Annual Report for 2002

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The Institute of Criminology

Established in 1977, the Institute of Criminology is a research unit linked to the Department of Criminal Justice, Faculty of Law at the University of Cape Town (UCT). Its aim is to initiate, coordinate and develop teaching, research and extension services in the broad field of criminology within and outside of the University, and to promote public interest in, and awareness of, all aspects of criminology.

PERMANENT STAFF
**CONTRACT STAFF**

**Senior Research Officers:**

- Lilian Artz, BA *(Simon Fraser)* MA (Criminology) *(Cape Town)*
- Penny Parenzee, BSocSc (SW) *(Cape Town)* MSS (Clinical) *(Bryn Mawr)*, MLSP *(Bryn Mawr)*
- Catherine Wood BSocSc (Hons) (Psych) *(Cape Town)* MSSocSc (Clin Psych) *(Rhodes)* (until January 2002)

**Researchers:**

- Reshma Inderjeeth, BA LLB (Natal), LLM *(Cape Town)*
- Diane Jefthas, MSocSc (Criminology) *(Cape Town)*
- Ros Koch, LLB *(Oxon)*, LLM *(Cape Town)*
- Kelley Moult, BSocSc (Criminology) (Hons) *(Cape Town)*
- Lashias Ncube, MA (Practical Anthropology) *(Cape Town)*
- Joy Owen, MSocSc (Social Anthropology) *(Cape Town)*
- Ricky Röntsch
- Dee Smythe, BA LLB *(Cape Town)*
- Boyane Tshehla, BProc (Unin) LLM *(Cape Town)*

**Consultants:**

Senior Research Officers:

- Melanie Lue-Dugmore, BA LLB *(Natal)*
- Julie Berg, MSocSc, (Criminology) *(Cape Town)*

**Research Support:**

Co-ordinator of the Social Justice Resource Project (SJRP): Elaine Atkins, MBibl *(Cape Town)*

Assistant (SJRP): Sindiswa Dlikidla, Dip LIS *(Peninsula Technikon)* (until October 2002)

**THE ADVISORY COMMITTEE**

The Institute is guided by an Advisory Committee. The committee advises the director on aspects of the Institute’s work and assists the director in fostering relationships between the Institute and interested parties and in promoting and publicising the work of the Institute. The current Advisory Committee comprises the following members:
Directors’ Overview

This is an unusual year in that the directorship changed at the end of June. This is therefore a joint report by Elrena van der Spuy and Wilfried Schärf.

2002 was a year of prolific research activity in the context of a consolidating South African criminal justice system. Unfortunately, the state's decision to withhold crime statistics since 2001 has made it extremely difficult to gauge whether patterns of property crime and interpersonal violent crime are stabilising or not. It was also a year of rising global tension and insecurity resulting from the events of 11 September 2001 and the decision of influential world powers to make ‘war on terrorism’.

The research output of the Institute received an important boost with the publication of Dirk van Zyl Smit’s Taking Life Imprisonment Seriously in National and International Law in the first part of the year.

During the course of the year work continued on the volume Justice Gained? Crime and Crime Control in South Africa’s Transition, edited by Bill Dixon and Elrena van der Spuy. All Institute members were encouraged to participate in the project and some select researchers outside the Institute were also invited. This volume takes a critical look at developments in the crime, justice and safety field in the post-1994 democratic era. Justice Gained? will become the third criminological volume produced by the Institute. It follows in the footsteps of Crime and Power in South Africa (1985), edited by Mana Slabbert and Dennis Davis, and Towards Justice? Crime and State Control in South Africa (1990), edited by Dirk van Zyl Smit and Desirée Hansson.

Advocacy and lobbying on the strength of research findings played a strong role in some of the projects in whose subject areas new legislation was pending. The Gender, Law and Development
Project busied itself with evaluating the implementation of the Domestic Violence Act and making proposals to the South African Law Commission on the proposed sexual offences legislation. The Juvenile Justice team, on the other hand, participated in research on young sex offenders. The team also provided the background research that led to recommendations about various aspects of the Child Justice Bill. In both these cases the Institute's researchers were part of broader institutional alliances.

The research on African justice systems benefited significantly from three research trips to Lesotho, Zambia and Malawi, during which primary research was undertaken. The focus of this project is on access to justice and the interface between the state and customary justice systems. One effect of this ongoing project has been the strengthening of links with African universities in Zambia, Mozambique, Lesotho and Malawi. Research into informal justice continued, and the findings were channelled to the South African Law Commission’s project on Alternative Dispute Resolution – Community Dispute Resolution Structures, though it is uncertain whether the project team’s deliberations will result in legislation.

A crime prevention model (Community Safety Forums) that was hatched in the Institute broke out of its experimental shell and was accepted as a national approach to crime prevention and development planning. After a five-year trial period in the Western and Eastern Cape, community safety forums were formally endorsed by the government at a conference in September, and are gradually being introduced throughout the country.

