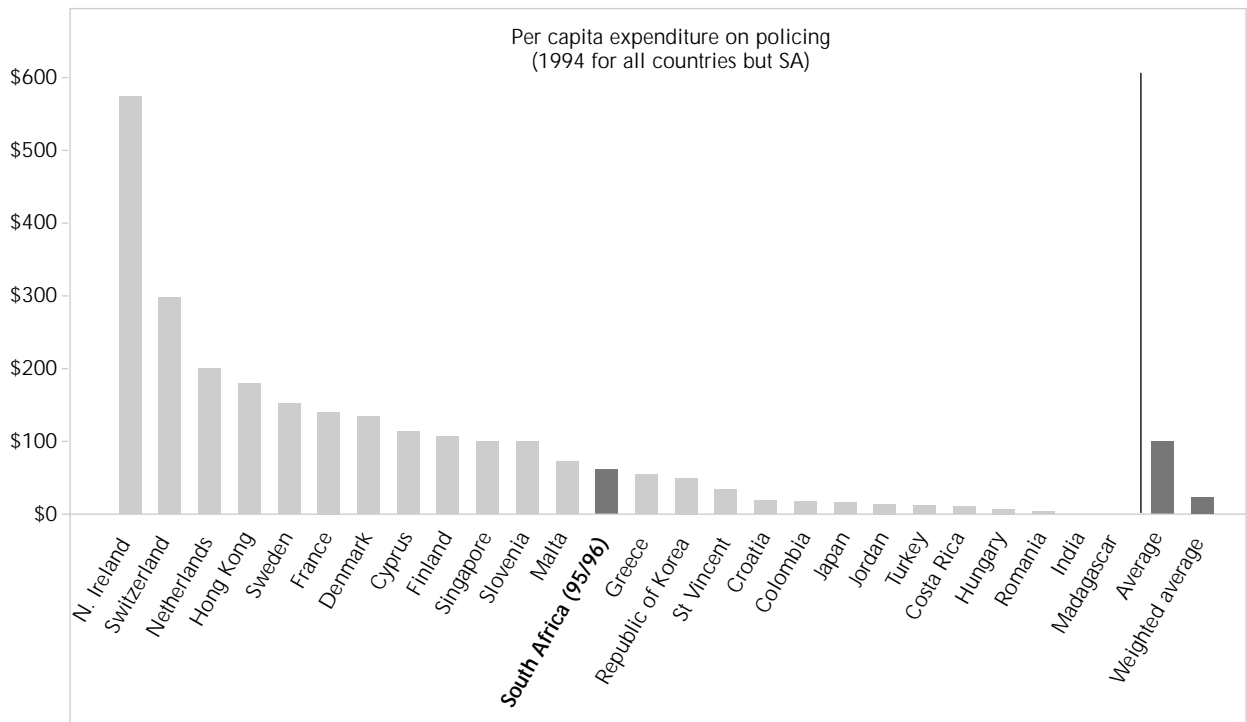


Per capita spending on criminal justice in SA is not out of line with international norms:

- In 1995/6, SA spent about \$80 per person on criminal justice. The unweighted global average for 16 countries spending in 1994 was \$158. If weighted by population, however, the global average falls to \$74.
- In relation to policing, for which data for more countries are available, SA's 1995/6 budget of \$63

compares with an unweighted average of \$98. When population is taken into account, however, the average for these countries falls to less than \$19, or a third of SA's expenditure per capita.

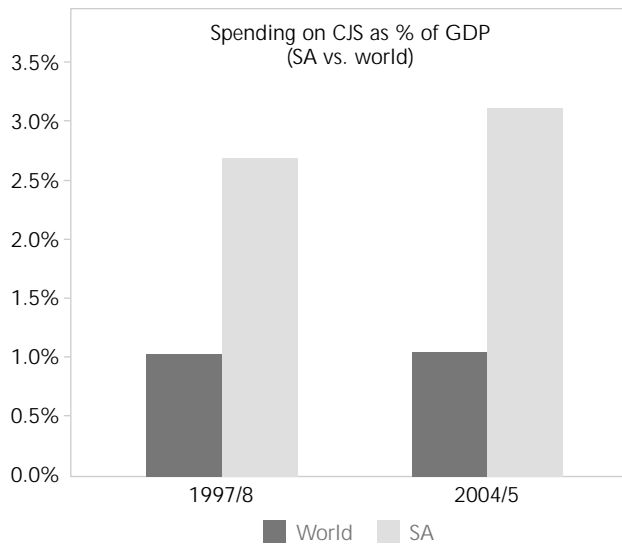
- In both cases, the highest spending country was Northern Ireland (\$747 and \$575) and the lowest was Madagascar (\$0.12 and \$0.05). India spent only \$0.20 per capita on policing in 1994. No figure is available for spending on its CJS as a whole.



Source: Newman & Howard (1999)



Figure 8: Spending on criminal justice in South Africa and the world (2)



How does spending on policing and criminal justice in SA compare with the rest of the world?

- A comparison of spending data for 1997/8 and 2004/5 reveals that while the international average for criminal justice spending as a proportion of GDP was about 1%, in South Africa, spending has risen from about 2.7% in 1997/8 to 3.1% in 2004/5.

Source: Farrell & Clark (2004), IMF (2004)

South Africa spends more on criminal justice than the rest of the world *and* that the country under-spends relative to the workload on those who must process cases. This, it turns out, is very much the case.

International benchmarks: capacity and workload indicators³⁸

One way of looking at how well-resourced (or otherwise) the criminal justice system is, is to look at the number of officials it employs in relation to the number of people in the community it serves. We could, in other words, compare countries on the basis of their per capita employment levels. One result of this approach is that, unlike the expenditure measures used above, this suggests that the criminal justice system in South Africa is relatively under-resourced.

Criminal justice system capacity relative to population

South Africa employs about 234 police officers for every 100,000 citizens compared to an average of about 380 for the 52 countries for which data are available. The international average is, however, a little distorted by the very high police per capita figures for the former Soviet republics and for a number of small Far Eastern countries. Nevertheless, even the median figure for this sample of countries of 340 police officers per 100,000 is substantially higher than South Africa's. In this regard, however, two points must be borne in mind.

SA employs 234 police officers for every 100,000 people compared to an average of about 380

- The first issue was raised earlier but bears repeating: comparing policing across borders is extremely difficult because different police forces have quite different mandates. It is likely, for instance, that the figures for police in countries of the former Soviet Union for example, include personnel who would be regarded as members of the military or the customs and revenue services in other countries. This implies that the differential between South Africa and the rest of the world may be much less dramatic than is implied by these figures.

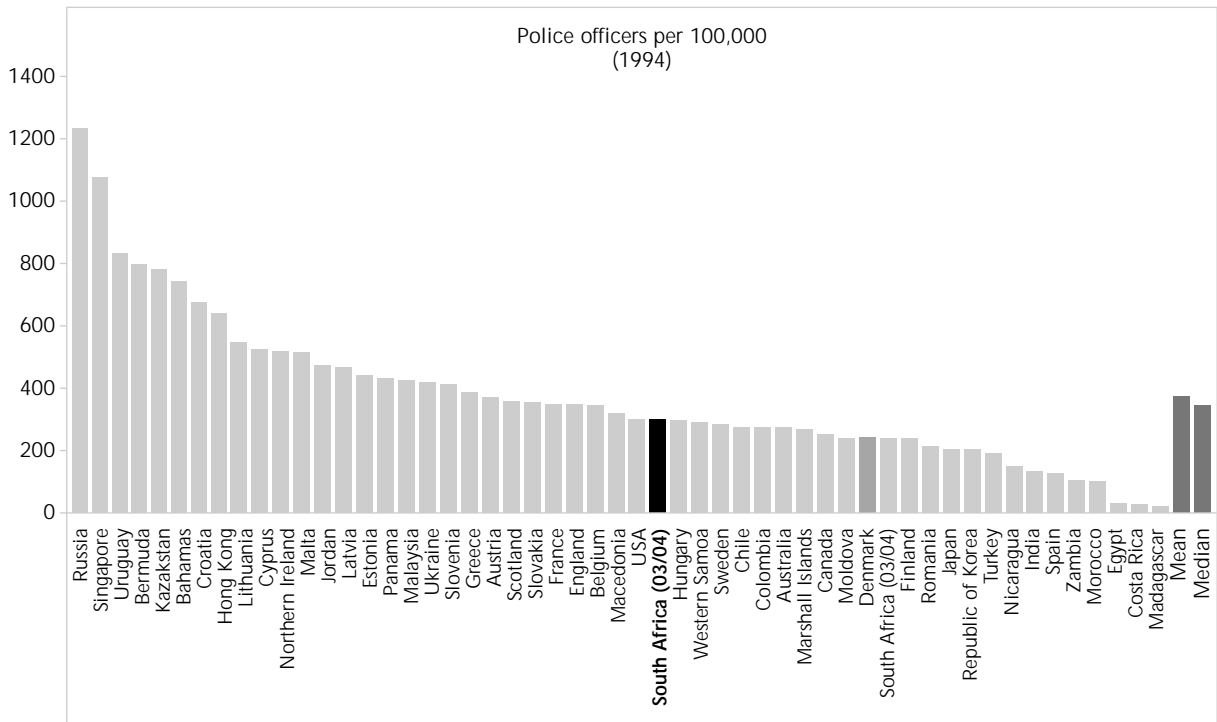
- The second qualification is that the number of police to citizens improves from 234 per 100,000 to 297 if we include civilian personnel in the calculation. Since this may well have been done by other countries in their submissions (despite the survey's specifically asked them not to do so), this may be a better basis for inter-country comparison.

In relation to the prosecution, a similar pattern of relative under-resourcing appears since South Africa has about six prosecutors per 100,000 people compared to a mean (and a median) of seven for a sample of 54 countries. (See Figure 9.)

