

C R I M E   I N   M T U N Z I N I

by

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## CHAPTER 1.

### THE INVESTIGATION.

#### 1.1 THE CHOICE OF THE SUBJECT.

The present investigation is a result of the following considerations which are of interest to the researcher:

In the first place, not much research has been conducted on the problem of crime among the Africans in South Africa. There is thus very little published material on this subject.

Furthermore, the problem of crime among the Africans has up till now mostly been investigated by white researchers, and in urban areas. While their efforts are highly commendable, one problem facing white researchers conducting research of this nature is that they have in most cases interpreted the criminality of the Africans in terms of their own standards. <sup>1)</sup>

Proximity to the area of research (Mtunzini) is another factor that has prompted the investigator to undertake this project.

#### 1.2 THE PURPOSE OF THE INVESTIGATION.

The present investigation presents a scientific exposition of the crimes of the Africans in Mtunzini, especially the most important socio-economic crimes, which in any case, constitute the largest percentage of the crimes committed in any country. <sup>2)</sup>

The analysis of the crime problem necessitates the following:

Firstly an appreciation of the magnitude and character of the problem.

Secondly, the identification of the factors which contribute to its existence, and

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- 1) NDABANDABA, G.L.: "Crime and the African", in Crime, Punishment and Correction, Volume 3, no.2, June, 1974, p.27
  - 2) VENTER, H.J.: Kriminologie, Croft Press Bpk., Pretoria, 1966, p. 102.

Thirdly, the organization of measures for the prevention and reduction of its incidence so that the social organism may function with a maximum efficiency. <sup>3)</sup>

The purpose of this investigation is therefore, inter alia,

To answer questions such as the following: What is the incidence of crime in Mtunzini? What is the actual increase in crime ( if any ) ? Which crimes are increasing most rapidly and why ? Which age-groups seem to be responsible for the increase ?

These and other related questions are constantly being asked by criminologists. Moreover, such questions emphasize the all-important fact that the starting point of any investigation, including the present one, is the scientist's problem. <sup>4)</sup>

The researcher, without being authoritative and dogmatic, also aims at indicating possible ideas regarding the prevention of crime. This is necessary in view of the fact that the investigation of a social phenomenon like crime necessitates, over and above a study of its incidence, causes, trends and consequences, the organization of measures for the prevention of its occurrence and the reduction of its incidence. <sup>5)</sup>

It is hoped that the inquiry will be a valuable aid to a better understanding of the crime situation of the Africans in general, and the Zulus in Mtunzini in particular.

### 1.3 DELIMITATION OF THE INQUIRY.

The investigation is limited to the area served by the Mtunzini Police Station, which is part of the Mtunzini Magisterial District. <sup>6)</sup>

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3) FREED, L.F: Crime in South-Africa, Juta and Company Ltd., Cape Town, 1963, p.3

4) Ibid., p.3

5) Ibid., p.3

6) See the map of Mtunzini, appendix A.

The Mtunzini Police Station was started towards the end of the 19th century by the Natal Police, better known as the Natal Mounted Police. <sup>7)</sup> After the war waged by the British regime against the Zulus in 1879, a Bantu Police Force was created to serve Zululand, known as the "NONGQAYI!" <sup>8)</sup>

The South African Police took over the Mtunzini Police Station in 1913 when it was formed. The new police station as used presently serves an area the size of which is 546 488 hectare (211 square miles), <sup>9)</sup> and is in charge of the following "IZIGODI" (areas):

1.3.1 CHIEF MAGEMEGEME DUBE

GOBANDLOVU

MANDLANKANA

MPEMBENI

MKOBOZA

1.3.2 CHIEF MNTONGENAKUDLA MKHWANAZI

NTUZE

ZIHUZU

MATOLONJENI

MANGEZI

KHANDISA

DLANGEZWA

NYEMBE

PORT DUNFORD

SIKHAWINI

1.3.3 CHIEF NZUZA

GABEKA

NHLABABO

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7) Information obtained from the Station-Commander, Mtunzin Police Station.

8) This information was also obtained from the Station Commander, Mtunzini Police Station.

9) Information obtained from the Station-Commander, Mtunzini Police Station.

1.3.4 CHIEF ZULU

OBANJENI

1.3.5 CHIEF LINDELIHLE MZIMELA

ITONDO

MZINGWENYA

MANJANENI

SIKHOSHE

NDLOVINI

KHUMBUKUMBU

OYEMENI

MAKEHLE

MAKOLOKOLO

OBIZANA

QWAYINDUKU 10)

The total population 11) of the area served by the Mtunzini Police Station is 54 496 and is distributed as follows:

BANTU = 52 934 (97,15%)

WHITES = 1 000

INDIANS = 486 (2,85%)

COLOURED= 67

The area under investigation is essentially a farming area, sugar cane being the main crop. The inhabitants are predominantly Zulus who are employed either in the local sugar cane farms, or in the local villages and towns such as Mtunzini, Gingindlovu and Empangeni. Quite a number are employed by the University of Zululand. A few are farmers who are self-employed.

The investigation covers a five-year period, namely from 1967 to 1971.

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10) Each of these Chiefs has his own tribal court functioning in terms of section 12 of the BANTU ADMINISTRATION Act, Act No.38 of 1927, as amended.

11) The population figures in respect of the Mtunzini Police District were kindly disclosed by the Station-Commander of the Mtunzini Police Station.

#### 1.4 APPROACH TO THE STUDY

Permission was duly obtained from the Commissioner of the South-African Police to peruse the police registers at the Mtunzini Police Station in order to collect relevant material for the investigation.

The data for the required period was collected by a simple process of copying the relevant particulars from the police records which were then duly synthesized into tables, analysed and interpreted.

#### 1.5 RESEARCH PROCEDURES

The following research procedures were used in this investigation:

##### 1.5.1 THE SOCIO-HISTORICAL METHOD

The use of the historical data on the crimes of the past among the Africans rests on the acceptance of the fact that there is a causal connection between the criminality of the past and the modern criminality of the Africans. The past holds the key to the present. <sup>12)</sup>

It is the present investigator's submission that the present criminality of the African must be seen in the light of its historical setting. <sup>13)</sup>

The historical method was used mostly in chapters 2,3 and 4. On the basis of the information obtained, it is possible to determine what conditions should be improved in future.

##### 1.5.2 THE COMPARATIVE METHOD

In criminology, the comparative method involves relating data to one another. The comparative

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12) YOUNG, P.V. : Scientific Social Surveys and Research,  
Prentice-Hall Inc., Englewood Cliffs,  
1961, p.140

13) NDABANDABA, G.L.: op.cit., p.27

method is also employed for reviewing the findings of different investigators. Only through the comparison of the results and views of the different investigators in the same field, as is done in the present investigation, is it possible to arrive at a fuller meaning and insight into the problem of crime.

Another application of the comparative method is to compare one phenomenon with the same phenomenon at a different time or place. The criminologist may, subject to certain reservations, compare crime in one country with that in another, or the criminality of one racial group with that of another. Thus in this investigation the criminality of the Africans in Mtunzini is compared with that of the entire African population in the Republic of South-Africa. The incidence, nature, causes and trends of crime among the present-day Africans are compared with those of the olden times. In all these comparisons, the investigator traces correspondences and differences, and offers explanations for the most significant tendencies.

### 1.5.3 THE STATISTICAL METHOD

The collection of statistical material on crime is one of the most common features of criminological research. 14)

The criminologist who uses statistical techniques often limits himself to the most elementary of such techniques. Much of his work in this field consists of drawing fairly obvious, though often useful, conclusions from the official figures. This is done by calculating percentages from the figures presented to make it easier for the reader to grasp the significance of the conclusions and to follow the crime

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14) MANNHEIM, H.: Comparative Criminology, Volume 1,  
Routledge and Kegan Paul, London, 1965, .  
p. 124 7/.....

movements over a period of time. <sup>15)</sup>

From the official statistics the researcher can do valuable work by further elaborating the picture given in the official volume, for example by working out the age and sex ratios of crime over a period of years for specific offences and thereby laying the statistical foundations for further research. <sup>16)</sup> The simple correlations worked out in this way should, however, not be regarded as showing cause and effect, because statistical correlations merely serve as signposts to further research leading to causal explanations. <sup>17)</sup> It is of great importance that criminologists should see their crime statistics in the light of other related social phenomena. <sup>18)</sup>

The statistical method was used mostly in Chapters 5,6,7 and 8.

#### 1.6 THE PRESENTATION OF THE MATERIAL

The material is presented in the following manner:

Chapter 2 indicates crime and punishment in the tribal Zulu society which is contrasted with the present-day conception of crime in the African communities.

In Chapter 3 the theory of culture and culture-conflict and its significance in crime-causation will be discussed.

An exposition of the criminal subcultures is given in Chapter 4.

The present extent of crime among the Africans in Mtunzini is discussed in Chapter 5 and compared with the present extent of crime among the Africans in the Republic of

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15) Ibid., p. 124

16) Ibid., p. 124

17) Ibid., p. 124

18) Ibid., p. 124

South Africa as a whole.

To understand the problem of crime fully, it is imperative that information be obtained concerning the age and sex factors of criminals. The age distribution of crime in Mtunzini is accordingly discussed in Chapter 6.

In Chapter 7 sex differences in crime are handled.

Chapter 8 deals with the cost of crime.

Finally, Chapter 9 gives a resume of the most important findings and recommendations with regard to the prevention of crime.

#### 1.7 REVIEW OF MATERIAL

The main sources of data for this research included the following:

##### 1.7.1 TEXTBOOKS

A variety of books by criminologists, anthropologists and other authorities, was consulted in order to collect material for this research. Some of the most important books were the following:

- (a) Comparative Criminology, A Textbook, Volumes 1 and 2, by H. MANNHEIM.

This book, written by a University Teacher of many years of experience in Criminology, is in the words of the author, a "straightforward criminological Bible".<sup>19)</sup> Volume 1 deals with such topics as crime: its meaning in relation to law, custom and morals, methodology of research in criminology and factors and causes related to crime. Volume 2 discusses factors such as our criminogenic society, criminal sub-cultures, culture-conflict and the age and sex factors in crime.

- (b) CRIMES OF VIOLENCE by L. RADZNIOWICZ

Radzinowicz gives the results of a large-scale research undertaken in England into crimes of

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19) Ibid., p. ix (preface)



violence. The book depicts a whole gamut of behaviour which reflects the many shades of violence in human relationships defined as offences by the law. No less important is a review of how far these crimes are reported to the police and how they are recorded. The relevance of undiscovered and unreported crimes of this kind has also been considered. The author rounds off by giving a survey of the sentencing practices of the courts and the subsequent conduct of those convicted of crimes of violence.

- (c) THE SUBCULTURE OF VIOLENCE by MARVIN E. WOLFGANG  
and FRANCO FERRACUTI.

The authors begin with a classic request for scientific collaboration and integration.. They provide a relatively rigid definition of criminology and review recent research and theory in this field. A chapter is devoted to the problems of defining and measuring the elusive concepts of subculture and values. Using the former central concept as a basis for merging some of the major tenets of sociology and psychology, they focus on the criminal display of violence. Next, they summarize an array of studies and theories related to aggression and assaultive crimes, particularly homicide and note how these references contribute to their thesis of a subculture of violence.

- (d) CULTURE CONFLICT AND CRIME by THORSTEN SELLIN  
In four sections, Sellin discusses criminology and the way of science; a sociological approach to the study of crime causation; research procedures and the conflict of conduct norms. The author emphasizes that the objective of criminology is the development of a body of general and verified principles regarding the process of law, crime and treatment. Sellin further declares that one of the most important aspects of criminology is the search for the

causes of crime. The book closes with discussions referring to a number of studies that have been made regarding the connection between culture conflict and crime.

- (e) BANTOE-JEUGMISDAAD by H.J. VENTER and G.M. RETIEF.  
The authors give here the result of a research project carried out in the Boksburg location. The personal and social background of 200 delinquent African juveniles, who appeared in the juvenile court during the period 1st August, 1951 to 31st December, 1954, were compared with those of 200 African school children living in the same location. The data was gathered by means of personal interviews with the delinquents and their relatives, consulting of the court and police records as well as the case files of the local probation officers of the Department of Social Welfare.

- (f) CULTURE AND POVERTY by C.A. VALENTINE.  
The most important issues discussed in this book include the uses and abuses of the idea of culture; a cultural image and its national policy reflections and the international "culture of poverty" with implications for social science and social policy.

- (g) THE SOCIAL SYSTEM OF THE ZULUS by E.J. KRIGE.  
The author gives an exposition of Zulu history, customs, political organization, law and justice and illustrates how the old and the new cultures conflict.

- (h) THE BANTU-SPEAKING TRIBES OF SOUTH-AFRICA by  
I. SCHAPERA.

The different articles written by a number of authors include the social organization of the African, domestic and communal life, political institutions, law, justice, magic and medicine.

Other important books consulted are reflected in the footnotes and the bibliography.

#### 1.7.2 OFFICIAL DOCUMENTS

The following documents were consulted:

- (a) ANNUAL STATISTICAL REPORTS OF THE COMMISSIONER OF THE SOUTH-AFRICAN POLICE provided valuable data in connection with the incidence, nature and trends of crime among the Africans.
- (b) ANNUAL STATISTICAL REPORTS OF THE COMMISSIONER OF PRISONS provided information regarding the cost of crime.
- (c) THE BANTU ADMINISTRATION ACT, ACT NO. 38 of 1927 gave useful information pertaining to the administration of justice and the prevention of crime among the Africans.
- (d) THE REGISTER OF CHARGES ACCEPTED (S.A.P.I ) at the Mtunzini Police Station was used mainly to compile statistics for Chapters 5,6,7 and 8.
- (e) REPORT NO. 08-01-04, STATISTICS OF OFFENCES AND OF PENAL INSTITUTIONS, 1967-1968.  
This report enabled the researcher to obtain data concerning the prosecutions and convictions among the Africans in the Republic of South-Africa.

#### 1.7.3 SCIENTIFIC JOURNALS

Reports and articles in the scientific journals of Criminology provided valuable information. Some of the most important journals consulted were the following:

- (a) Crime, Punishment and Correction, NICRO Criminological Journal.
- (b) Abstracts on Criminology and Penology.

#### 1.7.4 UNPUBLISHED MATERIAL

Some very useful material was obtained from papers read at the symposia the investigator attended such as the National Criminological Symposium on the Prevention of Crime held at UNISA from the 28th to the 31st August 1973.

The M.A. dissertations by E.E. POODHUN on "Parole Services for Indian Offenders", and J.L.W. DE CLERQ on "Die Politieke en Judisiele Organisasie van die Abakwanzuza van Mtunzini," were consulted and used profitably.

#### 1.7.5 UNOFFICIAL DOCUMENTS

In order to keep abreast with the latest developments and changes affecting African opinion about crime and criminals, the investigator had to consult popular newspapers like the "ILANGA" and "THE WORLD".

#### 1.7.6 PERSONAL COMMUNICATION

The investigator had to consult a number of old and responsible and knowledgeable informants in the African community in order to verify the data collected from anthropology books.

During the course of the investigation at the Mtunzini Police Station, the researcher collected a lot of information concerning crime in Mtunzini. This was done by means of informal interviews with the police.

#### 1.8 DEFINITION OF CONCEPTS

The following concepts are used in this investigation in the context indicated hereunder:

##### 1.8.1 ZULU

Doke and Vilakazi<sup>20)</sup> define a Zulu as a member of the Zulu nation.

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20) DOKE, C.M. and B.W. VILAKAZI: Zulu-English Dictionary, The Witwatersrand University Press, Johannesburg, 1958, pp. 899-900

value system which is apart from and a part of a larger or central value system. These are shared values that are learned, adopted and even exhibited by participants in the subculture and that differ in quantity and quality from those of the dominant culture. The subculture is important in Criminology because it is used more and more both as a priori assumption and a posteriori interpretation. <sup>22)</sup>

Because of the many criminal subcultures in the African society the subculture concept is important. From the point of view of the dominant culture, the values of the subculture set the central value system apart and prevent total integration, occasionally causing open or covert conflicts. The dominant culture may directly or indirectly promote this apartness, of course, and the degree of reciprocal integration may vary, but whatever the reason for the difference, normative isolation and solidarity of the subculture result.

#### 1.9 Factors Which Hampered The Investigation.

The investigator was hampered by the following factors in this research:

There is a conspicuous lack of literature on the subject of crime among the Africans. It was extremely difficult for the investigator to obtain information pertaining to the history of crime among the Africans, but with perseverance this problem was overcome.

Another problem was the lack of statistical material. On account of the practical problems involved, the investigator could not use all three types of criminal statistics in respect of Mtunzini, i.e. the police statistics, the judicial statistics and the prison statistics. This would have been an ideal situation. This short-coming in the present investigation is not

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22) Wolfgang, M.E. and F.Ferracuti: The Subculture of violence, Towards an Integrated Theory in Criminology, Tavistock Publications, London, 1966, pp. 99-100.

a particularly serious one, because the police statistics give the most comprehensive view of the extent, form and progress of crime in a specific community. The police are usually the first people to come into contact with the crime and the criminal.

Case studies had to be abandoned because of the difficulties involved in tracing the criminals whose crimes are included in the period under discussion.

These problems have, however, been successfully overcome, and as such, do not detract from the significance and validity of the investigation.

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## CHAPTER 2.

### CRIME AND PUNISHMENT IN TRADITIONAL

#### ZULU SOCIETY

##### 2.1 INTRODUCTION.

Giving an account of crime and punishment in traditional Zululand is difficult because the sources of reference are limited. The investigator therefore had to rely on information obtained from informants whose value can never be underestimated. Moreover, in tribal Zululand law was a way of life and not a subject for philosophizing, analysis and classification:

Furthermore, historical studies exclusively devoted to the history of crime are far and between - let alone those devoted solely to the study of Zulu crime.

In this chapter reference will continually be made to Zulu law as Mtunzini, being in Zululand, is inhabited mostly by the Zulus who are, inter alia, subjects of Zulu law. The understanding of the present extent of crime in Mtunzini entails insight into crime and punishment in tribal Zululand in general. This will be done by examining the sources and characteristics of Zulu law, the most common crimes and forms of punishments in traditional Zululand. Finally, the situation as it obtained in the olden days will be compared with the situation today.

##### 2.2 SOURCES AND CHARACTERISTICS OF ZULU LAW.

The phenomenon called law is as old as humanity and Zulu law is as old as Zulu society. Zulu law in its

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traditional manifestations was not codified, but was to a considerable extent inherent in their social system. <sup>1)</sup>

The laws existed as rights and duties developed through the course of time out of the Zulus' efforts to adapt their behaviour in relation to their fellowmen and to the physical environment they shared and exploited with them.

For this reason the Zulus often speak of their laws as having always existed or as having been created by the Creator or ancestors. The foregoing should not be misconstrued as meaning that no laws at all were made by man. It serves only to emphasize the all-important fact that the greater part of Zulu law was derived from the authority of tradition and precedent in social behaviour. The Zulu courts did not practise in creating the law, but merely recognized it as valid.

The court decisions, however, afforded a precedent for similar declarations in future. <sup>2)</sup> In the case of disputes regarding the validity of the law, discussions were held among the old men, and in certain cases reference was made to neighbouring chiefs. <sup>3)</sup>

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- 1) Zulu law was codified for the first time in the Natal Code of Bantu Law, which first appeared in 1878 and was amended in 1932 and 1968 so that the present code came into force on the 1st January, 1968. See Proclamation No. R. 195, 1967 entitled NATAL CODE OF BANTU LAW, p. 1
  - 2) SCHAPER, I.: The Bantu-Speaking Tribes of South Africa, Maskew Miller Ltd, Cape Town, 1966, p. 198
  - 3) Ibid., p. 198



In this way Zulu law was able to grow and expand into what may be called oral case law.

There were no lawyers in the modern sense since every man had to defend himself, his friends and relatives.<sup>4)</sup> As an adult every man could attend and participate in the hearing of lawsuits and in this way learned in practice the legal usages of his tribe.

### 2.3 AMENDMENT OF LAWS.

According to Schapera,<sup>5)</sup> a direct way of amending the existing laws was legislation. The chief had the power, if he acted according to recognized procedure, to make new decrees. He had, however, to discuss such projected changes with the council. It was only when the council had approved of such measures that the chief issued an order which, while it lasted, had the force of law. The traditions of the Zulus contain many instances of such changes in the law. Special men in the tribe made it their duty to remember past precedents.

Zulu law, like all systems of law, had as its source or origin every fact from which positive law originates, i.e. legislation and custom which had gradually obtained the force of law. Such customary law consisted of certain rules of conduct which were not written down, but developed from the views of the community and were carried down from generation to generation. Zulu law was transmitted to the children who were carefully taught by their parents to distinguish between right and wrong conduct.

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4) KIDD, D.: THE ESSENTIAL KAFFIR, A & C. Black, Ltd., London W.I., 1925, p. 197

5) SCHAPER, I.: op.cit., p. 198

This was done in order to make them conscious of the law. 6)  
Although Zulu law is sometimes referred to as custom,  
a distinction is sometimes made between Zulu law, on  
the one hand, and Zulu custom on the other hand.

Bryant 7) describes the situation as follows: "The  
law, not written, but wholly traditional or customary,  
was based upon a strong foundation of experience, equity  
and logic ----- all its details were well-known and  
well-understood by everyone."

It is clear from the foregoing that Zulu law was an  
established system of immemorial rules which developed  
from the way of life and natural needs of the people  
themselves. This was a matter of common knowledge,  
coupled with precedent applying to special cases.  
Such knowledge and precedents were retained in the  
memories of the chief and his counsellors, until such  
time that they were forgotten, or formed part of the  
immemorial rules. A very important fact that made the  
Zulu law-abiding was that of collective responsibility. 8)

The whole kraal was responsible for the misdeeds and  
debts of anyone of its inmates. The head of the kraal  
was responsible for the acts of his agents; women  
and children were not as a rule regarded as responsible. 9)

#### 2.4 THE PRINCIPAL CRIMES AND THEIR PUNISHMENT.

The Zulus of olden days greatly detested crime and other  
forms of misconduct 10) and were greatly concerned  
with other moral issues of the time. Krige 11)  
puts the matter as follows: "It must not be imagined

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6) KRIGE, E.J.: The Social System of the Zulu, Shuter &  
Shooter, Pietermaritzburg, 1965, p

7) BRYANT, A.T.: The Zulu People, As They were before the  
white Man Came, Shuter and Shooter, Pietermaritzburg,  
1967, p. 459

8) KRIGE, E.J.: op. cit., p. 223

9) Ibid., p. 223

10) BRYANT, A.T.: op. cit., p. 462

11) KRIGE, E.J.: op. cit., p. 223

that, because the Zulus tolerated such tyrants as Shaka and Dingane, their sense of law and justice was poorly developed."

The crimes recognized in tribal Zululand were so universally abhorred that the whole tribe rose up to stamp them out. The fact that the crimes were not codified makes it difficult to provide an exhaustive list of crimes. The chief crimes seem to have been witchcraft, incest and treason. <sup>12)</sup>

Seymour <sup>13)</sup> mentions rape, while Bryant <sup>14)</sup> mentions incest, witchcraft, infanticide and murder by poisoning. Schapera <sup>15)</sup> referring to the Africans in general, mentions abduction, assault, adultery, damage to property, homicide, infanticide, murder and sorcery. Referring specifically to the Zulus, Schapera <sup>16)</sup> then divides crimes in tribal Zululand into three main groups: crimes against tribal authority, witchcraft offences and other unnatural offences.

For the sake of convenience and analysis, the crimes found in traditional Zululand will be discussed in this Chapter under the following categories: crimes against tribal authority, crimes against the person and crimes against property.

#### 2.4.1 CRIMES AGAINST TRIBAL AUTHORITY.

The crimes against tribal authority are those which were committed against the King or Chief in his capacity as "Father" of the tribe. These crimes were not properly delimited so that they overlapped each other to a great extent. Witchcraft, for instance, which was looked upon as the most terrible crime by

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12) Ibid., pp. 223-225

13) SEYMOUR, S.M.: Bantu Law in South Africa, Juta Cape Town, 1970, p 12

14) BRYANT, A.T.: op. cit., pp. 582, 639-644, 698-733

15) SCHAPERA, I.: op. cit., pp. 205-210

16) Ibid., pp. 208-211

the Zulus, was not properly defined and delimited, so that a man who committed incest and married within the degrees of relationship prohibited by custom, was also called an "UMTHAKATHI " (witch or wizard) and was given capital punishment. <sup>17)</sup>

The most important crimes against tribal authority were:

(a) DISOBEDIENCE OF ANY ORDER GIVEN BY THE KING OR CHIEF OR OTHER TRIBAL AUTHORITY ACTING IN HIS OFFICIAL CAPACITY.

Any citizen who disobeyed such an order was guilty of a punishable offence. The punishment was usually a fine in the form of what was called "eating up" <sup>18)</sup> i.e. the sudden seizure of some or all of his stock. This applied also to actions constituting what may be termed "contempt of court", such as misbehaviour in court, impudence and refusal to give evidence. In cases where there was actual rebellion against tribal authority, or any conspiracy against the King or Chief, one of the most heinous crimes had been committed in Zulu society. Such a person was given capital punishment secretly and his property was confiscated. <sup>19)</sup>

(b) TREASON.

In traditional Zulu society a person was never tried for treason to determine whether he was guilty or not guilty. The mere suggestion of such behaviour on the part of the citizen was looked upon as treason and was sufficient to cause the King to send an army to stamp out the whole Kraal of the suspected person. <sup>20)</sup> Being such a serious offence treason was at

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17) KRIGE, E.J.: op. cit., pp. 224-225

18) SCHAPER, I.: op. cit., p. 211

19) Ibid., p. 211

20) KRIGE, E.J.: op. cit., p. 224

all times visited with the maximum penalty of the law-death. Kidd <sup>21)</sup> regards treason as synonymous with witchcraft. These two crimes were however different in many respects as it will become clear in the course of this chapter.

An example of how treason was punished is given by Gardiner, <sup>22)</sup> who describes how one of Dingane's brothers, together with two of his servants, was put to death because a year previously he had been implicated in an intrigue against the King. Dingane had spared his life, but his chief councillor had insisted on his death, declaring that the army could never go to war while this "UMTHAKATHI" ( criminal) was alive. The two servants were clubbed to death, but their master was, at his own request, strangled because he was of royal blood. Men were then sent to stamp out the ten villages that had been in this man's charge. The inmates were butchered and the houses burnt and only a few individuals managed to escape by flight. The cattle of all these kraals were "eaten up" and taken to the King.

Death and confistigation were likewise punishments given to deserters and those who conveyed information to the enemy. <sup>23)</sup>

(c) ENTERING OR ATTEMPTING TO ENTER "ISIGODLO" OR PRIVATE APARTMENT FOR THE KING'S WOMEN.

This was an equally serious crime and was given capital punishment. <sup>24)</sup> The "isigodlo" or royal reserve consisted of a big segment cut off by a

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21) KIDD, D.: op. cit., p. 355

22) GARDINER, A.F.: A JOURNEY TO THE ZOOLO COUNTRY, Struik, Cape Town, 1966, pp. 44-46

23) "FYNN'S EVIDENCE, 1852 Commission Report, Part V, p.68 " quoted by Krige, E.J.: op. cit., p. 224

24) KRIGE, E.J.: op. cit., p. 229

high palisaded fence at the upper end of the great kraal, to serve as the strictly private quarters (ISIGODLO) of royalty. Anybody who entered the "isigodlo" had to obtain the special permission of the King. Girls kept at the royal kraal were so feared that men, unexpectedly meeting them outside on the highway, took good care to give them a wide berth. And yet despite all risks, these royal women did have paramours. 25)

On one occasion some of Shaka's young warriors were caught making love to girls in the "isigodlo". No less than One-hundred and seventy five men and women involved in these love-affairs were butchered in cold blood in the cattle kraal. 26)

(d) OTHER CRIMES AGAINST THE CHIEF OR KING.

Any type of deviant behavior against the Chief or the King was a capital crime. Thus, for instance, anyone partaking of the first-fruit before the King was given capital punishment. Coughing spitting or sneezing while the King was eating or speaking were likewise considered serious crimes and were punishable by death. Similarly mistakes in carrying out messages given by the King, errors in judgement or imperception and neglect of one's regimental duties, were all serious crimes punishable by death. 27)

2.4.2 CRIMES AGAINST THE PERSON.

The King or the Chief was the "Father" of the tribe. He enjoyed all power and every privelege within the tribe. Nobody dared to gainsay his word or wish. Every person and every beast was his, as high paterfamilias of the tribe. He was the law, and his was the order, which he was always zealous to maintain, exterminating all malefactors and claiming for himself

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25) BRYANT, A.T.: op. cit., pp. 473-474

26) KRIGE, E.J.: op. cit., p. 223

27) IBID., p. 229

their property. 28) Crimes committed against any person were therefore regarded as having been committed against the King. "All blood belongs to the King, and so in the case of murder or of any bodily injury, it is the Chief who prosecutes and the Chief who gets the fine. " 29)

(a) SO-CALLED BLOOD CASES (AMACALAEGAZI)

Under this general sub-group is included murder, homicide, serious bodily assault and infanticide.

(b) MURDER AND/OR HOMICIDE.

Murder is the unlawful, intentional causing of the death of a human being. 30) Culpable homicide is the negligent, unlawful killing of a human being. 31) This distinction was not made in traditional Zulu law. Because all blood belonged to the King, a person who killed another, whether with intent or through negligence, or inadvertence, stood in real danger of death. 32) In traditional Zululand it did not matter whether the perpetrator of murder had dolus directus or dolus indirectus. The degree of criminal responsibility remained the same in both cases. All cases of death were reported to the King who confiscated all the criminal's property and gave him capital punishment. 33)

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28) BRYANT, A.T.: Op. cit., p. 472

29) KRIGE, E.J.: Op. cit., p. 228

30) LANDSDOWN, C.W.H. & W.G. HOAL & A.V. LANDSDOWN, S.A. CRIMINAL LAW & PROCEDURE, VOL. II, Juta and Company, Cape Town, 1957, p. 1537

31) Ibid, p. 1557

32) The various forms of mens rea were therefore not exactly the same as those found in the present-day law of the land. Today the state of mind of the perpetrator of an unlawful act is legally blameworthy, when he wills the act in question and is aware of the fact that it is unlawful.

33) SCHAPERA, I.: Op. cit., p. 208

A man who had killed another had to purify himself as soon as possible, to take out "iqunga" (compulsive killing of others). For purifying a murderer, charms consisting of bitter roots, together with pieces of flesh from a lion, a baboon, a jackal, a hyena, an elephant, were used. These ingredients were burnt into ashes and mixed. Some of this powder was then swallowed while the rest was mixed with water and used for bathing the murderer's body. <sup>34)</sup>

Any person who took the law into his own hands and killed a homicide, except under certain recognised circumstances, was himself punished for the same offence. <sup>35)</sup> A common modus operandus in committing murder was poisoning. To poison their victims the traditional Zulus took the tiger's whiskers and put it into the victim's food. The victim would then die slowly after eating such food. <sup>36)</sup> Still another method of poisoning was to put a small piece of a crocodile's liver into the victim's food. <sup>37)</sup>

Kidd <sup>38)</sup> states that it was common for murder and homicide to be punished by means of a fine. For the murder of a man, the fine was seven herd of cattle, and in the case of a woman the fine was ten herd of cattle, because a female's value to the tribe was greater. A woman gave birth to soldiers or warriors. Molema <sup>39)</sup> is of the opinion that the punishment for murder varied according to the time which had elapsed between the commission of the crime and the date of the trial.

(c) JUSTIFIABLE KILLING OR HOMICIDE.

In certain exceptional cases the killing of a human

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34) KRIGE, E.J.: op.cit., p. 228

35) SCHAPERA, I.: op.cit., p. 209

36) KRIGE, E.J.: op.cit., p. 323

37) According to an old informant (about 75 years of age) this was a very common method of poisoning.

38) KIDD, D.: op.cit., p. 355

39) MOLEMA, S.M.: The Bantu, Past and Present, Struik, Cape Town, 1963, p. 341



being was justified. <sup>40)</sup> This is not surprising since most legal norms consist of rules to which there are exceptions. Although the killing of a human being is forbidden by law, there are in all societies instances where it is in fact permissible to do so. A person may in fact kill another in self-defence, <sup>41)</sup> and in cases where a person who has committed such crimes as treason, sedition, murder, culpable homicide, rape, robbery, fraud, forgery, etc., resists arrest and attempts to escape. <sup>42)</sup>

Such cases of justifiable homicide were also found in traditional Zululand. A homicide or murderer who was caught red-handed was himself killed. Also an adulterer caught in flagrante delicto; a nocturnal wizard found in one's home; a thief taken with stolen cattle or found in the stock enclosure - all these were killed on the spot. <sup>43)</sup>

When a king died his private body guards were caught, their limbs broken up by force and their dead or dying bodies strewn into the grave in order to keep the royal one company. These people were to be regarded as a "mat" on which the king was to lie. To perform this gruesome ceremony men of strong criminal reputation (ABATHAKATHI ABAKHULU) were requisitioned. These hardened criminals were thereafter banished to distant places and never re-admitted into society. <sup>44)</sup>

(d) KILLING FOR MEDICINE.

Because the King had to be strong medically and magically, he had to be fortified against his enemies by the strongest of medicines, i.e., parts of a human body. For doctoring the King in this way,

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40) BRYANT, A.T.: op.cit., p. 301

41) Ex Parte Die Minister van Justisie: in S.V. VAN WYK, 1967 (1) S.A. 488 (A)

42) Criminal Procedure Act, No. 56 of 1955, Section 37(1) and (2)

43) SCHAPER, I.: op.cit., p. 210

44) BRYANT, A.T.: Olden Times in Zululand and Natal, Longmans Green, Cape Town, 1929 p. 68

human parts such as the lips, ears, nose, eyes and the human skull were used. The head in particular was considered to be the strength-giving part of the body. To obtain such parts, innocent people were killed and their skulls used. The top part of the skull was neatly cut and made into a basin in which the king would wash himself before going to bed. This basin he used until he died and his successor required a new one. Other innocent victims had therefore to be killed in order to procure the new basin. 45)

- (e) THE "UKUSUKULA" CUSTOM serves to illustrate another instance of justifiable homicide. This was a custom of doctoring crops in order to increase the harvest. The Zulus were in this respect in line with the primitive belief that human flesh was the most powerful fertilizer. For making the best medicine for this purpose, a person had to kill his first-born son. Parts of his flesh would be eaten with medicines while others were mixed with the seeds. Only wizards, however, would be prepared to take such a step. Other people who were not wizards, were content to buy these medicines from them secretly. 46)

The "ukusukula" medicine was thought to have the power of removing all the fertile soil from the lands of other persons and bring it to the charmed fields and was therefore a method of obtaining plenty at the expense of others. In this sense it was a form of witchcraft. 47) Bryant 48) maintains that the local "medical practioners" made a handsome income every year by supplying their clients with the "UKUSUKULA" mixture.