In keeping with the university’s policy to develop research capacity, two promising researchers were appointed on a full-time contract basis to the Policing Research Programme in 2002. Considerable effort went into creating research support systems and providing mentoring for the new appointees. Three such researchers had been already hired in 2001 to work on the ‘four case studies’ project focusing on vigilantes, shack-lords, taxi organisations and street committees. This research project was funded by the National Research Foundation (NRF).

Ironically, a measure of success in developing young researchers is that they become highly marketable in the broader employment market (government, other universities and non-governmental organisations (NGOs)). These staff losses are an ongoing problem and the university ought to take a serious look at the remuneration packages for contract researchers. Ironically, the loss of staff has forced the Institute to resort to consultancy-type contracts with established independent researchers.

Lastly, the Institute wishes to congratulate Wilfried Schärf who received the UCT Distinguished Teacher's Award in his twentieth year of teaching at the university.

**Research and Extension Work**

**1. Gender and Crime**

*Lillian Artz, Penny Parenzee, Kelley Moult and Dee Smythe*

Monitoring the investigation and prosecution of rape cases –
Lillian Artz, Penny Parenzee, Kelley Moult, Dee Smythe

In light of the proposed changes in the law relating to rape, the Gender, Law and Development project initiated a research project to examine the extent to which the new Sexual Offences Bill has
impacted on the pre-trial processing of reported rape complaints. The project specifically examined:

- the factors and elements used by police and prosecutors to determine whether a case is 'unfounded' or worthy of investigation and prosecution, that is, what they believed they were expected to do by law in terms of substantive definitions and evidentiary procedure
- the factors important to *the agents* in deciding whether to arrest, investigate or prosecute in a rape case, that is, those factors considered to be important in producing successful judicial outcomes
- investigation and prosecutorial methods, and strategies and policies applied and considered useful in processing rape cases
- the factors that limit or hamper effective investigation and prosecution of rape cases, including infrastructural/material, procedural, circumstantial and personal obstacles
- the role of medico-legal services in the examination of rape survivors, the provision of treatment and the use of medico-legal evidence in the prosecution of rape cases.

Primary research on the management and processing of sexual offences cases began in 2002. This involved the collation, description and analysis of information relating to current policing and medico-legal and prosecutorial practices in the management and processing of rape cases.

**Monitoring the implementation of rape law reform** – Lillian Artz, Penny Parenzee, Kelley Moult, Dee Smythe

A literature review has been undertaken on international initiatives in the field of monitoring and/or evaluation of the implementation of rape law reforms. Literature searches yielded numerous articles on rape law reform and on the substantive definition of rape. Only a handful of countries, however, have systematically evaluated the impact of rape legislation. The two most significant initiatives aimed at critically examining the investigation and prosecution of rape cases were undertaken in the United States and in Britain. We established a partnership with the authors of the British study to guide us through the research process.

The Gender, Law and Development Project also developed a partnership with the Sexual Offences and Community Affairs Unit of the National Prosecuting Authority (NPA) to undertake this research. The researchers have already interviewed prosecutors, magistrates and medico-legal personnel on the processing and management of rape cases in the Wynberg Regional Court district. Police statistics and the NPA database on sexual offences are currently being analysed.

A ‘media watch’ database has been started to document all reported rape cases in the local media since 1997. The review of media reports will provide us with a national perspective on the investigation and prosecution of rape cases, as well as contribute to a list of indicators for monitoring rape cases.

**Rape law reform** – Lillian Artz, Penny Parenzee, Kelley Moult, Dee Smythe

The Gender, Law and Development Project played a pivotal role in the rape law reform process in 2002. It organised a sexual offences working group and submitted a 250-page report to the South African Law Commission in response to the Commission’s discussion document on *Sexual Offences: Procedural Law*. The working group consisted of:

- Gender, Law and Development Project, Institute of Criminology, UCT
- Children’s Rights Project, Community Law Centre, University of the Western Cape (UWC)
- Division of Forensic Medicine and Toxicology, UCT
The Institute authored five of the chapters of the joint submission. These were:

- Medico-legal services
- Police investigation
- Legal representation for victims
- Expert testimony
- Sentencing of adult sex offenders

The submission was used almost in its entirety in the South African Law Commission's final report on sexual offences.

**Domestic homicide** – Lillian Artz, Penny Parenzee, Kelley Moult, Dee Smythe

The project on domestic homicide began with the negotiation of access to the death register and autopsy records held at the Division of Forensic Medicine and Toxicology (UCT) and the SAPS. A project proposal was approved by the Health Sciences Ethics Committee, the Law Faculty Ethics Committee and the Humanities Faculty Ethics Committee.

An extensive literature survey has been completed and data collection has commenced at the Salt River Medico-Legal Laboratory (SRMLL). The death register for the year 2000, supplied by the Division of Forensic Medicine and Toxicology, was searched for all deaths classified as homicides. The cases were collated into a separate database (consisting of about 2600 cases). The SRMLL database was then searched. Using the corpse numbers listed in the homicide death register, the researchers gathered the following information necessary for follow-up at station level:

- victim’s name
- Crime Administration System (CAS) number
- investigating police station.