Apart from the apparent under-resourcing implied by the data in Figure 9, another implication must be drawn from them. This is that for some reason, South



Figure 9: Police and prosecutors per capita

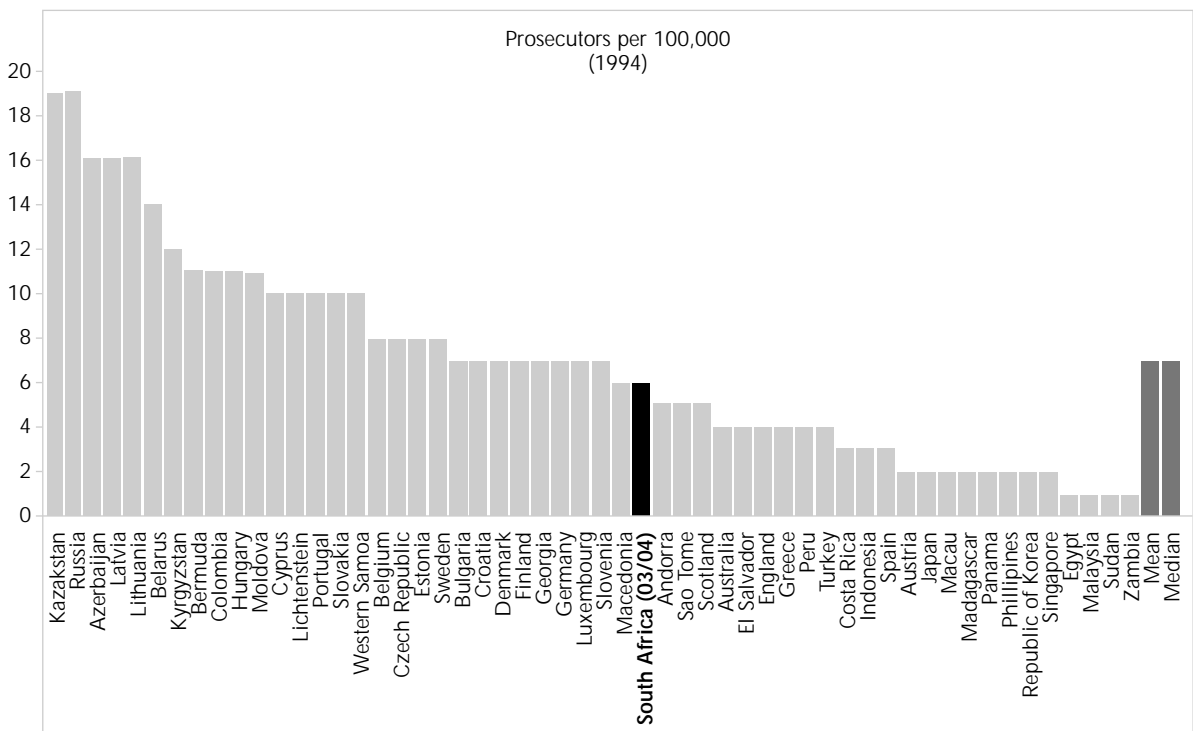


Staffing levels in South Africa's CJS are somewhat lower than the average for other countries:

- SA has about 234 police officers for every 100,000 people compared to a mean for 52 countries of just less than 380 and median of 344. (If we include civilians employed by the police, the number goes to 297 per 100,000).
- SA has about 6 prosecutors for every 100,000 people

compared to a mean (and median) of 7 for 54 countries.

- Given the fact that SA seems to spend more on criminal justice than do other countries, this means that we are relatively inefficient at converting expenditure into person-power. This may be because we spend more on logistics and administration or because our officials are relatively more expensive (when compared to per capita GDP) than are officials in other countries.



Source: Newman & Howard (1999)



Africa is unable to translate its relative superiority in spending on criminal justice into a level of per capita employment that is even equivalent to the international average. We are not, in other words, able to transform our spending advantage into a boots-on-the-ground advantage.

Two reasons might explain this. The first is that, relative to other countries, South Africa spends more of its criminal justice budgets on non-personnel expenditure, be it infrastructural (e.g. prison-building), logistical (egg vehicle-buying) or administrative (egg non-operational civilians, or vast quantities of paper). This may be why we are unable to translate high levels of overall expenditure into high per capita levels of policing and prosecution. Given what was shown earlier about the proportion of expenditure of the criminal justice budget that goes to personnel, and the breakdown of expenditure between police, courts and prisons, however, this explanation seems unlikely.

A second possible explanation seems more plausible: the reason for the inefficient translation of spending into person-power is that employing personnel in the criminal justice system in South Africa is relatively more expensive than in other countries.

This statement must be carefully explained. What this does *not* mean is that South Africa's police officers and prosecutors are over-paid. What is being argued, however, is that, *relative to South Africa's GDP per capita*, police officers and prosecutors earn more than their colleagues in other countries *relative to the GDP per capita of those countries*. In other words, average police salaries in South Africa (which are about four times higher than national per capita income levels) are a higher ratio of our GDP per capita than are the salaries of police officers in other countries. This is, of course, largely a function of South Africa's high levels of unemployment, which drags down our GDP per capita and, therefore, raises the ratio of average salaries to that figure. Nevertheless, it does have the effect of ensuring that South Africa's high levels of expenditure relative to GDP do not translate into high levels of personnel per capita.

Having said this, it is important to point out that staffing levels in the police (although not in the National Prosecution Authority) are currently on a strong upward path. In 2003/04, the staffing levels of which were used for the previous chart, the police employed nearly 135,000 people (of which about 25,000 were civilians). This is expected to grow by nearly a quarter to 165,000 in 2007/08. Naturally,

population levels will grow over the same period, but at nothing like the rate of employment growth in the police.

The result of this growth will be that in 2007/08, South Africa will be far higher up the league table than it is now. There are two reasons why this will be affordable. The first is that the SAPS budget is expected to grow over that time period. The second is that the rapid increase in low-paid junior officers will curb the growth of average salaries in the police. Whether these police per capita figures will be sustainable as police officers rise through the ranks (and become more expensive), however, will depend on future budget allocations. This point will be picked up again later.

Apart from the poor translation of spending levels into personnel levels, there is a second reason to question the earlier conclusion that South Africa's spending on criminal justice is relatively high. This is that *relative to our crime levels*, the capacity of our criminal justice system is not at all impressive.

Relative to our crime levels, the capacity of our criminal justice system is not at all impressive

Criminal justice system capacity relative to crime rates³⁹

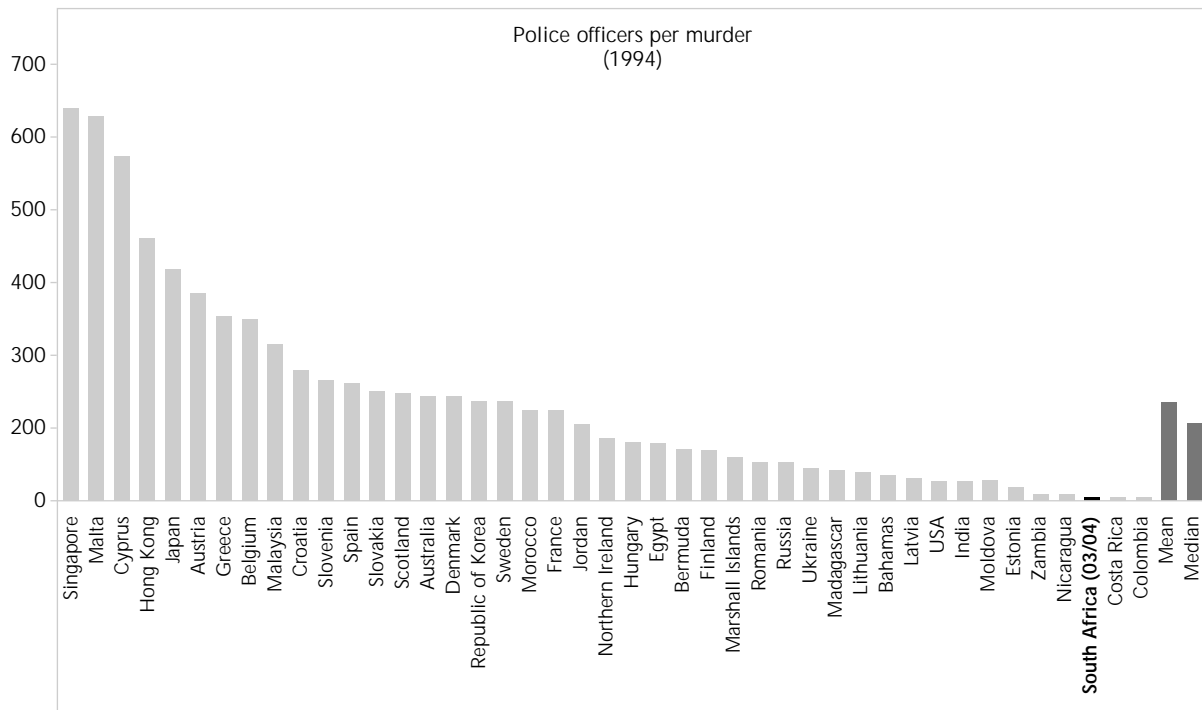
Consider, for example, the number of police officers and prosecutors there are per murder committed in South Africa in relation to the same number in those countries for which data are available.⁴⁰ (See Figure 10.)

The average number of police officers employed per murder committed for 43 countries for which data are available in 1994 is 158, with Singapore at nearly 630 officers per murder leading the list and Colombia with four bringing up the rear. South Africa's figure (for 2003/04), at seven officers per murder (or nine, if we include civilian employees of the police), was a little more than one twenty-fifth of the international average.

In relation to prosecutors per murder, the average for 30 countries was 2.6 prosecutors per murder (with Russia at the top of the list and Zambia at the bottom). South Africa's figure of 0.14 prosecutors per murder in 2003/04 was a little more than one-twentieth of the international average.

This means that the typical official in South Africa's criminal justice system has a far higher workload than officials in other countries. This result, it should be noted, is heavily dependent on what crime is used against which to measure staffing levels. In the case of theft, for instance, South Africa's per capita rate is not dissimilar to that of many other countries,

Figure 10: Police and prosecutors per murder

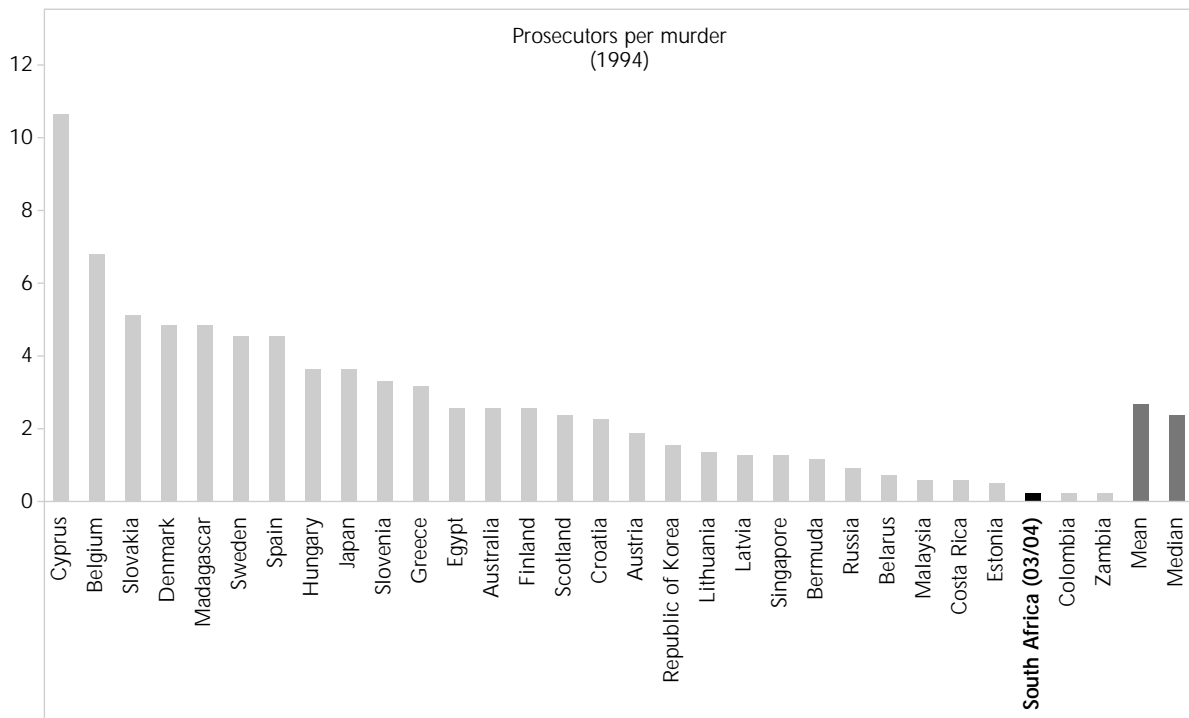


Staffing levels in South Africa's CJS are a great deal lower than the average for other countries when compared to the level of crime (eg murder):

- SA had about 7 police officers for every murder committed in 2003/4. (Nine employees if we include civilians in the police). This is substantially below the mean of 158, and median of 123, for 43 countries in 1994.
- SA has about 0.14 prosecutors for every murder

committed in 2003/4, compared to a mean of 2.6 and a median of 2.4 for 30 countries in 1994.