- (f) KILLING OF TWINS.

Any one or both twins born feet first or suffering

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45) KRIGE, E.J.: op.cit., pp. 241-242

46) Ibid., pp. 192-193

47) Ibid., p. 193

48) BRYANT, A.T.: op.cit., p. 301

from some defect, or was in any way a monster, could be killed justifiably. Also an albino child was not allowed to live. Such a child was referred to as an "INKAWU", meaning monkey, and therefore met a monkey's fate, i.e. he was killed. 49)

(g) WITCHCRAFT

Witchcraft, the malicious use of magic to kill other people or to inflict harm upon them or their property, was one of the crimes most dreaded by the Zulus. 50) Wizards were therefore regarded as men or women of strong criminal reputation. Every Zulu who has grown up in the traditional environment knows about the mystical power of witchcraft which seems to defy scientific explanations. Because witchcraft was regarded as a serious crime, its punishment was also severe. For this reason, no number of witnesses could establish the guilt or innocence of a wizard, because the crime of witchcraft was believed to be due to the workings of unseen forces. 51)

Accusations of witchcraft were, therefore, not tried in the ordinary way, but various forms of divination were employed by the witchdoctor to detect the criminal. Alternatively some of the undermentioned ordeals were undergone by the persons accused or suspected of witchcraft: 52)

- (a) The suspected person was made to lick a red hot iron, and if he was guilty, his tongue would burn.
- (b) Another ordeal was to cause the suspected person to pick out a small pebble which had been thrown with some charms and herbs into a pot of boiling water.

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49) PLANT, R.: Zulu in Three Tenses; being a forecast of the Zulu's future in the light of his past and his present, Davis, Pietermaritzburg, 1905, p. 12

50) KRIGE, E.J.: op.cit., pp. 226-227

51) Ibid. p. 225:

52) Ibid., pp. 225-227

The guilty person only would be scalded. <sup>53)</sup>  
Having been detected, the criminal was given capital punishment, preceded by torture. Usually the guilty man was first knocked on the head, and then killed by having sticks driven in succession up the arms till they reached the neck. His attire was destroyed and thrown away so that it could not be used afterwards. Moreover, responsibility was collective so that it was not only the witch who was killed but his entire family. This was done in order to prevent the multiplication of "bad" human material. <sup>54)</sup>

Witchcraft appears to have been a very wide and complex crime in traditional Zululand. It was not only the generic name given to a large number of crimes, but was also the name of a specific crime, which would correspond in modern times to culpable homicide or even murder. Some of the crimes covered by the term witchcraft included, for instance, actions such as: <sup>55)</sup>

- (a) Any breach of custom, such as eating in secret the meat left over night to be enjoyed by the ancestors. To eat such meat in secret and be discovered, was sufficient to constitute witchcraft.
- (b) Women who contravened the "HLONIPHA" custom would be likely of being "smelled" out as being guilty of witchcraft. The "hlonipha" custom consisted in a woman not doing or saying certain things in the presence of her parents-in-law. Referring to this custom Vilakazi <sup>56)</sup> holds that the custom has a religio-medical idea of the Zulu culture, which meant that if a woman did not behave as required towards her in-laws, she offended the gods, and her action was, therefore, likely to bring ill-luck to

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53) Ibid., p. 225

54) Ibid., p. 227

55) Ibid., p. 224

56) Vilakazi, A.: Zulu Transformations; a study of the dynamics of social change, University of Natal, Pietermaritzburg, p. 26

the family as well as to herself. The custom consisted, inter alia, of speech taboos which were practised, especially where the King or other important persons were concerned. "Hlonipha" was based on the old conception that to know a person's name meant to be able to influence him. In consequence then it was not only avoided to pronounce the name of a tabooed person, but every phonetical resemblance was also avoided, be it to the name in toto or to a part thereof. 57)

A married woman would, for instance, not pronounce the word "NDLELA" (path or way) if the father-in-law's name was "NDLELA". She would then "Hlonipha" (respect) the word "NDLELA" and instead use the word "INYATHUKO" for "NDLELA". The "Hlonipha" rules were clearly then formulated precepts of good conduct for women similar to those which Emily Post says are good for society women in European society. 58)

What cannot be doubted, however, is that witchcraft was a crime. The important fact is that it was essentially a hidden crime, in view of its secret nature. Describing the "ABATHAKATHI" as hardened criminals Krige 59) says "the unthakathi is the enemy of society. He is the man or woman who uses the powers of the universe, which he has learnt to employ by means of magic, for antisocial ends. The "umthakathi" uses his power for evil and against the welfare of society; he injures people's health; destroys life; prevents rain; occasions lightning; makes the cows become dry and is the cause of all manner of misfortune. Once he has been discovered, he is shown no mercy, but is got rid of as speedily as possible".

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57) DAMMAN, E.: "Bantu Thinking as reflected in their languages" p. 10, Address delivered at the University of Zululand on 23/3/1970

58) VILAKAZI, A.: op.cit., p. 27

59) KRIGE, E.J.: op.cit., p. 321

(h) THE MODUS OPERANDI OF WITCHES.

An interesting feature of the crime of witchcraft was the witch's modus operandi, which were many and varied. Witches usually moved about at night; called the dead out of their graves; opened bolted doors by merely breathing on them; induced anaesthetic sleep by a mere glance on such people as were not previously protected by the witchdoctor's charms. They generally amused themselves by cutting people's bodies and taking their blood; hair and other belongings in order to bewitch them, and cause sickness or death. 60)

They caused death or evil by using incantations, mystical power, medicines, by sending secondary agents like flies and other animals; by using their evil eye; by changing themselves into animals, etc. One of the worst crimes they committed was the prevention of rain which they withheld by putting pegs dipped in medicine in the ground and tying knots in the grass on the mountains and then sprinkling them with medicine. In the olden days if there was no rain, the King would send around messengers to look for such pegs or knots, and if they were found, the owner of the nearest kraal would be fined or killed. 61)

The witches caused lightning to strike a kraal 62) by securing some of the grass above the door of one of its huts (which got soiled from the bodies of persons going in and out) and some ashes from the common ash-heap. Lightning was also caused by using the footprints of a man, together with rubbish from the road leading to his home. These they burnt in the veld with

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60) Ibid., p. 323

61) Ibid., p. 323

62) Ibid., p. 324

the fat and feathers of the "bird of heaven". The smoke then went up to the sky, the sky became overcast, it began to thunder and lightning ran along the road on which the victim had walked, reached his home and struck him. <sup>63)</sup>

Moreover, it would appear that witchcraft was mostly a crime of women, who were believed to be more likely to enter into sexual relations with the devil. Thus in Zulu society the women who were witches were said to be paramours of the "TOKOLOSHE". This impish short little man with a long beard gives the women witches greater sexual gratification than a man. <sup>64)</sup> The TOKOLOSHE visits the women witches at night when the husband is asleep. A woman witch who has had sexual intercourse with the TOKOLOSHE runs the risk of its wrath should she forsake it. Female witches sometimes also employed an "IMPAKA" ( a wild cat ) to bewitch women with whom she was not on good terms. <sup>65)</sup>

Equally interesting was the creation of the so-called "UMKHOVU". "Umkhovu" <sup>66)</sup> is a corpse that has been dug up and brought back to life by a witch. First of all, the witch killed a person by witchcraft and then he woke him up from the dead, a process which was effected in various ways. One was that the witch dug the corpse up himself together with his friends. Another method of getting hold of the corpse was

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63) Ibid., p. 324

64) According to informants, the TOKOLOSHE has a very long penis. That is why TOKOLOSHE has a greater sexual appeal to the woman witch than the ordinary man (or her husband).

65) KRIGE, E.J.: op.cit., p. 325

66) Ibid., pp. 326-327

for the witch simply to strike upon the grave with a stick that has been doctored, and use the words "So-and-so, get up " Thereafter, the corpse rose. Having got possession of the corpse, the next step was to bring it back to life in the form of an "UMKHOVU". The "UMKHOVU" would then be sent everywhere on its master's missions and would even help the wizard to exhume other people. 67)

There was, of course, a whole class of witches called "IZINSWELABOYA" whose work was to seize lonely travellers and kill them in order to use their bodies for purposes of witchcraft or to convert them into "IMIKHOVU". 68)

Witchcraft was, of course, not a feature of the primitive Zulus only. The Israelites, for instance, also believed in witchcraft. Moreover, many people continued to be accused of witchcraft in England and Scotland up to and after the publication of the authorized version of the Bible (in the reign of James I, 1603-1625). In fact the belief in witchcraft was so strong that anybody who doubted its reality would be guilty of an offence tantamount to heresy. 69)

2.4.3 SEXUAL CRIMES: The sexual crimes mentioned by investigators are rape, incest, seduction, adultery, abortion, abduction and other forms of sexual perversions. 70) Sexual crimes were not only viewed in a very serious light, but were also regarded as ill-omened actions.

(a) RAPE: Although rape does not appear to have constituted a serious problem it was regarded as

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67) Ibid., p. 326

68) Ibid., p. 321

69) MANNHEIM, H.: Comparative Criminology, Vol. II, Rontledge & Kegan Paul, London 1965, p. 695.

70) KRIGE, E.J.: op.cit., p. 228



a serious crime once it had been committed. It was looked upon as a crime against the King. The normal penalty for rape was a fine, part of which went to the family of the victim. The fine was usually one to four herd of cattle. <sup>71)</sup> There were also instances when rape was punishable by death. <sup>72)</sup>

- (b) INCEST: A man committed incest if he married within certain degrees of relationship prohibited by custom. Such a man was referred to as "UMTHAKATHI" <sup>73)</sup> Zulus felt an antipathy against marrying their own clan.

Incest was looked upon with horror by the Zulus, and whenever it occurred, it was attributed to the seduction by a witch. <sup>74)</sup>

The reactions of society to the crime of incest varied according to the closeness of the relationship of the parties concerned. If a man were to commit incest with his sister, or with his father's young wife, his own people would put the 'dog' to death for having disgraced them. <sup>75)</sup>

If, however, the relationship was less close, the people, would be less angry and the criminal would be banished instead of being killed. It was believed that the ancestors would punish the criminals by making their off-spring monsters. <sup>76)</sup>

- (c) SEDUCTION.

Krige <sup>77)</sup> holds that among the Ngunis seduction was a crime whether pregnancy followed or not.

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71) KIDD, D.: op.cit., p. 355  
72) MOLEMA, S.M.: op.cit., p. 142  
73) KRIGE, E.J.: Op.cit., pp. 224-225  
74) KRIGE, E.J.: op.cit., p. 224  
75) Ibid., p. 224  
76) Ibid., p. 224  
77) Ibid., pp. 157-158

The Zulus allowed action to be taken each time a girl was seduced.

Any girl who became seduced had to answer for her conduct not only to the mothers of the village, who would swear at her by the most insulting terms, but also to her peers, who had also been disgraced by her action. For this reason she underwent an ordeal such as the following: She would be taken to the river to be examined whether the charge was true or not. If the charge was founded, she would be punished by her peers. On leaving the river, the girls would go to the boy's home, where they demanded a goat as a fine. If the goat was not given to them, the girls would seize it, slaughter it and smear the "UMSWANE" on their bodies, in order to purify or cleanse themselves. 78)

It was only after this ordeal that the parents would bring their charge against the boy. The amount of damages recoverable for seduction was often standardized, e.g. among the Zulus it was one herd of cattle, the so-called "INGQUTU" beast which was payable to the mother in respect of the hyman of the girl. In other cases an "IMVIMBA" or "IMVALA" beast was paid to the father. 79)

If however the seducer married the girl, the damages he had paid were considered as part of the "lobola".

- (d) ADULTERY: Adultery was considered a very serious crime. Adultery is, however, no longer a crime according to the law of the land. 80) In Bantu law (including Zulu Law) adultery is still a crime in terms of the Natal Code of Bantu Law. 81)

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78) Ibid., pp. 157-158

79) Ibid., p. 158

80) Green v. Fitzgerald and Others, 1914 A.D. 88

81) The Natal Code of Bantu Law, Vol.25, section 162 (1)

(d), The Government Printer, Pretoria, 1967.

A man who suspected his wife of committing adultery, partook of a certain medicine called "UMSIZO", obtained from a mysterious power of conveying disease to the adulterer upon subsequent intercourse. The disease was also called "UMSIZO". If adultery was followed by pregnancy, the adulterine child belonged to the husband of the wife who committed adultery and not to the child's natural father. 82)

Adultery by an married woman did not automatically entitle the husband to divorce his wife, unless she was an habitual offender. 83) The husband could, however, recover damages from the wife's lover. The amount of damages was five herd of cattle if the woman became pregnant, and three herd of cattle if she did not. Divorce, however, as we know it today, by judicial decree was unknown to the Zulu. A man could simply drive the wife away if there was sufficient cause, e.g. witchcraft, or insubordination. 84)

(e) ABDUCTION.

Landsdown 85) defines abduction as the removal of an unmarried person from the custody of his/her parents, or other persons having control over him or her without their consent, with the object of marrying or having sexual intercourse with him or her. There were actions in traditional Zululand conforming to the above definition. The custom of "UKUBALEKA" is one example. In this case the girl ran away to her sweetheart, an action which forced her parents to enter into marriage negotiations. There was another variation 86) of the "UKUBALEKA" known as UKUTHWALA (to carry).

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82) KRIGE, E.J.: op.cit., p. 157

83) SCHAPERA, I.: op.cit., p. 205

84) BRYANT, A.T.: op.cit., p. 601

85) LANDSDOWN, C.W.H. & W.G. HOAL & A.V. LANDSDOWN: op.cit., pp. 1635-1636

86) KRIGE, E.J.: op.cit., p. 126

This custom involved the taking of an unmarried girl by force and by surprise to the suitor's home where she would be made to put on the clothes and insignia of a newly married wife. The "UKUTHWALA" custom was usually connived at by the girl's parents, and for this reason it was actually a form of marriage by capture. It was not uncommon at certain times for a "THWALA" bride to run away to a man of her choice. 87)

Although the "UKUTHWALA" custom looked criminal on the surface, it does not seem to have been an actionable wrong. There was in fact no liability for the abduction, apart from the marriage payments. If however, there was no marriage taking place, special damages could be claimed especially if the girl had been seduced. 88)

Abduction, then, as a preliminary for marriage was known as the "UKUTHWALA" custom and it often took place with the connivance of the girl's father. "UKUTHWALA" was also resorted to if a girl rejected her lover who was determined to marry her. The boy with a number of his sibmates arranged to carry off the girl secretly to the boy's kraal. 89)

The abduction of a married woman was a horse of a different colour. As a rule such a crime was an aggravated form of adultery and was therefore punished more severely. 90)

(f) "UKUHLOBONGA" (EXTERNAL SEXUAL INTERCOURSE)

In Zulu society it was a serious crime for a young man to penetrate when having sex with a girl before marriage. It was not uncommon for children

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87) Ibid., pp. 129-131

88) SCHAPER, I.: op.cit., p. 206

89) KRIGE, E.J.: op.cit., p. 125

90) SCHAPER, I.: op.cit., p. 206

under puberty to indulge in sexual intercourse. After puberty, however, the girls were strictly controlled by those older than they were. <sup>91)</sup> In addition Zulu mothers used regularly to examine their daughters pudenda by way of supervision against defloration. Having premarital sexual relations was therefore a crime unless it conformed with the following procedure. <sup>92)</sup>

After a period of about three months, any young man who had been accepted by a girl, could go to the "AMAHIKIZA" or older girls and ask for permission to have external sexual intercourse or "HLOBONGA" with his lover. Such permission was seldom refused, for the custom, though technically unlawful, was nevertheless connived at by the older girls and the parents. Regarded, then, in such a way, "Ukuhlobonga" was universally practised among the Zulus without any qualms of conscience. <sup>93)</sup>

The "ukuhlobonga" custom was during the reign of Cetshwayo degraded by "SIGCWELEGWELE", head of the ema NGADINI clan, when he countenanced "ukuhlobonga" within his own clan, even between full brothers and sisters. Since that time promiscuous intercourse became common in certain families. <sup>94)</sup>

(g) ABORTION.

Miscarriages (UKUPUPUMA ISISU) were rather frequent among the Zulus. The artificial procurement of abortion was, however, rare. Yet it did occur especially with the royal girls in the "isigodlo". <sup>95)</sup> In the case of miscarriages the Zulus used many

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91) KRIGE, E.J.: op.cit., pp. 105-106

92) Ibid., p. 106

93) BRYANT., A.T.: op.cit., p. 568

94) Ibid., p. 569

95) Ibid., p. 629

preventatives generally called "UMSEKELO" or "UMATHUNGA" (*Cyrtanthus Obliquus*) or "UMKHUHLU" (*Strychnos*) and several other plants, many of them apparently possessing tonic properties. For procuring abortions, "UHLUNGUHLUNGU" (*VERNONIA CORYMBOSA*) was their usual stand-by. <sup>96)</sup>

#### 2.4.4 CRIMES AGAINST PROPERTY.

Because of the fluid and uncertain nature of the Zulu conception of property in traditional times, it is impracticable to deal fully with the important group of crimes against property. The Zulu land-system was communal. There were no privately owned estates. The whole country belonged to the clan. <sup>97)</sup>

In true Zulu thought all land belonged to the King or Chief as the representative of the nation as a whole. <sup>98)</sup> All that his subject had was the right to use the land allotted to them by the King.

Property crimes <sup>99)</sup> were, inter alia, the following:

##### (a) THEFT.

Theft appears to have been both a crime (public wrong) and a delict (civil wrong). Theft was rarely committed. Thieves were classified into manifest and non-manifest thieves. The former were criminals who were caught in the act of stealing and were usually punished by death. The latter were those who were not caught red-handed. They were, as a rule, expected to restore the stolen property or its value. <sup>100)</sup>

An interesting feature was the method in which a person suspected of stealing garden produce was detected. When theft of crops was suspected, part of the corn or maize was taken from the

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<sup>96)</sup> Ibid., p. 629

<sup>97)</sup> Ibid., p. 467

<sup>98)</sup> KRIGE., E.J.: op.cit., p. 176

<sup>99)</sup> SCHAPER, I.: op.cit., p. 207

<sup>100)</sup> Ibid., p. 207

field and put into a "THEKWANE'S" nest (the nest of a Hamerkop), which was then burnt. This would cause the house or receptacle in which the suspect was at that moment to burn also. This served as a clue as to the identity of the criminal. 101)

"Stealing by force in retaliation," was not regarded as a crime. 102) It is not clear, however, what Kidd means when he says "----- but property so taken must be restored or compensation given". If any man, by stealing, could promote the interest of his King, and his tribe, or if his stealing crippled his King's enemies, his crime was condoned. Such an act, in fact, won him public approval and universal applause. In this sense, then, theft was looked upon as an advantage to the King.

Theft was, however, viewed in a very serious light if it prejudiced the King or the tribe. This is the reason why the notorious Zulu thief, GCUGCWA, had to die by means of torture after stealing King Shaka's cattle. 103)

(b) STOCKTHEFT (CATTLE-STEALING)

Stocktheft was one of the most important of the property crimes and was severely punished.

Shaka, for instance, punished stocktheft with death. 104) In stocktheft the spoor laws, by which any kraal, to or near which the spoor of the stolen cattle were traced, was held to be

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101) According to old informants this method of crime-detection was always successful.

102) KIDD, D.: op.cit., p. 357

103) GCUGCWA was killed by torture as follows: The cattle he had stolen were herded into the kraal, and at the gate, Gcugcwa was tied to the gate posts so that he lay across the gate. There was no other obstruction at the gate save him. The herdboys went into the kraal and drove the cattle towards the gate. Although the cattle hesitated at first, they eventually rushed through the gate over his prostrate body and cut him to pieces as they did so. See Nyewbezi, C.L.: Zulu Proverbs, Wits. University Press, Johannesburg, 1963, p. 80

104) KRIGE. E.J.: op.cit. n. 229

responsible for the theft unless it could trace the spoor further. <sup>105)</sup>

Many law suits also arose out of the "UKUSISA" custom. "Sisa" means a custom whereby cattle or other live stock are deposited by their owner with some other person on the understanding that such person shall enjoy the use of them, but that the ownership shall remain with and increase accrue to the depositor. <sup>106)</sup> The person to whom the cattle had been "sisa'ed" had to give a full account of the increase and decrease of the cattle. Where he failed to do so, his action would amount to theft. <sup>107)</sup>

"Sisa" was usually practised by rich men, who would place one or more of their cattle in the keeping of another. The herdsmen of such "sisa" cattle were entitled to use their milk and could also use the meat when the animal died (INGCUBA). They were not, however, empowered to sell or slaughter the "sisa" cattle. If the cattle flourished under their care, they would be rewarded with a heifer from time to time. <sup>108)</sup>

- (c) ENCROACHMENT UPON THE FIELDS OF OTHERS could have been tantamount to trespassing or arson or malicious damage to property in modern times, but was not usually an actionable wrong. The trasgressor was simply asked to move away. If he continued to trespass, he was forcibly ejected, if necessary with the help of the messengers from the tribal courts. <sup>109)</sup> Cattle entering a field and damaging another's crops, entitled the owner to compensation. The usual procedure

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105) Ibid., p. 229

106) Section 1 (1) of the Natal Code of Bantu law

107) KRIGE, E.J.: op. cit., p. 229

108) SCHAPERA, I.: op. cit., pp. 154-155

109) Ibid., pp. 206-207



was for the parties to inspect the damage together and settle the matter between themselves. If they did not agree, the matter was taken to court. Messengers would then be sent to assess the damage and compensation given. <sup>110)</sup>

Damage to other forms of property entitled the owner to restitution. In the case of arson or other forms of damage to property, compensation often greatly exceeded the value of the damaged property. <sup>111)</sup>

At present the Natal Code <sup>112)</sup> provides that the destruction of crops by cattle or other stock will found an action for damages against the owner or person having the custody and control of such stock, unless such damage has been caused by the contributory negligence of the owner of the crops.

## 2.5 JUDICATURE.

On the whole the tribal Zulus led extremely well-ordered lives. All relations between the people were regulated by strict rules, which, when generally accepted, became law. Ordinary disputes were settled by the head of the kraal. If, however, the parties were not satisfied, the matter was taken to the district head, called the "INDUNA" and finally to the King. There was nothing, however, to prevent the complaints from going directly to the King in the first instance. It was not the duty of the district heads to report cases to the King, but to try cases. <sup>113)</sup>

The King had legislative and judicial power. The people were, however, ruled by custom and usage and very little legislation took place. Questions as to what the law

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110) Ibid., p. 207

111) Ibid., p. 207

112) Natal Code of Bantu Law, section 134, p. 26

113) SCHAPERA, I.: op.cit., p. 84

was were usually settled by discussion among the old men, and, if serious, by the King himself assisted by his counsellors. The King could, therefore, make no new laws without the consent of his counsellors who represented the people. The laws were usually proclaimed every year after the Feast of the First Fruits. <sup>114)</sup>

Another limitation to the King's power was that no person could be killed except for some offence. It was an easy matter, however, for the Zulu Kings to fabricate an offence if they wished to get rid of a subject. On being found guilty such a subject would be killed together with his family and his cattle confiscated by the King. <sup>115)</sup>

It is clear from the foregoing that over and above all persons reigned law and authority. The law, not written, but wholly traditional, was based upon a strong foundation of experience, equity and logic. Its main principles allowed a large margin of elasticity and discretion in its administration to meet the reasonable demands of every occasion. The law adequately satisfied all the simple needs of the community and was so simple that all its details were well understood by everyone. <sup>116)</sup>

#### 2.5.1 THE POLICE SYSTEM.

Before discussing the courts and criminal procedure, the question whether there was any police system in traditional Zululand needs attention. There was no organized police force in the form of disciplined professional corps of guardians of the law and society <sup>117)</sup> as it exists today. As a result everybody in the tribe was a 'policeman', and was bound to report to his superiors any crime he saw being committed. If he failed to do so, he incurred the responsibility himself. <sup>118)</sup>

It was furthermore, customary to find in aristocratic

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114) KRIGE, E.J.: op.cit., pp. 218-219

115) Ibid., p. 219

116) BRYANT, A.T.: op.cit., p. 459

117) Ibid., pp. 474-475

118) KRIGE, E.J.: op.cit., p. 223

kraals the so-called "IZIMVALI", whose duty was to look after the entrances. These gate-keepers had their huts next to the gates. In addition were found in royal kraals an "UMVAKASHI" or night watchman whose duty was to guard the kraal against intruders generally bent on criminal purposes. 119)

The most feared type of criminal, the witch, who usually made surreptitious nocturnal visits was prevented from entering kraals, inter alia, by using the bulbous root of a certain plant. This root, usually stuck at the entrance, had the power of making the witches forget their criminal ends. This precaution was used in addition to the above. 120)

The King was well looked after. Inside his hut, crosswise before the doorway, lay at night his valet, called in Zulu his "INSILA" (DIRT). His duty was, within the hut, to receive upon his body the royal nasal and throat discharges. During the day, he dressed the King's hair, bathed his body and adorned it with its finery. The so-called "ISISINDABISO" (ANUS WIPER) accompanied the King to stool. His duty was further to keep a good look-out against prying witches and to hide away from them the royal excreta, a much-valued acquisition for evil magic. 121)

At times the regiments acted as the state's police, i.e. they slew convicted and suspected persons, and confiscated their property in the King's name. 122)

Of the police, Bryant 123) says that the King had companies of warriors at his disposal to deal with refractory individuals or to execute criminals and confiscate their property; and all the local headmen had official messengers for bringing

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119) Ibid., pp. 42-43

120) Ibid., p. 43

121) BRYANT, A.T.: op.cit., pp. 230-231

122) SCHAPERA, I.: op.cit., pp. 85, 194-195

123) BRYANT, A.T. op.cit., pp. 462-463

offenders to their courts. This was the Zulu police and it adequately served its purpose. There were thus no regularly perambulating policemen, for the reason that the laws to be broken were so few.

#### 2.5.2 THE COURTS.

Apart from the King's or Chief's criminal courts, there were other bodies which settled or helped to settle disputes, viz., the family councils and the Chief's local courts, also known as district "indunas" courts or country courts. These courts had authority to adjudicate upon all matters of a purely local nature. Within their own jurisdiction, they could inflict even the extreme penalty of capital punishment. <sup>124)</sup>

#### 2.5.3 THE COURT PROCEDURE.

The court procedure in criminal trials allowed any adult to take part in the proceedings. <sup>125)</sup> The Zulu court procedure showed clearly its arbitrational nature. Law suits were begun in various ways according to the nature of the case, but the more general procedure was for the injured party to inform all his relatives and neighbours, who then went armed with sticks to the accused's kraal. A law party conformed to a certain stereotype; they looked generally angry, did not reply politely to questions and greetings. <sup>126)</sup>

Since everybody present was free to express his opinion in court, the cases dragged on for a long time. The tribal Zulus were fond of litigation and the time they used to spend in court for offences of a trivial nature stressed this characteristic. The trial bore some resemblance to a wrangling because if anyone said something resentful, he was ordered to keep quiet as follows: "Keep quiet you "SIPHUSHA", i.e. useless or ineffectual person, like snuff

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124) Ibid., p. 231

125) Ibid., p. 229

126) Ibid., pp. 230-231

which is not strong enough to be nice. There was no penalty for false evidence. Witnesses were never put under oath. Obviously, then, the judgement given at the end of the case was based upon the opinion of those present. 127)

Zulu law in the main, took cognizance only of offences actually perpetrated. The amount of damage actually inflicted was also taken into account in determining the punishment. A thief stealing two herd of cattle was, for instance, not as severely punished as one stealing four herd of cattle. The character of the accused played a part in the attitude the court adopted towards him. If the offender readily admitted his crime, he was usually dealt with more leniently and sometimes even excused. Similarly an habitual offender was always more severely punished than a first-offender. 128)

The relative status of the offender was another factor that was taken into consideration. So also foreigners who committed crimes were on the whole, more harshly judged than members of the tribe. 129)

The sentence, where it involved corporal or capital punishment, was carried out immediately after being pronounced. Fines were also paid out in the same way. Should any man delay unreasonably in paying the fine, messengers would be sent to seize the cattle at his kraal. 130)

Special mention should finally be made of the principle of collective responsibility which played so larged a part in Zulu law. This did not usually apply to cases where corporal or capital punishment was imposed. Collective responsibility

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127) Ibid., p. 230

128) SCHAPERA, I.: op.cit., pp. 215-216

129) KRIGE, E.J.: op.cit., p. 231

130) SCHAPERA, I.: op.cit., p. 271

however applied in cases of witchcraft where not only the accused was punished, but his whole family. 131)

The hut of the Chief councillor was a sanctuary and any criminal was safe when he fled to it. He could be fined, but was not given capital punishment once he had reached that haven. 132)

The main motives of punishment were retaliation and deterrence, although rehabilitation of the offender, was not entirely cut out. After the reason for the crime had been discovered, the judge then saw to it that, over and above punishment, proper friendly relations (UKUTHELELANA AMANZI) were restored. 133)

## 2.6 PRESENT-DAY ARRANGEMENT.

The present-day position differs considerably from that which obtained in traditional Zululand. Courts of Bantu Commissioners have been constituted in defined areas to hear all cases between Bantu. Bantu Commissioners' Courts have concurrent jurisdiction with magistrates' Courts in respect of certain offences committed by the Africans. 134)

Section 18 (1) of the Bantu Administration Act, No. 38 of 1927, makes provision for an appeal court known as the Bantu Appeal Court, while section 19 of the same Act, makes provision for Bantu assessors both in appeal courts and in the courts of Bantu Commissioners. The Bantu Administration Act also preserves the powers of the Chiefs, Headmen and Chiefs' deputies to try certain offences. 135) The procedure at any trial conducted by a Chief or headman in terms of section 20 of Act 38

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131) Ibid., p. 219

132) BRYANT., A.T.: op.cit., p. 442

133) KRIGE, E.J.: op.cit., p. 59

134) Section 9 of the Bantu Administration Act, No. 38 of 1927, makes provision for this arrangement.

135) Section 20 of this Act confers upon Chiefs jurisdiction to try and punish any offence under common or Bantu law other than those referred to in the 3rd Schedule.

of 1927, shall be in accordance with Bantu law and custom, subject to any other provision. Section 20 of the said act also provides that in the exercise of his jurisdiction, the Chief or headman, may not inflict any punishment involving death, mutilation, imprisonment or a fine in excess of forty rands or two herd of cattle (large stock) or ten herd of small stock or corporal punishment, save in the case of unmarried males below the apparent ages of thirty years.

If this court fails to recover from a person any fine imposed upon him, such a person may be arrested by the court messengers, and must within forty-eight hours after his arrest be brought before the Bantu Affairs Commissioner in whose area of jurisdiction the trial took place. <sup>136)</sup>

Regarding the present-day arrangement, Junod <sup>137)</sup> holds that the chief's power is very rapidly detereorating, being weakened by the fact that an offender feels instinctively that the character of the Chief is no more what it used to be, because the last word remains with the White "judge", i.e. the Bantu Affairs Commissioner.

Vilakazi <sup>138)</sup> says that Chiefs are nowadays "servants of the Native Affairs Department and express government sentiment rather than the wishes of the people". Moreover, they know that they hold power by virtue of the grace of the department of Bantu Administration and Development.

The basis of Zulu society which was loyalty to the King or Chief is, therefore, threatened. For the unsophisticated Zulus, the authority of the Chief is still the very foundation of his idea of justice. But then the

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136) Other important aspects of the administration of justice are given in Chapter 16 of the Natal Code of Bantu Law, p. 30 et. seq.

137) Junod, H.P.: Bantu Heritage, Hortors, Johannesburg, 1938, p. 98

138) Vilakazi, A.: op.cit., p. 106

number of unsophisticated Zulus is decreasing and the situation arising in the urban townships is undermining the respect of the Zulus for authority. The many changes in Zulu society have led to a tremendous increase in lawlessness <sup>139)</sup> among the Zulus, a people who used to be most loyal to the Chief and generally law-abiding.

Contact with the White man's law and its institutions, has made the Zulu society emerge from a relatively stable and integrated society, where norms functioned more or less uniformly, into a complex society faced with many conflicts.

## 2.7 SUMMARY.

The foregoing analysis of the Zulu concept of crime and punishment in traditional times makes it clear that the list of specific crimes was not a particularly long one. This could be on account of the fact that the most serious crime, witchcraft, was a 'blanket' term which included many other crimes, such as arson, culpable homicide, etc.

Punishments were not equal to the crimes as seen from some of the severe penalties administered for petty crimes, if committed against the King or Chief. The chief's decision was final which is not always the case nowadays. Responsibility was collective. Because there were no prisons, punishment usually took the form of restitution, banishment or death.

Court fees were unknown, but today they are paid to the "INDUNA" and also to the Chief. There are many other differences between the Zulu court of today and that of the olden days, for even though the old Zulu procedure has been preserved to a large extent, there have, of necessity, been many changes, and serious crimes are all dealt with by White magistrates according to South African criminal law and procedure. Indeed, the Zulus look upon the present courts of Zulu Chiefs as "White Men's institutions".



THE CULTURE INFLUENCES ON CRIME IN GENERAL  
AND IN TRADITIONAL ZULU SOCIETY.

- 3.1 INTRODUCTION: Studies of the cultural background of a people are very important in the understanding of their criminality. This is because a society can be understood only against the background of its peculiar culture. The present chapter, therefore, focusses attention on the cultural factors in the causation of crime in general and among the Africans in particular. The cultural explanation of crime is, however, not the only valid or even necessarily the most important approach. Explanations of crime in terms of culture, although important, cannot, therefore, tell the whole story, since every individual makes his own selection from what his culture offers him, accepting certain aspects and rejecting others. <sup>1)</sup>

The fact remains, however, that cultural factors do exert a very real influence, probably greater than is realized, in the causation of crime. The very definition of criminality is culturally determined, varying from one period of history to another, both in the nature of legal codes and in the manner in which such codes are interpreted. <sup>2)</sup>

Cognizant of these factors, the investigator will also point out the significance of subcultures in the tribal system of the Zulus and how these have influenced the criminality of the present times.

- 3.2 THE MEANING OF CULTURE AND ITS SIGNIFICANCE IN THE STUDY OF CRIME.

An analysis of the concept culture is indispensable if we are to appreciate the role of cultural factors in the causation of crime.

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- 1) GIBBENS, T.C.N. and AHRENFELDT, R.H.: CULTURAL FACTORS IN DELINQUENCY, TAVISTOCK PUBLICATIONS, J.B. LIPPINCOTT CO., Montreal, 1966, p. 166  
2) Ibid., p. 166

The concept of culture as used in the human sciences arose from a great human confrontation.<sup>3)</sup> It was one of the principal intellectual outgrowths of the world-wide meeting between the expansionist West and the non-western peoples. From this experience the west derived a growing need to find order in its increasing knowledge of immensely varied human lifeways.<sup>4)</sup>

Three aspects<sup>5)</sup> of the culture concept combine to make it a great idea in the analysis of social problems, including crime:

- (a) All men have cultures, and this helps define their common humanity.
- (b) All cultures show coherence and structure.
- (c) Each culture is a collective product of human effort, feeling and thought.