Further data collection was then undertaken using the case files housed at the Division of Forensic Medicine and Toxicology. The incident reports, which are filed by the SAPS members on collection of a corpse, were examined in order to ascertain whether the death fell into the category of homicide perpetrated by someone in a domestic relationship as defined by the Domestic Violence Act. Using information contained in these records, cases were either eliminated from or included in the final data set. A secondary data set was then created of cases which, on the basis of the information contained in the file, could neither be excluded nor included in the final data set.

These cases were then categorised by police station. Thirty-seven station commissioners were contacted to arrange access to the investigating officers concerned. The relevant investigating officers were contacted and interviewed to ascertain the nature of the relationship between the offender and the victim in each case.

A final data set of about 75 cases was compiled, and has been analysed in relation to:

- the nature of the relationship between the victim and the perpetrator
- the nature of the injury and the weapon used (if known)
- the place where the incident occurred
• demographic information (age, race, sex, marital status) of the victim
• demographic information of the perpetrator
• the blood alcohol level of the victim.

Further research is currently being undertaken to ascertain whether the victims had taken out any protection orders against the perpetrators by searching the registers at the various courts. The project will be completed and a preliminary report released in March 2003.

Rural women’s experiences of the Domestic Violence Act: Special focus on farm workers – Lillian Artz, Penny Parenzee, Kelley Moult, Dee Smythe

The Institute of Criminology's Gender, Law and Development Project is the lead organisation in a consortium of organisations that have been monitoring the implementation of the Domestic Violence Act. The Consortium on Violence Against Women, initiated by the Gender, Law and Development Project, was established in 1999 and includes:

• Gender, Law and Development Project, Institute of Criminology, UCT
• Rape Crisis Cape Town
• Gender Project, Community Law Centre, UWC
• Women on Farms Project
• Division of Forensic Medicine and Toxicology, UCT
• a health consultant.

The research on farm workers was an extension of the project to monitor the implementation of the Domestic Violence Act. This arm of the project focused on gathering information from farm workers, farm management and organisations working with farm workers. The bulk of the time was spent in the field conducting interviews with these key role players. The information gathered in the fieldwork phase was collated and analysed during 2002.

Based on this research, a well-structured report aimed at providing an in-depth analysis of domestic violence within the farming context was compiled during the year. A significant amount of time was spent grappling with the intricacies of patriarchy, development, domestic violence and methods of addressing domestic violence on farms. Throughout the process, the researchers relied on peer inputs to test their analysis and found themselves challenged to re-think some issues as a result of the theoretical questions raised.

The discussion of the findings is divided into two core areas in the report: domestic violence and development, and the Domestic Violence Act and criminal justice responses. The report concludes by presenting the need for a multi-pronged approach to address domestic violence and raising some key issues that should be considered when attempting to do so. The research report is to be published in 2003.

At the same time, the information gathered in the rural areas regarding the Domestic Violence Act was shared with various communities and sectors, including the participants from the fieldwork sites. This was done through presentations, which were made to community members and the relevant criminal justice agents. Other organisations that invited us to share the information obtained during our research included:

• The Law, Race and Gender Unit (UCT): Workshops for magistrates
• The People’s Family Law Centre: Training para-legal staff
• The Legal Aid Clinic (UCT): Training student legal aid advisors
The farm worker data was also presented at the Eighth International Interdisciplinary Congress on Women held in Uganda in July 2002. This congress gave us the opportunity to critically reflect on our methods and analysis, and was a useful exercise in both networking with other African countries and in critically engaging with the data in a multi-country setting. The presentation of our research work at the congress not only provided us with a platform to share our work and the challenges we are confronting, but also allowed us to engage international delegates in discussions to obtain a broader perspective on domestic violence in Africa. A presentation was also made to All Africa House associates on "The Utility of the Law in Addressing Domestic Violence Within a Developmental Context".

The interpretation of the Domestic Violence Act by magistrates – Lillian Artz, Penny Parenzee, Kelley Moul, Dee Smythe

The period under review was marked by intensive engagement with the Gender Directorate of the Department of Justice, the Judicial Officers’ Association of South Africa, the Magistrates’ Commission and the Magistrates’ Association of South Africa. In the course of research on magistrates’ interpretation of the Domestic Violence Act, the Gender, Law and Development Project, through its research-based advocacy approach, achieved considerable successes in terms of the law reform process.

The first major achievement was a partnership agreement between project researchers, the Department of Justice and the Judicial Officers’ Association of South Africa to host a three-day national conference for magistrates on domestic violence, sexual offences and maintenance. Over 300 magistrates and a number of High Court judges attended the conference, which was held in Pretoria at the end of July 2002. The Consortium on Violence Against Women organised the content and structure of the conference and facilitated the proceedings. A detailed written report was also submitted to the Department of Justice. It included the presentations to the conference (together with the question and answer sessions held after each presentation), the results of the focus-group work and the plenary sessions, and an analysis of the conference by the consortium facilitators.