- The implication of this is that the workload of the typical official in the SA's CJS is substantially greater than that of her colleagues in other countries.
- These comparisons are not as invidious if crimes other than murder are used. However, because murder is the best reported and recorded crime, because it is the one most reported by other countries, and because it is the most labour-intensive, it is used here.



Source: Lewis (1999), Newman & Howard (1999)



so its police-to-theft ratio is much better. Murder has been used in this analysis partly because the cross-country data on murder are better than are others and partly because this is the most serious (and labour-intensive) crime dealt with by a criminal justice system.

The case of prisons is slightly different from that of the police and the prosecution service. Here, South Africa seems to be getting a relatively high level of capacity out of the resources dedicated to the criminal justice system since we incarcerate a far higher proportion of our citizenry than do other countries. At 411 prisoners for every 100,000 people, South Africa locks up nearly three times more people, per capita, than the average for a sample of 84 countries.⁴¹ (See Figure 11.)

This suggests that the investment in prison expenditure in South Africa achieves a higher return (measured solely on the basis of the incarceration rate) than expenditure in other countries. One way in which this is achieved, unfortunately, is that the conditions in which prisoners are held are commensurably worse than they are elsewhere.⁴²

Nevertheless, it is still possible to doubt whether adequate resources are available even in the prisons since a comparison of the number of convicts to the level of murder reveals that South Africa, with six convicts per murder, fares quite poorly. The international average, based on a sample of 32 countries, is 40 convicts per murder. Since this figure is skewed by the low-murder, high-incarceration countries (like Egypt, Madagascar, Singapore and Hong Kong), one might want to compare our rate with the median for these countries. At 32 convicts per murder, that was still a good deal higher than South Africa's ratio.

Proposals made by opposition political parties

Over and above the international comparisons discussed earlier, there is another way in which to assess how much South Africa ought to be spending on criminal justice. This is by looking at the proposals made by opposition political parties and to assess what these say about government's current spending levels since one might assume that any weaknesses in government spending might be exploited by its political opponents.

The only opposition party that appears to have released detailed proposals for the criminal justice

system, including proposals on resource-levels and spending, is the official opposition, the Democratic Alliance (DA). These proposals are contained in two policy documents which together set out a very long list of proposals.⁴³ This is not the place in which to review these proposals, though we should note that, with few exceptions, the content of the DA's policy wish-list – despite its often strident critique of government policy – is not markedly different from that of government itself.

In relation to the police, this list consists of: recruiting 36,000 more police officers; massively increasing the amount of training; strengthening the capacity of the Independent Complaints Directorate; employing high-level lateral entrants; rolling out metro and municipal policing; creating a "professionally trained and properly equipped" rural protection division in the SAPS; and improving infrastructure at local police stations.

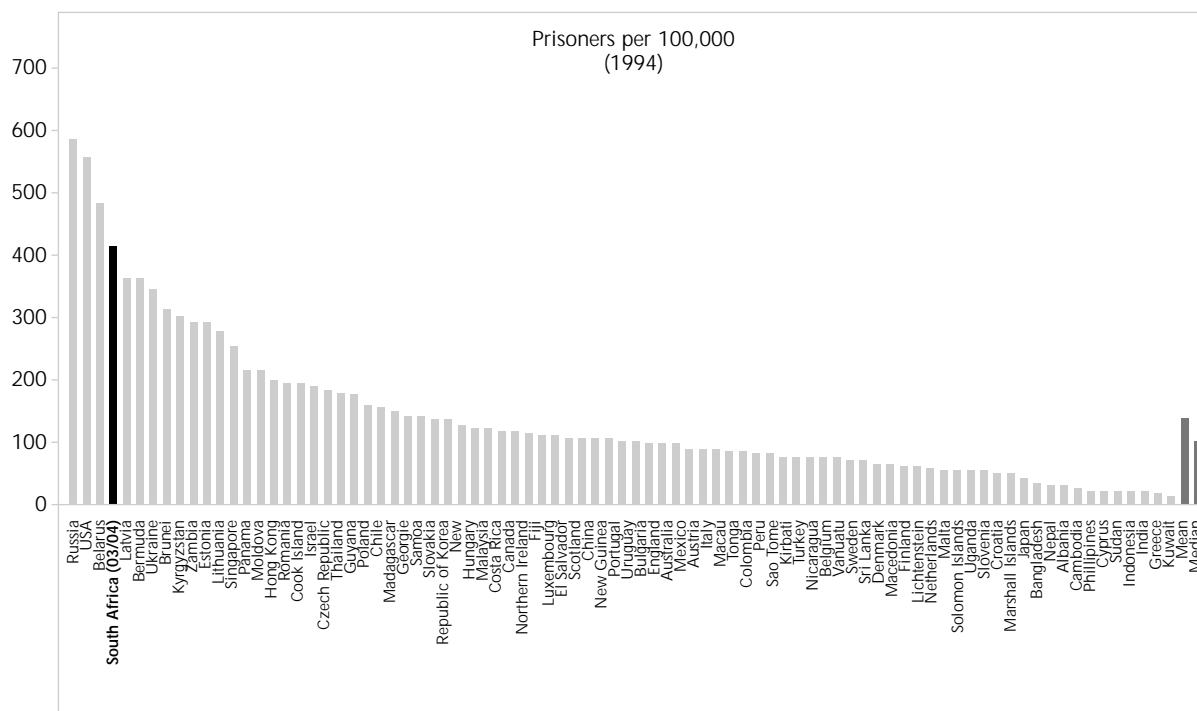
Elsewhere in the justice system, the DA proposes more changes, including: expanding ordinary and municipal courts increasing the budgets of anti-corruption agencies and the Auditor-General, creating a crime victims' fund, "fully fund[ing]" the implementation of the Domestic Violence Act, improving both prosecutorial staffing and pay, increasing funding for public defenders, lengthening prison sentences for serious criminals and building more prisons, employing more warders, rolling out rehabilitation programmes, and using electronic monitoring to facilitate the release from prison of less dangerous criminals. Finally, the DA proposes providing "tax relief of up to R5,000 or 5% of taxable income (whichever is greater) spent by households on verifiable private security-related expenses".

The DA's policy documents are relatively sanguine about how much all of this will cost. *Freedom from Fear*, for instance, from which most of these proposals come, suggests that the recruitment of 36,000 more officers will cost "R4.5 billion over three years," adding that this will require a "real increase of approximately 4% of the current Safety and Security budget".

On the face of it, this calculation seems somewhat fuzzy: a 4% increase to the Safety and Security budget, even over three years, amounts to only R3bn. Even if it did come to the advertised R4.5bn, it is clear that that sum would not pay for all the

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Figure 11: Incarceration levels

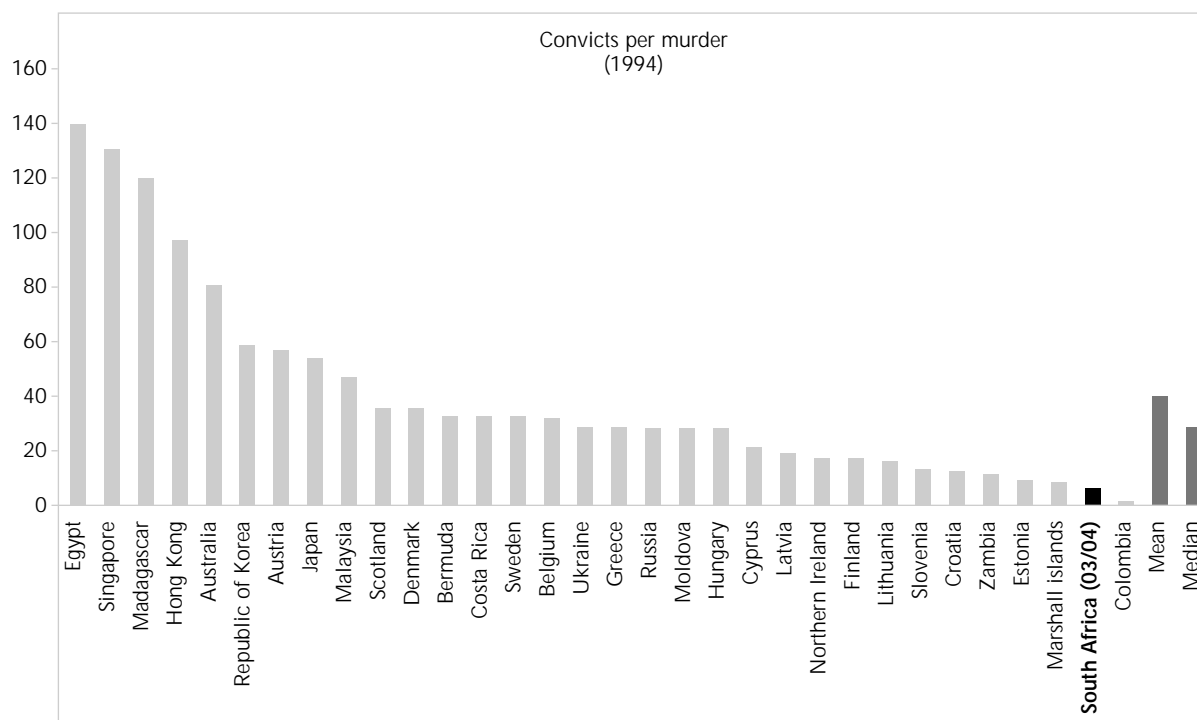


South Africa incarcerates a high proportion of its residents, but, when compared to crime levels, our incarceration rates do not appear quite as excessive:

- SA imprisons about 411 people out of every 100,000. This compares against an average of about 138 in a

sample of 84 countries

- If we take murder levels into account and compare countries on the basis of convicts per murder, SA, with 6 convicts per murder, features very low on the table of 32 countries. The average for these countries was about 40 convicts per murder. The median was 32.



Source: Shinkai & Zvekic (1999), Lewis (1999).