Culture, therefore, means the entire way of life followed by a people.<sup>6)</sup>

Culture consists of the rules which generate and guide behaviour-rules that one must learn to behave in ways that are recognizable, predictable and understandable to others. Culture is divided into the material and the non-material aspects. It would appear that the Africans have adopted mostly the material aspects of the White man's culture.<sup>7)</sup>

Philosophers, cultural anthropologists and sociologists have defined culture mostly in general terms. In recent years, special attention has been paid to the deleterious effects of an inferior type of mass-culture and the so-called criminal subcultures.<sup>8)</sup>

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3) VALENTINE, C.A.: Culture and Poverty, The University of Chicago Press, Chicago, 1968, p. 1

4) Ibid., p.2.

5) Ibid., p. 2

6) Ibid., p.2

7) VENTER, H.J.: KRIMINOLOGIE, Croft Pers. Bpk., Pretoria, 1966, p. 107

8) NELS ANDERSON: THE HOBBO, The University of Chicago Press, CHICAGO, 1923, pp. 3-39

The interdependence between the culture of a society and its crime has been the principal tenet of the sociological school of criminology for many years. Already in 1835 Adolph Quetelet had coined the famous phrase that " ---- society contains in itself the germs of all future crimes".<sup>9)</sup>

Fifty years later, Lacassagne, on the occasion of the first International Anthropological Congress in Rome in 1885 expressed himself as follows: " ----- The social milieu is the culture-medium of criminality, the microbe is the criminal element which has no importance until the day when it finds the culture which sets it multiplying ----- Societies have the criminals they deserve. " <sup>10)</sup>

Taft's contention that the cultural roots of crime have been somewhat neglected cannot be accepted without further ado.<sup>11)</sup>

The historians of culture have indeed taken the criminological aspects of their subject more or less in their stride. Right through it has been apparent that crime is rightly regarded as one of the manifold ways in which the culture of an age and a nation expresses itself. It is thus the task of historical criminology to compare, inter alia, the criminological physiognomy of different cultural periods and to show how the atmosphere and the conditions of the time influence its criminality, thereby making it clear that the criminality of any age is also dependent on its historical setting.<sup>12)</sup>

In using the culture concept to interpret crime, it is possible to show that through culture men collecti-

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9) BONGER, W.A.: INTRODUCTION TO CRIMINOLOGY, DE ERVEN, BOHN, HAARLEM, 1951, p. 78

10) Ibid., p. 78

11) TAFT, D.: CRIMINOLOGY, The McMillan Co., New York, 1947, p. 18.

12) MANNHEIM, H.: COMPARATIVE CRIMINOLOGY, Vol. 2, Rontledge & Kegan Paul, London, 1965, pp. 421-423

vely adapt themselves to environmental conditions and historical circumstances. <sup>13)</sup>

Contemporary African culture includes manifold adaptations both to the African tribal origins and to the White influence. All these aspects of external reality have been conceptualized by African minds, dealt with through changing and developing indigenous lifeways and thus have importantly conditioned the growth of African culture, which is experiencing a lot of changes that make it not well integrated. <sup>14)</sup> Change creates problems of adjustment which sometimes express themselves in violations of the law. <sup>15)</sup>

### 3.3 CULTURE-CONFLICT AND CRIME.

The term culture-conflict and its criminological implications cover a much wider field than the problems arising, for instance, from such factors as the physical migration of the tribal African into the White man's city. Unfortunately, however, the study of culture-conflict has not yet been clearly formulated in criminology, so that the phenomena which the concept denotes are viewed differently by various investigators. It is sometimes regarded as a cultural growth process, i.e., the growth of civilization; the result of migration of conduct norms from one cultural area to another and sometimes even as the clash of cultural codes. <sup>16)</sup>

Some eminent criminologists who have studied the connection between culture-conflicts and crime are Sutherland, Taft, Reckless, Sellin and Young. Sutherland, <sup>17)</sup> contemplating the transformation

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13) VELENTINE, C.A.: op.cit., p. 5

14) SCHAPERA, I.: The Bantu-Speaking Tribes of South Africa, An Ethnographical Survey, Maskew Miller Ltd., 1966, pp. 357-387

15) TAFT, D.: op.cit., p. 23

16) Sutherland, E.H.: Principles of Criminology, J.B. Lippincott Company, Chicago, 1947, pp. 51-52

17) Ibid., pp. 51-52

of the American culture from a familistic and co-operative one to an individualistic and competitive one, sees in this process the explanation of crime. The failure of a person to follow a prescribed pattern of behaviour is due to the inconsistency and lack of harmony in the influences which direct the individual. The conflict of cultures is the fundamental principle in the explanation of crime, and the more the cultural patterns conflict, the more unpredictable is the behaviour of the individual.

Reckless <sup>18)</sup> maintains that crime can be explained only as 'different orders of behaviour'. He suggests what he calls social vulnerabilities of the individual categoric risks for official action. The former are the weaknesses of the individual when confronted with a situation which may precipitate criminal behaviour. Categoric risks are persons who are most likely to engage in crime, become arrested or admitted into prison.

In 1938 Sellin <sup>19)</sup> summarized the main studies of the relation between culture-conflicts and crime. In addition to the theoretical considerations, he pointed out projects for research in this field which if pursued would undoubtedly and greatly add to the knowledge of the influences exerted by culture-conflicts on human conduct.

Statistical studies of such conflicts have, however, not yielded significant returns, but the more intensive studies of racial and nationality groups have revealed the importance of culture-conflicts. <sup>20)</sup> It is here that the conflicts of conduct norms are extensive and often diverse. If the conduct norms are inconsistent in a group, or if several groups possess divergent norms, the confused situation is reflected in the

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18) Reckless, W.C.: The Crime Problem, McGraw Hill Book Company, New York, 1940 pp. 25-54

19) SELLIN, T.: Culture Conflict and Crime, Social Science Research Council, New York, 1938, pp. 57-116

20) Ibid., pp. 55-67

individual attitudes and patterns of behaviour. Hence cultural conflicts have both social and personal aspects. 21)

Finally Roucek 22), referring to the U.S.A., contends that immigration contributes directly or indirectly to crime by creating disorganization and conflict. The cultural marginality, i.e. the position in between two cultural worlds in which the immigrants find themselves, unless counteracted by such factors as a good home, a good neighbourhood, etc, is bound to produce conflicts. Confusion as to the values and standards is then almost inevitable, and one of the symptoms of such a state of affairs is crime.

From the foregoing it becomes clear that some research has been conducted into the relation between culture-conflict and crime. An examination of some of these researches affords the present investigator the opportunity to make an assessment of the effect of culture-conflicts on the criminality of the Zulus also. To do this successfully, it is necessary first to analyze Zulu tribal life, and then to trace the changes, conflicts, etc., that have resulted from contact with other cultures, especially the white man's culture.

#### 3.4 THE TRIBAL LIFE OF THE ZULUS.

Certain aspects of the tribal life of the Zulus have been discussed in Chapter 2, crime and punishment in traditional Zulu society.

Any consideration of the criminality of the Zulus, like that of any other society, can be understood only against the background of its own peculiar culture. To get insight into the factors which lay bare the criminogenic

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21) Ibid., pp. 96-116

22) ROUCEK, J.S.: Sociology of Crime, Greenwood Press, New York, 1969, pp. 138-159

significance of the present-day Zulu culture, it is fitting to analyze the social life of the traditional Zulus, compare it with that of modern times and to trace those factors or situations which create conflicts. This is necessary because a study of the present criminality of the Zulus is essentially a study in social change.

The ideas of kinship <sup>23)</sup> played an important role in tribal Zulu society, and they ramified through almost every aspect of their culture. These bonds of kinship were very extensive and served to bring together and knit into a group, people who in European society would not be regarded as related at all. <sup>24)</sup>

3.4.1 THE FAMILY: The family was the centre of all relations. The next ring of the family after the basic unit of father, mother and the children, included aunts and uncles, first cousins and grandparents. Then came the great grandparents, etc. The Zulu family in tribal times could then be conceived of as a pyramid built of relatives. <sup>25)</sup>

The Zulu child grew up surrounded by a host of relatives extending beyond the narrow limits of his immediate family circle. To his maternal relatives the child was freer than towards his paternal relatives. Towards the mother the child's attitude was less constrained than towards the father to whom the child showed obedience mixed with awe. The husband-wife relationship was based on official and not on consanguineal ties. People recognized this and the possible disruptive factors in it. <sup>26)</sup>

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23) KRIGE, E.J.: Social System of the Zulus, Shuter and Shooter, Pietermaritzburg, 1950, p.23

24) Ibid., p.23

25) Ibid., p.24

26) Ibid., pp. 24-28

The main emphasis in the parent-child relationship was therefore on strict obedience. The friendly relationship of easy camaraderie and confidence between parent and child- an ideal of behaviour according to modern teachings - was not a feature of the tribal Zulus. <sup>27)</sup>

Generally, therefore, family life was characterized by completeness, homogeneity, security and cultural conformity. The whole family setting is different nowadays. Despite changes, however, the tribal system still survives relatively in tact in some rural areas. <sup>28)</sup>

3.4.2 THE SIB: In addition to the family there was in traditional times the so-called sib. The Zulu sib (ISIBONGO) was patrilineal, claiming descent from a common ancestor. Every sib was known by its praise-name and a sib-song (IHUBO). The sib-song, given more or less the same respect as a national anthem in modern times, was sung only on solemn occasions such as the death of a respected member of the sib. <sup>29)</sup>

3.4.3 THE SIGNIFICANCE OF AGE IN TRADITIONAL TIMES. Right through, age was an important factor in determining conduct in traditional times. The fact that a person was a baby or a child or an adult, determined what his sociological habitat was. Age was in fact a basis of social organization, since regiments, though military in nature and function, were based on age and were thus nothing other than age-sets. <sup>30)</sup>

Because of its significance in the social system of the Zulus and its influence on the criminal behaviour of the modern Zulus the "UKUBUTHWA"

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27) Ibid., p.24

28) Ibid., pp.23-38

29) Ibid., pp. 34-35

30) Ibid., pp.262-264



custom is worth analyzing.

3.4.4 THE "UKUBUTHWA" CUSTOM.

Like most Zulu customs this custom is gradually giving way before the disintegrating force brought about by contact with the White man's law. The custom was carried out in the following manner: after puberty, i.e., after the initiation ceremony, a young man was incorporated as a full member of the tribe and grouped up with others of the same age-group into a regiment. Such military regiments were formed in the royal kraal. The formalities involved, inter alia, the strengthening of the men so as to instil into them the courage and strength required of every member of the King's army. The trainees were trained in the use of shields and assegais.<sup>31)</sup>

Violence was rife. During their stay at the King's kraal, they were ill-treated and whipped at the pleasure of their superiors. All instructions had to be obeyed promptly and to the letter. Any violation of the regulations was followed by punishment on the whole regiment. The young men were also made to fight one another "(UKUQHATHWA)". There was very great rivalry, so that those in charge had to use sticks to keep them from scuffling.<sup>32)</sup>

Once they had gone through the ceremony, the young men would be free to court girls, although a great deal of their time was spent in fighting for the King. Obviously nowadays a permit is needed before a Chief can summon together young men for regimentation. Krige<sup>33)</sup> illustrates this by stating that there have been a number of cases in Natal where Chiefs have been prosecuted for

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31) IBID., pp. 37, 106 and 107

32) IBID., p. 108

33) SELLIN, T.: op.cit., p. 65

"strengthening" the army by observing some of the customs such as those discussed above. She goes on to say that shortly after the Great War, i.e., after the formation of the "INQABAYEMBUBE" ( a regiment), Mkhasibe Biyela, the Chief of the Biyela sub-tribe, gathered his men for a sacrifice and ordered a bull to be strangled by the troops. For this he was charged before the Bantu Affairs Commissioner at Melmoth and found guilty of an offence. He was in Sellin's <sup>34)</sup> words, " a public enemy of the White man's law, although he had acted in accordance with the accepted custom in his culture".

#### 3.4.5 THE COURTING OF GIRLS IN THE TRADITIONAL TIMES.

Falling in love was an extremely formalistic affair which did not only involve the two parties concerned, but the entire neighbourhood. Before any girl could fall in love, she had to be officially declared old enough to fall in love. The age-group to which she belonged was then allocated to a particular regiment. This was known as the "JUTSHWA" custom. <sup>35)</sup>

Because of the seriousness attached to love-making, every young man aimed at achieving the distinction of being an "ISOKA" ( CASANOVA or DON JUAN ). <sup>36)</sup>

Before a girl accepted a young man for a lover, she had to obtain permission from the older girls (AMAQHIKIZA"), and a special ceremony was observed. Socially, the girl who accepted a young man for a lover boosted his ego and gave him status. Being a CASANOVA gave the young men social and psychological poise. <sup>37)</sup>

It is clear, therefore, that the love-making ceremony was an effective form of social control. From the

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34) SELLIN, T.: op.cit., p. 65

35) Ibid., p. 138

36) Vilakazi, A.: Zulu Transformations, The University of Natal Press, Durban, 1962, pp. 49-50

37) Ibid., p. 50

point of view of the woman, the falling in love ceremony was important in that it established an effective method of controlling the activities of the girl concerned.

The process of falling in love nowadays is totally different from that described above. It has become a purely individual affair, involving only the boy and the girl concerned. Owing to the strictly individualistic approach and the opprobrious nature of the whole affair in modern times, falling in love is kept secret so that the parents, the teachers and other people in loco parentis may not know about it. This state of affairs has given the whole ceremony an undignified place in the community.

In fact the whole affair has become so simple that it is quite common for a young man or even a middle-aged man, to propose love to a girl by simply offering her some intoxicant. It is equally common for a girl to challenge a man into making love to her by requesting him to buy some drinks for her. Schapera<sup>40)</sup> confirms this when he says "courtship under urban conditions consists largely in going together to cinemas, dances, beer drinks, and in paying visits".

Moreover, the introduction into the Zulu press of the so-called love columns has further simplified the process.<sup>41)</sup>

#### 3.4.6 THE USE OF LIQUOR IN TRADITIONAL ZULU SOCIETY.

Equally interesting is the use to which liquor was put in the traditional Zulu society. Beer, a

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38) Ibid., pp. 49-50

39) Ibid., pp. 49-50

40) Schapera, I.; op.cit., p. 421

41) See "ILANGA", a famous Zulu newspaper, columns entitled "INHLIZIYO YAMI IBUHLUNGU", (MY HEART IS PAINFUL). In these columns are found letters from lonely people-men and woman from all parts of South Africa.

highly nourishing food had an important place in the diet of the Zulus of old. Owing to government regulations and the influence of missionaries, it is no longer drunk to the same extent as formerly and tends to be looked upon less as food and more as an intoxicant.

Beer was made with mielies or millet called "UPHOCO" or "UJIBA". The beer had to be drunk within a day or two lest it became sour. For this reason quite a large quantity had to be taken before it became intoxicating. 42)

Apart from its economic value as a food, beer was of great social importance. No ceremony was complete unless there was beer. A good illustration of the social value of beer was its use as a means of effecting reconciliation. When two members of a family or village had had a serious quarrel, friendship was re-established by the ceremony known as "UKUTHELELANA AMANZI" (To pour water for each other). 43)

Beer was brewed, and on the appointed day the men of the village and others living nearby, gathered at a spot outside the kraal, usually the "IBANDLA". The disputants wore an "ILALA" palm round their necks. A special mixture of medicine called "UMGAMU", and ashes from ash-heaps behind the huts of the village had been prepared and in this the disputants were made to wash their hands. 44)

Thereafter, each party gave a full account of the things that had made him angry. After that the disputants simultaneously threw their palm-leaves behind them, signifying that their dispute was a thing of the past. Special care was taken not

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42) Krige, E.J.: op.cit., p. 58

43) Ibid., pp. 58-59

44) Ibid., p. 59

to look in the direction in which the leaves had been thrown. The men of the "IBANDLA" then thanked them for mending their quarrel. The beer that had been prepared was then served and the two people who have been reconciled sat together on one mat and drank beer from the same pot, thus showing that they had been reconciled. On an occasion like this, others who had entertained ill-feelings towards each other took the opportunity to set matters right. <sup>45)</sup>

The uses of liquor in modern times are entirely different from the situation discussed above as will become clear in the discussion of the shebeen subculture.

The foregoing is only a brief account of the social system of the Zulus in the traditional times. Only those aspects of the social system which have some connection with culture-conflict and crime have been touched upon. It is necessary, therefore, to discuss at this stage the criminological implications of the conflicts brought about by the contact with the white man's culture.

### 3.5 THE CRIMINOLOGICAL IMPLICATIONS OF THE CULTURE-CONFLICTS AMONG THE AFRICANS.

The implications of the culture-conflict for the Africans have been stressed by earlier fact-finding commissions. <sup>46)</sup> Thus the committee appointed in 1942 to investigate the position of crime among the Africans in the Witwatersrand and Pretoria areas <sup>47)</sup> noted that the causes of crime, in the locations are rooted in adverse social and economic conditions, and expressed an inadequate home life, inadequate educational opportunities and inadequate recreational facilities.

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45) Ibid., pp. 59-60

46) Freed, L.F.: Crime in South Africa, Juta and Company Ltd, Cape Town, 1963, p. 129

47) Ibid., p. 129

The report goes on to say that the urbanization of the African, following in the wake of industrialization, has brought in its train a disregard on his part of tribal standards, laws and customs. Economic pressures projected by the flood-tide of industrialization have brought about that thousands of Africans live under conditions which are lacking in any moral standards. Co-habitation, without any form of marriage, is the manner of life adopted by many African. This has produced an environment in which the propagation of a criminal environment was inevitable. 48)

The report of the "Native Affairs Commission of 1939-1940" commented in similar vein regarding crime apropos the rising incidence of crime in the African locations: "An undisciplined, immoral, lawless community is fast being created, which will become increasingly difficult to control with the years." 49)

Prof.G.M. Retief 50) referring to urban African crime, holds that crime seen as social phenomenon, should always be viewed in relation to culture-conflicts; conflicts between European and African culture, and conflicts between traditional and urban culture- seen as the process of detribalization and urbanization. This in turn is tied up with the whole question of value conflicts and the disruption of the machinery for internal social control. This means that the old sanctions which guided the African's life in the tribal community are gone.

Referring to the urban African, Schapera 51) summarizes the situation by saying that broken homes and illegitimacy have become the order of the day. Marriages are unstable. When marriage is dissolved, the children usually remain with the mother or remove to a new home with her. Sooner or later, a new father sets in. Regard for chastity,

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48) Ibid., pp. 131-132

49) Ibid., p. 132

50) Venter, H.J. and G.M. Retief: Bantoe-Jeuqmisdad, Nasionale Handeldrukkery Bpk, Elsie'srivier, 1960, p. 217

51) Schapera, I.: op.cit., pp. 429-434

condemnation of extra-marital relations, and above all, of pre-marital child-bearing still form part of the moral code of the African, but it has become lip service.

This looseness in marital ties and the prevalence of illegitimacy serves to demonstrate the gap existing between the morality to which the society aspires and the actual practice. The reciprocities entailed by kinship bonds have been shirked because they are incompatible with the emphasis on individualism, which is a secularized version of the Christian teaching of individual moral responsibility. <sup>52)</sup>

Such a state of affairs has resulted in the isolation of the African family in the broad communal sense, which LUNDEN <sup>53)</sup> describes by saying that " ---- the detribalization of the people of Africa has broken long-standing controls, leaving little to maintain social solidarity." GIBBENS <sup>54)</sup> puts the matter as follows: "In parts of Africa the break-up of the traditional patriarchal family due to rapid cultural change may mean loss of respect for authority. Such rapid range usually means some degree of conflict, whether it occurs as the result of actual contact through migration, or as a revolution in folkways due to technological development". All these situations apply also to the present-day Zulus.

### 3.5.1 The Zulus and the White man's Law.

The main theme of this chapter is that cultural conflicts may arise, inter alia, when the laws of one cultural group are introduced into another territory or are extended to cover the territory of another. <sup>55)</sup> When the Zulus got into contact with the white man's culture, they did not only adopt his religion, his business methods and his liquor

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52) Vilakazi, A.: op.cit., pp. 48-58

53) Lunden, W.: Crimes and Criminals, The Iowa State University Press, Ames, 1967, p.3

54) Gibbens, T.C.N.: op.cit., pp. 169-170

55) Sellin, T.: op.cit., p. 63

(but not his drinking pattern), but they also became subject to the White man's law. This brought about conflicts as has always been the case when legal norms are imposed on a group previously ignorant of them. <sup>56)</sup>

Sellin <sup>57)</sup> discussing this conflict quotes MAUNIER as having said the following about the diffusion of French law into Algeria: " ---- -- In introducing the Code Pénal in our colonies, as we do, we transform into offences the ancient usages of the inhabitants which their customs permitted or imposed. Thus, among the KHABYLES of Algeria, the killing of adulterous wives is ritual murder committed by the father or brother of the wife and not by her husband, as elsewhere. The woman having been sold by her family to her husband's family, the honour of her relatives is soiled by her infidelity. Her father or brother has the right and duty to kill her in order to cleanse by her blood the honour of her relatives. Murder in revenge is also a duty, from family to family, in case of murder of or even in case of insults to a relative: the vendetta, called REKBA in Khabyhan, is imposed by the law of honour. But these are crimes in French law!"

When Soviet law was extended to Siberia, similar effects were observed. <sup>58)</sup>

The above illustrate clearly the tragic aspect of the conflict of cultures as reflected in the conflict of legal norms. The conflict of legal norms turns that which was a duty into a crime. <sup>59)</sup>

Many such situations abound in the history of the crimes of the modern Africans in general and

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56) Ibid., p. 64

57) Ibid., pp. 64-65

58) Ibid., p. 66

59) Ibid., pp. 64-65



the modern Zulus in particular as the ensuing paragraphs will further indicate.

It is clear, therefore, that culture-conflicts are inevitable when the norms of one cultural or sub-cultural area migrate to or come into contact with those of another. It is also interesting to note that most of the specific researches on culture-conflict and crime in America have been concerned with this aspect of conflict. <sup>60)</sup>

Culture-conflicts can, however, be a factor in the causation of crime only if the individual feels the conflicts or acts as if they were there. <sup>61)</sup>

The most important fact to remember is that there exists no modern culture which has developed without a large amount of borrowing from other cultures. <sup>62)</sup>

Cultural conflicts are the natural outgrowth of processes of social differentiation <sup>63)</sup> which produce an infinity of social groupings, each with its own definitions of life situations, its own ignorance or understanding of the social values of other groups. <sup>64)</sup>

The transformation of a culture from a homogenous and integrated one to a heterogeneous and disintegrated one is accompanied by an increase of conflict situations. The present-day Africans, including the Zulus, are faced with many such conflicts.

Referring to the urban Africans as a whole, Bain <sup>65)</sup> contends that as a social group, they have been

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60) Ibid., p. 63

61) Ibid., p. 63

62) Ibid., p. 62

63) Ibid., pp. 58-62

64) Ibid., p. 58

65) Bain, G.C.B.: Crime- the American Negro and the Urban Native in South Africa, The Carnegie Corporation Visitors Grants, Pretoria, 1938, p. 49.

dissatisfied with the white man's law and that this fact has rendered them dissatisfied with their present situation and anxious over their future. Bain further mentions that if the premise that the urban Africans are immigrants in the white man's city is accepted, then like all immigrants, they suffer from differential treatment in the process of law administration. Whatever the reason, the African is, therefore, more likely to be suspected, arrested and convicted.

Membership in an immigrant group to paraphrase Sellin,<sup>66</sup> means artificially raised crime rates, especially when the social distance between that group and the ruling group is great.

Discussing the conflict of laws among the Zulus in modern times, Plant<sup>67)</sup> holds that the Zulu has from time immemorial been distinctly amenable to law, always law-abiding. But the law to which he was used was simply the expression of the will of the King. The King used his authority for the general good, but if in that general good, a man's personal interests were overlooked, there was nothing he could do, except to say "SENGIFILE" ( I am dead ).

Plant<sup>68)</sup> further states that it is evident nowadays that the Zulus have to obey a law which they neither understand nor appreciate. The 'civilized' law, as he calls it, has only served to reduce the status of the kraal-head to the same level as that of his wives and children. He may no longer thrash his wives and children at will, because of the fear of being charged for assault by the white man's law. A further conflict presented by this 'civilized' law is that it is enforced by a code of punishment

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66) Sellin, T.: op.cit., pp. 70-78

67) Plant, R.: Zulu in Three Tenses, Davis, Pietermaritzburg, 1905, p. 62.

68) Ibid., p. 65

that to the Zulu appears confusing because it is at variance with the old Zulu idea of punishment.

Plant <sup>69)</sup> summarizes the whole conflict situation as follows: ----- "There is nothing about civilized law calculated to call forth his respect. But still further bewildering to the Zulu mind, side by side, and mixed up with this European law, there is a code of Native law, many things of which are grossly inconsistent with the spirit of the law he is called upon to obey. "Native law" he could understand and appreciate, though it be sometimes very irksome. 'Civilized' law he neither understood nor appreciated, but accepted as the ipse dixit of the AMAKHOSI-his rulers. But a combination of the two is a thousand times worse than either of the others separately could be, making a tangled skein that he regards as impossible to unravel. A law that permits him to have as many wives as he likes, and yet forbids him managing these wives in the only way long experience has taught him to be possible; that enrols him as the subject of some officially recognized chief, and metaphorically at least, to snap fingers in his face; that calls upon him to be loyal to the King and country, and yet when that country is invaded by an enemy, insists on his sitting still and doing nothing in its defence, such a law is to him, if not vanity, certainly a vexation of spirit; the result being the abandonment of any honest effort to comply with all the intricate details of such a contradictory tangle, and a callous indifference to any results that may accrue to himself for such noncompliance."

'Civilized' law is confusing in its administration. That a man whose guilt is distinctly proved by the evidence produced should escape scot-free through some technical quibble is regarded by some traditionalists as both unjust and unreasonable. This makes

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69) Ibid., p. 66

him feel convinced that under this law a man's case in court is decided very much more by the length of his pocket than by the justice of his cause. 70)

The general effect produced by this 'civilized' law is far from healthy, its tendency being to induce a spirit of duplicity, to lead the Zulu not to care very much for the character of an action, but to be law-abiding just so far as it is expedient, and so that as far as the character is concerned, the formative influence of 'civilized' law cannot be regarded as anything but distracting and harmful. 71)

Phillips 72) describes the conflict situation by stating that the African society was composed of invisible as well as visible members, i.e., the living and the ancestors, who, although dead, still cared for the tribe's welfare. This gave solidarity to Bantu law. From this background, the African enters industrial areas and modern living severely handicapped. Not only are there new laws, new crimes, a strange hurried court procedure and ubiquitous law-enforcement officers - the police, but also the motive power behind the machinery of justice is different. He enters a new penal element - the inflicting of punishment. To the African all this is puzzling, strange and inexplicable.

Schapera 73) analyzes the conflict by saying that the government officials represent a new system of administration, taxation in money, new laws and penalties for their breach, and new courts and methods of procedure. The government officials, furthermore, refused to tolerate ritual homicides, the punishment of sorcerers and similar practices held

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70) Ibid., p. 67

71) Ibid., p. 68

72) Phillips, R.: The Bantu in the City, A Study of Culture Adjustments in the Wits, the Lovedale Press, Cape, 1936, p. 174

73) Schapera, I.: op.cit., p. 358

to be repugnant to principles of natural justice and morality.

Bantu law itself has been gradually transformed. Throughout South Africa the greater part of Bantu criminal law has been replaced by South African criminal law. Throughout South Africa the Africans have been subjected to new laws of many kinds. Some they share with the whites, e.g. the provisions of the criminal law, while others provide especially for the administration of the African. These include, inter alia, the regulations such as that every African male over the age of eighteen failing to pay the annual poll tax or to produce a tax receipt is guilty of a criminal offence. <sup>74)</sup>

### 3.5.2 ATTAINING MAJORITY.

One obvious conflict is brought about by the European conception of 'coming of age' or attaining majority. <sup>75)</sup> The idea of a child's becoming emancipated from parental control at a certain time, is something inconceivable in the tribal situation. No matter how old the son, the father was the determining voice in arranging for his affairs. Even after marriage the son was expected to consult his father or his heir in all matters of any importance. Unmarried people were all regarded as minors, even if they had passed through the initiation ceremonies. They were under the particular control of their own parents, especially of the father. If they were still minors on the death of their father, one of the paternal uncles or some other close relative took his place as their guardian. The parents, therefore, generally see their power over their children weakened by the law of the white men. <sup>76)</sup>

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74) Ibid., pp. 374-375

75) Under the Natal Code, a Zulu male becomes a major on attaining the age of 21 or on his marriage. See section 27 (1)

76) Schapera, I.: op.cit., pp. 189 and 191

3.5.3 WOMEN IN BANTU LAW were under perpetual tutelage. A woman when she married passed from the legal control of her parents into that of her husband. Although in traditional Zulu society in Natal and Kwa-Zulu women are still deemed to be perpetual minors in law, the tendency nowadays is to find many women leading an independent life. Moreover, the law allows any unmarried African female, widow or divorced woman who is the owner of immovable property or is of good character, etc., to be emancipated by order of the Bantu Affairs Commissioner. <sup>77)</sup>

3.5.4 OFFENCES CREATED BY CONTACT WITH THE WHITE MAN'S LAW.

(a) HUNTING: This was a very popular passtime in the traditional times. Hunting was organized on a national level. It required the co-operation of a number of villages, and when a royal hunt was proclaimed, almost the whole nation would take part. In local hunting, however, it was usually the most important men in the neighbourhood who proclaimed the hunt. When the hunt was over, the party would gather round the master of the ceremonies, where they danced, and related their adventures to the Chief. Thereafter, they would return to their homes chanting a song. Contact with the white man's law did not only bring an end to this age-old and highly esteemed practice, but also made it a punishable offence. <sup>78)</sup>

(b) FURTHER OFFENCES MENTIONED IN THE NATAL CODE OF BANTU LAW. <sup>79)</sup>

The offences mentioned in the code are worth analyzing in order to illustrate the conflict. It must be emphasized from the onset that

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77) The Natal Code of Bantu Law, Vol. 25, section 28 (1) and (2)

78) Krige, E.J.: op.cit., pp. 203-208

79) See the Natal Code of Bantu Law, Chapter 16, entitled "Offences and General Penalty", i.e. pp. 155-172

although some offences mentioned in the code conflict with traditional Bantu law and custom, the code was first and foremost, written in order to preserve Bantu law and custom. Chapter 13, for instance, recognizes medicine men and herbalists in Zulu society. Medicine men and herbalists were important people in traditional Zulu society. They were not only a link between the ancestors and their descendants, but were also protectors of the weak. 80)

The herbalists are even more important nowadays. The difference, however, is that the law requires them to be licensed before they can practise as herbalists. If they practise without a licence, they are liable to prosecution. 81)

Needless to say, no licence was required in the traditional times before one could practise as a herbalist. The conflict in the minds of those who are charged for practising without a licence as herbalists is obvious. Herbalists are in most cases either illiterate or semi-literate, and are inclined, therefore, not to understand the ratio of this law and in their confusion, may overlook that this law is aimed at protecting society against those "criminals" who go about deceiving people that they are herbalists. Many people have been victims of herbalists who are not properly qualified. 82)

(c) THE CARRYING AND USE OF STICKS, ASSEGAIS, etc.  
Section 161 (1) of the Natal Code of Bantu Law

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80) Krige, E.J.: op.cit., pp. 297-335

81) Sections 119 and 120 of the Natal Code of Bantu Law stipulates that herbalists and medicine men must apply for a licence to the Bantu Affairs Commissioner.

82) According to informants around Gingindlovu in the Mtunzini District, there are many such people who loiter around the Station Platform. The present investigator has also had occasion to meet such people.

provides, inter alia, that " any person not being a member of the police, or otherwise authorized thereto, who carries assegais, axes, knobkerries, or other dangerous weapons to any feast, dance or other gathering, shall be guilty of an offence, and in addition to any other punishment to which he may be liable, the weapons carried by him shall be confiscated. " 83)

And then section 169 (1) reads: " Any Bantu who carries an assegai, swordstick (INTSHUMENTSHU) battle axe, stickshod with iron, staff or walking stick (UBHOKO) or any other dangerous weapon, shall unless, he is engaged upon some public duty or is a member of the police or has been authorized in writing by a Bantu Affairs Commissioner so to do, or is engaged in hunting or in bona fide night travelling outside an urban area, or in the case of a staff or walking stick (UBHOKO), is an aged or infirm person who bona fide uses such staff or stick to support him when walking, shall be guilty of an offence and upon conviction, in addition to any other penalty to which he may be liable, the weapon or weapons may be confiscated by the court." 84)

There is obviously a conflict among the traditionalists regarding the modern concept of dangerous weapons. If the above provisions of the code are compared with the provisions of Zulu law and custom, it is found that the stick was the Zulu's natural weapon of defence, carried by every boy and man. A man was always proud to have his own "ISAGILA" or rough knobkerrie, with head consisting of the root of a tree or joint of a branch: This "ISAGILA" he used for

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83) The Natal Code of Bantu Law, section 161 (1), p. 30

84) Ibid., p. 31



hurling birds and small game. A man would never go about without a stick of some kind. The "UMZACA" was used for self-defence, while the "ISISHUNGO" or "ICOPO" was used at display dances.<sup>85)</sup> In the large industrial areas, however, where some of these traditionalists go for employment, they are debarred from carrying sticks, and yet the "tsotsis" who molest them carry knives in their pockets. This situation is so serious that in Soweto the inhabitants as represented by S.M. MANTHATHA have recently written a letter to the Deputy Minister of Bantu Administration and Development, Mr. Punt Janson, in which they apply for permission to be allowed to carry sticks in order to defend themselves against the inroads of "tsotsis". The following is part of the letter : <sup>86)</sup> " ----- ons doel is om ons te beskerm teen kwaaddoenerige jeugdige en om die polisie te help. Ons kan dit nie doen as ons nie die nodige wapens het nie. " The petition went on to say that knives must only be sold to people who are licensed to do so.

(d) THE CARRYING AND USE OF KNIVES AS WEAPONS.

The result of the prohibition to carry and use sticks, has made the knife a very popular secret weapon used by the Africans in modern times.<sup>87)</sup>

The use of the knife as a weapon, both for attack and defence, has become such a serious problem that even females, juveniles and even some educated Africans arm themselves with knives.<sup>88)</sup>

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85) Krige, E.J.: op.cit., pp. 400-403

86) Mokoena, S.: "Witman se straf te pap", crime, Punishment and Correction, Volume 3 No. 2, June, 1974, p. 44

87) Ibid., p. 44

88) The investigator has come across a handful of educated Africans in the locations who resort to a knife when fighting.