The three days were used productively and produced a number of substantive outcomes relating to procedural reforms in domestic violence cases, as well as a number of commitments made by the Department of Justice.

As facilitators of a workshop for magistrates at the conference and through the presentation of the results of our monitoring work to magistrates, the Gender, Law and Development Project was able to develop links with strategic government personnel, including the business and administration departments of the Department of Justice. An outcome of this is that the project is often called on by government to assist in various activities, one of which is to provide additional training for magistrates around domestic violence, sexual offences and maintenance matters.

The conference also enabled us to share our research results and to lobby magistrates to take domestic violence matters seriously. At the same time, we were able to strengthen our relationship with government, which undoubtedly will be useful in our lobbying and advocacy work.

One of the major outcomes of the conference was the adoption of the Magistrates Guidelines on Domestic Violence developed by the Gender, Law and Development Project. The guidelines were developed in consultation with the Domestic Violence Act (DVA) Working Group, a grouping of ten magistrates representing the various provinces, a member of the Gender Commission, and
representatives from the Justice College and the Gender Directorate of the Department of Justice, all of whom were appointed by the Department of Justice.

Using the results of our research, we drafted the guidelines and submitted them to the DVA Working Group. This working group produced a ‘draft discussion document’ which was disseminated, discussed and ‘provisionally adopted’ by the conference delegates and the judicial commissions. The consortium asked for written submissions on the guidelines, which were incorporated during the working group meetings after the conference. The consortium received 47 submissions from magistrates across South Africa. The guidelines have been finalised and will be adopted by the Magistrates’ Commission in 2003.

In its *First Report on the Implementation of the Domestic Violence Act*, the consortium included revised application forms for protection orders, which are provided for in the Regulations of the Act. The DVA Working Group scrutinised these forms and recommended that the Department of Justice adopt them. The department has submitted the new forms to the Minister of Justice and the drafters of the current regulations, who have committed themselves to ensuring that the forms will be made available in all official languages. A budget has been set aside for this process.

**Domestic violence and the health sector** – Lillian Artz, Penny Parenzee, Kelley Moult, Dee Smythe

The monitoring of the implementation of the Domestic Violence Act has shown that domestic violence is still largely addressed in a fragmented manner and perceived as a legal and criminal justice problem. We have noted previously – and empirically – that the health sector does not play a critical role in response to legislation and domestic violence, and that this is unacceptable. It remains an ongoing challenge to work with the health sector to co-ordinate action against domestic violence, especially since interventions afforded by the Domestic Violence Act and other criminal justice mechanisms are only partial, and the health services are often the first and only point of contact with public sector services for victims of domestic violence.

The health sector activities conducted in 2002 by the Gender, Law and Development Project, in conjunction with the Consortium on Violence Against Women, were as follows:

- To meet our advocacy objectives, a written submission was prepared for presentation to the Portfolio Committee on Health at the Parliamentary Hearings on Gender-based Violence and Health.
- We developed a partnership with the Western Cape Department of Health to prioritise the development of a 'domestic violence protocol' for medical practitioners. A provincial task team, comprising consortium members and Department of Health staff, was elected to conduct the necessary technical work to develop the health protocol on domestic violence.
- Another substantive activity was to further investigate the role of the health sector in addressing domestic violence in the face of the HIV/AIDS pandemic. A position paper was prepared which investigates the interfaces between domestic violence and HIV/AIDS and raises key questions and challenges in addressing the volatile interfaces between these two pandemics in South Africa. The following themes are discussed in detail in the paper:

  - HIV/AIDS: A global crisis impacting on women
  - What makes women more vulnerable to HIV/AIDS?
  - Talking about sexual intercourse and condoms
  - Domestic violence and HIV/AIDS: How they fuel each other
  - Safer sexual intercourse strategies: What are they not saying?
It concludes with some suggestions for new frameworks, strategies and programmatic interventions for addressing the interfaces between HIV/AIDS and domestic violence.

Domestic violence and women in shelters – Lillian Artz, Penny Parenzee, Kelley Moult, Dee Smythe

Our domestic violence work also extended to working with women in shelters. An extensive study was conducted at several shelters in the Western Cape on the experiences of women in shelters with the Domestic Violence Act. The shelter report and, in particular, the data gathered at the shelters were critically scrutinised to draw out themes and issues that provided a link with the outcomes of the research on farm workers and the health sector, as well as the analysis of magistrates’ reports. Working with complainants who have sourced assistance from the criminal justice and health systems allowed us to weave together issues surrounding the implementation of the Domestic Violence Act that would otherwise be fragmented by the various methods and analyses of the sub-projects. The final report on women in shelters is due to be released in 2003.