DA's proposals. It is, after all, hard to see how recruiting somewhere between a quarter and a third more police officers could add much less than a quarter to a third of the annual budget. This means that something like an additional R8bn would be required every year to implement just this proposal.

Nor, it must be said, does the DA's alternative budget appear to be more accurately costed.⁴⁴ There, the DA reduces all the proposals set out above to a list of seven (some of which are not actually present in the DA's own policy document): the tax rebate, the electronic tagging of prisoners followed by their release, increasing prosecutors' salaries, increasing the resourcing of anti-corruption agencies, improving courthouse security, increasing the size of the Detective Service, and employing 6,000 new prison warders.

The total cost of this package is said to be R1.4bn or a 2.6% increase in spending for 2005/06. This is made up of R0.5bn in tax relief and R1.8bn for prosecutors, corruption, courts, detectives and new warders. This is partly offset by an estimated reduction in the DCS budget of R953 million when electronic tagging is introduced.

Once again, the costing of these proposals is questionable. Take the tax rebate. It proposes a rebate of R5,000 or 5% of disposable income (whichever is greater). It would be extraordinarily unlikely for this to sum to as little as R500 million for the simple reason that even if tax payers were to claim only R5,000 each, the total would be R19.5bn (or almost 40 times the DA's estimate) since there are 3.9 million individuals registered as tax payers.⁴⁵ Even if 80% of them failed to claim the rebate (though it is not clear why anyone would), the total rebate would still be in the order of R4bn.

Another question one might ask is why the DA would want to create such a large and economically-distorting subsidy for the private security industry.

In addition, the idea that a 45% increase in prosecutor pay will cost R89 million is also odd since it suggests that the present salary bill for prosecutors is about R200 million. In fact, the salary bill in the National Prosecution Authority programme (about two-thirds of which goes to public prosecutions) is a little more than R900 million.

There is, in short, no great sense that the numbers offered by the DA are anything but soft.

Nevertheless, what is striking is that, when all is said and done, the Official Opposition proposes spending only 2.6% more on criminal justice than the government already spends: this is not a proposal premised on the view that criminal justice is massively under-funded.

Individual criminal justice departments' budgets

The final section of this paper looks at key developments in the budgets of the individual departments in the criminal justice system and seeks to offer an analysis of the key priorities over the medium- and long-term.

The SAPS

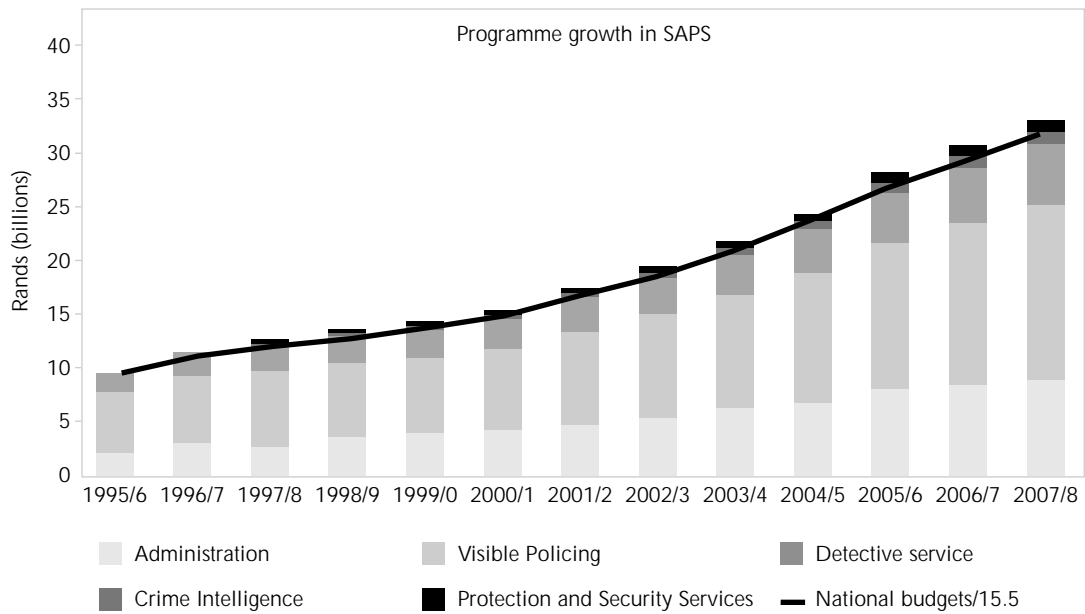
The programme structure of the SAPS budget has been relatively stable since 2000/01 even though its five programme structure of Administration, Visible Policing, Detective Service, Crime Intelligence, and Protection and Security Services is more recent. This is because the six programme structure that preceded it can be reconciled with the current structure quite easily. Prior to 2000/01, however, changes to the programme structure were made quite frequently. Because even these changes were not dramatic, however, it is not difficult to create a consistent dataset for earlier years.⁴⁶ The only exception is that it is not possible to identify how much was spent on Crime Intelligence or on Protection and Security Services prior to 1997/98; these functions must have existed, however, and would have been part of other programmes.

Most of the police budget (66%) is consumed by Visible Policing (which finances the work done at police stations, border policing, and specialised interventions handled by public order policing and the special task force) and the Detective Service (which finances station-level detective work, specialised units, the criminal record centre and the forensic science laboratories). Within Visible Policing, the fastest growing sub-programme has been crime prevention (i.e. the funding of police stations), while in Detective Services, the forensic science laboratory's budget has grown fastest, with station-level investigations and the criminal record centre also doing relatively well. The restructuring and rationalisation of the specialised units has seen their budgets remain relatively unchanged.

Administration accounts for about 29% of the police budget. It is important not to make too much of this

When all is said and done, the Official Opposition propose spending only 2.6% more on criminal justice

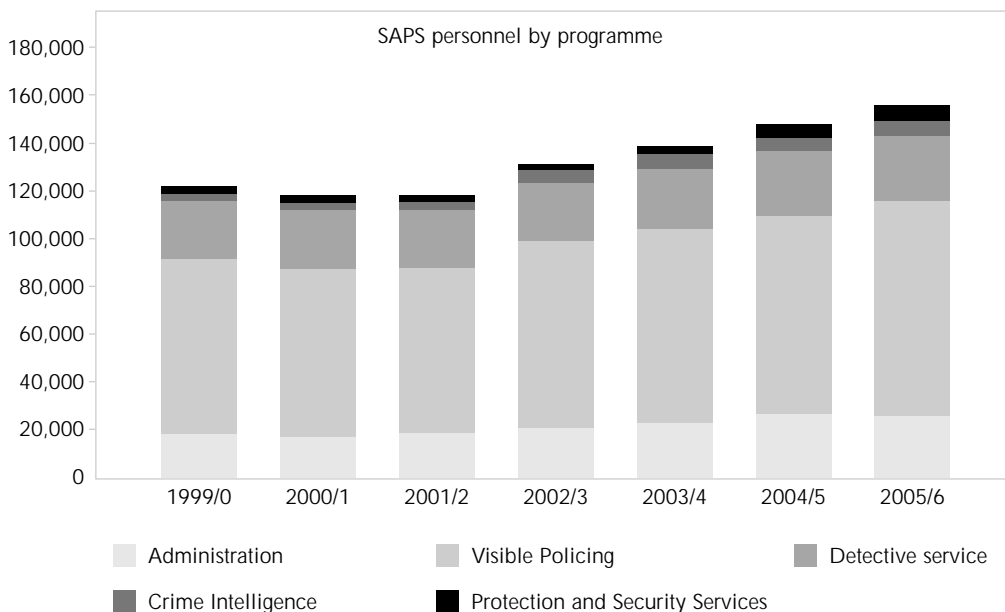
Figure 12: Programmes in the SAPS budget



The SAPS budget, when split between its five programmes reveals:

- Typically, Visible Policing consumes 50% of the budget, Administration takes 28%, and detectives receive 16%. 5% is split between Crime Intelligence and Protection Services.
- Although budget growth as a whole has been marginally faster than growth of the national budget, since 1997/8, Protection Services, Crime Intelligence and Administration have grown fastest. Visible

- Policing and Detective Service have grown slowest.
- The growth of Protection Services is a result of the creation of new functions for port and rail security in 2004/5.
- Personnel numbers have grown from 118,800 to 156,000 with most being allocated to Visible Policing and Administration, followed by Protection Services, the detectives and Crime Intelligence. The rate of growth of numbers has been highest in Protection Services and Crime Intelligence, and slowest in the detectives.



Source: Estimates of National Expenditure (various years)



or to assume that the Service is 'top heavy', since almost 30% of this budget is spent on medical aid contributions for the entire Police Service, while a further 10% is spent on managing the Service's computer systems. Much of the rest is accounted for by centralised logistics management and essential administrative functions such as human resource management.

Analysing the police budget by programme reveals interesting trends. The most important of these is that between 1997/98 and the end of the current MTEF, the smallest programmes (Crime Intelligence and Protection Services) have also been the fastest growing. The former has been growing at 13.3% a year between 1997/98 and 2007/8 and the latter at 17%, both off low bases.

Over the same period the budget as a whole grew at 10% a year, with the Detective Service and Visible Policing both growing at around 9%. This suggests that government has prioritised Crime Intelligence and Protection Services. This last point must, however, be read quite carefully because two new functions were created under the Protection Services programme in 2004/05 – Port of Entry Security and the Rail Police. It is this that accounts for the rapid growth of the programme, rather than growth in expenditure on VIP protection (which still makes up the bulk of this budget).

By far the most significant trend in the SAPS budget relates to personnel levels: after falling from over 140,000 personnel in the mid-1990s to a low of less than 119,000 in 2000/01, the Police Service is now recruiting aggressively. In fact, personnel numbers will be greater than 150,000 this year and will grow to 165,000 in 2007/08. By any standard, this is a rapid expansion of the establishment and one that has placed great strain on the capacity of the police's training facilities.

Between 1999/00 and 2005/06, the police establishment grew by 35,200 employees. Of these, 54% have gone into Visible Policing, 21% have gone to Administration, 10% to Protection Services, 8% to the detectives and 7% to Crime Intelligence. Relative to the size of their establishments in 1999/00, however, the fastest growing programmes are Protection Services and Crime Intelligence. The slowest is the Detective Service. (See Figure 12.)

The almost 40% growth in the establishment from its lowest point to the projected 165,000 is likely to put some strain on the police salary budget which is projected to grow by 11% a year between 2000/01 and 2007/08 even as the establishment grows at 5%

a year. This allows for salary increases of 6% a year. Given that average salaries rose by nearly 7% in 2004/05 and nearly 11% in 2005/06, it seems unlikely that a 6% growth rate in average compensation, in an environment in which inflation is projected to increase, is likely to be sustained. It is possible, therefore, that either the police salary budget will have to grow a little faster than is currently projected, or that personnel projections will prove to be unrealisable.

