

Unit 5 : Making sense of the criminal justice system: The trial and post-trial phases

5.1 Overview of Unit 5



Before we start with the key theme of this unit let us consider the image of Lady Justice.

Carefully study our image of Lady Justice. Make notes on the various objects that you see and what, according to you, the deeper meaning of these objects may be. While doing so, try to compare the image of Lady Justice in this unit with those of the previous units. Make notes on how our image of Lady Justice has change and once again, share your ideas in the debate: Does symbols, such as Lady Justice, still have meaning for us in the 21st century, on the African continent, in a fairly young democracy? Should she be replaced, adapted (changed), or plainly be discarded?

Early reflections

In the previous unit (Unit 4) we ended our journey on “making sense of the criminal justice system” at the point where a decision is taken by the NPA to prosecute or not. Unit 4 dealt with mainly the pre-trial phase, in which the police (complemented by the private security industry) and NPA are the main role players.

Remember that while the NPA is one of the main role players in the pre-trial phase, the role of the NPA does not end in the pre-trial phase. In fact, the public prosecutors (who are employed by the NPA) are role players in the courts throughout the trial phase.

Some of the questions that will be answered in this unit are:

- What happens when the public prosecutor decides to prosecute?
- Who are the role players during the trial phase?
- What happens during a criminal trial?
- What role can victims of crime play during the trial and post-trial phases?
- What happens after an accused is convicted and sentenced?
- What is the position regarding crime committed elsewhere in the world and how does South Africa deal with this?

Unit 5 continues the discussion of unit 4 by turning to the trial and post-trial phases. In this unit we will look at the important role of the judiciary, in other words the magistrate or judge, who is responsible for adjudicating in the trial of offenders, and other functionaries who contribute to the decision of whether the offenders are guilty or not.

Now go to '5.2 The judicial process' by clicking on "Next" at the bottom of this page

5.2 The judicial process

In this unit we will look at the important role of the judiciary, in other words the magistrate or judge, responsible for adjudicating in the trial of offenders, as well as the other functionaries who contribute to the decision of whether the offender is guilty or not.

Remember that while the NPA is one of the main role players in the pre-trial phase, the role of the NPA does not end in the pre-trial phase. In fact, the public prosecutors (who are employed by the NPA) are role players in the courts throughout the trial phase. Their role, as you have seen in unit 4, already starts during the pre-trial phase.

5.3 A first encounter with the court ...

In the previous unit you watched a short story of how four men were arrested for an armed robbery that they committed. Click on the link named [Robbery of Shiny Things Jewellery Store](#) and do the following:

2. If you wish to recap on what happened you can quickly read Chapter 1: The event.
4. Then read Chapter 2: Early preparations

When you are done with your reading go to: 5.3.1 Reflections on our story

The story is also available under Additional Resources: Robbery of Shiny Things Jewellery Store.

5.3.1 Reflections on our story

Let us reflect on the initial court appearance and the trial phase.

Important functionaries in the trial phase of the criminal justice process

A number of key role players or functionaries emerge from our story of the four accused above. Each of them is an important link in the chain of the criminal process.

Which of the role players stood out for you?

Chances are good that you may say that Alyce played a very important role, both during the pre-trial and the trial phase. You are correct. We will look more closely at Alyce's functions below. Before we do so, we would like to make a few remarks about the following role players:

- The prosecutor and The National Prosecuting Authority
- Witnesses
- The defence lawyer or legal representative for the accused
- The presiding officer (magistrate or judge).

We will in the final instance explore the issue of bail in more detail, followed by the individualisation of offenders, punishment and the human rights of offenders.

The public prosecutor

The public prosecutor plays an important role both during the pre-trial and the trial phases.

The prosecutor, in a nutshell, has the following responsibilities, as have emerged from Alyce's role in our crime story during both the pre-trial and trial phases:

- to assist the SAPS in gathering appropriate and sufficient evidence for the purpose of a criminal trial
- to decide whether an offender should be prosecuted or not
- to present evidence in court on behalf of the State (in an attempt to secure a successful conviction)
- to argue the case on behalf of the State
- assist the court in arriving at a just verdict
- in the case of a conviction, to arrive at a fair sentence; and ultimately,
- to promote justice by assisting the state to fight crime.

Although Alyce represents the State on behalf of the community during the pre-trial and trial phases, she should also be accountable to the community that is represented, namely to ensure that the interests of victims and witnesses are promoted.

What would the impact be if Alyce performs her functions inefficiently or poorly?

The most obvious result would be that:

- a guilty accused may be acquitted of a charge against him. In addition to this, the impact will be far more widely, namely:
 - cases that are slowly processed, may increase the number of awaiting trial prisoners, causing overcrowding in the correctional facilities;
 - it becomes difficult for the Department of Correctional services to rehabilitate existing sentenced prisoners;
 - on an even wider level, it may foster an impression that “crime pays”, because the system is unable to address the fight against crime.

Alyce represents the State in the criminal proceedings. You may perhaps wonder why the State is so dominant in a criminal case.