Girls and women usually hide their knives in their breasts or under their sleeves of their jerseys or dresses, while boys and men usually keep them in their pockets.

The idea of a concealed weapon such as the knife, is probably the result of the influence of the white man's culture, i.e., a revolver put in a holster or handbag, and, of course, the impracticability of going about armed with a stick. The idea of stabbing is, however, a cultural trait of the Zulus. In the traditional times stabbing by means of an assegai or swordstick (UBHOKO) was an accepted method of fighting. It is likely then that when it became impracticable to use the swordstick or assegai for stabbing, the idea of stabbing was transferred to the knife. <sup>89)</sup>

Gibbens <sup>90)</sup> discusses a similar conflict in the case of the Mexicans when he says "Special problems arise when two different cultures, each with its own standards of acceptability in behaviour, come into contact. Sometimes the results with regard to criminal acts are clear and even predictable, as when Mexicans are arrested for carrying weapons in New York".

It has not been possible in this chapter to mention all the actions which were not regarded as crimes in the traditional days. A few of these include e.g., collecting firewood from a forest or plantation, referred to as "UKUTHEZA". This was the special province of the women and girls. Collecting firewood did not require any permit. Moreover, women could collect firewood from any plantation or forest. The position is different nowadays. Before one can go and

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89) (a) See footnote 57 in chapter 4, for an explanation of the use of the knife. This refers to the use of "NTSHUMETSHU" under the "tsotsi" sub-culture.

(b) It is common knowledge that Zulu warriors used assegais when fighting against their enemies, while two young men engaged in a bout of stick-fighting would use a swordstick for stabbing.

90) Gibbens, T.C.N.: op.cit., p. 169

collect firewood, one needs the special permission of the chief or some other official. Gibbens<sup>91)</sup> once more illustrates this clearly when he says culture-contact results in crime as for instance when Hungarian immigrants steal coal from the railroad in Detroit because they had been allowed to take wood from the nearby forest in their homeland. Among the Africans today it is quite common to find prosecutions for collecting firewood without a licence. This contravention is sometimes also referred to as trespassing as will become clear in chapter 5: The present extent of crime.

### 3.6 SUMMARY.

Obviously then the conflict of cultures is the fundamental principle in the explanation of crime. The more the cultural patterns conflict, the more unpredictable is the behaviour of the individuals belonging to that group.

In this chapter an exposition of the meaning of culture-conflict; and the analysis of the role of culture-conflict in the causation of crime have been given. The importance of culture-conflict as it explains the criminality of the Africans in general and the Zulus in particular has been analyzed. This involved the discussion of the social system of the Zulus before their contact with the white man's culture, and particularly the white man's law. Right through this chapter the existence of a norm conflict within the personalities of the Zulus; within their cultural groups and between the norms of the white and the norms of the Zulus has been emphasized as a contributory factor in the causation of crime. It has become evident that the conflict occurs between legal norms which are different in the groups, i.e. the Whites and the Zulus, as well as the traditional system of living and the modern way of life. The importance of historical

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91) Ibid., p. 169

studies has therefore been emphasized in the understanding of the present criminality of the Zulus. Through such historical studies it has been shown that the conflicts which occur when the legal norms of one group are extended over areas formerly ignorant of them, they induce violations of the norms by persons living in the subjected area. The problems connected with the study of culture-conflicts in the causation of crime have also been mentioned. These are, inter alia, that studies of the influence of culture-conflicts in crime-causation have ordinarily to be made long after the moment when the extension of jurisdiction took place. Nevertheless, the present chapter has emphasized beyond all reasonable doubt that a lot of clarity can be brought about in the study of the impact of the white man's law on the Zulus if more research could be conducted on the factor of culture-conflict and crime. In conclusion, the present investigator wishes to stress that since so few studies have been made in this direction among the Africans in general and the Zulus in particular, more attention should be given by future researchers to culture-conflict as an explanatory concept of the crimes of the South African Bantu, in view of the fact that all the indexes of disorganization both social and individual abound in modern African society.

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CRIMINAL SUBCULTURES IN THE AFRICAN SOCIETY.

4.1 Introduction: The general discussion of subcultures: at the "TOPEKA Conference" presupposed a familiarity with the main lines of development in social theory in relation to delinquency and crime. <sup>1)</sup> These cannot be described here in detail, but it may be helpful to give a brief outline of the main developments. Many of these theories have originated in the U.S.A. They have been excellently reviewed by Wolfgang, Savitz and Johnston, Clinard, Merton and Nisbet. <sup>2)</sup>

Some of the most clearly defined criminal subcultures: are to be found in history, continuing sometimes in a modified form up to the present day. There have existed throughout history, in very different countries and cultures, rigidly and elaborated organized groups for whom serious forms of crime, including violence and murder, have constituted a way of life or a substantial element of their social cultural patterns. <sup>3)</sup> Such are, for instance, various criminal tribes, delinquent gangs and organized crime as mentioned in the following paragraph: ,.

The Ismailian set which originated in the eleventh century and spread to various parts of the Middle-East; the criminal gangs and brigands of India who passed on their skills to their children; the Thags who were a secret organization of robber gangs, the blood-feuds or vendettas which have existed universally and throughout history <sup>4)</sup> as well as cannibalism, which although practically extinct in modern times, was very

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1) Gibbens, T.C.N.: Cultural Factors in Delinquency, TAVISTOCK PUBLICATIONS, J.B. LIPPINCOTT COMPANY, LONDON, 1966, p.52

2) Ibid., p. 52

3) Ibid., pp. 60-61

4) Ibid., pp. 60-64

common among the South African tribes. 5)

A close criminological study of the African society reveals that the following criminal subcultures are found, viz., that of witchcraft; violence; "TSOTSISM" and that of "SHEBEENS". The subcultures of witchcraft and violence have always been present in the history of African crime, while the subcultures of "tsotsism" and "shebeens" are a result of contact with the white man's culture. This will become clear in the course of the discussion.

In this chapter, therefore, the concepts subculture and criminal subculture will first be analyzed before criminal subcultures as they affect the Africans in general and the Zulus in particular are discussed.

#### 4.2 The Concept Subculture.

A subculture implies that there are value judgements or a social value system which is apart from and a part of a larger or central value system. 6) From the point of view of this larger dominant culture, the values of the subculture set the latter apart and prevent total integration, occasionally causing covert feelings. 7)

The dominant culture may directly or indirectly promote this apartness, and the degree of reciprocal integration may vary, but whatever the reason for the difference, normative isolation and solidarity of the subculture result. There are shared values that are learned, adopted and even exhibited by participants in the subculture and that differ in quantity and quality from those of the dominant culture. 8)

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- 5) Some of the South African tribes notorious for cannibalism were the AMAZIZI, AMAKUZE, AMAHLUBI and AMADLAMINI. See Molema, S.M.: The Bantu Past and Present, W.Green & Son, Ltd, Edinburgh, 1920 p. 77
- 6) Valentine, C.A.: Culture and Poverty, The University Of Chicago Press, Chicago, 1968, pp. 106-107
- 7) Ibid., p. 107
- 8) Ibid., pp. 108-114

#### 4.3 The Importance of the Subculture Theory in Explaining crime.

The subculture concept is important in criminology because it is used more and more as a priori assumption and a posteriori interpretation.<sup>9)</sup> It is unfortunate, however, that criminologists have turned their attention to the problems of a criminal subculture only comparatively late, and probably first in relation to its existence within the narrow confines of penal institutions.<sup>10)</sup>

Mannheim<sup>11)</sup> refers to the theories of subcultures and anomie as class-oriented theories of crime in contradistinction to the non-class oriented theories such as culture-conflict and ecological theories.<sup>12)</sup> Mannheim goes on to say that by far the most important, comprehensive and influential of the class-oriented theories of crime are those based upon the concepts of the criminal subculture and anomie. While the concept of culture in general has under the influence of the cultural anthropologists been interpreted more objectively, the concept criminal subculture has often been used with undertones of strong moral condemnation.<sup>13)</sup>

In sharp contrast to such undertones recent decades have seen the development of a comprehensive and consistent concept of the criminal subculture as a basis of interpreting in detached scientific language certainly not the whole but at least considerable sections of criminality. The pioneering work in the field of criminal subcultures has been started in the U.S.A. and Britain as the following brief historical account will show.<sup>14)</sup>

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9) Mannheim, H.: Comparative Criminology, Volume 2, Routledge & Kegan Paul, London, pp. 510-530

10) Ibid., p. 510

11) Ibid., p. 499

12) Ibid., p. 532

13) Ibid., p. 500

14) Gibbens, T.C.H.: op.cit., p. 52

#### 4.4 The Historical Development of the Theory of Criminal Subcultures:

The historical studies of criminal subcultures reveal that in a criminal subculture are found groups such as gangs, as well as classes. The most characteristic feature of a criminal subculture is, however, the fact that in it are found problems arising from class conflict. 15

Mannheim 16) contends that when searching for the historical roots of the connection between class conflict and crime, it must be remembered that while for MARX, economic conditions were responsible for crime, he made no important contribution to the sociological analysis of crime and the criminal subculture. Credit must, therefore, be given to a Non-Marxist researcher, Emile Durkheim, for the beginnings of an analysis of the sources of the criminal subcultures, namely the theory of anomie, which is not only related to the theory of criminal subculture, but has also had a profound impact on criminological thought especially in the U.S.A. The Durkheim-Merton 17) theory of anomie was then enlarged and enriched by the foundations of those researchers who afterwards became interested in its implications for the criminal behaviour of American lower-class male juveniles and adolescents.

The following contributions are worth discussing in some detail:

##### 4.4.1 Bernard Lander's Statistical Study of 8 464 Cases of Juvenile delinquents in Baltimore. 18)

One of the hypothesis in his investigation is that anomie is the most important factor in analyzing delinquency. The delinquency rate is a measure of the degree of anomie; another measure is the percentage of house-ownership and so is the percentage of

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15) Ibid., p. 500

16) Ibid., p. 500

17) Ibid., p. 506

18) See Lander, B.: Towards an Understanding of Juvenile Delinquency, U.P. Columbia, New York, 1954, chapter 5.



Negroes in an area. The second factor in Lander's analysis is a socio-economic one, measured by rent and education. Lander's interpretation of the results of his factor analysis is that juvenile delinquency in Baltimore is fundamentally related to the stability or anomie of an area. <sup>19)</sup>

Mannheim criticises Lander's research, inter alia, by stating that although it is valuable on account of the sophistication of its statistical techniques, it does not show clearly how the factors mentioned co-operate in order to produce delinquency. <sup>20)</sup>

#### 4.4.2 Studies of Criminal Subcultures by A.K. Cohen.

Cohen's studies of criminal subcultures have been more influential than the studies of Lander in Baltimore. <sup>21)</sup> Cohen's studies offer a more plausible explanation of crime by giving the real characteristics of criminal subcultures. Cohen further shows how a criminal subculture is transmitted from one individual to another. He further explains the specific content of a criminal subculture and the reasons for its existence. <sup>22)</sup>

The years after Cohen's book have seen other publication on the subject of criminal subcultures. The most important of them is Cloward and Ohlin's highly perceptive and influential book. <sup>23)</sup> While their theory is strongly class-oriented, they are inclined to attach greater significance than Cohen does to the inequalities arising from economic factors. <sup>24)</sup>

More recently H.A. Bloch <sup>25)</sup> has repeated his view that the intergenerational tensions between young

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19) Ibid., p. 59

20) Mannheim, H.: op.cit., p. 507

21) Ibid., p. 507

22) Cohen, A.K.: Delinquent Boys, The Culture of the Gang, Glencoe, Illinois, 1955, p.

23) Cloward, R.A. & Lloyd, E. Ohlin, Delinquency & Opportunity, Glencoe, Illinois, 1961.

24) Mannheim, H.: op.cit., p. 512

25) Ibid., pp. 513-514

and old are far more important as an explanation of gang delinquency than conflicts between the social classes: Criminal subcultures are found not only in certain sections of the society, but also in certain geographical areas irrespective of class.

#### 4.5 Criminal Subcultures in the African Society.

The criminal subculture theory is also a useful device in the explanation of crime as a product of culture-conflict among the modern Africans in South Africa. Mayer<sup>26)</sup> referring to the urban Xhosa in East London describes very aptly the problems facing the urban Africans. He says that they are men of two worlds ----- perhaps one would say of three worlds, for if the country home is one world East London itself comprises two others - the White town where the Xhosa works and the non-white town where he lives meanwhile. In the cities the Non-white town consists of the township set apart by law and custom from the white residential and business areas. In the townships thousands of people live together, some in decent houses, while others live in shacks and from there the tribal inhabitants go forth every morning to do their wage-earning in the white areas. The rest of the non-white population live in a completely different world, namely, they are scattered about the white areas, in domestic servants' quarters on white employers' premises. In South Africa today, therefore, many so-called white ways and values are learnt by Black people mainly from Black people. But as Fortes has remarked, many adaptive patterns, proper to certain situations in town, can drop off like an old coat if or when the person returns to the country.

The above contention is true not only of the Xhosa but also of the Africans as a whole. This anomic situation in the African society has resulted, inter alia, in the formation of a number of criminal subcultures.

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26) Mayer, P.: Townsmen or Tribemen, O.U.P, Cape Town, 1963, pp. 1&2

The most important of these criminal subcultures will now be analyzed:

4.5.1 The Subculture of Violence.

Wolfgang and Ferracuti <sup>27)</sup> have the following to say regarding the subculture of violence among the Negro in the U.S.A.: They found " ---- that in the United States (homicide) rates are highest among males, non-whites and the young adult ages. Rates for most serious crimes, particularly against the person, are highest in these same groups". They further point out " ---- the significance of a jostle, a slightly derogatory remark, or the appearance of a weapon in the hands of an adversary are stimuli differentially perceived and interpreted by Negroes and whites, males and females. Social expectations of response in particular types of social interaction result in differential definitions of the situation. A male is usually expected to defend the name and honour of his mother, the virtue of womanhood ---- and to accept no derogation about his race ( even from a member of his own race ), his age or his masculinity. Quick resort to physical combat as a measure of daring, courage or defence of status appears to be a cultural expression, especially for lower socio-economic class males. When such a culture norm response is elicited from an individual engaged in social interplay with others who harbour the same response mechanism, physical assaults ---- are likely to be common."

Labuschagne <sup>28)</sup> then goes on to say that these are aspects that we see in the conduct of the Africans and Coloureds, and it is thus justifiable to conclude that the high ratio of violent crimes amongst these

27) Wolfgang, M.E. and R. Ferracuti: The Subculture of Violence, Towards An Integrated Theory in Criminology, Tavistock publications, New York, 1966, p. 153

28) Labuschagne, J.J.: "Crime in South Africa," Crime Punishment and Correction, Volume 1 No. 2, November 1972, p. 9

groups is due to such a subculture of violence. The present investigator concurs with this statement.

One of the problems found then with members of such a subculture of violence is that the use of violence is not necessarily viewed as illicit conduct, and the users thereof do not have to deal with feelings of guilt about their aggression. Violence becomes a part of the life style and it occurs mostly within the subculture, for violence is used mostly between persons or groups who themselves rely upon the same values and norms. <sup>29)</sup>

Many explanations have, of course, been given to account for the subculture of violence. The psychoanalytical school <sup>30)</sup> has, for instance, conceived of violence as the actualization of the so-called "death-instinct", a general aggressive instinctual drive. Then several medical investigations have been conducted in criminology on homicidal groups. One particular approach to violence, is that which utilizes psychological tests for the study of groups of violent subjects. Many of such psychometric researchers are on homicides. <sup>31)</sup>

From these studies emerge the general picture of a personality characterized by egocentrism and lack of emotional control. And then the frustration-aggression hypothesis has been readily accepted by many investigators. It is a classical approach to the problem of violence and its heuristic value has probably not been matched by any other theory. In terms of this theory, frustration produces an emotional state, anger, which heightens the probability of occurrence of drive-specific behaviours, namely aggression. The probability that aggression will actually take place, depends on the presence

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29) Ibid., p. 9

30) Wolfgang, M.E. and F. Ferracuti: op.cit., p. 141

31) Ibid., p. 143

or absence of restrainers against aggressive, hostile actions. This hypothesis has been employed in two studies on homicides, one by Henry and Short and the other by Palmer. <sup>32)</sup>

Laubscher, <sup>33)</sup> giving a psychiatric explanation of the crimes of the African in general says: "The Native is not by nature blood-thirsty, but his aggressive instincts or pugnacious propensities are excitable, easily roused and explosive".

Among the Zulus in particular the subculture of violence has its roots in the history of the Zulus themselves. Many actions which are regarded as assaults today in terms of the white man's law were not regarded as such in the traditional situation. In fact a fight between two able-bodied young men was approved of conduct in traditional Zulu society. When two young men met each other on the way, one would, for instance, say "NGICELA INSELELE, WETHU", which means "I challenge you to a bout of stick-fighting, my peer". Naturally one or even both would be injured during the combat, but there would be no case (or crime committed). What actually happened was that the injured party would be satisfied with the nursing or "first-aid" given to him by his opponent. <sup>34)</sup>

Similarly love-making also involved a great deal of violence. A young man would, for instance, never make love to a girl by approaching her politely before speaking to her. He would simply grab her and literally force her into submitting to his wishes.

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32) Ibid., p. 95

33) Laubscher, B.J.F : Sex Custom and Psychopathology, Routledge and Kegan Paul, London, 1951, p. 306

34) According to elderly informants this type of behaviour did not entitle one party to charge the other for any crime.

Reference has been made to the "THWALA" custom, which involved the taking or abduction of an unmarried girl by force and by surprise to the suitor's home where she would be made to put on the clothes and insignia of a newly married wife. <sup>35)</sup>

Krige <sup>36)</sup> says, for example, that when a young man talked to a girl, he caught the girl and twisted her arms to force her to speak.

All the above-mentioned forms of violence were accepted forms of conduct in tribal Zulu society and were, therefore, not illegal. Contact with the white man's law has, however, transformed these forms of conduct into crimes variously known as assault, rape and abduction. <sup>37)</sup>

In the traditional Zulu culture, physical aggression was regarded and seen as a demonstration of masculinity and toughness. White 'civilised' law has changed some violent acts into crimes without changing the attitudes of those who are products of the sub-culture. This has, therefore, resulted in the high incidence of crimes of violence against the person among modern Africans. It is likely then that as a result of this cultural trait of violence which has been carried into modern times, the many assaults among the Africans are committed not so much out of the motive of revenge, but out of a spirit of bravado or of testing each other's strength or skills in fighting. Although the white man's law stipulates that assault and abduction are crimes and punishable, this idea has not yet been internalized in the minds and feelings of Africans, who in most cases, see nothing wrong with fighting.

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35) See abduction, Chapter 2, p. 51

36) Krige, E.J.: The Social System of the Zulus, Shuter & Shooter, Pietermaritzburg, 1965, p. 104

37) The above-named forms of conduct conform with the definitions of assault, rape and abduction, respectively, as defined by S.A. Criminal Law.

Some assaults take place in the streets. Others (and these are in the majority) take place in drinking parties. Usually such assaults occur more often where concoctions are sold. It is suggested therefore, that the tradition of violence among the Africans may be one of the factors contributing to their crime rate which is much higher than that of other racial groups as the following data will reveal.

During the year ending 30 June, 1972, 11 686 persons were killed in South Africa as a result of crimes of violence including murder, culpable homicide, infanticide, faction fights, assaults public violence and other punishable offences. <sup>38)</sup>

The following table illustrates the nature of the violence as well as the race of the victim:

TABLE 1.

Crimes of Violence and the Race of the Victim in South Africa for the year ended 30 June 1972 <sup>39)</sup>

ACTS OF VIOLENCE	RACE OF VICTIM				
	WHITE	COLOURED	ASIAN	BANTU	TOTAL
Culpable Homicide	869	438	75	3 388	4 770
Murder	118	543	55	5 004	5 720
Infanticide	5	8	1	80	94
Faction Fights	-	-	-	235	235
Assaults	6	24	1	203	234
Public Violence	-	-	2	14	16
Other Crimes	61	14	3	540	617
TOTAL	1059	1026	137	9464	11686

38) Annual report of the Commissioner of the South African Police for the year ended 30 June 1972, Government Printer, Pretoria (R.P. 23/1973), p. 5

39) Ibid., p. 5

The above figures reveal that Africans constituted altogether 5 004 victims of murder out of a grandtotal of 5 720 in respect of all races. The total number of faction fights victims was 235 and involved only Africans. Infanticide victims totalled 80 out of 94 i.e. the Africans accounted for 85 per cent of all victims of infanticide in South Africa during the statistical period ended 30 June 1972.

The subculture of violence can be best illustrated with reference to faction fights, which are very common, especially in rural areas. In certain areas in Kwa-Zulu e.g., the Msinga District (TUGELAFERRY) there are clans which are always at loggerheads. Factors leading <sup>40)</sup> to faction fights are usually disputes over grazing grounds, girls and, of course, plain testing of one another's skills. The last factor is probably a remnant of the old Zulu custom of UKUCELA INSELE (to challenge another to a bout of stickfighting in order to test who is stronger). The clans start fighting when they meet in the wedding parties or "IMISINDO", as they call them.

Every year much blood is shed through these faction fights. On the 31st January, 1965, e.g. members of the Community at TIERVLEI in the Cape fought with a group of Coloureds. During this faction fight four Africans were seriously injured while nine police vehicles were damaged. In the same year eleven faction fights took place in Natal in which six Africans were killed while twelve were seriously injured. During that year two faction fights took place in the police division of Port Natal at which five Africans were killed while two were seriously injured. Also during that year there was a faction fight in the Transkei, in which five Africans were killed and a number injured. <sup>41)</sup>

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40) Ndabandaba, G.L.: "Crime and the African", Crime, Punishment and Corrections, Volume 3, June, 1974, p. 35

41) Ibid., p. 35



On the 19th February, 1965, Chief NKOSANA MTIRIRA of QULUNGU, ENGCORO, Transkei, was attacked by approximately twenty African males with axes and assegais. The chief, his mother and an African priest were killed while the chief's wife was seriously injured. 42)

On the 8th November, 1967, members of the Sithole tribe were attacked by the Zwane tribe in the ELENGE area of the MSINGA district. At this time fifty-one men were killed (forty members of the Sithole tribe and eleven members of the Zwane tribe). Seven Sitholes and nine Zwanes were injured. In the Tugela Ferry area, also in MSINGA, seven Africans were killed and four were injured in faction fighting. 43)

On the 12th May, 1968, there was a faction fight between the Xhosas, Pedis and Sothos in the Eastern Transvaal. Seventeen Xhosas, three Pedis and one Sotho were injured while one Xhosa was killed.

Recently, i.e. in October 1974, in the Ingwavuma area, seven tribesmen have been murdered and hundreds of people made homeless in a fierce faction fight. In the wave of unrest at least sixty-four huts were burned to the ground, leaving scores of families homeless. Make shift tents erected by tribesmen were slashed and cut down with pangas. 44)

When these clans fight, they divide themselves into groups such as those resembling the military groups or "AMABUTHO" of the olden days. A diversity of weapons is used such as assegais, sticks and even firearms. The tribes in Tugela Ferry and Bergville (EMANGWANENI) are notorious for using home-made guns. 45)

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42) Ibid., p. 35

43) Ibid., p. 35

44) The Daily News, Durban, Friday, October 4, 1974, Headlines, p.1

45) Ndabandaba, Gabap. cit. p. 35

In the urban areas it is the "tsotsi" who are responsible for the many forms of violence and hooliganism as will become clear in the discussion on the subculture of "tsotsism". Suffice it so say here that many investigators have established that gang warfare not infrequently breaks out in the large cities. Rival gangs are observed in battle in the streets and outside cinemas. 45)

In a memorandum which he submitted in 1950 to the commission of Inquiry into acts of violence committed by Africans, Mr. Venables 46) stated that a large number of Africans above thirty years were consciously and actively instigating the young juveniles of the African townships from twelve years upwards to crimes of violence. 47)

#### 4.5.2 The Subculture of "TSOTSISM"

Another subculture that is fast developing in the African societies, be they urban or rural, is the so-called "tsotsi" subculture. The term "tsotsi", meaning a criminal tough guy, came into use in Johannesburg in 1946 following the exhibition of a film entitled "STORMY WEATHER" in which the all-Negro cast wore stove-pipe trousers, wide-brimmed hats and massive watch chains. African youths who adopted this kind of dress as something which was symbolic of derring-do, came to be known as "tsotsis", the name being derived from the Sotho word meaning stove-pipe trousers. 48)

Other investigators maintain that the term "tsotsi" is derived from "HO TSOTSA", a South Sotho word meaning to sharpen, while others hold that the word originated from "ZOOT SUIT", a fashion which originated from an American gang. 49)

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46) Freed, Is. Soc. Sci., pp. 128-129

47) Ibid., pp. 128-129

48) Ibid., p. 73

49) Penal Reform News, The Penal Reform League of South Africa, Pretoria, October, 1960, p. 16

"Tsotsi" gangs are a well-known feature in the African community. They are formed mostly by males between the ages of 12 and 40 years.<sup>50)</sup> The "tsotsi" subculture has found fertile soil in the rural areas where it is brought by those youths who have tasted city life. This substantial segment of present-day African society known as "tsotsis" have a way of life, values and characteristic patterns of behaviour which are the product of a distinctive cultural system. The "tsotsi" subculture has some of the following values: toughness, physical prowess, evidenced by demonstrated position of strength and endurance and athletic skill, masculinity symbolized by a distinctive complex of acts and bravery in the face of physical threat.<sup>51)</sup>

The "tsotsi" gangs are becoming better and better organized, more powerful and more dangerous everywhere. It is not uncommon for them to be armed. One of the reasons why "tsotsi" gangs have become more organized is that membership is not open to any minor criminal who wishes to join. Before a youth is admitted to the gang, he has to prove that he is of value to the gang. The most common method is for the recruit to plead guilty in court to a crime committed by one of the leaders.<sup>52)</sup>

Referring to this subculture, Dr. J.W. Bodenstein<sup>53)</sup> says that there is "----- a small segment of Bantu society so culturally alienated and confused that a prison sentence, even for an offence disgraceful by any standards, may actually give added prestige."

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50) Freed, L.F.: op.cit., p. 73

51) Ibid., p. 130

52) Ibid., pp. 77-78

53) Bodenstein, J.W.: "The Bantu Ex Prisoner - some Cultural Patterns in his Reaction to Imprisonment and their Relevance Regarding Rehabilitation", A Paper read at the 2nd Annual General Meeting of the Bantu Prisoners Aid Committee, Durban, 27.9.1969.

The "tsotsis" are capable of committing any crime. Freed <sup>54)</sup> observed in his investigation that in the African bus terminals thousands of milling, restless, angry Africans were molested by "tsotsis" everyday. While they are quick with a knife, they also draw and use revolvers and have become quite sophisticated in their operation.

In the townships there are, for instance, certain areas out of which residents dare not venture alone at night for fear of "tsotsis". The "tsotsis" are never slow to take advantage of the human chaos and they are notorious for pickpocketing people. They live by spivery, and their line is to try and study transactions involving watches, cameras, fountain pens, textiles, rubber contraceptives; fancy goods, car batteries, tyres and radios. <sup>55)</sup>

A practice very similar to the "TWALA" custom of tribal times is common in the "Tsotsi" subculture. It is quite common for a "bad" woman, when she finds that she is falling in love with the members of another "tsotsi" gang, to invite them to take her from the gang by whom she is presently held. The woman usually does this by engaging in a form of dance known as "FAMO", in which she dances with a seductive voluptuousness revealing the more intimate parts of her body. <sup>56)</sup>

The problems created by the "tsotsis" are summarized by Freed when he says: " ----- Indescribable happenings were taking place in the townships. The tales of crime, violence and terror that come to us from the townships would shock any civilized community anywhere in the world. No decent man or woman was safe in his or her own home. Wives and young girls were

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54) Freed, L.F.: op.cit., p. 73

55) Ibid., p. 73

56) Ibid., p. 115

raped in the streets and on their way from work. Some were even raped in their own homes in fear of victimisation. These gangsters ruled the townships at the point of knife or pistol. They robbed the people in the trains to and from their work, in the bus queues and in their homes. They assaulted innocent victims in the street and terrorised one area after another. They considered themselves invincible and showed no fear even for the police."<sup>57)</sup>

S. Mokoena <sup>58)</sup>, Chairman of the Reformed Independent Churches Association puts the matter as follows with regard to the "tsotsis" in Soweto: " ----- Sowet is h plek van skrik, veral oor naweke en snags. Mense kan dit nie na sewe saans in Soweto se strate waag nie. Ons noem dit die "death walk". Bendes saai snags verwoesting in die "townships".

In Pietermaritzburg a group of "tsotsis" assaulted a professional boxer over one weekend. The boxer had to undergo an operation as a result of the four stitch wounds he received. The "tsotsis" pounced upon him with bottles and other sharp weapons and left him seriously injured in the street. <sup>59)</sup>

At Kwa-Mashu a soccer star was stabbed to death while on his way home from a football match. <sup>60)</sup>

In the Johannesburg municipal area <sup>61)</sup> there were 891 cases of murder during the period 1 March, 1966 to 28 February, 1967. As a result of this the Rand Daily Mail ran a series of articles on crime in Soweto, describing the gangs of vicious men, many of them teenagers, who train in groups, terrorising the inhabitants and running protection rackets.

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57) Ibid., p. 127

58) Mokoena, S.: "Witman Se Straf Te Pap", Crime, Punishment and Correction, Vol. 3. No. 2, June, 1974, p. 45

59) Week-End World, Johannesburg, 30.10. 1971, p. 2

60) Ibid., p. 2

61) A Survey of Race Relations in South Africa, 1967, Compiled by M. Horrel, published by the South African Institute of Race Relations, Johannesburg.

It was pointed out, too, that it is not only these gangsters who resort to violence. Frequent use of knives is made by ordinary citizens also when in rage or under the influence of drink or dagga. A dreaded weapon is the needle-sharp steel spoke called a "NTSHUMENTSHU", which is plunged into the spinal cord, leaving the victim paralyzed and giving South Africa the highest paraplegic figure in the world. It is estimated that 1 000 or more people are murdered in Soweto every year and as many as twenty some weekends. The toll of the injured and maimed is unknown, but it must be a terrifying figure. All this is a result of the "tsotsi" subculture.

The "tsotsis" are of different classes. Monica Wilson <sup>62)</sup> holds that in Langa, Cape Town, the "tsotsi" element is divided into the "IKHABA" or clever bright boys. They range from 15-25 years and are composed of boys and girls who have finished the primary school, but are not continuing. They are usually violent, boisterous and given to smoking dagga and fighting with knives. The "IKHABA" or "jongspan," as they are also called, look for factory jobs, or are delivery boys. They never work in the building industry and rarely in docks. One attraction in factory work is the opportunity it offers for pilfering. Moreover, the hours are not long and the work is not heavy. They prize a free week-end.

A little older than the "jongspan", ranging from 25-35 years, is the so-called "OoMac" from the Scottish Mac. They are expected by "tsotsi" subculture to be more reasonable and responsible than the "IKHABA". They no longer run around whistling in the townships, or jumping on and off running

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62) Wilson, Monica: Langa, A Study of Social Groups in an African Township, Oxford University Press, 1963, London, pp. 22-23

busses, nor do they smoke dagga in public. Pilfering is felt to be a means by which they supplement their income. <sup>63)</sup>

This classification of "tsotsis" is closely related to the stages through which the "tsotsis" travel before they graduate into true "tsotsism". <sup>64)</sup>

The first category is that of learners (laities).

"Laities" are boys below the age of twelve who roam about the township streets playing children's games and frequenting the bioscope, but they already display criminal tendencies, confined mainly to petty thefts in cafes and greengrocers' shops.

They play dice for cents and pencils, sniff benzine and build up a crust of resistance to parents and society. Some of them are still at school, though they play truant quite often; others have abandoned school and have part-time jobs as caddies on the golf course or carriers in the market while others sell sweets, monkey nuts, shoe laces, ladies' earrings and cosmetics in trains, busses, sportsgrounds and other public places. They are learners; the older "tsotsis" often send them to buy dagga; to spy and do many other things which are part of "tsotsi" training. This stage is exciting to the young - you have your money from selling things, you can consequently put on long trousers, smoke cigarettes and have people turning a blind eye upon your independence, because you enjoy the protection of the big boys. <sup>65)</sup>

Vilakazi <sup>66)</sup> makes the following remarks regarding the Zulu "tsotsis": he distinguishes between "tsotsis" who have gone to school and those criminals known

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63) Ibid., p. 53

64) Penal Reform News, The Penal Reform League of South Africa, Pretoria, October 1960, p. 16

65) Ibid., p. 16

66) Vilakazi, A.: op.cit., p. 76

as "AMAGXAGXA". He also points out that the word "tsotsi" is confusing. Originally it referred merely to narrow-bottomed pants. However, the people who wore such pants were considered pickpockets, won't works and criminals and the word "tsotsi" has come to mean this kind of juvenile delinquent.

This criminal element is drawn from the youths who have had very little or no education, or who have had unfortunate family backgrounds because of the conditions in South African cities. Many youths who go from the rural areas to the cities are recruited to this criminal gang, for as records of convicted "tsotsis" show, they are either completely illiterate or have very low literacy.