Briefing and support for Provincial Administration of the Western Cape on sexual offences and harassment in schools – Lillian Artz, Penny Parenzee, Kelley Moult, Dee Smythe

The Gender, Law and Development Project had a number of meetings with the Provincial Administration of the Western Cape (PAWC) to provide guidance and support around its policy for dealing with sexual offences and sexual harassment in Western Cape schools. The work with PAWC included:

- a briefing on the definitions of various offences, including rape, indecent assault and common assault, as well as the contents of relevant pieces of legislation such as the Sexual Offences Bill
- subsequent research into protocols adopted in other jurisdictions, most notably that of the Saskatchewan Education Department, Canada, as well as research into the feasibility and constitutionality of various options for dealing with offenders, including immediate suspension and expulsion
- research into the question of whether school governing bodies and the Provincial Administration can be held liable in cases where a learner is sexually abused by a fellow learner – in this respect the decision of the BC Human Rights Tribunal of Jubran v Board of Trustees 2002 BCHRT 10 proved very useful.

2. Policing Research

Elrena van der Spuy, Wilfried Schärf, Julie Berg, Melanie Lue, Reshma Inderjeeth, Kelley Moult and Boyane Tshehla

During the course of 2002 policing research was expanded with the view to examining, from a number of different angles, developments in the broader terrain of policing – both within and beyond the state. The research fell broadly into two categories: developments in public policing and policing developments outside/beyond the public police.

2.1 Developments in public policing
A review of South African policing studies – Elrena van der Spuy

The political context of transition – from the period of cautious liberalisation to consolidation – provided the background to an enquiry into South African policing studies. The central aim of this discussion was to map the chronological and thematic development of South African policing studies over a period of fifteen years.

This paper, completed in 2002, traces the development of local policing studies through four consecutive phases:

• the politics of police brutality (1985–1990)
• political liberalisation and the internationalisation of police reform (1990–1997)
• the managerialist agenda (1998+)
• transitional policing (2000+).

The thematic concerns of each phase are discussed through an examination of a number of core texts. By way of conclusion, the prospects for the maturation of indigenous policing studies are briefly considered.

Police transformation in an urban renewal environment: Observations from the Western Cape – Joy Owen

A decade of police reform has seen important shifts in policing policy and operational strategies. In this investigation, recent policy developments relating to urban renewal strategies and city improvement districts were examined and their impact on policing discourse and praxis considered. A review of such policy developments was furthermore supplemented with ethnographic field research. This research was conducted at two police stations in the Western Cape so as to explore facets of the ‘cop canteen culture’.

A project under construction? Gender transformation and police within the South African context – Kelley Moult

The integration of women into police institutions and the challenges confronting the feminisation of the ‘cop canteen culture’ have been prominent issues in international literature on policing. A review of the international literature was conducted so as to identify the challenges that confront police institutions in this regard. Against this background, an attempt was made to consider recent South African endeavours to give a gender-specific content to the larger project of institutional reform of the state police agency.

Combating terrorism: Legislative developments and operational strategies – Reshma Inderjeeth

The events of 11 September 2001 have refocused international attention on the challenge that terrorism poses for state and citizen security. This project set out to track some of the most crucial developments relating to the combating of terrorism at both the international and local level.

The first part of the report on the research findings engages with the difficulties surrounding the definitional demarcation of terrorism. The second part discusses recent developments in the legal-administrative regimes and operational strategies relating to terrorism in three jurisdictions, namely the United Kingdom (Anti-Terrorism, Crime and Security Act of 2001), the European Union and the
United States of America (USA Patriot Act of 2001). In the third section of the report, South African legislative proposals relevant to the topic are considered against the background of international developments (with particular reference to the Anti-Terrorism Bill of 2000).

2.2 Policing developments outside/beyond the public police

Local government and policing mandate: The case of the Cape Town City Police Service – Melanie Lue-Dugmore

Much has been spoken about the diversification of the terrain of policing. This project examined the establishment of, and operational features associated with, the Cape Town City Police Service (CPS) in the Cape Metropolitan area. The project explored the legal mandate, organisational structure and policing priorities associated with this newly established municipal policing agency. The various challenges confronting its successful deployment in a context where several policing agencies co-exist were also considered. The research also highlighted the need for a system of co-operative governance of multiple policing structures, with both divergent and overlapping spheres of jurisdiction and authority. An occasional paper on the research project will be published in 2003.

The private security industry in the Western Cape: Issues and challenges – Julie Berg

The privatisation of policing and the resulting commodification of security is an important feature of contemporary policing. The increasing diversification of policing agencies – above, beyond and below the state – has propelled issues relating to the governance of security to the forefront of political debate. It is against this background that an investigation into the private security industry in the Western Cape was undertaken. The objectives of this enquiry were twofold. The first was to map the regulatory framework and mechanisms, both formal and informal, in terms of which the private security industry currently operates. The second objective was to investigate the range of issues (both internally and externally) confronting the private security industry as one sector within a much broader policing matrix.