Justice

Between 1995/96 and the end of the present MTEF in 2007/08, the Justice budget will have grown far faster than the national budget as a whole. Indeed, if the Justice budget had grown only as fast as the national budget it would be almost 40% smaller today than it is. The rapid growth of the budget is, however, concentrated in two programmes, the National Prosecuting Authority (which incorporates the DSO) and Auxiliary Services (in the case of which, growth has been concentrated heavily in the financing of the Legal Aid Board and the funding of a computerisation programme called, obscurely, the National Crime Prevention Strategy).⁴⁷

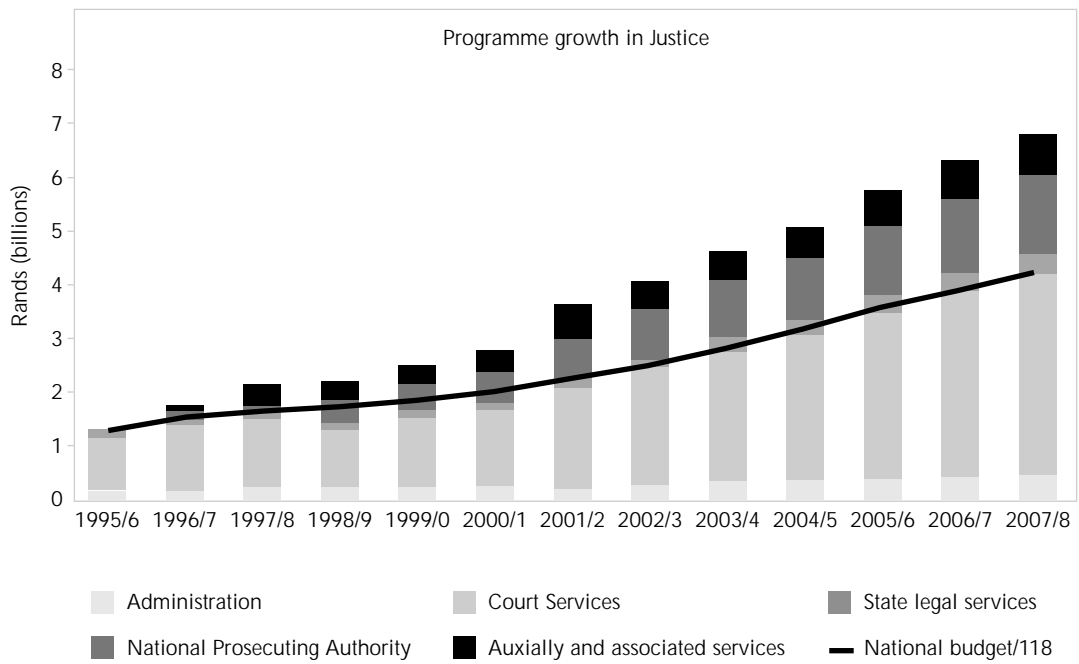
The result of this is that while Court Services (a programme which, for convenience, here includes salaries of judges and magistrates) constituted 70% of the Justice budget in 1996/97, it now forms just 54% of the budget. The NPA, by contrast, has grown from 10% in 1996/97 to 22% today. About 29% of this is allocated to the DSO, the budget of which has grown more slowly than the budget for public prosecutions since 2002/03. (See Figure 13.)

Within the Auxiliary Services programme, the most important story relates to the Legal Aid Board, the budget of which more than quadrupled from R75.6 million in 1995/96 to nearly R335 million in 1997/98. During this time its share of the Justice budget rose from 6% to 16%. Through various policy changes aimed at containing expenditure, this has now been managed back to about 8% of the budget, or about R440 million in 2005/06. The principal reason for growth in the Auxiliary Services budget, however, is that between 2000/01 and 2005/06, nearly R900 million has been allocated to the development and rolling out of computer systems in the department. A further R335 million is allocated over the next two years.

Between 1999/00 and 2005/06, the department employed almost 4,000 additional personnel (an

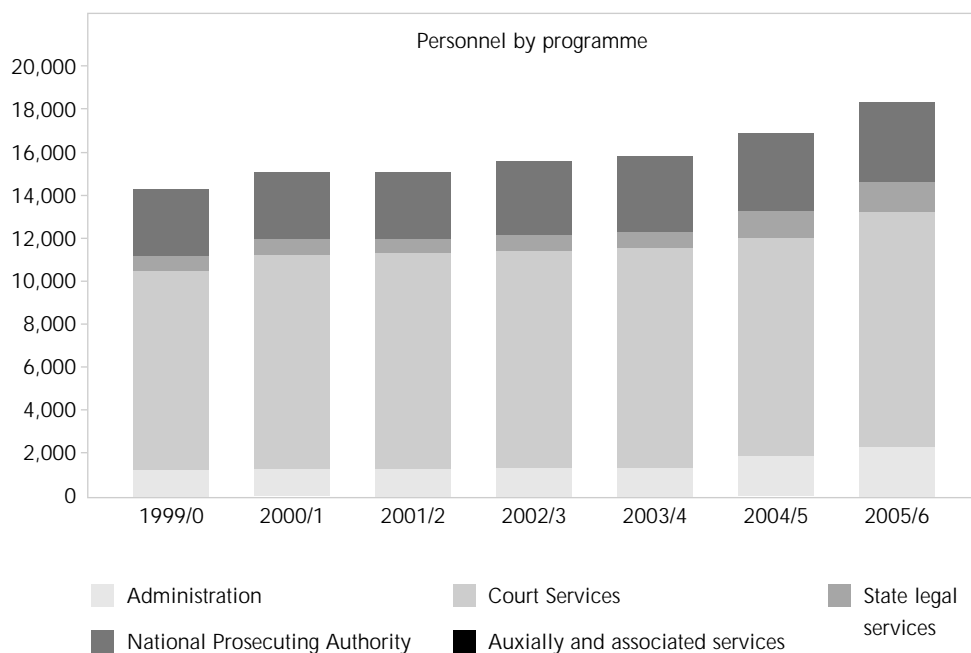
After falling
from over 140,000
personnel ... to less
than 119,000,
the Police Service
is now recruiting
aggressively

Figure 13: Programmes in the Justice budget



The DOJ's programmes have grown at different rates:

- Since 1994/5, the budget of the DOJ has grown substantially faster than that of government as a whole, largely because of rapid growth in the NPA budget (especially because of the creation of the DSO) as well as growth in the allocation to legal aid and to computerisation in the department.
- Personnel numbers have grown since 1999/00, with the fastest growing programmes by employment levels being State Legal Services and Administration.



Source: Estimates of National Expenditure (various years)



average annual growth rate of 4%). Forty-two percent of these have gone into Court Services, 26% into Administration, 18% into State Legal Services and 14% into the NPA. The average annual rates of growth of staff numbers in each programme are 3% in Court Services and the NPA, 10% in Administration and 13% in State Legal Services.

Taken together, the allocation of funds and personnel between Justice's programmes suggests that government has prioritised computerisation, the creation of the DSO, and the expanded financing of public prosecutions (although personnel numbers have not grown as fast as salaries).

The DCS

Of the three departments' budgets, the Department of Correctional Services' budget is least amenable to analysis because the programme structure has changed repeatedly and provides almost no auxiliary information (in the form of sub-programmes) to use as a guide in the interpretation of those changes. In addition, the accounting practice of using 'internal charges', a negative budget to offset what would amount to double counting elsewhere, complicates matters because no details are offered about how these charges affect each programme. This means that the raw numbers for programme expenditure over-state actual spending, but the true figures cannot be determined on the basis of the existing budget documentation. The effect of all of this is that it is not possible to extend a longitudinal analysis of the budget's programmes before 2000/01.

As discussed earlier, if one takes a long-term view, the DCS's budget has grown faster than the national budget since 1995/96. In more recent years, however, its growth has been somewhat slower than that of the national budget. Within the budget, the fastest growing programme has been Facilities, which, at 24% per year, has grown three times faster than the budget as a whole. Much of this is explained by the growth of spending on the two public-private partnership prisons, which grew from next to nothing in 2000/01 to nearly R600 million over the current MTEF. This has meant that the Facilities programme now accounts for 17% of the DCS budget, up from 7% in 2000/01.

Sixty-one per cent of the DCS budget is devoted to two programmes: Administration, which, as in the

police, pays for centralised administrative services and payments towards employees' medical aid; and Security, which finances the salaries of warders and almost nothing else. Care, which accounts for a further 9% of the budget, buys food and medical attention for prisoners.

Another 9% of the budget is spent on rehabilitative services and parole evaluations, while 3% is spent on community corrections (now called After-care). Apart from the rapid growth of the Facilities budget and the sluggish growth of the Administration and After-care budgets (4% and 8% per year, respectively), the prison-centred programmes (Security, Corrections, Care and Development) have all grown at around 11.5% per year. It is, however, not enough.

The essential problem that DCS has confronted over the past ten years is quite well documented: prisoner numbers have risen inexorably, while both staff levels and accommodation capacity have failed to keep up.⁴⁸ Indeed, since 1995 prisoner numbers (which were nearly 187,000 in August 2004) have grown four times faster (5.3% per year) than has bed space (1.3% per year). The result has been that today's prisons hold, on average, more than 70% more prisoners than they are designed for. (See Figure 14.)

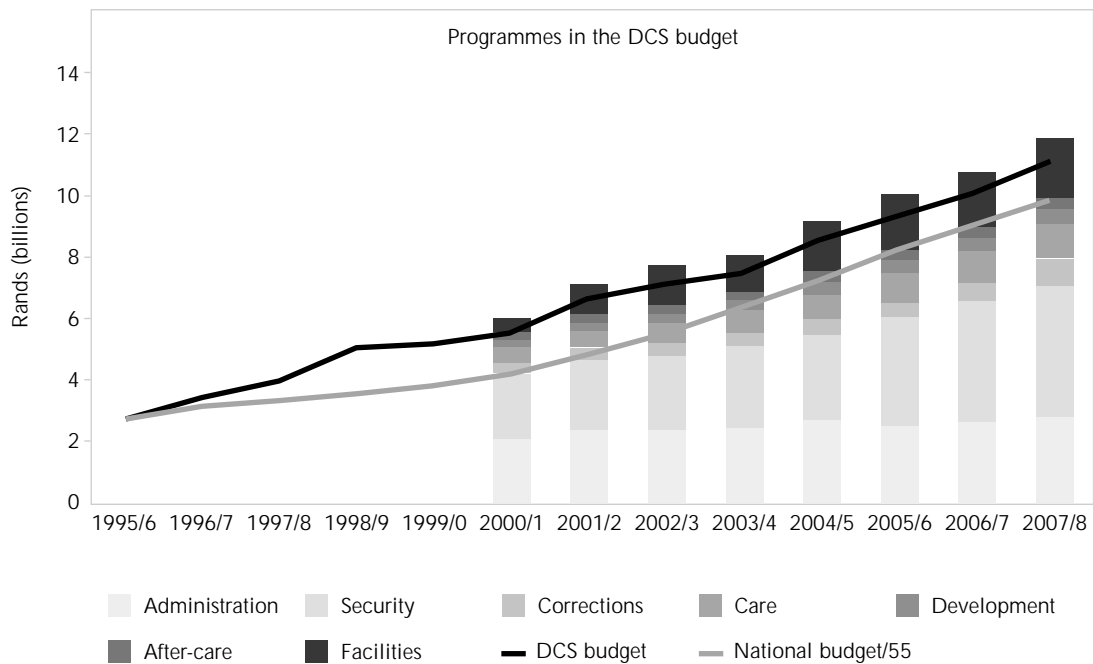
Prisoner numbers
have risen
inexorably ...
[but] staff and
accommodation
capacity have
failed to keep up

Over the shorter period for which we have data (1998/99 to 2005/06), the growth in prisoner numbers has also been about three times faster than the growth of staff numbers, resulting in deteriorating prisoner-to-warder ratios. This is likely to make DCS's rehabilitative ambitions ever harder to achieve. When combined with the growing problem of overcrowding, the result may mean that simply maintaining effective control over prisons and prisoners may become an increasing problem. This problem is unlikely to be resolved soon given the relatively slow pace at which new accommodation can be procured: the 12,000 new beds that DCS says will come on stream in 2008, for instance, will accommodate only about two-thirds of the additional prisoners who will need accommodation if prisoner population levels grow at current rates.