Then there are many Africans today who have been well educated and who were brought up by Christian parents in Christian homes who have become "tsotsis", i.e. criminals. This is, however, another story and has its counterparts in New York, Los Angeles, Paris or in any Western city. These people are called "tsotsis", but it is here used to describe criminals and not the kind of pants worn. <sup>67)</sup>

There is another group of young intellectuals who are "tsotsis" because they do not believe any more in Christianity. This group is not "criminal" however, although many of them have been to prison. They are disillusioned with Christianity. They are also dissatisfied with democratic mouthings of Westerners. This does not make them "tsotsis". They are so called because they have no reverence for the old or for the new Christian middle-class values. <sup>68)</sup>

The "amagxagxa", on the other hand, with dirty

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67) Ibid., p. 76

68) Ibid., p. 76



handkerchiefs tied, muffler-style, round their necks - proud symbol of their little sophistication - have remained largely a country criminal element. 69)

The "tsotsis" have thrived and become attractive to some young people because they have been culturally exciting. They have a language of their own, which is very earthy, racy and something of a secret language and, therefore, fascinating to the young. They are tough and they have demonstrated to everybody that crime does pay and are always the best dressed. They are defiant of traditional values and spurn middle-class Christian morality and the whole culture of what they refer to in Durban as "OSITSHUZANA" i.e., the Excuse-me-people or those who try to live according to refined social standards. 70)

Finally, there is the class known as "IBARI". "Ibari" is probably derived from the Afrikaans word - baar-rough, but is associated with barbarism. A film, THE BARBARIANS, shown some years ago in Johannesburg, depicted the barbarians invading Rome and it made a great impression. After that film the "tsotsis" are said to have taken over the word and applied it to the new generation of country men who were in the process of being absorbed in town. 71)

From the foregoing it becomes clear that the "tsotsi" subculture has become an established feature of townlife that has come through most clearly to the consciousness of the townpeople and has been absorbed into their own folklore. The "tsotsi" subculture has become even in the countryside a kind of myth with a power rivalling that of the witch myth and with definite parallels; for both "tsotsi" and witch embody the same basic concept - the reversal of

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69) Ibid., p. 76

70) Ibid., p. 76

71) Wilson, M.: op.cit., p. 21

ordinary decent human values. Like the witch, the "tsotsi" is both terribly dangerous and terribly unpredictable, so that nobody knows who the next innocent victim may be. <sup>72)</sup>

One of the main features of "tsotsi" mythology is the boundless nature of their criminality. He knows no inhibitions, no scruples, no remorse. He will do anything to anyone. He chooses the last day of the week and month to lie in wait at the railway station, knowing that on this day there will be many people setting out for home with all their wages. In classical witchcraft situations, the witch and the victim stand in a definite relationship in which are engendered hatred, envy or resentment. Appropriately enough to the impersonal urban surroundings, on the other hand, this new incarnation of evil remains a complete stranger to his victim. <sup>73)</sup>

The fear of the tsotsi element is a real one. This fear together with that of witchcraft has actually contributed to a great deal of instability of the African people, which has led to social disorganisation in general. While some Africans take their families to the rural areas through the fear of "tsotsism" in the urban areas, others remove their families to the towns and cities for fear of witchcraft in the rural areas. <sup>74)</sup> Some families, however, become disillusioned and frustrated when they find out that both "tsotsism" and witchcraft are found in urban as well as rural areas. In the rural areas there is the further problem that crime, especially "tsotsism" and witchcraft, is not as easy to control as in the cities, because the criminals move about freely without being required to produce permits and without being charged in terms of curfew

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72) Mayer, P.: op.cit., p. 72

73) Ibid., p. 72

74) Ibid., p. 72

regulations. 75)

Finally, a thorough study of the violent gangs engaged in faction fights or "tsotsi" violence indicates that there is an element of regimentation involved. Although, therefore, the model for the tough guy, hard, fearless, skilled in physical combat, is represented by the movie gangsters, there is some evidence that the "tsotsis" also show some resemblance with the "AMABUTHO" or military regiments of the olden days, as well as the influence of the slum environments. The "tsotsi" subculture is, therefore, a combination of the impact of crime films of the West, the historical influence of the "UKUBUTHWA" custom and the influence of <sup>76)</sup> slum areas. This must never be overlooked.

#### 4.5.3 The Subculture of "SHEBEENS"

The social significance of beer in tribal Zulu society has been analyzed in the previous chapter. In the Zulu tradition, "Nomkhuhwane", the heavenly maiden, was believed to have come down from heaven to teach the people how to make beer. 77) Beer was never sold in the olden days and when a man wished to entertain his friends, he invited them to a beer party. Here the men sat in a circle and it was etiquette for the host first to taste the beer and then pass it round to the others. Obviously then there were no bars or beerhalls in traditional Zulu society, because beer was never sold. "Shebeens" were also non-existent.

"Shebeens," which are places engaging in a kind of bootlegging, originated as a result of the legal prohibition on the part of the African to purchase

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75) Ndabandaba, G.L.: "The Consequences of Crime", A Paper Read at the National Criminological Symposium on Crime Prevention, held at UNISA, 28-31 August, 1973.

76) This contention is strongly adhered to by the present investigator in the article referred to in footnote 40 of this chapter.

77) Krige, E.J.: op.cit., p. 197

white liquor, i.e. spirits, wine and beer. It would appear that "shebeens" date back as early as 1896 <sup>78)</sup> and that they have become a kind of institutionalized way of earning a living or of supplementing one's capital. <sup>79)</sup>

Also known as "AMAJOINT" (JOINTS), "shebeens" are of different categories. Some are high-class or AI; while others are just ordinary. "Shebeens" are the worst breeding grounds of crime. They produce both the criminals and the victims. Many "shebeens" are the haunts and meeting places of murderers and robbers who are frequently in league with the "queens" who run them. The drunkards that the "shebeens" produce become an easy prey for thugs. The stabbings and other crimes of violence during weekends and public holidays are largely a result of the drinking evil in the "shebeens". "Shebeens" are, of course, not run only by the African but also by Asiatics and Coloureds. <sup>80)</sup>

It is interesting to note that even after 1961 when the Africans had been given access to the white man's liquor, "shebeens" kept on flourishing and are still flourishing because the African has apparently acquired a taste for something stronger than ordinary African beer. Moreover, "shebeens" operate even during weekends and public holidays and virtually for twenty-four hours and are found not only in the urban townships, but also in the country locations. <sup>81)</sup> Freed holds that in Johannesburg vacant pieces of ground in the central area were frequently used by Africans

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78) Phillips, R.E.: The Bantu in the City-A Study of Culture Adjustment on the Witwatersrand, The Lovedale Press, Cape, 1936, p. 178

79) Freed, L.F.: op.cit., p. 111 also confirms in his research that when making inquiries about the cause of crime in the townships, it was found that the increasing cost of living was forcing more and more Africans to deal in the illicit liquor trade.

80) Freed, L.F.: op.cit., p. 119

81) Freed further holds that as a result of this popularity, shebeens have now established themselves in strong competition with the municipal beerhalls. See Freed, L.F.: op.cit., p. 130

for the running of "shebeens". The "shebeen-runners" had often to change their venues, however, for the purpose of avoiding arrest. Wherever the place of operation is, the "shebeen" queens do brisk business. 82) They sell a diversity of concoctions such as "skokiaan", "barbarton", "pineapple drink", "isishimeyane", "gavini", "izingoda" and even African beer and white liquor. "IZIPAKUPAKU" i.e. African beer bought from bottle stores in cartons is a very fashionable commodity in modern times, sold every where illicitly, including beaches, railway stations, bus terminals, in trains, etc. 83)

"Shebeen" queens resort to devious means to evade police detection such as burying the concoctions in common yards and along the river banks. 84)

Dagga is sometimes also sold in the "shebeens".

#### 4.5.4 The Subculture of Witchcraft.

This subculture is discussed as the last one, not because it is not important, but simply because witchcraft offences in traditional Zulu societies have been dealt with in great detail. 85)

It will, therefore, suffice here to mention that witchcraft is still a crime practised secretly. Up to the present day, the Africans still consider most sicknesses and death as resulting from witchcraft. There can be no doubt, therefore, that the fear of the crime of witchcraft presses hard on

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82) Ibid., p. 76

83) It is a very common affair in this area to see children and women selling "IZIPAKUPAKU" to passers-by.

84) The banks of the Mhlatuze River are notorious for drinking dens in this area.

85) See witchcraft as an offence in the traditional Zulu society in chapter 2 of this dissertation.

5.4 For many modern Africans. 86)

5.4.1 The educated modern Africans, however, visit the diviners secretly, because, although visiting the diviners, they hypocritically regard going to them as uncivilized and contrary to the teachings of the churches. Moreover, the stress is no longer on discovering the exact identity of the witch (criminal), but on treating the patient by providing medicines against the jealousy of the witch. 87)

There are others involving social life. Molema 88) considers the subculture of witchcraft as one of the greatest curses of the Black man. It is so universal and so deep-rooted that to this day many, and even those who pretend to be enlightened and professed Christians, do not cast a shadow of doubt on the reality of witchcraft. For this reason, the modern African dislikes the witch and so fears him that he employs diviners and magical medicines against him, so that he may be protected against the ill-effects of witchcraft to which he ironically refers as "gypsona" 89)

Even in places of employment, witchcraft is very commonly practised. Schapera 90) says "Accusations of witchcraft or sorcery against a 'boss-boy' are common, and sometimes the post is refused because a man is afraid either that witchcraft or sorcery will be worked against him, or that he will be accused of using them to kill other people." Moreover, the one who gains special favour with an employer is thought to do so by means of medicine.

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86) Ndabandaba, G.L.: op.cit.,

87) Schapera, I: The Bantu-Speaking Tribes of South Africa, Maskew Miller, Ltd., Cape Town, 1966, pp. 426-427

88) Molema, S.M.: op.cit., p. 170

89) Ndabandaba, G.L.: "Crime and the African", Crime, Punishment and Correction, Volume 3 No. 2, June 1974, p.41

90) Schapera, I.: op.cit., p. 395

There is also the belief that one who has very strong medicines is dangerous to his fellowmen.

Schapera <sup>91)</sup> states further that accusations of witchcraft and sorcery are an expression of quarrels, and further forment them; those believing themselves to be injured are bitter against those they believe to be guilty.

Schapera <sup>92)</sup> quotes Hellman as saying the following regarding the subculture of witchcraft in modern times: " ----- Magic provides a far more satisfactory outlet for the perplexed and stricken individual, and it is to magic that the average Native turns for aid. The demand for the services of the "inyanga" has not decreased among the urban populations."

Further on she says "Magic <sup>93)</sup> has revealed great potentialities of adaptability. In addition to the treatments used in curing illness, protecting against witchcraft and other ills, and ensuring success and popularity, new forms have been evolved to meet new conditions. There are medicines to enable an unemployed Native to find work; medicines to attract beer customers to a woman desiring to build up a beer trade; herbs to blind the police so that they will not find a women's beer "hole" or see a Native out after curfew without a special licence; medicines to cause a magistrate to impose a lenient sentence on an offender; and medicines to obviate the necessity of paying bills! In short for every situation, new medicines are available".

4.6 SUMMARY: In this chapter reference has been made to the subculture theory as an explanatory concept of crime.

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91) Ibid., p. 397

92) Ibid., p. 426

93) Ibid., p. 426

It has also been pointed out that throughout history, every society has had its so-called criminal subcultures. The African society is, therefore, no exception in this regard. The most important criminal subcultures in the African society are the subculture of witchcraft; the subculture of violence; the subculture of tsotsism and the subculture of shebeens. These criminal subcultures have become part and parcel of the Black man's culture in South Africa. The present investigator, therefore, adopts the view that any explanation of the criminality of the Black man must take cognizance of these criminal subcultures. This chapter has also made it clear that most of the theoretical spadework in the study of criminal subcultures has been done in the U.S.A. and Britain.

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THE PRESENT EXTENT OF CRIME.5.1 Introduction.

The purpose of this chapter is to analyze the present extent of crime for the Africans in Mtunzini. In doing so reference will be made to the incidence of crime among the Africans in South Africa as a whole.

5.2 The Crime Statistics.

Since this chapter is based on the Police statistics in Mtunzini, a brief discussion in this connection is a necessary background.

5.2.1 The Dark Figure in Crime.

Although the criminal statistics indicate a lot of crime today, it must not be forgotten that they do not indicate the full amount. For a variety of reasons, victims often do not report crimes to the police, for example, because the victim did not think that the police could do anything, or the victim thought it was a private matter and did not want to harm the offender, or because the victims feared reprisals by the offender.

Detailed surveys in the United States of America have shown that the actual amount of crime is several times that reported in the statistics. They found that twice as many violent crimes are committed, three-and-a-half times as many rapes, three times as many burglaries and twice as many thefts are committed.<sup>1)</sup> Such unreported crimes are referred to as the 'dark figure' of the criminal statistics.<sup>2)</sup>

Any investigator, therefore, trying to calculate the extent of crime in any country soon realises that he is attempting the impossible. Clearly, then, the

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1) Labuschagne, J.J.: "Crime in South Africa", Crime, Punishment and Correction, Volume 1, No.2 November, 1972, p. 17

2) Mannheim, H.: Comparative Criminology, A Textbook, Volume 1, Routledge and Kegan Paul, London, 1965, p. 109

extent of crime in South Africa in general and in Mtunzini in particular as given in this chapter is not complete, because a number of crimes are not known to the police, belonging as they do, to the dark figure of criminal statistics. There is, however, a growing research literature in modern times on aspects of this problem based upon self-reported crime. <sup>3)</sup>

Crime statistics consist of

5.2.2 Police Statistics: The police may become acquainted with crime mainly in two ways: through a complaint lodged by the public and then investigated by the police, and by discovering a crime themselves. By the nature of things, the police cannot discover all crimes. Yet, despite this fact they have knowledge of a very large number of offences (mainly serious crimes which are really the important ones), because they are the protectors of life and property of the public and the safety of the state, and daily come into close contact with crime and the criminal. Statistics kept by the police include all crimes known to them; the number of arrests; the number of warnings issued; the number of persons summoned before court and also full particulars about the person concerned. <sup>4)</sup>

5.2.3 Judicial Statistics.

When the police in South Africa have completed their investigation of a case, the matter is handed to the courts. The legal proceedings then enter a step which is also of very great importance to the criminologist. The court statistics reflect, inter alia, the number of prosecutions, convictions, data regarding sentences, etc. <sup>5)</sup>

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3) See, for example, N. Christie, A Study of Self-Reported Crime, and K. Elmhorn, Study in Self-reported delinquency among school children; both in Scandinavian Studies in Criminology Volume I, 1965.

4) van der Walt, P.J.: n Sosiologiese Klassifikasie van Misdade, n Studie in die Misdaadstatistiek, Nasou Beperk, Elsiesrivier, 1964, p. 135

5) Ibid., p. 136

#### 5.2.4 Prison Statistics.

Although prison statistics are mainly of an administrative nature, they contain data which are important to the criminologist. As a source of information, these statistics are dependent on the police and the court statistics since the prison is the final judicial organization with which the criminal comes into contact. Prison statistics, therefore, reflect only information of that portion of the offender population who have been sentenced to a term of imprisonment. <sup>6)</sup>

It is clear that of the three types of criminal statistics, the police statistics, namely "crimes known to the police", contain the most complete criminal data available. Nevertheless, an analysis of crimes known to the police is fraught with many difficulties. The criminologist should approach them with a critical attitude.

#### 5.3 The Extent of Crime.

##### 5.3.1 South Africa.

The extent of crime in Mtunzini can be appreciated meaningfully only if it is compared with the extent of crime in South Africa. Table 2 <sup>7)</sup> illustrates the extent of crime in South Africa for the period 1969-1970.

The following significant facts emerge from Table 2:

- (a) While the Africans in South Africa constitute 55,09 per cent of the total population (excluding the homelands), they constitute 59,66 per cent of the total conviction figures.
- (b) The Coloureds have a greater disparity, namely, they constitute only 13,09 per cent of the

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6) Ibid., pp. 136-137

7) From Population Census, 1970 Report No. 02-05-01 and Statistics of Offences and of Penal Institutions, 1969-1970, Report No. 08-01-06, The Govt. Printer, Pretoria.

TABLE 2.  
CRIME IN SOUTH AFRICA, 1969-1970 8)

WHITES.

	<u>Population</u>	<u>Convictions</u>
Cape	1 102 367	14 060
NATAL	442 499	5 564
TRANSVAAL	1 890 182	23 014
O.F.S.	295 903	4 719
TOTAL	3 730 951	47 339
% of Total	25,88%	10,45%

ASIATICS.

Cape	21 617	317
NATAL	514 810	8 647
TRANSVAAL	80 563	893
O.F.S.	5	22
TOTAL	616 995	9 879
% of Total	4,28%	2,8%

COLOURED.

Cape	1 751 546	114 216
NATAL	66 863	2 864
TRANSVAAL	150 853	5 729
O.F.S.	36 090	2 709
TOTAL	2 005 352	125 518
% of Total	13,9%	27,7%

BANTUS.

Cape	1 360 172	70 170
NATAL	1 116 021	51 744
TRANSVAAL	4 267 272	113 818
O.F.S.	1 317 308	34 537
TOTAL	8 060 773	270 269
% of Total	55,9%	59,66%
GRANDTOTAL	14 414 071	443 005

8) Reproduced with the kind permission of NICRO head office, Cape Town.

population, yet are responsible for 27,07 per cent of the conviction figures.

- (c) With the Asiatics, the reverse is true: they constitute 4,28 per cent of the total population, but only constitute 2,18 per cent of the total convictions.
- (d) The same also applies to the whites; they make up 25,88 per cent of the total population, but only 10,45 per cent of the total convictions.
- (e) It is clear, therefore, that of the major population groups, the Coloureds have the highest rate of convictions (in relation to the size of their population).
- (f) The Africans are second, but their percentage of the total conviction figure is virtually the same as their percentage of the total population.
- (g) It must be borne in mind, however, that a large number of Africans are convicted of petty offences and the so-called technical offences. It is precisely this kind of contravention which makes the problem of crime in South Africa so comprehensive, overload the courts and fill the prisons to overflowing with short-term prisoners and creating endless problems. <sup>9)</sup>

#### 5.3.2 Mtunzini.

The following table indicates the incidence of crimes known to the police in Mtunzini during the period 1967-1971.

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9) van der Walt, P.J.: "The Crime Problem in South Africa," A paper read at the National Criminological Symposium on Crime Prevention, UNISA, Pretoria, 28-31 August, 1973.

TABLE 3.

Crimes Recorded by the Police in Mtunzini,  
S.A.P.I, 1967-1971 <sup>10)</sup>

YEAR	NO. OF CRIMES	MALES	%	FEMALES	%
1967	1 646	1 416	86,03	230	13,97
1968	1 257	947	75,34	310	24,66
1969	1 119	899	80,33	220	19,67
1970	1 218	1 099	88,59	139	11,41
1971	1 341	1 055	78,67	286	21,33
TOTAL	6 581	5 396		1185	

The figures in Table 3 reveal the following in respect of crime in Mtunzini:

- (a) Over a period of five years, namely, 1967-1971, the Africans in Mtunzini were responsible for a total of 6 581 crimes as recorded by the police at the Mtunzini Police Station.
- (b) 5 396 or 82 per cent of these crimes were committed by males, while 1 185 or 18 per cent were committed by females.

The Africans are, of course, predominant in this district, forming 97,15 per cent of the total population of the area served by the Mtunzini Police Station. The Whites, Indians,

10) This table was compiled by the investigator from the data obtained from the R.C.A. (S.A.P.I) for the period 1967-1971.

and Coloureds, on the other hand, constitute only 2,85 per cent of the total population of Mtunzini. <sup>11)</sup>

Obviously then the factor of population is one of the factors accounting for the high incidence of crime among the Africans in this area.

- (c) It emerges further from Table 3 that in the area under investigation, there has been no steady increase in crime from 1967 to 1971. In fact the reverse might be true. Thus it will be noticed that from 1967 to 1968, the crime rate actually decreased by 389 or 6 per cent. From 1968 to 1969 there was a decrease in the crime rate by a total of 138 or 13 per cent. There was, however, a slight increase of 99 or 2 per cent from 1969 to 1970.
- (d) Finally, from 1970 to 1971, the crime rate increased by a total of 1123 or 22 per cent. The decrease in the crime rate in Mtunzini has been attributed to stricter police control in the area. Ever since a new police station was opened in 1958, the number of the police has been increasing steadily. Moreover, their methods of crime-detection have improved tremendously resulting in the detection, clearing up and solving of many crimes. Since 1958, the radio patrol has been used more often in this area. Good results in crime-prevention are, therefore, at present being obtained by the police. <sup>12)</sup>

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11) Information obtained from the Station-Commander of the Mtunzini Police Station.

12) Police at the Mtunzini Police Station confirm this. According to a number of informants also faction fights and other forms of violence were very common before the establishment of the University in this area. In fact the present chief in the area around the University was once deposed, for allegedly taking part in a faction fight (he was reinstated in 1969).

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TABLE 4.

FREQUENCY OF THE DIFFERENT CLASSES OF CRIME AMONG THE AFRICANS, 1963-1968 <sup>13)</sup>

OFFENCES AND CLASSES	YEARS					
	1963 - 64	1965 - 66	1966 - 67	1967 - 1968		INCREASE 1963 - 1968
				PROSECUTIONS	CONVICTIONS	
A: SAFETY OF THE STATE AND GOOD ORDER	7,86 18 544	7,83 18 811	7,73 20 212	25 145	7,24 19 004	2,48 460
B: COMMUNITY LIFE	22,94 54 103	22,07 53 029	22,29 58 291	76 199	25,04 65 672	21,38 11 569
C: PERSONAL RELATIONS	29,58 69 753	29,17 70 104	27,26 71 283	106 181	26,74 70 156	,58 403
D: PROPERTY	28,84 68 021	29,13 70 005	29,91 78 223	112 356	26,26 68 891	1,28 870
E: ECONOMIC RELATIONS	,22 518	0,19 449	0,17 435	405	0,12 310	40,15 208
F: SOCIAL RELATIONS	10,56 24 904	11,62 27 931	12,65 33 070	44 727	14,59 38 283	53,72 13 379
TOTAL	100,00 235 843	100,00 240 329	100,00 261 514	365 013	99,99 262 316	11,22 26 473

13) Table 4, reflecting prosecutions (1967-1968) and convictions (1963-1968) for the most important socio-economic crimes among the Africans in South Africa was obtained from NICRO, Cape Town.

#### 5.4 Crime Patterns Among the Africans.

5.4.1 South Africa: The distribution of the different classes of crimes among the Africans is clear from Table 4 for the period 1963/1964 to 1967/1968:

It emerges from Table 4 that

- (a) The crimes showing the highest increase among the Africans are those in the Class F category. These are crimes involving social relations, namely road traffic offences and all offences under Act No. 13 of 1928. During the statistical period 1963/64 to 1967/68, these crimes increased by 53,72 per cent, <sup>14)</sup> (Petty offences such as Bantu Tax offences, would show an even higher increase).
- (b) From the number of prosecutions reflected in Table 4, it becomes clear that the prosecutions for Class D crimes, i.e. crimes against property are the highest among the Africans. They totalled 112 356 which represents 30,78 per cent of all prosecutions against the Africans during the statistical period 1967-1968.
- (c) An analysis of the conviction figures also reveals that crimes against property have the highest incidence among the Africans. The highest rate of convictions was, for instance, in 1966/1967 (78 223) and it involved property crimes.
- (d) Class C crimes are also significant. In 1967/1968, for instance, convictions for violations of personal relations totalled 70 156 and

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14) It is interesting to note that the Class F crimes were non-existent in the traditional Zulu society because there were no cars and therefore no traffic offences.

constituted 27,13 per cent of all convictions among the Africans during the statistical period 1967/1968.

Clearly, then, the crimes for which the Africans are mostly prosecuted and convicted are those in the Classes D and C, which relate to personal relationships and property.

- (e) Violations of community life as represented by Class B also show a fairly high incidence. During the statistical period 1967/1968, there were 76 199 prosecutions and 65 672 convictions in respect of these crimes among the Africans. They constituted 20,88 per cent and 25,04 per cent respectively.
- (f) Violations of social relationships, i.e. Class F crimes, totalled 44 727 prosecutions and 38 283 convictions (12,25% and 14,55%) respectively, during the statistical period 1967/1968.
- (g) Class A offences, i.e. those pertaining to the safety of the state and good order gave a total of 25 145 prosecutions (6,89%) and 19 004 convictions (7,24%) during the statistical year 1967/1968.
- (h) Economic crimes are the least important crimes among the Africans. During the statistical year 1967/1968, they totalled only 405 prosecutions (0,11%) and 310 convictions (0,12%) which is statistically insignificant.

Although the conviction figures <sup>15)</sup> were not available for Mtunzini, there is every likelihood that the classes of crimes with regard to

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15) For the research in Mtunzini, the present investigator relied only on the police statistics taken out of the R.C.A. records (S.A.P.I.).

prosecutions and convictions would follow the same pattern as reflected in Table 4 in respect of South Africa.

5.4.2 Classification of Offences in South Africa.

Crime is divided by the Department of Statistics <sup>16)</sup> into the following categories:

Class A: Crimes Against the safety of the state and good order, embracing the following sub-classes:

- A1. Public safety, order and peace.
- A2. Administration of justice and good order.
- A3. Public finance and revenue.

Class B: Community life.

- B1. Family life and care of children.
- B2. Indecent, sexual and related matters.
- B3. Liquor and drugs.
- B4. Other matters against community life.

Class C: Personal relations.

- C1. Life or body of a person.
- C2. Reputation and honour of a person.
- C3. Liberty.

Class D: Property.

- D1. Burglaries and related matters.
- D2. Theft from the person by force.
- D3. Stocktheft.
- D4. Other thefts.
- D5. Falsitas and related matters.
- D6. Other matters relating to property.
- D7. Animals.

16) Code List of Offences, S.28C., 1963 Bureau of Statistics, Pretoria, pp. 1-35

Class E: Economic Affairs.

- E1. Economy general.
- E2. Agriculture, animal husbandry, etc.
- E3. Mining and related matters.
- E4. Manufacturing and construction.
- E5. Commerce and business services.
- E6. Other economic.

Class F: Social Relations.

- F1. Road traffic.
- F2. Education.
- F3. Sports and recreation.
- F4. Preservation of Plants.
- F5. Welfare.
- F6. Health services.

Generally speaking offences in South Africa are classified into two broad groups, namely:

The more important economic-sociological offences, and

Other offences or contraventions of the law, which from a sociological point of view, are of lesser importance, such as essentially petty offences and misdemeanours. <sup>17)</sup> The data given in Table 4 cover only offences of more socio-economic importance.

It is clear that less serious offences such as influx control offences, licence offences, Bantu tax offences, curfew regulations, Bantu (urban areas) Consolidation Act, registration and production of documents by Africans, known as infringements and classified above code number 500 are ignored by the Department of

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17) Report No. 08-01-04, Statistics of Offences and of Penal Institutions, 1967-1968, The Government Printer, Pretoria, 1971, preface.

Statistics. 18)

5.4.3 Mtunzini.

Inspection of data in Table 5 reveals that:

- (a) The crimes with the highest incidence among the Africans in Mtunzini are contraventions of the liquor laws, such as illegal possession of African liquor concoctions. During the period under investigation, there was a total of 1 801 crimes pertaining to the selling, brewing and drinking of concoctions such as "isiqatha", "isishimeyana", "gavini" and "umaconsana". These crimes constituted 27,37 per cent of all crimes committed by the Africans in Mtunzini during the period 1967 to 1971.

If the total of 1 801 is broken down further, it emerges that 1 738 or 26,41 per cent of the grandtotal of 6 581 crimes were connected with the brewing of concoctions while 63 or 3,55 per cent of the grandtotal were for the crime of drunkenness.

- (b) Violent crimes, viz. murder, assault, faction fights, robbery, rape, abduction, culpable homicide, resisting arrest and infanticide totalled 1 204 during the period under discussion. This constitutes 18,3 per cent of all crimes committed by the Africans in Mtunzini from 1967 to 1971.

- (c) Traffic offences gave a total of 726 or 11,30 per cent of the total number of crimes committed

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18) Infringements classified above code number 500 and ignored by the Department of Statistics increase the African crime figure. In 1971/1972 there was e.g. a total of 132 264 cases of curfew regulations; 59 013 cases of Bantu tax; 277 393 cases involving the registration and production of documents by Africans. See Annual Report of the Commissioner of the South African Police for the year ending 30 June, 1972, R.P. 23. 1973, p. 4

TABLE 5.

DISTRIBUTION OF TYPES OF CRIMES COMMITTED IN MTUNZINI, 1967-1971<sup>19)</sup>

TYPE OF CRIME	YEARS										TOTAL
	1967		1968		1969		1970		1971		
	Number	% of Total	Number	% of Total	Number	% of Total	Number	% of Total	Number	% of Total	
Abduction	2	0,2	-	-	-	-	-	-	-	-	2
Arson	11	0,66	2	0,15	3	0,26	3	0,24	4	0,29	23
Assault	157	9,53	131	10,42	127	11,31	174	14,28	225	16,77	814
Burglary	20	1,21	36	2,86	29	2,59	36	2,95	27	2,01	148
Contempt of Court	9	0,54	3	0,23	3	0,26	-	-	-	-	15
Crimes Pert. to Bantu Law	19	1,15	6	0,47	2	0,17	-	-	6	0,44	33
Culpable Homicide	6	0,36	-	-	2	0,17	1	0,08	-	-	9
Curfew Regulations	280	17,04	15	1,19	5	0,44	25	2,05	55	4,10	380
Dagga Laws	24	1,45	40	3,16	6	0,53	20	1,64	19	1,41	109
Escaping for Custody	9	0,54	6	0,47	9	0,08	4	0,32	9	0,67	37
Faction Fights	-	-	-	-	-	-	-	-	13	0,96	13
Failure To Pay Tax	112	6,80	157	12,40	204	18,23	120	10,06	68	5,07	541
Forgery	3	0,18	2	0,15	-	-	-	-	4	0,29	9
Fraud	-	-	-	-	2	0,17	-	-	2	0,14	4
Gambling	-	-	-	-	4	0,35	4	0,32	8	0,59	16
Immorality Act	-	-	-	-	-	-	1	0,08	1	0,07	2
Infanticide	2	0,12	-	-	-	-	-	-	-	-	2
Liquor Laws	362	21,93	322	26,60	274	24,48	456	37,43	387	28,85	1 801
Mal. Dam To Property	6	0,36	17	1,34	3	0,26	6	0,49	14	1,04	46
Murder	3	0,18	9	0,79	20	1,78	15	1,23	16	1,19	63
Non-Support of Children	1	0,06	2	0,15	6	0,53	2	0,16	8	0,59	19
Pass Laws	252	15,31	134	10,51	135	12,06	142	11,65	50	3,72	713
Poss. of Dang. Weapons	19	1,15	16	1,27	6	0,53	7	0,58	6	0,44	54
Prohibited Immigrants	28	1,07	7	0,55	4	0,35	3	0,24	5	0,37	47
Radio Licence Offences	12	0,72	15	1,20	1	0,08	-	-	-	-	28
Rape	11	0,66	9	0,71	12	1,07	13	1,06	15	1,11	60
Resisting Arrest	6	0,36	6	0,47	3	0,26	7	0,58	3	0,22	25
Robbery	16	0,97	13	1,03	15	1,34	6	0,49	18	1,34	68
Stocktheft	17	1,03	18	1,43	22	1,96	12	0,98	17	1,26	86
Theft	64	3,89	52	4,13	57	5,09	58	4,76	68	5,07	299
Traffic Offences	76	5,22	153	12,09	109	9,74	137	11,24	251	18,71	726
Trespassing	88	5,34	44	3,5	18	1,42	52	4,43	97	7,23	299
Other Crimes	31	1,88	42	3,34	40	3,57	32	2,62	45	3,35	190
TOTAL	1 646		1 257		1 119		1 218		1 341		6 581

19) Data extracted from the R.C.A. Records at the Mtunzini Police Station, 1967-1971.

in Mtunzini during the period under discussion.

- (d) Contraventions of the pass laws totalled 713 or 10,83 per cent of the grandtotal during the period under discussion. During the statistical period 1971/1972 <sup>20)</sup> the contraventions of pass laws by Africans in the whole Republic of South Africa gave a total of 277 393 prosecutions. The prosecutions in Mtunzini during the same period were 50. This forms 0,02 per cent of all the prosecutions of pass laws by the Africans in South Africa during the period 1971/1972.
- (e) Violations of curfew regulations in Mtunzini totalled 380 or 5,71 per cent; tresspassing, 299 or 4,54 per cent and theft also 299 (4,54%) during the period under discussion.
- (f) Those crimes referred to in Table 5 as relating to Bantu law include all those created by the Bantu Administration Act, No. 38 of 1927 and the Natal Code of Bantu Law, which is applicable only to the Zulus inhabiting Natal and Kwa-Zulu. <sup>21)</sup> Such crimes include, inter alia, practising as an "inyanga" without a licence, failing to comply with the Bantu Commissioner's or chief's orders. These crimes totalled only 33 (0,50%), which is insignificant.
- (g) The category "other" in Table 5 includes crimes such as fishing without a licence, cruelty to animals, failure to pay dog's tax, obstructing a railway line (Act No. 70 of 1957). These crimes totalled 190 or 0,29 per cent of all the crimes committed by the Africans in Mtunzini during the period under investigation.

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20) These offences are not covered by the Report No. 08-01-04. For this reason the investigator had to rely on the most recent statistics obtained from the Annual Reports of the Commissioner of the South African Police.

21) Natal Code of Bantu Law, No. R. 195, Vol. 25, 1967, p. 1



5.4.4 Analysis of the Most Important Crimes in Mtunzini.

(a) Drunkenness, Illegal Possession of Concoctions and other Contraventions of Liquor Laws.

The fact that the contraventions of the liquor laws had the highest incidence in Mtunzini during the period under discussion makes it difficult to resist the conclusion that one of the most serious problems facing the present-day Africans in Mtunzini is the drinking problem. This is further evidenced by the fact that the Mtunzini criminal courts are everyday faced with excessive loads of cases pertaining to the brewing, possession, sale and drinking of "isishimeyana" or "isiqatha".<sup>22)</sup>

Because of the seriousness of the problems created by the drinking, the sale and possession of concoctions in Mtunzini, the investigator deems it fitting to explain how "isishimeyana" is brewed. "Isishimeyana"<sup>23)</sup> is made from a mixture of malt, wheat, brown sugar and water. This mixture is boiled and then allowed to brew for one day. Thereafter it is ready for consumption. Naturally this is a much stronger drink than ordinary Zulu beer which takes much longer to brew.

"ISIQATHA" is made from "ISISHIMEYANA" by adding to it potato peels and allowing the mixture to boil for a long time. The peels are taken from cooked and raw potatoes.

The strongest concoction "IZINGODO" or "UMACON-

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22) According to the Mtunzini Police and other informants in this area, these are the most common concoctions brewed and sold in this area.

23) According to a number of informants this is a standard formula in this area.

SANA" 24) looks very much like dry gin or cane spirit or vodka to the naked eye. It is made from "ISIQATHA" by means of a process of distillation as follows: After the "ISIQATHA" has been made from "ISISHIMEYANA" as explained above, it is poured into a big pot or container and kept there for a day. A basin is then placed on the "ISIQATHA" mixture in the big pot or container, which is then closed by means of a potlid. Fire is made and the "isiqatha" is allowed to boil gradually for two to three days. The vapour flowing from the potlid into the basin floating on the "isiqatha" is known as "IZINGODO" or "UMACONSANA".

There is no doubt, then, that the illicit liquor trade is rife in the area under investigation. The consumption of liquor is high and the methods of drinking are sometimes clumsy. 25)

The "shebeen" subculture is important in the case of Mtunzini also as the following data pertaining to the "shebeens" indicate. The police estimated that in their area there are about forty-one "shebeens" distributed as follows: 26)

Fifteen are located at Gobandlovu, Khandisa 27) and Manzamnyama.

Ten are found at Zikoshi, Qwayinduku, TONDO and Emoyeni.