Non-state justice in post-apartheid South Africa: The case of Khayelitsha – Boyane Tshehla

Field research into non-state forms of governance and regulation was conducted during the course of 2001. In the latter part of 2002, the research findings were consolidated in a journal article. The article provides a scan of various mechanisms involved in social ordering and dispute resolution in the township of Khayelitsha. The scan provides proof of the proliferation of non-state mechanisms in what appears to be an increasingly competitive security environment. Such developments, it is argued, need to be understood as part of a wider security deficit that continues to confront poor citizens in the post-apartheid state.

3. Sentencing and Punishment
3.1 Sentencing

The highlight in the area of sentencing was the publication of Dirk van Zyl Smit’s comparative study of life imprisonment. *Taking Life Imprisonment Seriously in National and International Law* appeared in April 2002.

During the year under review there were major further developments in the law relating to life imprisonment in the jurisprudence of the European Court on Human Rights in particular. Dirk van Zyl Smit continued to study and to comment on these developments. Thus, he presented a paper on ‘New Limits on Life Imprisonment’ at the Second International Sentencing and Society Conference in Glasgow in June 2002 and gave a guest lecture on the same theme in a Masters course for prison governors at the Institute of Criminology in Cambridge.

Other research on sentencing focused on the human rights basis of sentencing in international criminal tribunals. The first fruits of this work were published in 2002 as ‘Punishment and Human Rights in International Criminal Justice’ in *Human Rights Law Review* (2002) 2: 1–17. This work forms part of a larger continuing research project focusing on the implementation and imposition of punishment in international criminal law.

Work on the doctrinal basis for regarding grossly disproportionate sentences as constitutionally prohibited continued during the year. This, too, is an ongoing project. It is designed eventually to produce proposals for new international instruments that will encourage or even compel states to give more prominence to the principle of proportionality in sentencing.

After the major activity around the *Report of the South African Law Commission on a New Sentencing Framework*, which was completed in late 2000, sentencing law reform was not as prominent in the work of the Institute as previously. The Law Commission, through its Sentencing Project Committee, of which Dirk van Zyl Smit was a member but no longer chair, continued its work in 2002. It focused its activities on an investigation into the feasibility of setting up a compensation scheme for victims of crime. In the course of the year a number of consultative meetings were undertaken around the country. A final report on this subject will be produced in 2003.

Sentencing remained of burning public interest in South Africa and there was considerable call for public comment on radio and television by members of the Institute on this issue. Dirk van Zyl Smit contributed a more popular article on sentencing reform to the practitioners’ journal, *Without Prejudice*.

**Prison matters**

Prison law reform in Malawi was a large part of the work in 2002. Dirk van Zyl Smit was briefed by the Government of Malawi, with the support of the European Union, to head a small team of consultants to produce a new draft Prisons Act and regulations for Malawi. This new law has become essential, as it is required by the Constitution of Malawi. In practice too, much future reform hinges on having an adequate legal basis. Work on this project proceeded quickly and a final report is expected in early 2003.

In September 2002 Dirk van Zyl Smit played a prominent part in the Second Pan-African Conference on Penal and Prison Reform in Africa held in Ouagadougou, Burkina Faso. He not only presented a plenary paper on ‘The Role of Legislation in the Protection of Prisoners’ Rights’, but also headed the
team that drafted the Ouagadougou Declaration on Accelerated Penal Reform in Africa.

A new departure in prison matters in 2002 was the focus on the position of former prisoners. This oft-forgotten group suffers various legal and social handicaps, which can and should be avoided. In October 2002 Dirk van Zyl Smit attended a Workshop on Prisoners’ Civil Disabilities at the Baldy Center for Law and Social Policy, University of Buffalo Law School. There he presented a paper on ‘Civil Disabilities of Former Prisoners in a Constitutional Democracy – Building on the South African Experience?’ It was clear from the workshop that the comparative study of the position of ex-prisoners was in its infancy and that there was considerable scope for expanding this research.

Dirk van Zyl Smit served as a member of the National Council on Correctional Services. This body not only advises the Minister of Correctional Services on the release of persons sentenced to life imprisonment, but must also be consulted by the minister before any major new policies are introduced in the field of prison or community penalties. In this regard he paid particular attention to prison overcrowding and drew the attention of the council to a (draft) paper he had written, which pointed out the enormous problems that overcrowding was causing for the prison system as a whole.

4. Youth Justice

Catherine Wood and Boyane Tshehla

**SAYStOP (South African Young Sex Offenders Project)** – Catherine Wood

The South African Young Sex Offenders Project was established in 1997 to develop interventions to treat and manage children accused of committing sexual offences in South Africa. Over the past five years the project has been involved in developing, researching and piloting a diversion programme for children who have committed sexual offences. In June 2002 a final research report titled *Evaluating the SAYStOP Diversion Programme* was completed. With the delivery of this evaluation report the Institute brought to a conclusion its research obligations vis-à-vis the SAYStOP Consortium. The first objective of the report was to evaluate the effectiveness of the diversion programme developed by SAYStOP. A second objective was to provide a comprehensive review of international literature relevant to the development and evaluation of programmes targeted at children who commit sexual offences. In its final conclusion, the report notes that the study provides support for the continued use of the SAYStOP diversion programme (limited as it is) as a first-line intervention for dealing with certain types of children accused of committing sexual offences.