Systemic issues

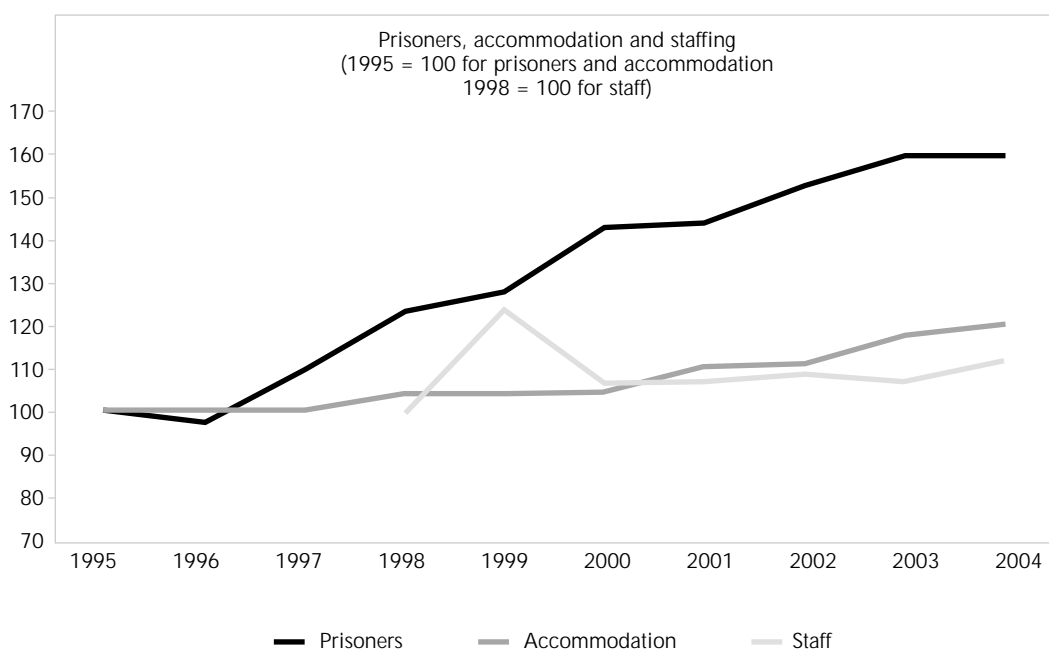
Although the criminal justice system as a whole has seen its combined budget grow considerably over the past ten years in both nominal and real terms and in relation to the rest of government spending,

Figure 14: Programmes in the DCS budget



DCS's programmes have grown at different rates:

- Over the long-term, the DCS budget has grown faster than the national budget, but this is true largely because of the rapid growth of the budget in the late 1990s. More recently, it has grown less quickly than the national budget.
- The fastest growing programme is Facilities, with the PPP prisons being largely responsible for this.
- Prison-centred programmes (Security, Care, Development and Corrections) have all grown at a similar rate. Administration and After-care have grown less quickly.
- Prisoner numbers have grown far faster than has either accommodation or staff levels.



Source: Estimates of National Expenditure (various years)



areas of stress remain which current budget trends do not address adequately. The most obvious of these relate to workload and capacity issues.

As was demonstrated earlier, South Africa spends a relatively large amount on criminal justice but has not been able to translate this spending into high per capita staffing levels. More seriously, in relation to crime levels, our staffing levels are low by global standards if we compare them to the level of crime as proxied by the murder rate. In relation to the police, this matter is being addressed since staff levels are rising and crime levels (at least in the case of murder) are falling. Unfortunately, staff levels have not grown at the same pace in other departments in the criminal justice system.

Since 2000/01, police personnel numbers have risen by 31%. In the ordinary run of events, one would expect there to be two consequences of this. The first is that more crime might be prevented as patrols, operations and overall visibility increase.⁴⁹ The second is that more people will be arrested. This is partly because a great deal of practical police crime prevention consists of patrol officers' looking for people who appear suspicious and their making arrests when their suspicions are confirmed, more rapid responses to calls for service (which ought to mean some further arrests are made), and crime prevention operations that target areas in which criminals are believed to live. It is also partly because there are many criminals who are not arrested, partly, one must assume,

The consequences [are that] court rolls will clog up further and awaiting trial prisoner numbers ... will increase.

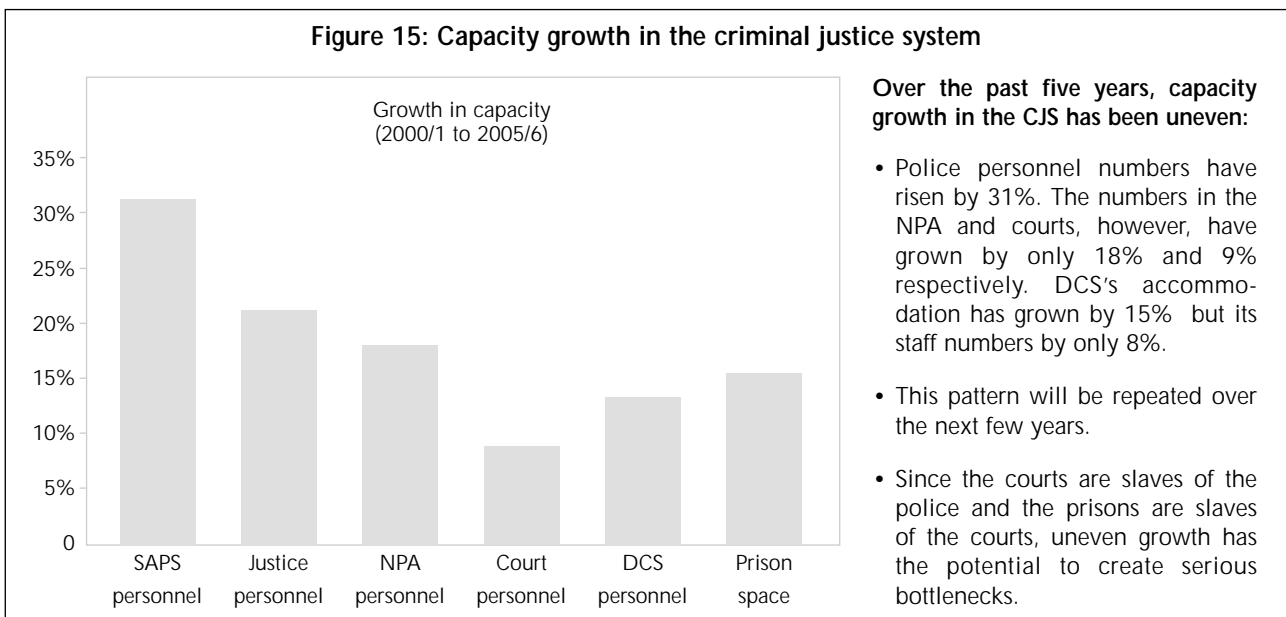
because personnel constraints. Presumably, some of these will now be arrested as numbers of detectives increase.

Stated simply, the problem is this: while a 31% increase in police personnel may not result in 31% more arrests, we would be disappointed if more police officers did not mean that criminals were being brought to court. If capacity in the prosecution service, the courts and correctional services does not increase at the same rate as in the SAPS, these departments may struggle to cope with the increasing number of cases. This is, in fact, what has happened: between 2000/01 and 2005/06, prosecutor numbers and the number of personnel in the courts have increased by only 18% and 9% respectively, while in the prisons, accommodation has increased by 15% and warder numbers by only 8%. (See Figure 15.)

The consequences of this kind of unbalanced growth are reasonably predictable: court rolls will clog up further and awaiting trial prisoner numbers, which have fallen in recent years as new systems and new technology have come on line, will increase once again. Prisons will become even more overcrowded – both because of the increase in awaiting trialists – and because more people will be found guilty when their cases are finally heard.⁵⁰

This pattern of growth is not a recipe for the long-term health of the system. Indeed, there is some evidence that the

Figure 15: Capacity growth in the criminal justice system



Source: *Estimates of National Expenditure (various years)*

crunch in the courts has already begun. (See Figure 16.)

Since 2000, when police staff numbers began to rebound and when a more aggressive policing philosophy was adopted, the number of cases being taken to court every year has risen by 84%.⁵¹ The same, however, cannot be said of the number of prosecutions, which rose only by 31%. The fact that withdrawals also grew by less than the rate of growth of cases handed over to the prosecution, has meant that the gap between the number of cases brought to court and the number finalised (either through prosecution or withdrawal) has grown. In 2003 alone, this left an additional 350,000 cases on the rolls, some of which will involve accused persons who will either be denied bail or will not be able to afford it.

A number of policy recommendations flow from the fact of rapidly increasing police numbers. The most obvious of these is that, if improvements in productivity in the courts large enough to offset the increase in arrestee numbers are not found, increases to the establishments of both the NPA and the courts will have to be financed. In addition, more staff and accommodation will be needed in prisons unless alternatives to incarceration are rolled-out rapidly or average sentences are cut dramatically to increase the outflow of prisoners reaching the end of their sentences. This, it should be said, will apply whether or not the NPA manages to prosecute more cases: if the number of

prosecutions does not increase, then space will have to be found for awaiting trialists; if prosecutions do increase, space will be needed for convicts.

Conclusion

This paper has explored how the budget of the criminal justice system has evolved over time. In so doing, it has attempted to show that, relative to government spending as a whole, the budget has grown fitfully, with relative rapid growth in the immediate post-apartheid period followed by slower growth after 2000, and then some acceleration in the present MTEF. It has also highlighted that this growth was not even across the system as a whole: the Justice budget has grown faster than that of the SAPS and DCS.