Five are located at Ekupulumleni, and Khumbukhumbu,

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24) The word "UMACONSANA" is a noun derived from the verb "CONSA", meaning to drop slowly. Of the three words ("IZINGODO", "GAVINI"), "MACONSANA" describes the concoction best.

25) It is quite common to see a person carrying a bottle of beer and/or carton of "ijuba" (ISIPAKUPAKU) and drinking at regular intervals as he walks along the road.

26) This information was collected with the kind co-operation of the Mtunzini Police.

27) Khandisa is the "isigodi" in which the University of Zululand is situated.

and

One shebeen is found at the Ncekwane area.

The areas infested mostly with shebeens are, therefore, Gobandlovu, Port Dunford and Khandisa.

(b) Contraventions of the Dagga (Cannabis) Laws.

Closely connected with the contraventions of the liquor laws are contraventions of the dagga laws. Dagga is in most cases usually sold in the shebeens. During the period under discussion, contraventions of the dagga laws totalled 109 (1,66%). Of this total 90 (82,5%) were committed by males whereas 19 (17,5%) were committed by the females.

To see dagga problem in Mtunzini in its proper perspective, it is necessary to compare it with the dagga problem in South Africa as a whole as reflected in Table 6.

TABLE 6.

INCIDENCE OF DAGGA OFFENCES

IN SOUTH AFRICA, 1972.<sup>28)</sup>

RACE	TOTAL	% of TOTAL	% of TOTAL Population
Whites	2 809	7,4	26
Coloureds	7 943	20,6	14
Asiatics	1 347	3,5	4
Bantu	26 365	68,5	56
TOTAL	38 464	100%	100%

28) Annual Reports of the Commissioner of the South African Police for the year ended 30 June, 1972, R.P. 23 1973, p. 7

The above figures give the impression that the contraventions of dagga laws are relatively highest among the Africans. In fact, the dagga problem is so acute in Zululand in particular that according to a Station Commander of a big police district in Zululand, the police have information that dagga is smuggled to Cape Town every night.<sup>29)</sup> This is probably due to the fact that Natal is one of the most prolific dagga-cultivating areas in South Africa.<sup>30)</sup>

Mtunzini forms part of the dagga-producing areas in Natal. The most notorious dagga-producing areas in Natal are along the banks of the Tugela River and between the Black and the White Umfolozi rivers. The greater parts of these rivers cut through Zululand.<sup>31)</sup>

In Mtunzini in particular the most notorious dagga-producing areas are the Mhlatuze valley, Ongoye and Mangezi.<sup>32)</sup> Ongoye in particular is a hot-bed for dagga-producing mainly because some parts thereof are inaccessible by road. It is extremely difficult for a police van to reach the place. Ongoye has a fairly high rainfall and a very rich and luxuriant vegetation, factors which make it ideal for dagga-growing. Dagga at Ngoye is planted in between trees that grow wild and also in between banana trees. In the police district of Mtunzini, the dagga-producing areas are also noted for

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- 29) Ndabandaba, G.L.: "Crime and the African", Crime, Punishment and Correction, Volume 3, No.2, June 1974, p.33
- 30) Venter, H.J.: Kriminologie, Croft Pers Bpk, Pretoria, 1966, pp. 136-137 refers to the "Inter-Departmental Committee on the abuse of Dagga", which states, inter alia, that dagga flourishes in areas of high rainfall.
- 31) See maps of Natal and Mtunzini, appendix A
- 32) According to the Police and other informants, these areas are notorious for dagga growing in this area.

violence. The police have estimated that during the last three years, i.e. 1971/1972 and 1973 about three tons of dagga were destroyed by the police.

(c) Traffic Offences.

The traffic offences committed by the Africans in Mtunzini during the period under discussion totalled 726 or 11,30 per cent. The most common charges as revealed by the criminal statistics include reckless or negligent driving, driving without a licence, operating an unlicensed vehicle, overloading and conveying passengers for a reward in a private car.

In 1968 the total number of prosecutions for traffic offences in Mtunzini was 153. The corresponding figures for the Africans in South Africa for the same year was 44 727 prosecutions. This means that the Africans in Mtunzini accounted for 0,34 per cent of all prosecutions for traffic offences in 1968.

(d) Pass Laws, Failure to Pay Tax, Curfew Regulations and Prohibited Immigrants.

All the above-named crimes have one feature in common, viz, they all regulate to a greater or lesser extent the movements of the Africans in general. Pass laws which include, inter alia, failure to produce a reference book, defacing a reference book etc., numbered 713 or 10,83 per cent during the period under investigation. Failure to pay tax alone totalled 541 or 8,22 per cent; contraventions of curfew regulations numbered 380 or 5,71 per cent, while the transgressions of the laws regulating the influx of foreign Africans, who from time to time are arrested by the police and deported for being prohibited immigrants, totalled 47 or ,71 per cent during the period under discussion.

Altogether these crimes accounted for a total

of 1 681 or 26 per cent.

If the above situation in respect of Mtunzini is compared with the prosecutions for the African in South Africa as a whole, the following picture emerges: The figures for the statistical period 1971/1972 reveal that there was a total of 485 389 Crimes pertaining to pass laws, Bantu Tax and curfew regulations <sup>33)</sup> committed by the Africans. The corresponding total for the above crimes in Mtunzini during 1971 was 173, which is 0,04 per cent of all the crimes relating to pass laws, curfew regulations and Bantu Tax.

(e) Crimes of Violence.

There is no doubt that the most serious crimes are those which involve some degree of physical aggression. These crimes totalled 1 204 (18,3%) during the period under investigation.

The injuries inflicted by such crimes are usually grievous and often irreparable.

"There is no way to undo the damage done to a child whose father is murdered or to a person who has been seriously assaulted. And though medicine may heal the wounds of a victim of a robbery, and the police may recover his stolen property, they cannot restore to him the feeling of personal security that has been violently wrested from him. The most damaging of the effects of a violent crime is fear and that fear must not be belittled" <sup>34)</sup>

Comparing the crimes of violence in Mtunzini

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- 33) Annual Reports of the Commissioner of the South African Police for the year ended 30 June 1972 (R.P. 23/1973), p.4  
34) Labuschagne, J.J.: "Crime in South Africa," in Crime, Punishment and Correction, Volume I, No. 2, November, 1972, p. 8

TABLE 7.

TYPES OF WEAPONS USED AND THE METHOD  
OF ASSAULT USED IN MTUNZINI, 1967-1971 <sup>35)</sup>

WEAPON OR METHOD OF ASSAULT USED	YEARS					TOTAL
	1967	1968	1969	1970	1971	
HAMMER	2	1	-	-	-	3
FIST	15	11	13	11	7	57
CANE KNIFE	20	11	16	25	19	91
KNIFE	44	36	41	31	41	193
BUSH KNIFE	9	-	-	-	2	11
STICK	55	52	33	44	41	225
BOTTLE	1	5	1	1	2	10
KNOBKERRIE	16	3	5	5	6	35
STONE	3	2	2	2	1	10
HANDS	11	5	4	3	1	24
TEETH	3	-	1	1	-	5
IRON	5	2	4	4	1	16
HOE	1	1	-	1	1	4
PLANK	1	-	2	-	1	4
SHARP INSTRUMENT	2	2	5	4	6	19
SCREW DRIVER	1	1	-	-	-	2
BOILING WATER	1	1	-	-	-	2
SHAMBOCK	1	-	2	1	1	5
BOOTED FOOT	1	-	3	1	-	5
WIRE	1	-	-	-	-	1
MUG	-	1	-	-	-	1
AXE	-	2	2	-	-	4
SAW	-	2	-	-	-	2
ASSEGAI	-	2	5	1	1	9
POT	-	1	-	-	2	3
GLASS	-	1	-	-	-	1
FIRE	-	1	-	-	-	1
SHOES	-	1	-	1	1	3
REVOLVER	-	5	1	-	-	6
BLUNT INSTRUMENT	-	-	1	-	-	1
RING FORCE	-	-	1	-	-	1
PANGA	-	-	-	1	-	1
PLIERS	-	-	2	-	-	2
CROWBAR	-	-	1	-	1	2
PIPE	-	-	1	-	1	2
FINGER NAILS	-	-	-	-	1	1
UNKNOWN INSTRUMENT	-	-	2	-	-	2

35) Data extracted from the R.C.A. Records at the Mtunzini Police Station, 1967-1971.

with the crimes of violence among the Africans as a whole, it becomes clear that the Africans in general contribute an exceptionally high percentage of the total prosecutions and convictions for violence as the following statistics for 1967/1968 will illustrate. During this period alone, there was a total of 98 897 prosecutions and 66 769 convictions for assaults only among the Africans. In Mtunzini during the same period, the total number of prosecutions for assaults among the Africans was 131. This constitutes 0,13 per cent of all prosecutions for assaults in respect of the Africans in South Africa during the statistical year 1967/1968.

From the records at the Mtunzini Police Station, it transpired that in the commission of the crimes of violence, the knife was the most widely used weapon. In view of the fact that the knife was not the only weapon used, it is fitting at this juncture to examine the weapons most commonly used by the Africans in Mtunzini in the perpetration of violent crimes. The kinds of weapons used are reflected in Table 7.

The following significant facts emerge from Table 7:

On the basis of the types of weapons used, the crimes of violence may be grouped into cases in which the assailant either punched, kicked, tripped or pushed the victim; cases in which a sharp instrument was used, and finally cases in which a blunt instrument was used.



The variety of weapons and methods used in the commission of violent crimes against the person are legion, ranging from the use of parts of the body such as teeth and finger-nails, to utensils such as mugs and even firearms. Even this wide range of weapons reflected in Table 7 does not complete the sinister list, because it only refers to weapons used during a specific period, i.e. 1967-1971. Nevertheless, this variety of weapons used forms a remarkable contrast to those used in traditional times.

The knife has gained more popularity than the stick, which, as has been explained, was used mostly in traditional times. Whereas the knife (including the cane knife) was used 295 times, the stick (including the knobkerrie) was used 260 times during the period under discussion.

The use of the fist has also become a fairly popular method of assault as reflected in Table 7.

The sharp instrument in Table 7, where it is not a knife, probably refers to the so-called "NTSUMENTSHU", the use of which has been described in Chapter 3, pp. 73 and 75 and Chapter 4, p.95.

(f) Property Crimes (Class D)

The most important property crimes in Mtunzini include theft, housebreaking, arson, malicious damage to property, fraud and forgery (falsitas). These crimes totalled 529 or 8,04 per cent during the period under discussion.

Taking once more the period 1967/1968 for comparative purposes, it emerges that the prosecutions for property crimes among the Africans

totalled 98 184 while the convictions numbered 58 339. The corresponding number of prosecutions in Mtunzini for the same period was 109. This constitutes 0,11 per cent of all prosecutions for property crimes among the Africans for 1967/1968.

(g) Stocktheft.

the total number of prosecutions for stocktheft in Mtunzini was 86 or 1,15 per cent. If the above prosecutions are compared with the total number of prosecutions for stocktheft among the Africans in South Africa for the year 1967/1968, it emerges that there were 13 238 prosecutions and 8 796 convictions. The corresponding total for the Africans in Mtunzini for the same period was 18, which is 8,14 per cent of all prosecutions for stocktheft by the Africans in South Africa during the period 1967/1968.

(h) Sexual Crimes (Class B).

The sexual crimes reflected in Table 7 as committed by the Africans in Mtunzini totalled 66 or 1 per cent. These include abduction, rape and contraventions of the Immorality Act, Act No. 23 of 1957.

Adultery which is no longer a crime according to the law of the land <sup>36)</sup> is nevertheless still a crime in terms of Bantu law. <sup>37)</sup>

Although the incidence of adultery was not high, the police do charge the Africans for adultery from time to time. The total number of prosecutions for adultery was 14 or 0,21 per cent during the period under discussion.

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36) Green v. Fitzgerald, 1914, A.D., p. 88. In this case it was decided that adultery as a crime had been obrogated by disuse.

37) See Section 162 (1) of the Natal Code of Bantu Law, No. R. 195, Volume 25, 1967, pp. 30-31

During 1967/1968 the Africans in South Africa as a whole were responsible for a total of 6 923 prosecutions for sexual crimes and 3 485 convictions. The corresponding total for the Africans in Mtunzini for the same period was 9 prosecutions for sexual crimes which is 0,13 per cent of all prosecutions for sexual crimes by the Africans in South Africa during the period 1967/1968.

#### 5.5 Summary.

An analysis of the present extent of crime has revealed that the crimes committed by the Africans in modern times, even in rural areas, are radically different from those found in the olden days, not only in extent, but also in their nature as well as their causes. The crimes with the highest incidence are violations of personal relations (Class C crimes) and crimes against property (Class D crimes). These are followed by violations pertaining to community life (Class B crimes); violations of social relations (Class F crimes). Economic crimes show the lowest incidence. Crimes relating to social relations have the highest rate of increase among the Africans in general. Petty offences such as influx control offences, Bantu tax offences, violations of curfew regulations and other infringements classified above the Code Number 500 and ignored by the Department of Statistics, would have shown the highest incidence as well as the highest rate of increase if they had been included in the report issued by the Department of Statistics. 38)

Obviously the crimes discussed in this chapter were not all found in the traditional Zulu society. Traffic offences (Class F crimes) are a good example. The

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38) The report referred to here is Report No. 08-01-04, Statistics of Offences and of Penal Institutions, 1967-1968, The Government Printer, Pretoria.

crimes mentioned and analyzed in this chapter as being common among the Africans in modern times illustrate beyond all doubt that the nature and course of crimes are no longer what they were in the old traditional times.

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## CHAPTER 6.

### THE AGE FACTOR IN CRIME.

#### 6.1 Introduction.

A realistic assessment of the problem of crime in any community is far from complete unless some consideration is given to the basic characteristics of the offenders such as the age factor. In this chapter the significance of the age distribution of crime will be examined with reference to the Africans in South Africa in general, and in Mtunzini in particular.

#### 6.2 The Significance of Age.

Age is an important factor in determining the type of crime committed, though it is a neutral concept which acquires criminological significance only in interaction with environmental factors. The biological and psychological changes that man undergoes in the course of years effect changes in his interests, his sense of values and his orientation, all of which considerably help to direct and colour his conduct. Factors that cause crime do not influence man equally at all ages. <sup>1)</sup>

As far back as 1831, Quetelet, <sup>2)</sup> the Belgian statistician and criminologist, contended that age was the most important causal factor in crime, that at certain periods of the life criminal tendencies were stronger than at others and that certain periods of life followed a specific sequence. Thus said Quetelet, man's earliest crimes were crimes against property, then as man comes to full strength and maturity, he commits crimes of violence. Immorality offences reach their peak during puberty and occur again towards the end of life. <sup>3)</sup>

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1) Von Hentig, H.: Crime, Causes and Conditions, Mc-Graw-Hill Book Company, New York, 1947, pp. 140-145

2) Van Bemmelen, J.M.: Criminologie, Leerboek der Misdaadkunde, N.V. Uitgewers-Maatschappij, Zwolle, 1952, pp. 222-224

3) Ibid., pp. 222-224

### 6.3 Age and Criminal Liability.

In South African Criminal law an infans is held to be incapable of committing a crime or doli incapax.<sup>4)</sup> After completion of the seventh year and until completion of the fourteenth year, the child is presumed to be doli incapax, but this presumption is rebuttable.<sup>5)</sup> Thus the same person may, for instance, steal a car at seven and again at twenty-three years of age. Both acts may be identical, but legally and socially, they are not, for the former is a delinquency while the latter is a crime, because technically a person does not commit a crime until he reaches the age which has been set by the state. Both these factors - age in terms of the life cycle of the individual and the arbitrary legal designation - are important in explaining the subject of age and criminality.<sup>6)</sup>

### 6.4 The Socio-and Psycho-criminological Significance of Age.

In analyzing the ages of offenders, the following factors<sup>7)</sup> ought to be borne in mind:

First, age refers to the different stages of organic evolution and involution through which the individual passes from birth to death.

Secondly, age is important, not as a matter of chronology, but as a characteristic of an individual's relationships to the whole of society. Age as chronology is but the invention of man in counting the growth of a person in time and is arbitrary. The essence of age is that it is an index for indicating the individual's social position. Basically then age is merely an attribute of an individual, the same as his weight, and not a cause of his actions.

Thirdly, age is a convenient statistical device used

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4) Hoffmann, L.H.: The South African Law of Evidence, Butterworths, Durban, 1970, p. 368

5) Ibid., p. 368

6) Von Hentig, H.: op.cit., pp. 129-131

7) Ibid., pp. 129-131

to classify and to enumerate individuals quantitatively. Under a designated age, a person is considered a juvenile delinquent, supposedly incapable of committing a crime.

It is important also to bear in mind that for the purpose of crime statistics and in order to draw conclusions based on mass phenomena, criminals are classified according to age only, without taking into consideration whether the individuals concerned have reached the ordinary stage of development common to that particular phase of life. <sup>8)</sup>

As the individual passes through his life cycle, he, in effect, moves through a sequence of subcultures, each with its own patterns of approved conduct. Some of these subcultures are more difficult to live in than in others. An individual's age is thus an important sociological characteristic, which carries in its train particular values, attitudes, goals and problems.

Age is also important in determining the type of crime committed. This is because the attitudes, interests and other personality attributes vary at different stages of development. Consequently, the opportunity to transgress the law as well as the incidence of certain forms of crime are not the same for all age-groups. For this reason, certain crimes, from their very nature, cannot be committed by a juvenile for factual or legal reasons. A juvenile cannot, for example, be arrested for bigamy or non-support of children. Having no licence, he is theoretically denied many traffic offences. Since he is lacking in technical skill, it is arduous for him to commit forgery or counterfeiting. With no amount of money entrusted to him, he cannot easily commit embezzlement. <sup>9)</sup>

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8) Ibid., p. 145

9) Ibid., pp. 142-145

Puberty and post-puberty, being periods of greater emotional tension and friction, are more likely to cause deviant behaviour in its various manifestations, including crime. During his youth, the individual has more opportunities for falling into crime than in his later life. As man ages and his life becomes more settled, social and cultural factors and institutions in the community have a more stabilizing effect on him. His character and his life become steadier and his behaviour is directed towards greater stability.

" ---- The older we get and the more the social institutions grip us, the more we reach a point of character stabilization and the less we can tear loose from moorings of institutions and character stability". 10)

A number of criminologists have shown that the younger age levels are more conducive to criminal behaviour than the later years of life. Ruth Cavan<sup>11)</sup> has asserted that "criminal activity begins in childhood, reaches full flower in late adolescence or early adulthood and declines with age."

#### 6.5 Age Patterns in Crime.

There have been a number of investigations into the distribution of crime according to age or age-groups. The following statistics give a general picture of crime according to age.

Hurwitz<sup>12)</sup> cites Danish statistics on 335 criminals detained in State Prisons in 1946. The majority of these committed their first offences between the ages of fifteen and thirty-four years, and most of them were in the age-group eighteen to nineteen years.

For Soviet Russia, Calcott<sup>13)</sup> gives the peak age

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10) Ibid., pp. 154-155

11) Cavan, R.S.: Criminology, Thomas T Cromwell Company, New York, 1947, p. 285

12) Hurwitz, S.: Criminology, G.E.C. Gad Publishers, Copenhagen, 1952, pp. 140-141

13) Calcott, M.S.: Russian Justice, New York, 1935, quoted by Mannheim, H.: Comparative Criminology, A Textbook, Vol. 2, Routledge & Kegan Paul, London, 1966, p.681



before the last war as at about 20-24 years for both sexes, with a sharp decline from then up to 40 years and a less marked one from 40 to 60 years.

The Italian figures for the period 1950-1956 show, for both sexes together, per 1 000 of population, an even sharper rise from 0,71 for the 14-18 group to the peak of 4,61 for the 18-21 group and a decline to 3,43 for the 21-25, rising again to 4,07 for the 25-30 group, and thereafter a slow, but persistent decline to 2,87 for 40-50, 1,96 for 50-60, 1,09 for 60-70, and 0,45 afterwards. <sup>14)</sup>

Venter <sup>15)</sup> in an analysis of the ages at which 550 recidivists and 140 first-offenders went to trial revealed that:

- (a) The highest crime percentage fell into the age-group 17-18 years. Of the 550 recidivists 45,1 per cent had stood trial as juvenile offenders at the very beginning of their criminal career. For first-offenders the corresponding figure was 17,9 per cent.
- (b) The number of convicted juveniles among the recidivists rises rapidly from their tenth year and reaches its peak about the sixth year.
- (c) One third of the 550 recidivists and 140 first-offenders were sentenced for the first-time at the ages 19-20 years, with the peak at 19 years for the recidivists and at 21 years for the first-offenders.
- (d) The percentage of first convictions remains fairly high in the age-group 25-29 years, but from the age of 30 years, there is a considerable decrease for first-offenders.

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14) Mannheim, H.: op.cit., pp. 680-681

15) Venter, H.J.: Residivisme, H.A.U.M., Cape Town, 1966, pp. 140-141

Freed <sup>16)</sup> states that although the figures relating to the age distribution of the criminal subjects he investigated, were inadequate from the point of view of statistical analysis, it appears that the centre of gravity for juvenile delinquents falls between 18 and 19 years. Most male offenders commit crimes between the ages of 20 and 29 years and offending females commit crimes at the considerably higher age of 30-39 years.

6.6 Distribution of Crime According to Age in South Africa.

The distribution of crime according to age-groups in South Africa is reflected in Table 8 referring to age-groups admitted into prisons during the year ended 30 June 1973.

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16) Freed, L.F.: Crime in South Africa, Juta, Cape Town, 1963, p. 17

TABLE 8.

Age Groups Admitted According to Race in South Africa Prisons, 1 July 1972 to 30 June 1973. 17)

AGES	WHITES		BANTU		ASIATICS		COLOURED		TOTAL
	Male	Female	Male	Female	Male	Female	Male	Female	
18 years & under	288	6	15 078	4 969	52	-	2 429	663	23 485
19 years	399	25	12 563	5 346	68	4	2 316	655	21 376
20 years	568	43	19 316	7 115	73	7	3 332	904	31 358
21-29 years	2 797	196	103 340	21 192	506	34	19 071	3 879	151 015
30-39 years	1 888	113	62 314	12 678	352	49	10 018	2 235	89 647
40-59 years	1 341	82	28 959	6 676	296	47	5 268	863	43 532
60 years & over	174	9	2 343	558	28	2	581	92	3 787
TOTAL	7 455	474	243 913	58 534	1 375	143	43 015	9 291	364 200
Sentenced juveniles in custody as at 30 June 1973.	119	1	4 274	328	31	2	1 432	66	6 253

17) It was difficult for the investigator to obtain data regarding the age distribution of crime from the police statistics. Consequently statistics taken out of the Annual Report of the Commissioner of Prisons for the year ended 30 June, 1973, R.P. 91/1973, p. 7 were used to illustrate the age distribution of crime in South Africa.

An analysis of the data in Table 8 reveals that there was a total of 364 200 people of all age-groups admitted into prisons during the year ended 30 June 1973.

- (a) The total for the Africans, both male and female, was 302 447 which constitutes 83,04 per cent of all admissions.
- (b) The centre of gravity for crime among all races in South Africa fell between the age-groups 21-29 years.
- (c) Crime decreases as age increases.

#### 6.7 Crime According to Age-Groups in Mtunzini.

In analyzing the police statistics of crime for the Mtunzini area, the investigator noticed a few isolated cases where offenders did not know their ages. This was due to illiteracy and is of little statistical significance.

The incidence of crime according to age-groups for the area of investigation is accordingly given in Table 9.

It emerges from Table 9 that:

- (a) Criminality in Mtunzini begins in early childhood, increases during adolescence and young adulthood; decreases during adulthood and virtually disappears in old age. <sup>19)</sup>
- (b) The age-group 8-10 years was responsible for only a small total of 6 or ,1 per cent during the period under discussion. Thereafter, there was a gradual increase in crime from the age of 11 years to the

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19) For purpose of Table 9 childhood = 8-12 years; adolescence and young adulthood = 13-24 years; maturity or adulthood = 25-60 years and old age = 61 years and over.

TABLE 9.

Age Distribution of Crimes in Mtunzini, 1967-1971 18)

AGES	1967	1968	1969	1970	1971	TOTAL
8-10	-	1	-	1	4	6
11-15	22	8	22	15	14	81
16-20	172	158	134	180	218	862
21-25	314	243	222	208	280	1 267
26-30	292	259	244	259	276	1 330
31-35	211	145	134	82	184	756
36-40	267	213	135	180	184	979
41-45	165	83	95	135	84	562
46-50	126	91	79	81	67	444
51-55	43	24	22	32	13	134
56-60	24	22	19	28	12	105
61-65	10	6	7	6	4	33
66-70	-	3	2	9	1	15
71-75	-	-	2	2	-	4
76 & over	-	1	2	-	-	3
TOTAL	1 646	1 257	1 119	1 218	1 341	6 581

18) Data systematized in this Table was extracted from the R.C.A. (S.A.P.I.) records at the Mtunzini Police Station for the years 1967-1971.

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15th year. This was followed by a sharp rise from the 16th year, namely from a total of 81 (1,23%) in the age-group 11-15 years, to a total of 862 (13,1%) in the age-bracket 16-20 years. The juveniles as a whole, i.e. those below the age of 21 years, accounted for a total of 949 crimes or 14,42 per cent during the period under discussion.

- (c) This could mean either that although juvenile delinquency is prevalent in this area, it does not constitute a serious problem, or that the parents are not always eager to report their children to the police. The latter explanation is more likely to be the correct one. In the true Zulu (African) tradition, for instance, it would be quite anomalous for parents to report a child to the police, unless, of course, his transgression was an extremely serious one. <sup>20)</sup> A parent who goes to the extent of handing his child over to the police is regarded as failing to discipline his child in the culturally accepted way. <sup>21)</sup>
- (d) There was another sharp rise from the 21st year so that in the age-group 21-25 years, the total was 1 267 or 19,3 per cent during the period under discussion.
- (e) The age-group 26-30 years accounted for the highest total of all the age-groups in five years, namely 1 330 or 20,2 per cent. While the centre of gravity for crime in South Africa as a whole is in the age-group 21-29 years, the centre of gravity for crime in Mtunzini is in the age-group 26-30 years.
- (f) There was a sharp decline in crimes from the

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20) This matter is regulated, inter alia, by section 41 of the Natal Code of Bantu Law, Volume 25, No. R 195, 1967, The Govt. Printer Pretoria.

21) According to a number of informants it is unbecoming to take a child to the police. The parents must try and discipline the child themselves.

31st year, namely from a total of 1 330 crimes in the age-group 26-30 years, there was a sharp decrease to a total of 756 crimes or 11,5 per cent in the age-group 31 to 35 years. Thereafter, the totals fluctuate until a final decline in crime is reached in the age-group 51 to 55 years. This decline continues into old age, until in the age-group 76 years and over, a small total of 3 crimes (0,5%) is reached.

- (g) Clearly, then, the life span 16 to 50 years is of criminological significance in Mtunzini. Individuals falling in this age-group accounted for a total of 6 200 crimes or 94 per cent during the period under discussion.
- (h) A more detailed analysis shows that the age-group 36 to 40 years committed more crimes than the age-group 31 to 35 years. While the former was responsible for a total of 979 or 14,9 per cent, the latter accounted for a total of 756 crimes or 11,5 per cent. The age-group 51-76 years and over, accounted for a total of only 294 crimes or 4,5 per cent of the crimes committed during the period under investigation.

The decrease in crime in the older age-groups is due to the fact that the older person usually retires from the active struggle in life, including crime. Especially among the Zulus (they form the majority of the African population in Mtunzini), the aged is actually given a lot of respect, because he is regarded as a mediator and a mouthpiece of the living young to their ancestors (ABAPHANSI). <sup>22)</sup>

Undoubtedly, then, the laws of organic growth and decline have something to do with the relation between age and the incidence of crime. <sup>23)</sup>

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22) Krige, E.J.: The Social System of the Zulus, Shuter and Shooter, Pietermaritzburg, 1965, pp. 283-285

23) Von Hentig, H.: op.cit., pp. 140-145

TABLE 10

CONVICTIONS ACCORDING TO AGE AMONG THE BANTU IN SOUTH AFRICA, 1967 - 1968<sup>24)</sup>

CLASS AND OFFENCE	AGE IN YEARS			TOTAL
	7-17 YEARS	18-20 YEARS	21 YEARS AND OVER	
A1. Public safety, order and peace	754	1 228	4 274	6 256
A2. Administration of justice & good order	466	1 480	9 637	11 583
A3. Public finance and revenue	9	44	1 112	1 165
B1. Family life & care of children	33	136	2 168	2 337
B2. Indecent, sexual & related matters	501	803	2 181	3 485
B3. Liquor and drugs	1 790	6 949	46 149	54 888
B4. Other matters against community life	278	593	4 091	4 962
C1. Life or body of a person	6 304	11 451	51 956	69 711
C2. Reputation & honour of a person	20	43	110	173
C3. Liberty	25	62	185	272
D1. Burglaries & related matters	3 314	2 482	5 527	11 323
D2. Theft from the person by force	798	1 429	2 623	4 850
D3. Stocktheft	1 223	925	6 648	8 796
D4. Other Thefts	7 370	7 384	23 678	38 432
D5. Falsitas & related matters	72	148	881	1 101
D6. Other matters relating to property	750	603	2 336	3 689
D7. Animals	149	80	471	700
E1. Economy general	-	-	9	9
E2. Agriculture, animal husbandry, etc	-	1	3	4
E3. Mining related matters	4	15	267	286
E4. Manufacturing & construction	-	-	5	5
E8. Other economic	-	-	6	6
F1. Road Traffic	790	2 544	34 891	38 225
F6. Health Services	-	1	57	58
TOTAL	24 650	38 401	199 265	262 316

24) Report No. 08-01-04, Statistics of Offences And Of Penal Institutions, 1967-1968, The Government Printer, Pretoria, tables 9.7 and 9.8 pp. 127-137.



## 6.8 Specific Crimes According to Age.

The above discussion has shown the comparative frequency of crime in the different age-groups. In the following analysis the investigator will examine the specific crimes according to age as well as the changes in the types of crime with advancing age with particular reference to the Africans in South Africa and Mtunzini.

### 6.8.1 South Africa.

The general trend of specific crimes according to age among the Africans in South Africa is reflected in Table 10 which reveals that:

- (a) In the age-group 7-17 years, the Africans are convicted mostly of crimes against property. During the statistical period 1967-1968, there was a total of 13 676 convictions (19,85% of all convictions during the statistical period 1967-1968).

Other classes of crime are relatively unimportant in this age-group as illustrated by the following: violations of social relations gave a total of 790 convictions and accounted for 0,3 per cent of all convictions for Class F crimes during the statistical period 1967-1968 (this is statistically insignificant).

- (b) In the age-group 18-20 years, the most important crimes in order of importance are crimes against property, totalling 13 051 convictions (18,94% of all convictions for Class D); Class C crimes, i.e. violations of personal relations, with a total of 11 556 convictions (16,472% of all convictions for Class C crimes) and finally violations of community life (Class B), totalling 8 481 convictions and accounting for 12,914 per cent of all convictions in respect of Class B crimes among the Africans during the statistical period 1967-1968.

TABLE 11.

AGE DISTRIBUTION OF OFFENDERS IN MTUNZINI ACCORDING TO TYPE OF OFFENCE COMMITTED : 1967-1971. 26)

Type of Crime	AGES OF OFFENDERS																								TOTAL							
	UNDER 21 YEARS OF AGE										21 YEARS AND UNDER 30 YEARS																					
	1967					1968					1969					1970					1971											
	M.	F.	M.	F.		M.	F.	M.	F.		M.	F.	M.	F.		M.	F.	M.	F.		M.	F.	M.	F.								
THEFT	22	3	17	1	17	9	14	5	15	5	10	2	17	3	24	2	8	7	22	-	25	2	12	2	3	2	16	8	25	1	299	
STOCKTHEFT	2	-	2	1	-	-	3	-	-	1	3	5	-	-	3	4	-	4	-	4	1	10	-	12	-	17	1	5	-	8	-	86
M.I. TO PROPERTY	2	-	2	-	-	-	1	1	3	-	3	-	-	-	3	2	-	2	-	5	-	6	-	8	4	1	-	1	1	-	1	46
ARSON	1	-	-	-	1	-	-	-	-	-	2	-	-	-	2	-	2	-	-	-	9	-	2	-	-	-	3	-	-	-	23	
HOUSEBREAKING	29	-	28	-	25	-	-	-	-	-	4	-	25	1	14	-	-	-	-	-	9	-	5	1	1	1	-	3	2	-	148	
TRESSPASSING	8	4	10	-	1	6	6	19	10	21	11	20	14	2	1	4	11	15	27	20	17	29	13	4	2	2	3	-	15	4	299	
GAMBLING	-	-	-	-	-	-	-	-	3	-	-	-	-	-	2	-	1	-	4	-	-	-	-	-	2	-	3	-	1	-	16	
FORGERY	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	2	-	-	-	3	-	1	-	-	-	-	-	1	-	9	
ROBBERY	6	-	4	1	3	-	2	-	2	-	5	-	2	3	7	-	4	-	9	-	5	-	3	-	5	-	-	-	7	-	68	
LIQUOR LAWS	7	12	23	25	5	10	13	7	9	4	58	30	34	50	45	40	78	48	55	63	157	98	86	104	102	72	176	134	136	120	1801	
DAGGA LAWS	1	-	1	-	1	-	3	-	5	-	15	-	8	1	1	1	5	2	6	-	6	2	24	6	2	1	7	3	5	3	109	
PASS LAWS	47	7	12	1	17	-	14	-	13	-	69	13	53	1	56	-	62	-	17	-	108	8	63	4	62	-	66	-	20	-	713	
CURFEW REGULATIONS	80	13	4	-	-	-	3	3	14	9	50	15	3	3	2	1	7	5	8	11	106	16	2	3	1	1	3	4	12	1	380	
MURDER	1	-	1	-	5	-	1	-	2	-	-	-	2	-	-	-	9	-	7	-	2	-	6	-	15	-	5	-	7	-	63	
ASSAULT	31	16	9	7	19	3	30	13	16	10	26	18	33	4	39	18	60	111	12	11	50	16	75	3	44	4	60	-	72	4	814	
RAPE	1	-	1	-	3	-	1	-	7	-	2	-	2	-	7	-	6	-	3	-	8	-	6	-	2	-	6	-	5	-	60	
ABDUCTION	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	
CULP.HOMICIDE	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	-	4	-	-	-	1	1	1	-	-	-	9	
NON-SUPPORT OF CHILDREN	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	-	1	-	-	1	-	2	-	6	-	-	-	7	-	19	
CR. PER. TO BANTU LAW	-	-	-	-	-	-	-	-	-	-	1	-	-	1	1	-	-	-	2	2	16	2	5	-	1	-	-	-	2	-	33	
RADIO LICENCE	-	1	-	-	-	-	-	-	-	-	4	2	1	3	1	-	-	-	-	-	4	1	8	3	-	-	-	-	-	-	28	
TRAFFIC OFFENCES	11	4	28	-	2	-	13	-	40	-	12	6	47	-	31	1	50	-	72	-	35	8	78	-	75	-	74	-	139	-	726	
POSS. OF DANG. WEAPON	8	-	3	-	1	-	-	-	3	-	8	-	4	-	4	-	1	-	2	-	3	-	9	-	1	-	6	1	1	-	54	
ESCAPING FROM CUSTODY	2	-	3	-	1	1	3	-	2	-	2	-	2	-	6	-	-	-	4	6	5	-	1	-	1	-	1	-	3	-	37	
IMMORALITY ACT	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	2	
FRAUD	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	1	-	-	-	-	-	-	-	1	-	1	-	-	-	4	
PROHIBITED IMMIGRANT	2	-	-	-	-	-	-	-	-	-	1	3	2	-	-	-	-	-	1	-	20	2	5	-	4	-	3	4	4	-	47	
RESISTING ARREST	-	-	1	-	-	-	-	-	-	-	-	3	-	3	-	2	-	3	-	-	6	-	2	-	-	-	5	-	-	-	25	
CONTEMPT OF COURT	-	-	-	-	-	-	-	-	-	-	3	-	1	-	3	-	-	-	-	-	6	-	2	-	-	-	-	-	-	-	15	
FAILURE TO PAY TAX	13	-	13	-	17	-	-	-	-	-	17	-	62	-	89	-	-	-	28	-	82	-	81	1	98	-	-	-	40	-	541	
INFANTICIDE	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	2	
FACTION FIGHTS	-	-	-	-	-	-	-	-	3	-	-	-	-	-	-	-	-	-	9	-	-	-	-	-	-	-	-	1	-	-	13	
OTHER CRIMES	9	-	4	3	8	-	6	2	4	2	6	4	9	3	12	-	10	4	12	-	10	2	16	7	19	1	10	-	24	3	190	
TOTAL																											6 581					

26) Data extracted from the R.C.A. Records, Mtunzini Police Station, 1967-1971.