**Youth violence, activism and citizenship** – Boyane Tshehla

The research project on the involvement of youth in non-state ordering, funded by the Social Science Research Council (SSRC) and the National Research Foundation (NRF), was completed in 2002. The research report was presented at a Fellows’ Workshop in Dakar, Senegal in June 2002. As part of this project, the Institute of Criminology hosted Dr Ron Kassimir, Director of Africa Program at the SSRC, on 23 July 2002.

One of the core findings of this report is that, given South Africa’s political history, the concept of ‘youth’ is particularly ambivalent. As a consequence, biological age is only one of the indicators for defining youth. The research project confirmed that young people – however defined – are active in non-state ordering as both responsible citizens (e.g. leaders of community policing forums, dispute
resolution structures and other forums) and as targets of non-state initiatives to maintain ‘social order’. The elusive nature of youth activism after 1994 is best understood as continuum of activities. The form and content of such activism is shaped by a range of cultural, political, social and economic realities.

5. Access to Appropriate Justice in Africa: Select Justice Systems

Wilfried Schärf

This project made huge strides with three separate but interlinked research forays. The first was a one-week scoping and recruitment visit to Malawi in January 2002 to assess the feasibility and logistics of conducting an investigation into the functioning of the subordinate courts and their interface with the chiefs’ courts. What was being tested were the levels of, and the quality of access to, the formal courts and the unofficial customary courts. The available literature on them was searched and an annotated bibliography compiled. Malawian colleagues from NGOs and the academic community were recruited to participate in the planning for, and subsequent implementation of, a five-week, four-district primary research process for the Malawi Law Commission. This took place in June/July with a five-person team comprising colleagues from Malawi and South Africa.

The report was submitted to the Malawi Law Commission in October. Its main finding is that both the state justice system and the non-state system of justice deliver poor quality of justice to Malawians and don't cater for their needs. This base-line study of the functioning of the justice system is an important springboard for the more analytical and comparative project that will extend to other African justice systems as funds and time permit.

The second primary research foray of the year was to Lesotho. Four districts were covered in an attempt to ascertain how the traditional justice system provides elementary services to residents in rural areas. This system is run by chiefs and is not recognised by the formal legal system.

The third opportunity that presented itself was a scan of non-state justice systems in the Southern African Development Community (SADC) region, which entailed interviews in Zambia with representatives of NGOs and the academic community. The research report of that process will be presented at an international conference in London in 2003. The outcome of this project will be a monograph on selected African justice systems.


Elaine Atkins and Sindiswa Dlikidla

The Social Justice Resource Project (SJRP), established in 1989, continues to provide an information service and a research and reference library in the criminal and social justice fields. Researchers, students, social and criminal justice agencies, visiting overseas scholars and members of the public used the resource centre during 2002.

The SJRP reference service

The SJRP houses and maintains a well-organised collection of resources of both the Institute of
Criminology and the Law, Race and Gender Unit, Faculty of Law, UCT. The collection contains over 10,000 documents and the major focus is on policing and crime control, sentencing and punishment, administration of justice, gender issues, youth at risk, and ecological criminology. The Institute’s web-based online catalogue of resources can be found on the website http://www.uct.ac.za/depts/sjrp. The Law, Race and Gender Unit’s catalogue can be found at http://pc055.lcu.uct.ac.za/law/. Access is also available from the SJRP computers to other local, national and international databases and electronic journals via the Internet.

An annotated bibliography of documents used to inform the process of child justice reform in South Africa developed by the Child Justice Alliance is available as a searchable database at http://www.lib.uct.ac.za/childjustice. Most of these resources are housed in the SJRP.

**Information and literature searches**

The SJRP supports the research projects within the Institute of Criminology with information and literature searches as well as a current awareness service that alerts researchers to new legislation and research in their field. Over 400 users per year use the resource centre and requests for information are also answered electronically. Users are directed to online resources or information is faxed or answered by e-mail.

**Institute of Criminology website**

An important focus this year has been the promotion of access to information through our websites. The Institute website has been greatly improved and Internet access through the SJRP publications page has enabled people to access publications and research papers of the Institute’s research staff and dissertations of postgraduate students. The annual reports of the Institute are also accessible through the website.

A new project this year was the development of a new website called *Non-State Justice Systems in Africa*. The aims of the website are to make the Institute’s research on this topic available, to provide on-line publications, to provide links to research in this field, and to create a platform for networking with others in the field. This new website is available at http://web.uct.ac.za/depts/criminology/ajap/indexaj.htm.