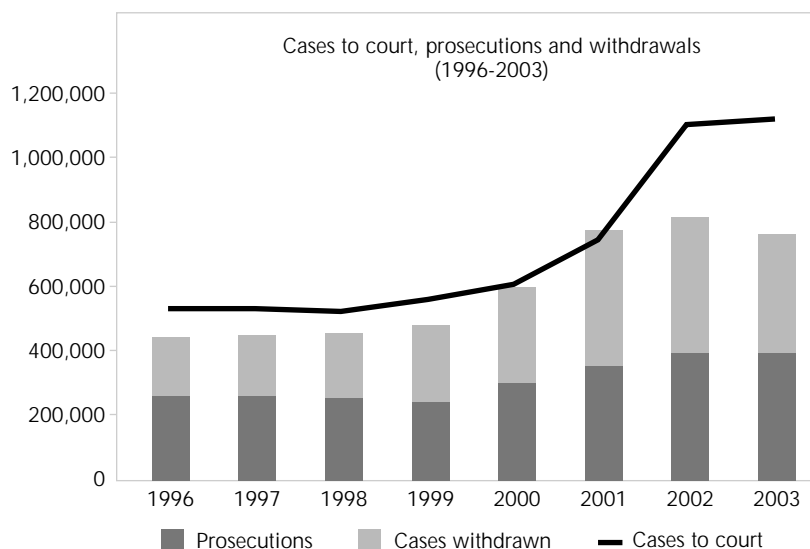
In exploring the changes to the growth rate of the budget for criminal justice relative to that of social services (for which the allocation to provinces was used as a convenient proxy), an interesting result emerged: the rate of change in crime (whether it was increasing more slowly or decreasing more quickly) appears to have been better when social services spending was growing faster than criminal justice spending. This finding provoked a key question: just how much should a society like ours spend on criminal justice?

The answer to this question is ambiguous. On the one hand, it appears that relative to international norms, South Africa actually spends a lot on criminal justice. On the other

Bottlenecks in the courts and overcrowding crises in the prisons are likely to become more acute in the future

I

Figure 16: Court rolls have grown because cases are not cleared



The courts are already struggling to clear their rolls:

- Since 2000, the number of cases going to court has risen by 84%. The number of prosecutions has only grown by 31%.
- Withdrawals have increased by 42%, but that still leaves a growing number of cases stuck on the rolls. This amounted to more than 350,000 cases in 2003 alone.

Source: National Prosecuting Service



hand, we appear to be inefficient in translating that spending advantage into high levels of per capita employment in the sector. The result is that we are nowhere near as high on a league table of employment per capita as one might expect if our spending levels alone were examined.

When compared to crime levels, the position is even worse: South Africa has a very low number of police officers and prosecutors per murder, and our prison capacity (though capable of incarcerating large numbers of people) does not hold anything like the international average of convicts per reported murder (though the comparison would be less depressing if other crimes were used to proxy crime rates generally). This, it must be said, is partly a result of the fact that we have used murder as the basis of international comparison, a fact forced on us by the (even greater problems of) under-reporting and under-recording that beset other crimes.

When considering trends in budgets of individual departments as well as in the system as a whole, it emerged that while progress is being made to improve police capacity, progress in the other two departments has not been as rapid. The result is that bottlenecks in the courts and overcrowding crises in the prisons are likely to become more acute in the future.

Establishing the policy implications of all is not straightforward. On the one hand, we know reasonably unambiguously that relative to its workload, the criminal justice system in South Africa appears to be under-resourced. In other words, it lacks the person-power required to push cases through the system. The trouble is that any attempt to approach global norms would be hopelessly unaffordable. There is simply no way, for instance, that we could afford to employ 20 times as many police officers as we do in order to match our police officers-to-murder ratio to the global mean. Besides, it looks like we already spend more than other countries on criminal justice.

In addition, given that there is an apparent correlation with increases in social spending and decreases in crime, it might be argued that we ought not to increase spending on criminal justice much faster. The trouble with this, however, is that increasing social expenditure at rates fast enough to bring down crime might also be hopelessly expensive. It might, however, be justified on other grounds.

Furthermore, it seems that bottlenecks in the system are likely to develop over the next few years due to the unbalanced growth in the capacity of the police, courts and prisons. This would suggest the

need to increase spending in the latter two departments. If this were at the expense of growth in the police budget, however, government would be sending a perverse message to its departments: if you are successful, if you increase your output, we will cut your budget. This too is clearly not desirable.

Perhaps the only reasonable conclusion is that – with the possible exception of the relative underfunding of capacity in courts and prisons – there are few serious alternatives to government's current approach to criminal justice. It seems that the slow, steady growth of spending on criminal justice is all we can reasonably hope for and expect.

Notes

- 1 This argument does not necessarily mean that the private provision of some services traditionally part of a criminal justice system is ruled out of court. Instead, it implies that whoever is responsible for the physical delivery of particular services – be they those of incarceration and rehabilitation or those of guarding and patrol – it is a society's central authorities who must be responsible for ensuring that these services are, in fact, provided. In this regard, however, it could well be argued that private security, despite some superficial similarities, is not the same thing as policing and is not, therefore, a substitute for it; although it may complement the work of the constabulary, it can never replace it.
- 2 The traditional definition of the state used by sociologists and political theorists is that it is that institution that commands a monopoly over the legitimate use of force in a defined geographical area.
- 3 For a much more elaborate account of the benefits of multi-year budgeting, see National Treasury, *National Budget Review*, 1998, National Treasury, Pretoria, chapter five, <http://www.treasury.gov.za/documents/budget/1998/review/chapter_05.pdf>, (25 April 2005).
- 4 In practice, Parliament votes to accept the budget proposed by Cabinet and does not exercise line-by-line scrutiny of what is being allocated. I am not aware of any occasion on which it has altered proposed budgets placed before it.
- 5 An example: the 2005/06 SAPS budget includes R15.7bn for the Programme: Visible Policing. This is divided between three sub-programmes: crime prevention (R12.1bn), border control (0.2bn) and specialised interventions (R1.2bn). The first pays for the services offered at police stations, the second provides for uniformed policing at border posts and the last pays for the National Task Force and the centralised public order policing units. Conventionally, programme names are capitalised while sub-programme names are not.
- 6 Although an Adjusted Appropriation Act is passed every year to make provision for unforeseen and unavoidable expenditure, in some instances an additional, dedicated intervention is made. The Drought Relief Adjustments Appropriation Act (3 of 2004) provided for additional funds to be allocated to the Departments of Health (to combat communicable diseases), Social Development (to provide food aid),

Agriculture (to provide fodder) and Water Affairs and Forestry (to provide potable water) in communities ravaged by drought.

- 7 The budget figures used in this report, as well as all the data on personnel numbers were obtained from various editions of the annual Treasury document, *The Estimates of National Expenditure*, or, for years preceding the introduction of this document, *The National Expenditure Survey*, <www.treasury.gov.za>.
- 8 There are two qualifications to this statement. The first is that there is a fourth national department involved in the provision of criminal justice, the Independent Complaints Department (ICD) with a separate budget. The second is that there is some expenditure at provincial and local levels of government. This includes provincial governments' allocations to the provincial Secretariats for Safety and Security which are tasked with monitoring policing (and, in principle at least, help to improve the quality of law enforcement), and local governments' expenditure on municipal and metropolitan policing. The first of these – the Secretariats – is far too small an expenditure item to have much effect the analysis presented here. The second – municipal policing – cannot be accommodated because no national data on spending appear to exist. In any event, since these agencies still focus largely on the enforcement of traffic legislation, there is, in any event, a respectable case for not including them here. (See G Newham, *Local Level Civilian Oversight of the Metropolitan Police Departments in South Africa*, CSV, Johannesburg, 2004, for a review of what municipal policing agencies actually do.)
- 9 The three Chapter Nine institutions are the Gender Commission, the South African Human Rights Commission and the Public Protector. All three are treated as sub-programmes under the programme Auxiliary and Associated Services.
- 10 The demands on the Department made by these responsibilities are not insignificant. On 31 March 2003, for instance, the Guardian's Fund in the Master's Offices held more than R2bn rand in trust (Department of Justice and Constitutional Development, *Annual Report of the Master of the High Court of South Africa 2002/03*, Department of Justice and Constitutional Development, Pretoria, 2004). Even more significantly, there are 530 cash halls in magistrates' courts around the country through which maintenance payments worth roughly R2bn are processed every year. Given the antiquated systems employed, corruption and maladministration associated with these funds is a perennial headache for departmental management (Department of Justice and Constitutional Development, *Annual Report of the Department of Justice and Constitutional Democracy 2003/04*, Department of Justice and Constitutional Development, 2005, p 10).
- 11 The apportioning of only two goals to the criminal justice system – the successful investigation, prosecution and trial of offenders and the prevention of crime – risks doing a disservice to departments that do have other goals as well. One of these is that investigations and trials should be completed fairly, swiftly and with due regard to human rights norms. A second is that some services – such as those of victim empowerment and the provision of legal assistance to indigent accused persons – have quite different purposes. The reduction of all this complexity to two

primary goals is not intended to undermine this complexity but to reflect the fact that these goals are generally subsidiary to the primary ones or, and this is key for the purposes of this paper, consume only relatively small amounts of resources.

- 12 This is not the place to review the difficulties associated with seeking to quantify the impact of criminal justice on crime levels. Suffice it to say that it is an extremely difficult and controversial matter. Interested readers can look to D Bruce & R Nield, *The Police that we Want: A Handbook for Oversight of the Police in South Africa*, CSV, Johannesburg 2005; or J Dilulio Jr, G Alpert, M Moore, G Cole, J Petersilia, C Logan & J Q Wilson, *Performance Measures for the Criminal Justice System*, US Department of Justice, Washington DC, 1993, for contrasting approaches to this debate..
- 13 In this context, and for the rest of this paper, the term 'government spending' means all expenditure allocated through the national budget. This includes the allocation to provincial governments made from the national fiscus and which constitutes well over 90% of the resources used by that sphere of government. Provincial governments are responsible for making allocations to the various functions for which they are responsible – principally, welfare payments and health care, as well as primary and secondary education.
- 14 Inflation figures were calculated using data from the Reserve Bank's online statistical database, specifically the series KBP7112N which measures total consumer inflation in urban areas. For each financial year between 1995/96 and 2004/05, the monthly measure for the mid-point of the fiscal year was used. For 2005/06 through 2007/08, projected inflation rates provided in the 2005 Budget Review were for CPIX to be 4% in 2005, 5.1% in 2006 and 5.4% in 2007 (National Treasury, *Budget Review 2005*, National Treasury, Pretoria, 2005, p 12).
- 15 Although every effort has been made to use a consistent set of dates for comparison and for determining growth data, in the case of personnel numbers it has proved to be impossible to obtain reliable personnel figures for the criminal justice system prior to 1997/98 when these figures were routinely included in the Treasury's budget documentation. In addition, the MTEF does not signal personnel figures for Y2 or Y3. For these reasons, this section deals with the period 1998/99 to 2005/06.
- 16 Since inflation over the same period was 5.2%, this implies real average salary growth of nearly 2% per year.
- 17 It is believed that when the 11 police agencies that existed under apartheid were amalgamated, there were roughly 148,000 serving members. This figure is considered extremely soft, however, due to the poor record keeping in some agencies and the apparent existence of ghost employees. Nevertheless, it does appear that the decline in police numbers was both greater and took place over a longer period than these figures alone would indicate. We do know for certain, for instance, that in 1995 the Police Service had an establishment of 142,120 personnel since this is the number they reported to the United Nations Crime Trends survey (UNODC, *United Nations Surveys of Crime Trends and Operations of Criminal Justice Systems, covering the period 1990-2000*, p 4, <http://www.unodc.org/unodc/en/crime_cicp_survey_