- (c) The age-group 21 years and over has the highest number of convictions in respect of all classes of crime. The crimes with the highest incidence in this age-group are violations of community life (Class B) which gave a total of 54 589 convictions and accounted for 83,12 per cent of all convictions for Class B crimes among the Africans during the statistical period 1967-1968.

Violations of personal relations (Class C) totalled 52 251 or 74,48 per cent of all convictions for Class C crimes among the Africans during the above-named period.

Crimes against property (Class D) totalled 42 164 convictions and were responsible for 61,204 per cent of all convictions for Class D crimes among the Africans during the statistical period 1967-1968.

Also important in the age-group 21 years and over are violations of social relations (Class F) and crimes pertaining to the safety of the state and good order (Class A). They totalled 34 948 (91,39%) and 15 023 (79,052%) respectively of all convictions for Classes F and A Crimes during the statistical period 1967-1968.

Finally, economic crimes, as represented by contraventions of the insolvency laws, offences relating to the Companies Act, Act No. 61 of 1973 and illicit traffic in gold and diamonds, have the lowest incidence among the Africans in all age-groups. In all age-groups there were only 310 convictions (0,118% which is statistically insignificant) for Class E crimes.

6.8.2 Mtunzini.

An analysis of the data in Table 11 reflecting the age distribution of offenders in Mtunzini according to type of offence, reveals the following important facts:

(a) The age-group 7-20 years <sup>25)</sup>

The distribution of the different classes of crime among the Africans in this age-group in Mtunzini shows that:

Crimes against property (Class D) constitute the majority of crimes. They totalled 232 or 3,53 per cent of all crimes committed by the Africans in Mtunzini during the period under discussion.

Violations of personal relations are the next important group of offences in this age-group in Mtunzini. These crimes numbered 164 and accounted for 2,49 per cent of all crimes committed by the Africans in Mtunzini during the period under investigation.

Finally, violations of community life gave a total of 139 or 2,11 per cent of all the crimes committed by the Africans in Mtunzini during the period under discussion.

Crimes pertaining to the safety of the state and good order show the lowest incidence among the Africans in this age-group in Mtunzini. They totalled only 15 and accounted for 0,23 per cent, which is statistically insignificant.

(b) The Age-Group 21-29 years.

In this age-group violations of community life (Class B), constitute the majority of crimes among the Africans. They totalled 582 and

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25) In the case of Mtunzini, the investigator used the age-groups 7-20 years; 21-29 years and 30 years and over, respectively.

accounted for 8,84 per cent of all crimes committed by the Africans in Mtunzini during the period under discussion.

Violations of personal relations gave a total of 350 and were responsible for 5,32 per cent of all crimes committed by the Africans in Mtunzini during the period under investigation.

Finally, violations of social relations numbered 219 and accounted for 3,33 per cent of all crimes committed by the Africans in Mtunzini during the period under discussion.

(c) The Age-group 30 years and over.

The following crimes are important among the Africans in this age-group in Mtunzini:

Violations of community life are the most common crimes in this age-group. They gave a total of 1 271 and constituted 19,31 per cent of all crimes committed by the Africans in Mtunzini during the period under discussion.

Violations of social relations totalled 409 and represented 6,21 per cent of all crimes committed by the Africans in Mtunzini during the period under discussion.

Violations of personal relations gave a total of 363 and represented 5,52 per cent of all crimes committed by The Africans in the area of investigation during the period 1967 to 1971.

The total for crimes against property was 227 i.e., 3,45 per cent of all crimes committed by the Africans in Mtunzini during the period under discussion.

Crimes pertaining to the Safety of the State

and good order, gave a negligible total of 48 (0,73%) which is statistically insignificant.

It is clear from the above exposition that the age distribution of crime among the Africans in Mtunzini follows more or less the same pattern as that for South Africa. This is illustrated by the fact that the youth both in South Africa (7-17 years) and in Mtunzini (7-20 years) commit mostly crimes against property.

#### 6.9 Summary.

Right through this chapter, it has become evident that age is an important factor in determining the type of crime committed. Among the Africans in South Africa in the age-group 7-17 years, the most common crimes in their order of importance are crimes against property (Class D.); and violations of social relations. Economic crimes are not important in this age-group. The age-group 18-20 years follows the same pattern of the distribution of crimes with the exception that violations of personal relations and violations of community life, are also important in this age-group. In the age-group 21 years and over, the Africans commit mostly violations of community life, crimes pertaining to personal relations, crimes against property and violations of social relations.

The distribution of the different classes of crime among the Africans in the various age-groups in Mtunzini follows more or less the same pattern as described above. In the age-group 7-20 years, the order of importance is as follows: crimes against property, violations of personal relations and violations of community life. In the age-group 21-29 years, the order of importance is the following: violations of community life, violations of personal relations and violations of social relations. Finally, in the age-group 30 years and over, violations of community life; violations of social relations, violations of personal relations and crimes against property are the most important crimes.

## CHAPTER 7.

### Sex Differences and Crime .

7.1 Introduction: the question of the differential liability to crime of males and females may be studied according to age-group over a period of years. The sex incidence of crime is accordingly examined in this chapter.

#### 7.2 Offenders by Sex.

Crime whether considered in terms of persons arrested, convicted or imprisoned, is essentially a male prerogative.<sup>1)</sup> Referring to this tendency, Lunden<sup>2)</sup> says that with only a few exceptions, about 90 per cent of all persons arrested are men and only 10 per cent are women. He later points out that most crimes are committed by men between 20 and 30 years of age.<sup>3)</sup> The exact distribution of men and women in crime depends, however, on the character of the offence.

Describing what she calls the criminal scene in England and Wales, Josephine Bell<sup>4)</sup> holds that the majority of crimes are committed mostly by males under the age of twenty-five. Freed<sup>5)</sup> also emphasizes the fact that the question of the differential liability to the crimes of males and females illustrates that males are more liable to crime than females. Comparing the various racial groups, he found that, on the average, African and Coloured females are 34,4 times and Asian females 6,6 times more liable to criminality than are White females, and that, on the other hand, African and Coloured females are 5,1 times more liable to criminality than Asian females. This tendency he explains by saying that it is likely that African and Coloured females are more intensely subjected than White

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1) Lunden, W.A. Crimes and Criminals, The Iowa State University Press, Ames, 1967, p. 10

2) Ibid., p. 10

3) Ibid., p. 125

4) Bell, J.: Crime in Own Time, Nicholas, London, 1962, p. 43

5) Freed, L.F.: Crime in South Africa, Juta and Company, Cape Town, 1963, p. 174

and Asian females to the diverse social forces which are contributory to personal disorganization.

Venter and Retief <sup>6)</sup> point out that among the Africans the difference between the criminality of the males and that of the females is not as pronounced as in the case of the White. The sexual distribution of crimes, however, shows that the differences are more obvious in the nature of the crimes than in the incidence.

Crime is thus in many respects a typical male reaction. It is necessary to find some explanation for this tendency.

### 7.3 Possible Explanations of the Differential Sex Rate in Crime.

Lack of physical strength has often been quoted as explaining the lower female rate of offences against the person, <sup>7)</sup> but Pollak <sup>8)</sup> argues against this, maintaining that in the present age, technological inventions enable the weaker sex to be physically aggressive without possessing manual strength, and if women are strong enough to do comparatively heavy work in factories, shops and households, why should they not be capable of physical aggression too?

It is, he concludes, the cultural stereotype, the assignment of certain social roles rather than their physique that reduces their use of violent methods. To some extent this is true, but one has to bear in mind that, as Pollak <sup>9)</sup> shows himself, the average physical inferiority of women which can hardly be denied, has inevitable psychological consequences favouring non-violent techniques. This in conjunction with their actual

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6) Venter, H.J. and G.M. Retief: Bantoe-Jeuqmisdad, Nasionale Handelsdrukkery, Bpk, Elsiesrivier, 1960 pp. 11-30

7) Mannheim, H.: Comparitive Criminology, Vol.2., Routledge & Kegan Paul London, 1965, p. 700

8) Ibid., p. 700

9) Ibid., p. 700



lack of physical strength explains why women prefer poisoning to other techniques of killing.

Lombroso <sup>10)</sup> spoke of the greater 'ferocity' of women criminals, but stressed the comparative rarity of the born criminal type among female offenders, only 14 per cent as against 31 per cent among males. Prostitutes, on the other hand, he believed to belong far more frequently (about 38 per cent) to this type. Female offenders were mostly occasional law-breakers. Lombroso wrote of the greater biologically conditioned conservatism of women, which makes it easier for them to accept the existing social order even where it is to their disadvantage.

Nevertheless, women can become rebels against established authority just as well as men and commit crimes for the sake of the values in which they believe. Thus Mary S. Calcott <sup>11)</sup> holds that in the earlier days of the Soviet regime, the male peasants, seeing that opposition was useless, did not resist collectivization as fiercely as was done by their womenfolk who used to poison their cows or pigs before they were taken from them. This more individualistic approach to life also colours the female selection of property offences: for example, women prefer shoplifting to looting, where individual choice of the articles is difficult, or to stealing money.

William Healy <sup>12)</sup>, who also found among his cases more female than male liars, is inclined to blame largely the social environment for it.

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- 10) Lombroso, C. and G. Ferrero: "La donna delinquente, la prostituta e la donna normale", Torino 1893, quoted by Mannheim, H.: op.cit., p. 701
- 11) Calcott, M.S.: Russian Justice, New York, 1953, quoted by Mannheim, H.: op.cit., p. 703
- 12) Healy, W.: 'Pathological Lying, Accusation and Swindling', Criminal Science Monograph No. 1, London, 1915, quoted by Mannheim, H.: op.cit., p. 704

Mannheim <sup>13)</sup> contends that the male-dominated character of the criminal law has made women, except for the natural rebels, accustomed to get around rather than act against the law. He goes on to say that one might even venture the paradox that in a female-dominated legal system their crime rate would increase.

Closely connected with this, the greater capacity of women to adapt themselves to reality and their greater elasticity and resourcefulness have been stressed. <sup>14)</sup>

Albert K. Cohen <sup>15)</sup> has tried to explain the lower female crime rate by suggesting that women may have their own brand of subculture which approves or disapproves conduct in ways fundamentally different from their male counterparts, with ideals and solutions entirely different.

#### 7.4 The Sex Differences in Crime According To Age Among the Africans in South Africa.

The sex distribution of crime according to age among the Africans in South Africa is a necessary background in the explanation of this phenomenon in Mtunzini.

Table 12 reflects the sex distribution of crime according to age among the Africans in South Africa.

From an analysis of the figures in Table 12 the following significant facts emerge:

- (a) 262 316 Africans were convicted in South Africa during the period 1967-1968. 234 709 of these were males while 27 607 were females. These figures constitute 64,30 per cent and 35,70 per cent, respectively.

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13) Ibid., pp. 704-705

14) Ibid., p. 704

15) Cohen, A.K.: Delinquent Boys, The Culture of the Gang, Routledge and Kegan Paul, London, 1956, pp. 44 and 137

TABLE 12

CONVICTIONS ACCORDING TO SEX AMONG THE BANTU IN SOUTH AFRICA, 1967 - 1968 <sup>16)</sup>

CLASS AND OFFENCE	AGE IN YEARS						TOTAL
	7-17 YEARS		18-20 YEARS		21 YEARS AND OVER		
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
A1. Public safety, order & peace	574	180	973	255	3 536	738	6 256
A2. Administration of justice & good order	406	60	1 265	215	8 668	969	11 583
A3. Public finance & revenue	7	2	11	33	326	786	1 165
B1. Family life & care of children	13	20	94	42	2 013	155	2 337
B2. Indecent, sexual & related matters	477	24	744	59	2 059	122	3 485
B3. Liquor and drugs	1 707	83	6 504	445	41 922	4 227	54 888
B4. Other matters against community life	263	15	571	22	3 832	259	4 962
C1. Life or body of a person	5 259	1 045	9 856	1 595	45 820	6 136	69 711
C2. Reputation & honour of a person	19	1	39	4	94	16	173
C3. Liberty	23	2	62	-	173	12	272
D1. Burglaries & related matters	3 076	238	2 289	193	5 223	304	11 323
D2. Theft from the person by force	761	37	1 385	44	2 531	92	4 850
D3. Stocktheft	1 159	64	859	66	6 141	507	8 796
D4. Other thefts	5 846	1 524	5 719	1 665	19 279	4 399	38 432
D5. Falsitas & related matters	62	10	127	21	806	75	1 101
D6. Other matters relating to property	699	51	523	80	1 916	420	3 689
D7. Animals	143	6	71	9	425	46	700
E1. Economy general	-	-	-	-	8	1	9
E2. Agriculture, animal husbandry	-	-	1	-	2	1	4
E3. Mining related matters	3	1	12	3	248	19	286
E4. Manufacturing & construction	-	-	-	-	5	-	5
E8. Other economic	-	-	-	-	6	-	6
F1. Road Traffic	774	16	2 522	22	34 727	164	38 225
F6. Health Services	-	-	1	-	50	7	58
TOTAL	21 271	3 379	33 628	4 773	179 810	19 455	262 316

16) Report No. 08-01-04, Statistics of Offences and Of Penal Institutions, 1967-1968, The Government Printer, Pretoria, Tables 9.7 and 9.8, pp. 127-137.

TABLE 13.

Sex Differences in Crime in Mtunzini, 1967-1971 17)

AGE GROUPS	1967		1968		1969		1970		1971		TOTAL
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	
7 - 10	-	-	1	-	-	-	1	-	4	-	6
11- 15	22	-	6	5	11	3	17	2	12	59	137
16- 20	198	24	107	43	97	32	143	29	151	65	889
21- 25	277	57	185	54	175	43	186	20	208	43	1 248
26- 30	222	47	196	58	182	42	241	11	230	34	1 263
31- 35	266	24	102	38	126	43	91	14	140	41	855
36- 40	190	39	159	48	102	29	161	21	141	37	927
41- 45	155	12	66	33	82	11	127	14	74	2	576
46- 50	42	11	75	21	68	12	57	14	68	2	370
51- 55	26	9	23	-	15	2	28	4	13	2	122
56- 60	10	4	18	9	15	2	13	7	10	-	88
61- 65	7	2	6	-	15	1	4	2	4	-	41
66- 70	-	-	2	1	5	-	8	1	-	1	18
71- 75	-	-	1	-	4	-	1	-	-	-	6
76 & Over	1	1	-	-	2	-	1	-	-	-	5
TOTAL	1 416	230	947	310	899	220	1 079	139	1 055	286	6 581

17) Statistics systematized in this table were taken out of the R.C.A. (S.A.P.I.) records for the period 1967 to 1971 at the Mtunzini Police Station.

- (b) While the majority of males were convicted for violations of personal relations (Class C), namely 61 345 (23,39%), the majority of females were convicted for crimes against property, namely 9 851 (3,76%).
- (c) Among the males convictions for violations of community life (Class B) follow those for Class C. The total number of males convicted for Class B crimes is 60 199 or 22,95 per cent.
- (d) In the case of females the next important group of crimes are violations of personal relations (Class C) which gave a total of 8 811 convictions (33,6%).
- (e) Convictions for crimes against property (Class D) form the third largest total among the males, namely 59 040 (22,51%); while in the case of the females, the third largest group of convictions is for violations of community life (Class B), namely 5 473 (2,09%).
- (f) Violations pertaining to the social relations (Class F), constitute the fourth largest number of convictions among males, namely 38 074 (14,51%), while Class A crimes (Safety of the state and good order) form the fourth largest number of convictions in the case of females, namely 3 238 (1,23%).
- (g) The fifth largest number of convictions among males is for Class A crimes, namely 15 766 (6,01%), while that for females is in respect of violations of social relations, namely 209 or 0,08 per cent which is statistically insignificant.

7.5 The Sex Distribution of Crime According to Age in Mtunzini.  
Data in Table 13 reveals that:

- (a) The males in all age-groups were responsible for

a total of 5 396 crimes or 82 per cent of all crimes committed by the Africans in Mtunzini during the period under discussion. The females, on the other hand, were responsible for a total of 1 185 crimes (18%). There is thus a difference of 4 211 or 64 per cent between the males and the females.

- (b) The majority of male offenders are in the age-groups 21 to 25 years and 26 to 30 years. In the age-group 21-25 years alone 1 031 males (15,82%) were prosecuted while the females in the same age-group totalled only 217 (3,30%). The age-group 26 to 30 years, which had the highest total in respect of all age-groups (male and female) had a total of 1 071 (16,27%) for the males and 192 for the females (2,92%). This is in agreement with Freed's findings.<sup>18)</sup> He established that with reference to the adult section of his group, it would appear that the majority of adult male offenders were in the age-group 20 to 29 years, while the majority of adult female offenders were in the older age-group, namely 30-39 years.
- (c) The males under 21 years of age were responsible for a total of 750 crimes (11,4%), while the females under 21 years accounted for a total of 262 crimes i.e. 4 per cent which is statistically insignificant.
- (d) It is among the males where criminality begins early. Thus all the male early starters are distributed as follows: in the age-group 7-10 years in 1968 there was only 1 male; in 1970, there was also 1 male and in 1971, there was four males prosecuted.
- (e) The only year in which the females in Mtunzini committed a significantly great number of crimes

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18) Freed, L.F.: op.cit., p. 177

was 1968. During that year, the females in all age-groups were responsible for a total of 310 crimes (4,71%).

- (f) The age-group 61 years and over were responsible for a total of 64 crimes (0,97%, which is statistically insignificant). Of these crimes, 51 or 80 per cent were committed by the males, while only 13 or 20 per cent were committed by the females.

Closely related to the question of the sex distribution of offenders according to age, is the question of how the sex factor influences and determines the type of crime committed.

#### 7.6 The Connection Between the Sex Factor and the Type of Crime Committed in Mtunzini.

The sex distribution of specific crimes in Mtunzini is clear from Table 11. This table calls for a discussion of some individual crimes for its elucidation.

##### (a) Contraventions of the Liquor Laws.

Out of a total of 1 801 crimes committed in Mtunzini during the period under discussion, 984 or 56,64 per cent were committed by the males, while the females were responsible for a total of 817 or 45,36 per cent. If the figures in respect of the contraventions of the liquor laws are broken down further, it emerges that the highest incidence is in the age-group 30 years and over. This age-group, both male and female, had a total of 1 185 contraventions of the liquor laws (65,8%). Of this total the males accounted for 657 (36,5%) and the females gave a total of 528 or 29,32 per cent. Those under the age of 21, both male and female, were responsible for a total of 165 (9,2%), the males accounting for 57 or 3,2 per cent and the females for 58 or 3,22 per cent of the total number of prosecutions for the liquor laws during the period under investigation.

(b) Assault.

Of the 814 crimes committed by the Africans in Mtunzini during the period under discussion, 674 or 83 per cent were committed by the males, while 138 or 17 per cent were committed by the females in all age-groups. The majority of assaults, namely 301 (36,98%) were committed by the males in the age-group 30 years and over, while the females in that age-group were responsible for only a small total of 27 (3,32%). In the age-group 21 to 30 years, the males were responsible for 270 assaults (33,2%), and the females in that age-group committed 62 assaults (7,62%). The males below 21 years committed 105 assaults (12,9%) and the females in that age-group 49 assaults (6,02%).

(c) Traffic Offences.

Out of the 726 traffic offences committed by the Africans in Mtunzini during the period under discussion, 707 or 98 per cent were committed by the males while only 19 or 2 per cent were committed by the females in all age-groups. Clearly, then, traffic offences are the prerogative of males among the Africans in Mtunzini. The reason for this is that the driving of a vehicle is still a rare phenomenon among the African women. It is only lately that a handful of females have started driving cars. Data in Table 11 in respect of traffic offences show further that the majority of offenders are males in the age-group 30 years and over. They totalled 401 or 55,23 per cent. In the age-group 21 to 30 years, there was a total of 212 males (29,2%) and the males below the age of 21 years gave a total of 94 or 12,95 per cent. The female totals in the above age-groups were 8 (1,1%); 7 (,96%) and 4 (,55%), respectively.

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(d) Pass Laws.

There was a total of 713 violations of pass laws among the Africans in Mtunzini during the period under investigation. 679 or 95,23 per cent of these were committed by the males, while only 34 (4,77%) were committed by the females. The males in the age-group 30 years and over were responsible for the highest total, namely 319 or 44,74 per cent. In the age-group 21 to 30 years, there was a total of 257 males (36,04%), while the age-group below the age of 21 years accounted for a total of 103 or 14,45 per cent. The female totals in the above age-groups were 12 (1,68%); 14 (1,96%) and 8 (1,12%), respectively.

(e) Failure to Pay Tax.

The taxes referred to here are those reflected on pages 22 to 25 of the "Bantu Identity Card" entitled "Belasting -Tax".<sup>19)</sup> Failure to pay tax is normally discovered by the police during their daily "beats". In the Police Division of Mtunzini, out of a total of 541 contraventions of tax laws during the period of investigation, 540 or 99,82 per cent were committed by the males while only 1 female (,18%) was prosecuted for this crime.

(f) Theft.

The majority of thefts were committed by offenders (male and female) in the age-group 21 years and below. Out of a total of 299 thefts committed by the Africans in Mtunzini during the period under discussion, this age-group was responsible for a total of 108 thefts (36,12%). Of this total 85 or 28,43 per cent were committed by males, while only 23 or 7,69 were committed by the females.

(g) Tresspassing.

Out of a total of 299 offences pertaining to tress-

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19) See Bantu Identity Card, Bantu Reference Bureau, Pretoria, pp. 22-25  
162/.....

passing in Mtunzini during the period under discussion, 148 (44,59%) were committed by the males while 151 (55,41%) were committed by the females in all age-groups. Breaking down the figures for trespassing further, it appears that the males under 21 years were responsible for a total of 35 (11,70%), the males in the age-group 21 to 29 years had a total of 63 (21,70%) and the males above 30 years were responsible for a total of 50 (16,72%). The totals for the females in the above age-groups were 50 (16,72%), 62 (20,74%) and 39 (13,04%) respectively.

(h) Curfew Regulations.

The late hour at Mtunzini is at 10 p.m. 20)

Every African moving in the village without a permit after that time is liable to be prosecuted. Out of a total of 380 contraventions of curfew regulations, 295 (77,63%) were committed by the males while 85 (22,37%) were committed by the females in all age-groups. The males under 21 years accounted for a total of 101 (26,58%); those between 21 and 29 years, gave a total of 70 (18,42%) and those in the age-group 30 years and over were responsible for a total of 124 prosecutions (32,63%). The female totals for the above age-groups were 25 (6,58%); 25 (9,21%) and 25 (6,58%) respectively. Contraventions of curfew regulations in Mtunzini are essentially a male crime, common mostly in the age-group 30 years and over.

(i) Burglary.

Out of 148 burglaries committed in Mtunzini during the period under discussion, 142 (95,34%) were committed by the males, while only 6 (4,66%) were committed by the females in all age-groups. The

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20) According to the police in Mtunzini, the siren rings at 9 p.m. to warn those who are in the streets. There is, therefore, an hour's grace for getting ready for the late hour.

majority of the males prosecuted for housebreaking were in the age-group 21 years and below.

(j) Dagga Laws.

Finally, reference must be made to the contraventions of the dagga laws. Out of a total of 109 contraventions of dagga laws committed by the Africans in Mtunzini during the period under discussion, the males were responsible for a total of 90 (82,5%) and the females accounted for a total of 19 (17,5%) in all age-groups. In the age-group below 21 years there was a total of 9 males (8,26%); in the age-group 21 to 29 years, there were 35 males (32,11%) and in the age-group 30 years and over, there were 44 males (40,37%). The totals for the females in respect of the above age-groups were the following: No female was prosecuted in the age-group below 21 years, while 4 females (3,67%) were prosecuted in the age-group 21 to 29 years and 15 females (13,76%) were prosecuted in the age-group 30 years and over.

The rest of the crimes as Table 11 shows, are more common among the males than females. The only exceptions are the following: contraventions of the Immorality Act, Act No. 23 of 1957, <sup>21)</sup> and infanticide. There were only 2 contraventions of the Immorality Act during the period under discussion. One took place in 1970, while the other occurred in 1971. The former offence was committed by a Zulu woman in the age-group 21 to 30 years, while the latter offence was committed by a Zulu woman in the age-group below 21 years of age.

- (k) Infanticide had a total of 2 during the period under discussion. Both offences were committed in 1967, and in both cases the perpetrators were women in the age-groups 21 to 30 years and 30 years

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21) The relevant section of the Act referred to here is section 16 (1) and (2) which regulates sexual offences between white and non-white persons who are described as Coloured persons in the language of the statute 164/.....

and over, respectively.

#### 7.7 Summary.

The main thesis of this chapter has been that the criminality of the males exceeds that of the females among the Africans in South Africa in general and in Mtunzini in particular. <sup>22)</sup> The chapter has made it clear that also among the Africans, crime is essentially a problem of the male species. In Mtunzini, for instance, the males were responsible for 82 per cent of all crimes committed by the Africans during the period under discussion, while the females were responsible for only 18 per cent.

With regard to the higher incidence of crime among the African males, some of the following factors have been emphasized as influencing the distribution of crime among the males and females: biological and physiological differences between the sexes, the degree of their participation in the social and economic life, the opportunity to commit crime and the role played by public opinion.

It is also apparent that there are differences in the nature of crimes committed by men and women, respectively. In this investigation, certain offences, viz., possession of dangerous weapons, fraud, contempt of court, non-support of children, abduction, murder, gambling, rape and faction fighting, were committed only by males, while contraventions of the Immorality Act, Act No. 23 of 1957 and infanticide were committed only by females.

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22) This findings confirms earlier findings such as those by Venter, H.J. and G.M. Retief: op.cit., p. 252

THE COST OF CRIME.

8.1 Introduction.

The cost of crime can never be accurately calculated for any particular country.<sup>1)</sup> The data in respect of the economic cost of crime are ordinarily not available. Accordingly, in order to arrive at some knowledge of the position, the investigator will rely only on the police statistics in Mtunzini. To illustrate the cost of crime, reference will be made to damage done to property through crimes like arson, malicious injury to property, robbery and other forms of destruction carried out by thieves and other criminals before and after entering premises. All such actions represent a considerable financial loss to the victim. Since the economic cost of crime is not the only facet of the problem, mention will also be made of the intangible costs of crime measured in terms of human suffering.

Barnes and Teeters<sup>2)</sup> express themselves as follows with regard to the cost of crime: " the wholesale tragedy that resulted daily from such crimes of violence as assault and battering, mayhem, kidnapping, rape, manslaughter, criminal negligence and murder, was almost inconceivable. Thousands are thus affected and their physical and mental suffering is very real. In addition the innocent members of the families of delinquents and criminals suffer untold embarrassment due to social stigma. The cost of crime on family life is, therefore, obvious. Every year, many families must attempt to make new adjustments as a result of criminal acts. These adjustments cannot always be successfully made and various demoralizations result that exact a heavy toll from the individuals concerned. Society and eventually the nation in the long run pay an intangible price through broken homes, community disorganization - all aspects of the cost of crime which undermine the

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1) Freed, L.F.: Crime in South Africa, Juta and Co., Ltd., Cape Town, 1963, p. 149

2) Barnes, H.E. & N.K. Teeters: New Horizons in Criminology, Prentice Hall, Inc., New York, 1961, p. 80

morale of the community usually expressed in the great fear the victim and prospective victim has of the criminal."

The cost of crime in Mtunzini will be illustrated by referring to the value of property stolen, and to property lost through arson, housebreaking, robbery and malicious damage to property. The nature and type of property stolen will also be analyzed. The chapter will conclude by referring to the cost and consequences of crime among the Africans in general.

## 8.2 The Value and Nature of Property Stolen.

### 8.2.1 The Republic of South Africa.

Little attention has been given by South African criminologists to the value of property stolen as well as its nature. <sup>3)</sup>

Freed <sup>4)</sup> holds that thefts from the South African Railways constitute a grave economic loss to the authorities. African "tsotsi" gangs operating in Johannesburg alone were responsible for theft totalling from R6 000 to R8 000 a day from railway and delivery vehicles.

According to a statement made in 1954 before Mr. Justice Caney at the criminal Sessions held in Pietermaritzburg by Detective Sergeant A.J. Oosthuizen of the South African Railways and Harbours Police at Glencoe, Natal, claims against the Railways in respect of stolen and missing goods totalled anything between R1 200 000 and R1 6000 000 per annum. <sup>5)</sup>

The total losses resulting from crime in other South African towns, cities and other areas is by no means insignificant. Telephone receivers frequently

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3) The cost of crime in Mtunzini invites a comparison with what obtains in the Republic of South Africa as a whole.

4) Freed, L.F.: op.cit., pp. 149-164

5) Ibid., p. 152

disappear from public call boxes, and by way of preventing this type of crime, the Post Office authorities have been forced to display expensive notices in all boxes, offering a reward of R10,00 to any person able to furnish information leading to the conviction of such a criminal. <sup>6)</sup>

Describing crime as an erosive and injurious phenomenon, van der Walt <sup>7)</sup> holds that crime is like a murdering vortex which pulls down and into its temptuous swirling, always deeper and deeper.

Crime also injures the life of society and the nation in various respects. During the statistical period 1 July, 1972 to 30 June, 1973, 440 922 convicted and unconvicted prisoners (total 717 980) were committed to prisons in South Africa and detained for shorter or longer periods and withdrawn from the labour market. <sup>8)</sup>

The Annual Report of the Commissioner of the South African Police <sup>9)</sup> referring to South-West Africa describes the cost of crime as follows: after the SWAPO Committee labour disputes had been settled, thousands of Ovambo arrived at recruiting offices in Ondangwa, but numerous instances of violence were reported: a considerable portion of the wire fence along the international border between Angola and Ovambo was damaged, stock inspection kraals were destroyed, stock inspectors were intimidated and tribal headmen were threatened with violence and seriously assaulted while their kraals were set

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6) Ibid., p. 152

7) van der Walt. P.J.: "The Crime Problem in South Africa", A Paper Read at the National Criminological Symposium on Crime Prevention, held at Unisa 28-31-8-73.

8) The estimates of the Administrative expenditure in respect of the prisons department during that period was R38 185 000. See Commissioner of Prisons, Statistical Report of the Commissioner of Prisons of the Republic of South Africa for the period 1 July 1972 to 30 June 1973, R.P. 91/1973, p. 1

9) Annual Report of the Commissioner of the South African Police for the period year ended 30 June, 1972, R.P. 23/1973, pp. 8-9

alight. With the aid of pangas schoolchildren were driven out of school and were warned to stay away from school for good. Lawlessness and unrest prevailed and Police reinforcements had to be sent to Ovambo. In the process of maintaining law and order and protecting lives and property, some members of the Force received injuries at the hands of armed rioters and were obliged, on various occasions to open fire.

The same report describes the following cases of armed robbery <sup>10)</sup> with the concomitant financial losses:

On 7 September 1971, while on his way to the bank, Mr. Salkow of "Dial Furnisher", President Street, Johannesburg, was held up by six African males and was ~~robbed~~ of R3 381,81 in cash and cheques to the value of R7 089,47. Six African males were subsequently arrested, R1 900,00 was recovered and a 22 pistol was seized.

On 1 November 1971 a masked white man, armed with a pistol, held up the manager and woman cashier of the Netherlands Bank, Paarden Eiland, and robbed the bank between R4 000,00 and R5 000,00. No arrest had been made at the time of the publication of the report.

On 8 May 1972, a white man, the driver of a railway bus between Mount Frere and Mount Ayliff, was held up by three African males with a revolver and robbed of a post-bag containing R20 000 in cash. Six African males and one African female were later arrested and only R3 065 was recovered (and a revolver).

During December 1971, a jeweller's shop in Hillbrow, Johannesburg, was burgled and jewels valued at R20 000 were stolen. A white man was arrested and jewels to the value of R16 000 were recovered.

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10) Ibid., pp. 7-8



Finally, during the statistical period for the year ended 30 June 1972, 26 574 cases of stocktheft were dealt with in South Africa and only 4 594 (17,38%) proved to be unfounded. This means that in the total of 21 980 (82,62%) the victims lost their stock through stocktheft. <sup>11)</sup>

In the United State of America, estimates of the cost of crime have varied from \$3 000 000 000 to \$16 000 000 000 per annum. <sup>12)</sup>

Spaulding has estimated on the basis of a study in Massachusetts that one-tenth of all the money raised for taxation purpose in that state was expended on the combating of crime. <sup>13)</sup>

#### 8.2.2 Mtunzini.

The police statistics in Mtunzini did give the investigator limited information regarding the description and the value of property stolen or otherwise destroyed in consequence of some offence. Even if the police statistics had contained detailed information regarding the value of property stolen, the picture would still be incomplete, because many thefts are not known to the police and even those thefts which are known to the police are not always solved. The following table illustrates the estimated value of property stolen in Mtunzini during the period under investigation:

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11) Ibid., p. 6

12) Freed, L.F.: op.cit., pp. 156-157

13) Ibid., pp. 156-157

TABLE 14.