The Institute’s websites enable the work of the Institute to be disseminated in Africa as well as internationally.

**Electronic research skills development**

The SJRP is involved in skills development and capacity building by facilitating the development of electronic research skills among researchers and students in the field of criminal and social justice. This is done through tutorials aimed at equipping researchers with skills to locate relevant research from a variety of online databases.

During 2002 electronic research skills tutorials were run for eight students and seven researchers to introduce criminal and social justice online resources and to encourage the development of skills in using the Internet. The online tutorial can be accessed at http://www.uct.ac.za/depts/sjrp/tutintro.htm. A new tutorial to introduce criminal justice online resources has been developed and this will be run for eight criminal justice researchers from the Community Safety Information Centre of the Western Cape Provincial Government in March 2003.
The research skills of students and researchers were also developed through other means. During the year four students were given the opportunity to extend their research and office skills by researching information for bibliographies.

7. Special Projects: New Directions in Criminology

Considerable progress has been made on the manuscript of *Justice Gained? Crime and Crime Control in South Africa’s Transition*. The text edited by Bill Dixon and Elrena van der Spuy takes a critical look at the impact of South Africa’s transition to democracy on crime and provides a commentary on key issues in contemporary South African criminology. The book is due to be published in South Africa in the latter part of 2003.

8. Seminar Series

Lilliam Artz, Penny Parenzee, Kelley Moult and Dee Smythe, *Funding Proposals*, Gender, Law and Development Project, Institute of Criminology, UCT.

Katie Quinn, *Jury Bias and the European Convention on Human Rights*, Queens University, Belfast.

Chris Giffard, *Restorative Justice and Prisons*, Centre for Conflict Resolution, UCT.

Tony Samara, *War on Crime – War on Youth?* Department of Sociology, University of California.

David Cooper, *Creativity and Chaos: Research at Research Institutes at Tertiary Institutions in the Western Cape*, Department of Sociology, UCT, and Department of Education, UWC.

Clifford Shearing, *We Thinking Justice*, National University of Australia and Community Peace Programme, South Africa.

Richard George, *Tourist Perceptions About Crime*, Graduate School of Humanities, UCT.

Publications, Conferences and Consultancies

BOOKS


ARTICLES


**CHAPTERS IN BOOKS**


**CONFERENCE ABSTRACTS**

Artz, L. 2002. Rape: The uncivil war on women in South Africa. Eighth International Interdisciplinary Congress on Women, Department of Women and Gender Studies, Makerere University, Kampala: 366.


**CONFERENCES and WORKSHOPS ATTENDED**


**UNIVERSITY PUBLICATIONS AND PUBLICATIONS OF A POPULAR NATURE**


UNPUBLISHED RESEARCH/TECHNICAL/POLICY DOCUMENTS


Department for International Development (DFID), Pretoria.


**EXTENSION AND DEVELOPMENT WORK**

Artz, L. 2002. Expert affidavit on commercial sex work. In the matter between Jordan, Broodryk and Jacobs and the State, Constitutional Court of South Africa.

Artz, L. 2002. Board of Advisors, People’s Family Law Centre.


Parenzee, P. 2002. Member, Board of Trustees, Rape Crisis, Cape Town.


Schärf, W. 2002. Member, SAYStOP Steering Committee.


Van der Spuy, E. 2002. External examiner, Department of Criminology, University of Pretoria.

Van der Spuy, E. 2002. External examiner, Department of Criminal Justice, University of Port Elizabeth.

Van der Spuy, E. 2002. External examiner, Criminology and Crime Prevention, Faculty of Law, University of Namibia.

Van der Spuy, E. 2002. Member, Review Committee, Centre for Social Science Research, University of Cape Town.


Van der Spuy, E. 2002. Member, SAYStOP Steering Committee.

Van der Spuy, E. 2002. Member, Board of Directors, U Managing Conflict (UMAC).

Van der Spuy, E. 2002. Member, Advisory Committee, Centre for Scientific Development (CSD) Unit, Centre for Socio-Legal Research, University of Cape Town.


Van Zyl Smit, D. 2002. Member, Board of the Institute of Criminal Justice, Queen’s University,
Belfast.


**CONSULTANCY AND OTHER ACTIVITIES BASED ON EXPERTISE DEVELOPED IN RESEARCH**


Tshehla, B. 2002. Discussant of the paper, Outsourcing the Sovereign, presented by Dr Lars Buur at the Wits Institute for Social and Economic Research, University of the Witwatersrand, Johannesburg.


Van der Spuy, E. 2002. Member of Working Group, Petrol Station and Safety Project, Human Sciences Research Council (HSRC), Cape Town.

10. FUNDING

List of Funders

- Ford Foundation
- Law, Race and Gender Unit, UCT
- National Research Foundation (NRF)
- Open Society Foundation
- U Managing Conflict (UMAC)
- University Research Committee, UCT
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