- seventh.html>, (10 May 2005).
- 18 The creation of the Social Development Agency at national level has complicated this analysis since welfare payments for the period 2005/06 to 2007/08 are now to be paid for from the national department rather than from provincial departments. For the purposes of the analysis conducted here, the funds allocated to the Social Development Agency for welfare payments over the current MTEF have been added to the provincial allocations in order to ensure comparability over time.
 - 19 National government allocations to the provinces constitute over 95% of their budgets. Of this, 82% is spent on Education (35%), Social Development (26%) and Health (22%). Given how important the national contribution is to provinces, as well as the fact that so much of it is spent on social services and that this proportion has been on an upward trend, it is reasonable to treat the allocation to provinces as a proxy for expenditure on social services. The figures come from National Treasury, *Trends in Intergovernmental Finances: 2000/01–2006/07*, National Treasury, Pretoria, 2004, pp 11-13.
 - 20 If the impact of the DSO on the Justice budget is eliminated, average annual growth in the Justice budget between 1995/96 and 2004/05 falls from 15.2% to 14.6%.
 - 21 Obviously, if the DSO is moved to the police – a possibility being considered by a Presidential Commission at time of writing – and if this is then worked into the figures from earlier years, police budget growth would be faster and Justice's would be slower, for all three periods.
 - 22 There is very little difference to this analysis if the dates of the periods used are changed to 1995/96 to 2000/01 and 2000/01 to 2003/04. This change does have the effect, however, of making the rate of decline in murder and attempted murder in the latter period somewhat lower than the rate of decline in the earlier period. For all the other crime types, however, rates of decline are greater (or rates of increase are smaller) in the later period than in the earlier even when the dates are shifted in this manner.
 - 23 For more on these difficulties, see A Altbeker, Revisiting socioeconomic rights, *Business Day*, 20 May 2002, <<http://www.businessday.co.za/Articles/TarkArticle.aspx?ID=528763>>, (21 April 2005).
 - 24 For some discussion on the difficulties of cross-country comparisons of crime data, see A Altbeker, 'Puzzling statistics, *SA Crime Quarterly 11*, March 2005; J Lynch, Crime in international perspective, in JQ Wilson & J Peterselia (eds), *Crime*, ICS Press, California, 1995; or G Newman (ed), *Global Report on Crime and Justice*, Oxford University Press, New York, 1999, especially the introduction and the first two chapters. G Newman, op cit, also includes a chapter on 'Resources in criminal justice' by G Newman & GJ Howard which looks at the problems of comparing resource levels across national boundaries.
 - 25 This need not be the case if economies of scale for those aspects of the work that can be centralised (e.g. training and criminal records management) offset the added administrative burden of trying to manage a widely dispersed organisation.
 - 26 See Newman & Howard, op cit, pp 125-6.
 - 27 U Zvekic, Head: Strategic Planning, UNODC, Vienna, personal communication.
 - 28 Newman & Howard, op cit, p 121.
 - 29 Ibid, pp 137-8.
 - 30 G Farrell & K Clark, *What does the world spend on criminal justice?*, The European Institute for Crime Prevention and Control, Helsinki, 2004. This work follows an earlier piece written by the same two academics but with two collaborators, G Farrell, E Lane, K Clark & A Tseloni, *What does the world spend on policing?*, *International Journal of Comparative Sociology XLII*, 1-2, 2001.
 - 31 Owing to the lack of data, the estimation technique which produces these results also generates a wide margin of error. Thus, although the estimate for 1997 was \$360bn, the standard deviation is such that the 95% confidence range extends from \$150bn to \$570bn (Farrell and Clark, op cit, p20).
 - 32 The population figure was obtained from UNPD, *Human Development Report 2004: Cultural Liberty in Today's diverse World*, UNDP, New York, 2004, statistical appendix, table five. This document gives population figures for only 1975, 2002 and an estimate for 2015. The implicit population growth rates were, however, calculated to determine population levels for 1997 and 2004. The value of global output was obtained from the statistical appendix in *World Economic Outlook*, IMF, Washington DC, 2005, p 201, which suggests that global output in 1997 was \$29,678bn and that it was \$40,671bn in 2004.
 - 33 Using a similar methodology to that described above, G Farrell, et al, op cit, 2001, find that in 2000 the global expenditure on policing amounted to about \$194bn, a somewhat lower number than the \$222.5bn that Farrell & Clark, op cit, had estimated for 1997. If this estimate is accurate, and if a proportional reduction for other components of the criminal justice system was also implied, it would tend to reduce the overall estimate of spending both per capita and as a proportion of GDP used here by as much as 10%. Since Farrell and Clark were involved in both papers, and since Farrell & Clark, op cit, was written after the *IJCS*, the latter's figures are used in this report.
 - 34 The 95% confidence interval which Farrell and Clark give means that it is possible that world spending on criminal justice is as much as 58% greater (or 53% lower) than the point estimate they provide. Even if world per capita spending was 58% greater than the estimates used here, South Africa would still be spending about 40% more than the international average.
 - 35 These data come from Newman & Howard, op cit, p 302.
 - 36 Population figures were taken from Table Five in the statistical appendix to UNDP, op cit. The figures used relate to 2002. Since India's population growth rate is faster than other countries' on the list, this may marginally overstate the downward effect of population weighting on the overall average for 1994. Even under the most favourable assumptions, however, this list produces a weighted average of no more than a \$20 per person.
 - 37 The reason why the weighted average for policing is proportionately so much smaller relative to its unweighted average than is the weighted average for criminal justice relative to its unweighted average, is that data for per capita spending on policing are available for India (a very large, very poor country which spends only about \$0.20 per capita on

- policing), while figures for India's spending on the criminal justice system as a whole are not available. If they were, it is likely that the ratio of the weighted average for criminal justice expenditure to its unweighted average would have more closely resembled that of the weighted average expenditure on policing to its unweighted average.
- 38 All the international data in this section come from Newham (ed), *op cit*, p 300. These data are for 1994. The South African data we use, however, are for 2003/04. Implicitly, therefore, we are assuming that resource and crime levels in other countries have not changed significantly in the past ten years. This is unlikely to be true of all countries, but it is not unreasonable to think that many of the changes will be relatively modest and that, in any case, changes in different countries will, to some extent at least, offset each other.
- 39 Crime figures used in this section come from C Lewis, *Police records of crime*, in G Newman (ed), *op cit*, 1999.
- 40 A reminder of an earlier warning is warranted: international crime figures are notoriously unreliable and comparisons made between countries must, therefore, be treated with a great deal of caution. For an account of the difficulties see Altbeker, *op cit*, 2005.
- 41 The incarceration figures come from H Shinkai & U Zvekic, *Punishment*, in G Newman (ed) *op cit*, 1999.
- 42 See J Steinberg, *Prison Overcrowding and the Constitutional Right to Adequate Accommodation in South Africa*, 2005, CSVR, Johannesburg, 2005, <<http://www.csvr.org.za/papers/papjonn2.htm>> (4 July 2005).
- 43 The two documents in which DA criminal justice policy proposals are contained are DA, *Freedom from Fear: Making the Criminal Justice System Work*, 2004, and DA, *Budgeting for Jobs: The DA's Alternative National Budget 2005*, 2005, <www.da.org.za> (10 May 2005).
- 44 *Ibid*.
- 45 The figure comes from SARS, *Annual Report 2003*, SARS, Pretoria, 2004, p 16.
- 46 Visible Policing was created in 2000/01 out of two programmes, one called Crime Prevention and another called Operational Response. These two had existed for the previous three years. Before that they had been part of a single programme called Crime Prevention and Operational Response. Crime Intelligence was created in 1999/00 by extracting what was a sub-programme from the Detective Services and turning it into a full-fledged programme. Some minor spending under the heading Capital Works or Public Works in 1995/96 and 1996/97 was incorporated into the Administration programme to ease analysis.
- 47 For the bulk of this paper, we have excluded 'non-core expenditure' from consideration of the justice budget. Here we continue that practice but with an important modification: whereas previously, 'non-core expenditure' included spending on State Legal services, now this category is left in. In the present section, therefore, non-core expenditure refers to the budgets of the TRC, SAHRC, CGE, Public Protector and the Represented Political Parties Fund. The other adjustment that has been made is that, for convenience and ease of exposition, the direct charge on the National Fiscus which is used to pay the salaries of judges and magistrates has been added into the budget for Court Services.
- 48 See H Fagan, *Curb the vengeance: Laws on minimum sentencing and parole spell worsening prison conditions*, *SA Crime Quarterly 10*, ISS, Pretoria; J Steinberg, 2005, *op cit*.; and D van Zyl Smit, *Swimming against the tide: Controlling the size of the prison population in the new South Africa*, in B Dixon & E van der Spuy (eds), *Justice Gained?: Crime and Crime Control in South Africa's Transition*, UCT Press, Cape Town, 2004.
- 49 The question of whether more police do reduce crime is not, of course, uncontroversial. It does seem, however, that the balance of the debate must rest with those who say that it does, even if the rate of decrease is debateable (see S Levitt, *Using Electoral Cycles in Police Hiring to Estimate the Effect of Police on Crime*, National Bureau of Economic Research, Cambridge, 1995).
- 50 For data on the improvement in the turnaround time of requests for criminal records with the advent of the Automated Fingerprint Identification System in the SAPS, see Ass. Comm. P du Toit, *The Automatic Fingerprint Identification System (AFIS) and its impact on the CJS*, 2005, presentation to the Consolidating Transformation conference, Gordon's Bay, February 2005, <<http://www.csvr.org.za/confpaps/pietdutoit/pietdutoit.htm>> (5 July 2005). Slide 17 demonstrates that there has been massive improvement in the turnaround time of requests for criminal records, one of the blockages that used to delay the completion of trials.
- 51 These data were provided to the ISS by the National Prosecution Service.

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About this paper

This paper explores how South Africa's criminal justice system has evolved over the past decade by looking at the approach government has taken to resourcing it. It describes the growth in expenditure on criminal justice, disaggregating this between departments and over time. It suggests that South Africa's spending on criminal justice exceeds international norms, but that on a per capita basis and in relation to our levels of crime, the criminal justice system is relatively under-resourced. It argues, however, that it would be unaffordable to attempt to match our levels of resources to international norms and that, in any event, the current prioritisation of increased social expenditure over increased criminal justice spending has not negatively affected crime levels.

About the author

Antony Altbeker is a senior researcher in the Crime and Justice Programme of the ISS. He has previously worked as a senior manager at the National Treasury where he played a role in the work of the justice cluster. This paper was reviewed by some of his former colleagues from the National Treasury, but the author is solely responsible for any errors and omissions.

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