Value of Property Lost Through Thefts and  
Stockthefts in Mtunzini, 1967-1971.

YEAR	Total Number of Thefts and Stockthefts		ESTIMATED VALUE
	Theft	Stocktheft	
1967	64	17	R2 660,30
1968	52	18	R3 871,39
1969	57	22	R1 807,85
1970	58	12	R2 145,68
1971	68	17	R3 165,37
	299	86	R13 650,59

It emerges from Table 14 that:

- (a) The highest value of property lost through thefts and stockthefts was in 1968. During that year there was a total of 52 thefts and 18 stockthefts and the value of property lost through these crimes was estimated at R3 871,39, the highest value during the period under investigation.
- (b) In 1967 there was a total of 64 thefts and 17 stockthefts and the value of property lost through these crimes was estimated at R2 660,30.
- (c) In 1970 the totals for thefts and stockthefts were 58 and 12 respectively, and the value of property lost was estimated at R2 145,68.

1969 had the lowest estimated value of property lost, namely R1 807,85.

- (d) The figures in respect of the estimated value of thefts and stockthefts are alarming, but they do not represent

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14) This table was compiled from the data obtained from the R.C.A. records in the Mtunzini Police Station, 1967-1971. 171/.....

a complete picture of the economic cost of crime in Mtunzini. While the investigator was going through the police statistics regarding the value of property stolen or otherwise destroyed, there were many cases where the police had written opposite the stolen article or property "value unknown". Also not included in the figures in Table 14 are theft and stocktheft cases heard and tried in the tribal courts of Chiefs and headmen in Mtunzini.

In addition to the value of articles stolen, it is equally interesting to examine the types of articles stolen most in the area of investigation. The nature of articles stolen as well as the type of stock stolen are legion, ranging from clothing to fowls and even goats, as reflected in Table 15.

Analysis of data in Table 15 indicates that:

- (a) Although the articles and stock stolen differ from year to year, certain articles such as cash, groceries and clothing are favourite commodities for the thieves.
- (b) It is clear from Table 15 that the article stolen most in Mtunzini is clothing. During the period under discussion, there were 113 thefts involving clothing.
- (c) The total for the thefts of cash was 77 during the five-year period under investigation, while the total for thefts involving groceries numbered 51.
- (d) Articles such as liquor, sugar cane, cycles and stock such as goats and cattle, although consistently stolen, do not have high totals.
- (e) Auto-theft is rare, so that during the period under investigation, there were only three cases involving theft of vehicles: in 1969 one motor car and one motor cycle were stolen, while in 1970 only one motor car was stolen.

TABLE 15.

Types of Articles and Stock Stolen in Mtunzini, 1967-1971 <sup>15)</sup>

Article Stolen	Number of Times Stolen				
	1967	1968	1969	1970	1971
Beer	-	4	-	-	-
Blankets	-	-	1	-	-
Bucket	-	-	-	-	1
Building Material	-	-	2	4	10
Car Battery	-	-	-	-	1
Cash	17	16	16	13	15
Cattle	-	4	3	2	3
Chain	-	-	-	1	4
Cigarettes	-	-	-	1	-
Clothing	16	10	33	27	27
Crockery	-	1	-	1	-
Cycles	11	-	4	7	5
Drums	6	-	-	1	-
Ducks	-	1	-	2	-
Electric Cables	-	4	-	-	-
Fertilizer	2	-	1	1	-
Firearms	2	3	-	2	1
Fishing Rod	-	-	-	-	1
Forest Produce	9	-	-	-	-
Fowls	3	2	4	6	-
Goats	7	1	8	8	3
Golf Clubs	-	-	-	-	1
Groceries	6	12	7	18	8
Guitar	-	-	-	1	-
Handbag	-	1	-	-	-
Jewellery	-	1	-	-	-
Lantern	-	-	-	1	-
Liquor	4	-	-	6	-
Motor Car	-	-	1	1	-
Motor Cycle	-	-	1	-	-
Oxen	5	-	-	-	-
Pigs	1	-	1	-	-
Radio	2	1	1	3	-
Raincoat	1	-	-	-	-
Record Player	-	-	1	-	-
Sheep	-	2	-	-	2
Soap	1	-	1	-	-
Stationary	-	-	-	-	1
Sugar Cane	5	-	1	2	-
Suit case	-	-	-	1	4
Tools	1	-	1	-	-
Utensils	2	5	1	-	2
Walking Stick	-	-	-	-	1
Window Pane	2	-	-	-	-
Wristwatches	3	2	1	5	2

15) Data used here were taken out of the R.C.A. records in Mtunzini, 1967-1971.

- (f) It is also interesting to note that firearms are stolen from time to time. There were seven cases of thefts involving firearms during the period under discussion. The revolvers are usually stolen by domestic servants from their white employers. In 1971, for instance, the one revolver stolen was taken from the employer's cupboard. <sup>16)</sup>

Other crimes which are important in the calculating of the economic cost of crime are, inter alia, arson, malicious damage to property, fraud, burglary and robbery.

8.3 The Nature and Value of Property Lost or Destroyed Through Other Crimes, viz. arson, malicious damage to property, fraud, burglary and robbery in Mtunzini.

- 8.3.1 Arson and Malicious Damage to Property: During the period under discussion there were twenty-three cases of arson. The nature and value of property destroyed through arson was not recorded in all cases. The few cases recorded by the police were, however, evaluated at R978,00. R900,00 of this estimated value involved malicious burning of sugar cane plantations, while R78,00 was in connection with the setting on fire of dwelling huts for revenge purpose. <sup>17)</sup> With regard to the estimated value of property lost through malicious damage to property, the investigator was able to calculate a sum of R586,80 from the police records in Mtunzini during the period under discussion.

8.3.2 Burglaries.

The majority of burglaries were committed with the intention of committing thefts. In a few cases of housebreaking, the police could not establish the motive. During the period under discussion, the

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16) Information regarding the details of this crime was obtained from the R.C.A. records in the Mtunzini Police Station, 1967-1971.

17) Revenge was in most cases the motive mentioned by the police as to the setting of dwelling huts on fire.

houses broken into included dwelling houses, tea-rooms and shops, and the estimated value of property lost or destroyed was R6 213,71. A classic example of housebreaking and theft occurred in 1970 when criminals broke into a tearoom owned by a White, stealing jewellery, cheques and other items to the value of R1 508.<sup>18)</sup> If the total financial loss of R6 213,71 is broken down according to different years, it emerges that:

- (a) In 1967 there was an estimated loss of R1 484,05.
- (b) The 1968 estimated loss was R1 181,46.
- (c) In 1969 the loss was estimated at R893,10.
- (d) The highest loss occurred in 1970, namely R2 068,75.
- (e) Finally, the 1971 loss was estimated at R586,35.

8.3.3 Robbery: The financial losses suffered by the victims of robbery during the period under discussion totalled R1 484,04 distributed as follows according to the different years:

- (a) In 1967 there was a total of R114,77.
- (b) In 1968 the losses were estimated at R1 107,17.
- (c) The estimates for 1969 amounted to R137,45.
- (d) During 1970 the financial loss was R27,50.
- (e) In 1971 the estimated losses amounted to R100,15.

There is no doubt that the financial losses sustained by the victims in consequence of robbery are also substantial. The most common type of robbery is what the Zulus describe as "UKUBAMBA INKUNZI" (TO HOLD THE BULL).<sup>19)</sup> The modus operandus thereof consists in robbing a victim either by pointing a firearm at him or by stabbing him or shooting him and thereafter pickpocketing him. The reason why the victim is killed, is in most cases, to destroy

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18) Details of this crime were obtained from the R.C.A. Records in the Mtunzini Police Station, 1970.

19) Ndabandaba, G.L.: "Crime and the African", Crime, Punishment and Correction, Volume 3, No.2, June 1974, pp. 33-34

damaging evidence. 20)

#### 8.4 Summary.

The economic cost of crime in Mtunzini cannot be accurately estimated owing to the unavailability of data in that direction. The victim or the police Officer evaluating property stolen or otherwise destroyed, gives only a rough estimate. Information regarding the cost of crime in this chapter is, therefore, incomplete.

It has, inter alia, become clear in this chapter that the cost of crime both in terms of property lost and destroyed through thefts and other crimes, is much higher than the figures estimated here. The result of all this is that the absolute and relative cost of combating crime in Mtunzini is an expensive undertaking both in terms of money and property lost and human suffering. More purposeful research into the nature and value of property lost through crimes such as mentioned in this chapter can contribute greatly to the prevention and combating of crime.

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The Most Important Findings and  
Recommendations Regarding the Prevention  
of Crime Among the Africans.

9.1 Introduction.

A systematic exposition of crime among the Africans brings to light many problems: the high incidence of crime; culture-conflicts; criminal subcultures and the fact that not all crimes are reported to the police. All these problems make it clear that measures must be taken to prevent crime among the Africans. The most important findings as well as recommendations regarding the prevention of crime among the Africans will accordingly be discussed in this chapter.

9.2 The Most Important Findings.

The aims of this research as set out in chapter 1 have been to give a scientific exposition of the crimes committed by the Africans in Mtunzini and to compare these with the general crime pattern among the Africans as a whole in the Republic of South Africa.

It has been the purpose of this study also to compare the present extent of crime among the Africans with the extent of crime among the traditional Africans of olden times. It was found that the present-day position differs considerably from that which obtained in traditional times. In the olden days the list of crimes was not a particularly long one, because the African society was not as complex as it is today. Punishments were not equal to the crimes committed as seen from some of the severe penalties administered for petty offences, especially if committed against the King or Chief. The King's decision was final, which is not always the case nowadays, because crimes are nowadays tried not only by the chiefs but also by magistrates according to South African criminal law and procedure, over and above Bantu law.

The main crimes in the olden days were witchcraft offences,



rape, incest and treason. Generally speaking, crimes in tribal times were divided into two main classes: crimes against the individual and crimes against the King, or crimes against tribal authority

It has become evident that cultural conflicts arose when the laws of the Whites were introduced into the African communities. When the African got into contact with the White man's culture, he did not only adopt his religion, his business methods and his liquor, but he also became subject to a law he did not understand.

This research has also shown that there has developed in the African society a number of criminal subcultures as a result of the cultural conflicts. These criminal subcultures which include the subcultures of violence, "shebeens", "tsotsism" and witchcraft have become firmly established in the modern African society, be it urban or rural. Any explanation of the criminality of the African must take cognizance of these criminal subcultures.

The analysis of the present extent of crime both in Mtunzini and in the Republic of South Africa has shown that the crimes committed by the Africans in modern times, even in rural areas, are radically different from those found in the olden days, not only in extent, but also in their nature as well as their causes. The crimes showing a high incidence in modern times are violations of personal relations (Class C crimes); crimes against property (Class D crimes); violations pertaining to community life (Class B crimes) and violations of social relations (Class F crimes). Economic crimes show the lowest incidence. Petty offences such as influx control offences, Bantu tax offences, violations of curfew regulations and other infringements classified above the code number 500 and ignored by the Department of Statistics have the

highest incidence.

With regard to the age distribution of crime among the Africans, the investigation has revealed that age is an important factor in determining the type of crime committed. The age-group 7-17 years is characterized by crimes against property and violations of social relations. In the age-group 18 to 20 years the most common crimes are crimes against property, violations of social relations, violations of personal relations and violations of community life. In the age-group 21 years and over, the Africans commit mostly violations of community life, crimes pertaining to personal relations, crimes against property and violations of social relations.

The distribution of the different classes of crime among the Africans in the various age-groups in Mtunzini, follows more or less the same pattern as described in the preceding paragraph in the case of South Africa. In the age-group 7-20 years, the most important crimes are crimes against property; violations of personal relations and violations of community life. The age-group 21-29 years is characterized by violations of community life, violations of personal relations and violations of social relations. Finally, in the age-group 30 years and over, violations of community life, violations of social relations, violations of personal relations and crimes against property are the most important crimes. The criminality of the males exceeds that of the females. In Mtunzini for example, the males were responsible for 82 per cent of all the crimes committed during the period under discussion, while the females were responsible for only 18 per cent.

Finally, the present investigation has estimated the economic cost of crime in respect of the area under discussion. This was found to be tremendous. It was emphasized, however, that the cost of crime can never

be accurately calculated for any particular area, including Mtunzini in particular and the Republic of South Africa in general.

### 9.3 Recommendations with Regard to the Prevention of Crime.

Crime-prevention emphasizes the fact that criminology should study, inter alia, the effectiveness of law-enforcement. In this section of the dissertation, the investigator intends to make some recommendations regarding the prevention of crime among the Africans. Particular reference will be made to the role of the state and other agencies, such as acts of parliament, the police, the prison: crime-preventing organizations and compulsory education.

#### 9.3.1 Acts of Parliament.

A South African statute which deals specifically with the topic of crime-prevention among the Africans is the Bantu Administration Act, Act No. 38 of 1927 <sup>1)</sup>

The prevention of crime among the Africans is discussed in four sections of the above Act: sections 27, 28, 29 and 30.

Section 27 in particular contains the following rules, among others; the State President may make regulations against the advertising to Bantu of any substance alleged to be capable of procuring for any person wealth <sup>2)</sup> of success in any undertaking or occupation or of procuring in any person any disposition or attribute or immunity from resistance against or susceptibility to hostile agencies, supernatural powers, witchcraft or unnatural diseases. <sup>3)</sup>

Section 30 provides, inter alia, for the prevention of congestion of the population and overcrowding,

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1) See Chapter VII of the Bantu Administration Act, Act no. 38 of 1927, entitled "Prevention of Misconduct and Disorders, Regulation of Bantu Living and Control of Certain Villages and Townships.

2) According to a number of informants, people in the African society sometimes pay big sums of money to "NYANGAS" who claim that they can make them rich over-night the so-called "UKUTHWALA".

3) See chapters 2 and 4.

the prevention of the brewing, possession, supply or consumption of African beer within certain areas.

Generally, then, the provisions of these sections are aimed at preventing inter alia, indecency, violence and the practising of witchcraft among the Africans.

The present investigator recommends that there should be stronger enforcement of the above sections relating to the prevention of violence and witchcraft offences.

Private persons who are not familiar with the provisions of the Criminal Procedure Act, Act No. 56 of 1955, regarding the powers of arrest without a warrant by private persons, should be given some knowledge in this direction. More adult education is necessary to make the average adult acquainted with the basic knowledge of the laws aimed at crime-prevention, such as who may arrest without a warrant and under what circumstances <sup>4)</sup>

#### 9.3.2 Decriminilisation.

The Hon. J.T. Kruger <sup>5)</sup> contends that the most obvious way in which the state could contribute towards the prevention of crime is probably by decrimilization of offensive behaviour which is currently categorized as criminal. Among the Africans in particular may be mentioned section 25 of the Bantu Labour Act, 1964, which makes it possible to refer Africans who have contravened or failed to comply with certain laws, to Bantu Aid Centres instead of referring them and prosecuting them before a criminal court. It is expected that the decrimilization effected in this respect, would eventually have a profound effect on our prison population, because according to available

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4) Reference is being made here to the provisions of section 24 of the Criminal Procedure Act, Act No. 56 of 1955.

5) Kruger, J.T.: "The Approach of the State With Regard To The Prevention of Crime", A paper read at the National Crimnological Symposium on the Prevention of Crime, held at UNISA from 28-31 August, 1973.

statistics over 600 000 Africans will be affected thereby annually. <sup>6)</sup>

Decriminilization should, however, be undertaken only after a careful consideration of all the implications involved, otherwise the State might find that it has created a "Frankenstein" which it may not be able to control in the long run. <sup>7)</sup>

### 9.3.3 The Police.

There should be improved communication between the African public and the South African Police. Very few Africans view the police as friends and protectors. Reciprocal contact between the public and the police can be brought about through regular discussions and consultations to ensure that police institutions do not fall into a state of isolation and become removed from the community they serve.

Presently, the members of the Force conduct lectures at schools and other places where mainly young people are concentrated, the object being to make them aware of the gravity and extent of the drug problem. <sup>8)</sup>

Such discussions with young people should be continued and the programme should be expanded to include other dangers of the consequences of crime.

In 1969, the Metropolitan Police, London, organized a "Help The Police" competition as an exercise in improved communication to establish a better relationship with young people. A hundred thousand children, of whom 10 000 entered visited police stations to collect entry forms. By courtesy the B.O.A.C. and the Royal Canadian Mounted Police, the four winners travelled to Canada for a fortnight. Altogether it led to appearance on radio and television and 33 000 centimetres of press coverage - a very satisfying

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6) Ibid.,

7) Ibid.,

8) Annual Reports of the Commissioner of the S.A.P. for the year ended 30 June 1972, R.P. 23/1973, p. 8

publicity exercise. 9)

Competitions such as the one described above, even if they are not as expensive as the one illustrated above, would help change the attitude of the public towards the police.

Finally, the investigator recommends that there should be a closer co-operation between the police, the Bantu Education Department, the Department of Bantu Administration and Development and the parents in the struggle against crime.

#### 9.3.4 The Reserve Police Force.

During the year ended 30 June 1972, twenty-three Reservist Warrant Officers were promoted to the rank of lieutenant. Seventeen of these Warrant Officers completed a training course at the South African Police College. The number of Reservist Lieutenants now stands at forty. 10)

At present the White Reservists number 15 806,7 120 of whom are active, while the Non-White Reserve Police Force comprises 3 524,2 547 of whom are active. Members of the public continue to enlist in the Reserve Police Force in considerable numbers and appointments made average 126 per month. 11)

This grand gesture of goodwill and keen support is proof of the mutual understanding between the general public and the South African Police. Especially in the African townships the cultivation and establishment of the Reserve Police Force is essential. The Reserve Police should then work in close co-operation with the African community and the crime-preventing

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9) Waldron, J.: "Current Problems Facing The Police In The British Isles", A paper read at the National Criminological Symposium on the Prevention of Crime, held at UNISA, from 28 to 31 August, 1973

10) Annual Report of the Commissioner of the South African Police for the year ended 30 June 1972 R.P. 23/1973, p. 3

11) Ibid., p. 3 183/.....

organizations such as "QONDA" and "MASINGAFI".

9.3.5 Crime-Preventing Organizations.

The African communities in the townships have established crime-preventing organizations like "QONDA" (BE STRAIGHT) and "MASINGAFI" (LET US NOT DIE). The activities of these organisations should be expanded and reinforced.

9.3.6 The Prisons Department.

As certain activities of the South African Police and the Departments of Justice and Prisons overlap to a considerable extent, these three departments should co-operate more intimately in the prevention of crime among the Africans.

The rehabilitation programme of the Prisons Department includes, inter alia, religious care, education and guidance as well as psychological services.

(a) Education and guidance.

During the year ended 30 June 1973, 293 prisoners sat for school, technical and academic examinations. In all, 32 prisoners obtained certificates. Of the 394 prisoners who took trade tests, 245 were successful. The literacy project has now been established in 24 prisons. During the year ended 30 June 1973, 351 illiterate prisoners completed the course. <sup>12)</sup>

(b) The Psychological services.

This section is still growing and at present has 12 members at its disposal. Seven members are at Pretoria Central Prison ; one is stationed at Victor Verster Prison, while four members are at present engaged in full-time study at University. <sup>13)</sup>

The above services should be consolidated and should form an intergral part of the rehabilitation programme in the African prisons.

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12) Statistical Report of the Commissioner of Prisons of the Republic of South Africa for the period 1 July 1972 to 30 June 1973, R.P. 91/1973, pp. 12-13.

The employment of more qualified African warders, criminologists, psychologists, social workers and educationists to aid the Prisons Department in their commendable efforts to rehabilitate African offenders is of vital importance. In this regard there could be greater co-operation between the Prisons Department and the Black Universities in the training of students. To keep pace with the ever increasing need for greater efficiency the Prisons Department should, where possible, offer scholarships and bursaries to enable African students to pursue degrees and diplomas at the Universities with a view of following a career in the Prisons Department.

9.3.7 Educating the Public about the Dangers of the Abuse of Liquor.

The high incidence of crimes pertaining to the liquor laws among the Africans, is a clear indication that the public needs to be educated in the use of liquor. The many cases of drunkenness which result from careless methods of drinking of concoctions and the white man's liquor, could, therefore, be reduced considerably by educating the drinking public about the dangers and consequences of the abuse of liquor.

In the African communities in modern times, the unhealthy practise of sending children to go and buy liquor from bars, beerhalls and "shebeens," should be discouraged, both by the parents and owners of bars and beerhalls in order to prevent the contagion of bad example.

9.3.8 Compulsory Education.

Uptill now there has been no compulsory education among the Africans. This has led to many problems connected with illiteracy, late age in attending school, delinquency and crime. In the area under investigation, the present researcher was struck by the advanced ages of children



in the substandards, as well as by the great number of children of school-going age who either just stay at home or are employed as domestic servants or as herdboys, looking after cattle and goats.

Literacy is a basic tool for successful living. A status of illiteracy is inimical to the requirements for successful living.

#### 9.3.9 Other Recommendations.

- (a) The investigator recommends that there should be an increase in the number of public telephone call boxes in the African townships. When a violent crime has been committed, in some cases, phoning the police delays until the victim dies or the offenders escape.
- (b) Also in places which are difficult to reach by car, efforts should be made by the authorities to improve the network of roads leading to those areas. The same is true of road and street lights.

In conclusion, the investigator recommends that there must, above all, be an on-going research programme directed towards the question of crime among the Africans. Such a research programme should be carried out over a long period, and should lay particular emphasis on the problem of culture conflicts and the criminal subcultures in the modern African society.

#### 9.4 Summary.

It has become abundantly clear in this chapter that crime is a community phenomenon which calls for the co-operation of the state and the community in general for its prevention. Among the Africans in particular, the prevention of crime is a much more complicated task than it is in the case of the Whites, for instance. This is because of the culture-conflicts and the criminal subcultures found in the modern African communities. Some of the most impor-

tant agencies which can be of help in the prevention of crime among the Africans are acts of parliament, decriminilisation, the police, crime-preventing organisations, the prisons department, compulsory education and adult education or upgrading adult literacy. The prisons are of particular importance here, because when offenders land in prison, it implies that prevention of crime has failed in the community. For this reason, preventing a person from landing in prison is a much more realistic approach than to wait until he transgresses the law and then send him to prison and expect him to be rahabilitated.

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Summary.

The present investigation gives a systematic exposition of crime among the Africans in Mtunzini and compares it with crime among Africans in South Africa.

The criminality of the modern African must be seen in the light of its historical setting. For this reason the present extent of crime among Africans has also been compared with the extent of crime among the traditional Africans in previous times. This comparison brought to light that the crimes committed by Africans in modern times differ considerably in volume and nature from those committed in the traditional times. The main crimes in the past were witchcraft, rape, incest and treason; and their classification was very simple. They were divided into crimes against the individual and crimes against tribal authority.

Cultural conflicts arose when the Africans came into contact with the White man's culture. The Africans did not only adopt the White man's religion, business methods and liquor, but also became subject to a law he did not understand. Cultural conflicts are inevitable when the norms of one cultural area come into contact with those of another. In introducing their legal system to the tribal Africans, the Whites, therefore, declared as offences many ancient practices of the inhabitants which their customs permitted or imposed. Thus, among the Africans many forms of violence which today are tantamount to assault in terms of the law of the land, were not regarded as crimes in traditional Bantu law, and were not punishable.

The transformation of the culture of the Africans from a homogeneous, well-integrated type to a heterogeneous and disintegrated one has resulted in the creation of criminal subcultures of violence, "tsotsism", "shebeens" and witchcraft. Any explanation of the criminality of the Africans must take cognizance of these criminal subcultures.

The crimes showing a high incidence in modern times are violations of personal and social relations, community life and

crimes against property.

My research has revealed that Africans below 30 years commit mostly property crimes, while those above 30 years commit mostly crimes pertaining to social relations, personal relations and crimes against property. During the period under review, males were responsible for 82 per cent of all crimes committed in Mtunzini, while females were responsible for only 18 per cent.

The cost of crime in terms of property lost and human suffering is tremendous. For this reason, more purposeful research should be conducted into the problem of crime among Africans.

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Opsomming.

Die resultate van hierdie ondersoek bied 'n sistematiese uiteensetting van misdaad onder Bantoe\* in Mtunzini en die gegewens word vergelyk met die oor misdaad onder Bantoe in Suid-Afrika.

Die misdadigheid van die moderne Bantoe moet gesien word in die lig van sy historiese milieu. Derhalwe is die omvang van misdaad onder Bantoe ook vergely met die omvang van misdaad onder die tradisionele Bantoe in vorige tye. Die vergelyking het getoon dat die misdade wat deur Bantoe in die moderne tye gepleeg word, aansienlik in omvang en aard verskil van die wat gedurende die tradisionele tydperk gepleeg is. Die ver- naamste misdade in die verlede was towery, verkragting, bloedskande en verraad; en om hulle te klassifiseer was baie eenvoudig. Hulle is naamlik verdeel in misdade teen die individu en misdade teen die stamowerheid.

Kulturele konflikte het ontstaan toe die Bantoe met die Blanke se kultuur in aanraking gekom het. Die Bantoe het nie alleen die witman se geloof, sakemetodes en sterk drank aangeneem nie, maar het ook onderworpe geraak aan 'n wet wat hy nie begryp het nie. Kulturele botsings is onvermydelik as die norme van een kultuurgebied in aanraking kom met die van 'n ander. Met die instelling van hul regstelsel vir die stam-Bantoe het die Blankes derhalwe baie ou gebruike van die Bantoe wat deur hul sedes toegelaat of afgedwing is, tot oortreding verklaar. Gevolglik is baie vorme van geweld wat vandag gelykstaan aan aandrang ingevolge die landwet, nie as misdade volgens die tradisionele Bantoereg beskou nie en was hulle ook nie strafbaar nie.

Die transformasie van die kultuur van die Bantoe na 'n homogene, goed-geïntegreerde tipe tot 'n heterogene en gedisintegreerde kultuur het tot gevolg gehad die skepping van kriminele subkulture van geweldpleging, "tsotsisme", "sjebeens", en toordery.

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\* Die term word vir die enkelvoud en meervoud gebruik.

Enige verduideliking van die kriminaliteit van die Bantoe moet hierdie kriminele subkulture in aanmerking neem.

Die misdade wat h hoë voorkoms-syfer in die moderne tyd toon, is skending van persoonlike en maatskaplike verhoudinge, van die gemeenskaplewe en misdade teen eiendom.

My navorsing het getoon dat Bantoe onder 30 jaar meesal eiendomsmisdade pleeg, terwyl diegene bo 30 jaar meesal misdade pleeg in verband met maatskaplike verhoudinge, persoonlike verhoudinge, en misdade teen eiendom. Gedurende die tydperk van ondersoek was mans vir 82 persent van die misdade in Mtunzini verantwoordelik, terwyl vroue vir slegs 18 persent verantwoordelik was.

Die koste van misdaad in die vorm van verlore eiendom en menslike lyding is ontsettend. Om die rede behoort meer doelgerigte navorsing na die probleem van misdaad onder die Bantoebevolking onderneem te word.

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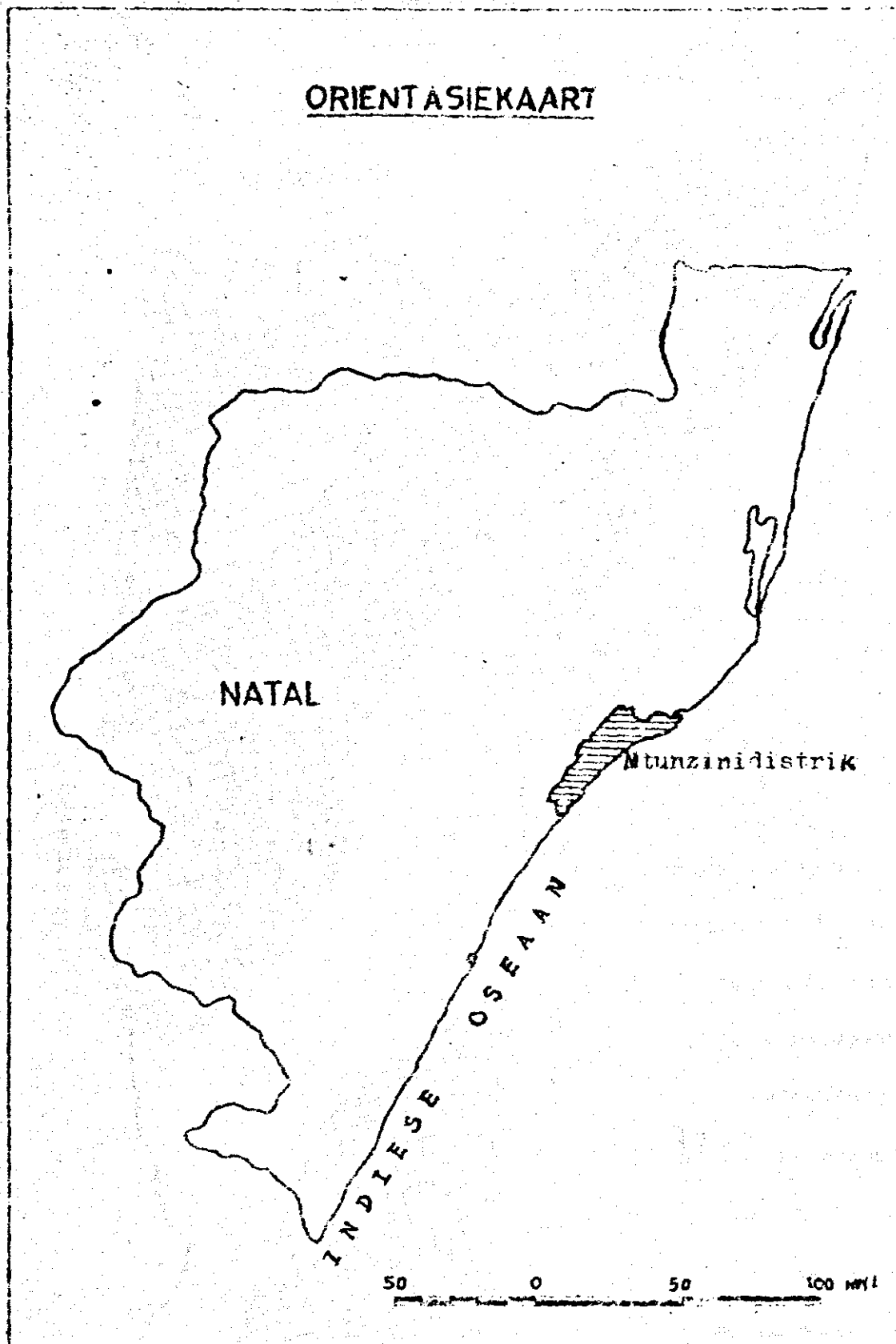
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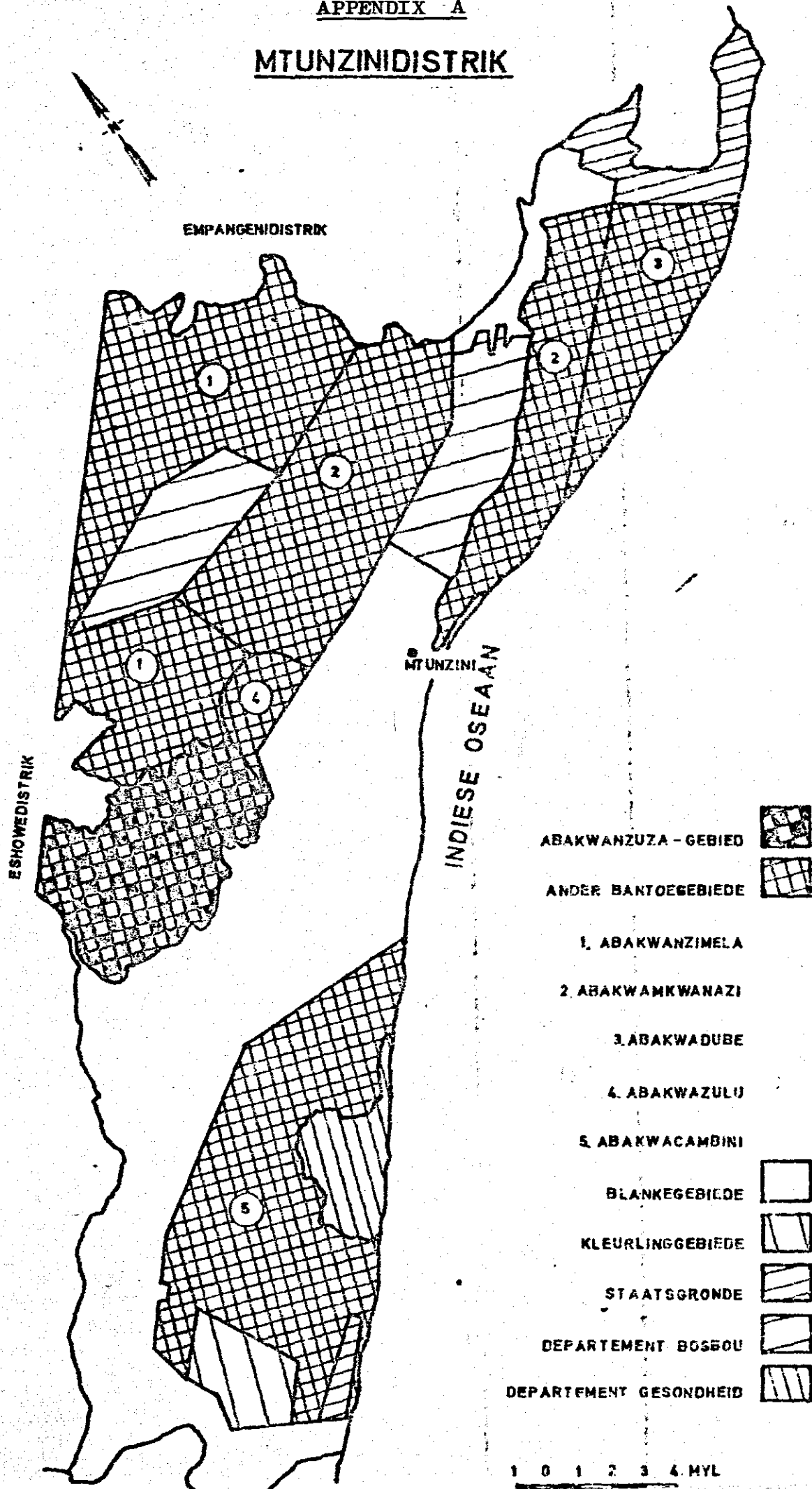
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ORIENTASIEKAART



APPENDIX A

MTUNZINIDISTRIK



**MAAND  
MONTH**

13

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