The reason for this is because the crime that has allegedly been committed is punished by the State on behalf of the community. The crime is regarded as a breach of legal rules, which the community regards as binding. Criminal proceedings are hence instituted by the State (who is charge of the criminal proceedings) and an accused is charged to answer to the relevant criminal charges. Despite the strong role of the State, the Constitution specifically protects the rights of detained, arrested and accused persons.

The National Prosecuting Authority

It is the NPA (through the public prosecutor) that decides whether there is a prima facie case that would justify proceeding with prosecution. This is term you may have heard before. That is, a decision has to be made whether there is sufficient evidence “at first sight” or “at face value”, prior to that evidence being tested in court, to justify proceeding with a case in court. In other words, there should be sufficient evidence to justify an expectation that conviction is possible if such evidence would stand. To simplify, we can say that the NPA decides whether a case against a person (based on the untested evidence) is strong enough to proceed with prosecution in a criminal court.

It needs to be understood that a case which is already doubtful even before evidence is tested or contested in court, would probably not succeed. As a matter of principle the NPA should not prosecute cases where they are to depend solely on a possible admission by the accused during the trial.

An example:

An example of the issue of prosecuting an offender or not based on the available evidence was the NPA's decision a few years ago not to charge President Jacob Zuma in the Shabir Shaik trial, despite a claim made in August 2003 by the then Director of the NPA, Bulelani Ngcuka, that there was a prima facie case against President Zuma. A lot have since been written about the damage this statement caused to the reputation of the President. However in 2016, the North Gauteng High Court found the decision to drop the charges to be illegal and irrational.

Witnesses

A witness can be anyone of the following:

- the victim;
- anyone else who knows what happened or
- who knows something about the crime; or
- a police officer; forensic expert or another expert.

After each witness has given evidence, the accused or his or her legal representative may question the witness. This is to test the truthfulness or correctness of the evidence of the witnesses. This also gives the accused or his or her legal representative the chance to give their version of the events.

The defence lawyer or legal representative for the accused

The legal representative for the accused is tasked with countering the claim and evidence provided by the prosecutor (on behalf of the State). In instances where the State fails to provide sufficient evidence to support a finding that the accused is guilty beyond reasonable doubt, the legal representative of the accused may ask the court to discharge the accused. The legal representative of the accused has the right to cross-examine the witnesses that testify on behalf of the State and also presents evidence in support of the case of the accused. He or she may also call witnesses to testify on behalf of the accused.

The presiding officer

In the closing argument, the prosecutor summarises the case. The prosecutor gives reasons why the accused should be found guilty. The accused or the legal representative of the accused also summarises and submits closing arguments and explains to the court why the accused should not be found guilty.

This is the moment when the presiding officer gets the opportunity to decide whether the accused is guilty or not.

The role that the Magistrate or Judge (see unit 3 again for the difference between these two role players) plays in the criminal justice process is critical to ensure that a fair trial results. As part of this process, this functionary objectively views the criminal event and comes to a decision of guilt or innocence.

If the accused is found guilty, the prosecutor has proved the guilt of the accused "beyond reasonable doubt". If the accused is found not guilty, it is because the presiding officer has reasonable doubt as to whether the state has proved the case "beyond reasonable doubt". If there is reasonable doubt, the court has to acquit the accused. This means he or she goes free. The phrase "beyond reasonable doubt" will be explored in more detail below.

Bail

Let us now briefly consider the issue of bail, as this came up during the initial court appearance of the accused in our story, whose application for bail was denied.

Legislation in South Africa (the Criminal Procedure Act 51 of 1977) stipulates that no person who has been arrested, may be detained for longer than 48 hours unless he or she has been brought before a court which orders further detention. In order to determine whether it is in the best interests of justice to release an accused on bail or not, five factors are considered:

- The likelihood that the accused may endanger an individual or society at large
- The likelihood that the accused will not present him- or herself for the trial
- The likelihood that the accused will threaten the prosecution by interfering with witnesses or destroying evidence
- The likelihood that the accused will undermine the objectives of the criminal justice system
- The likelihood that the release of the accused will disturb public order.

Do you agree with Judge Koen's finding regarding the issue of bail for the three accused?

If you argued that this should be considered, you are correct. The Criminal Procedure Act distinguishes between certain crimes. In the case of serious crimes and extremely serious crimes, an accused may only be released if he or she produces evidence to convince the court that the interests of justice supports his/her release (in the case of serious offences), or if he/she (in the case of extremely serious offences) produces evidence to satisfy the court that exceptional circumstances exist, which in the interests of justice, permits his or her release.

Human rights in the criminal justice system

Let us pause for a moment to recap what we have said about the Constitution and rights in unit 2. Just as all members of society have rights, so do both victims of crime and offenders. Section 35 of the Constitution outlines the rights of arrested, detained and accused persons in the criminal justice process.

Each role player involved in the criminal justice process has rights which ensure that they are fairly and equally treated. Even an accused has certain rights and they have further rights when they are being criminally prosecuted.

Rights of accused persons

Accused persons have the following rights, which include the right:

- to be told what the charge is
- to a quick and public trial
- to appear in court within 48 hours after arrest
- to a trial by an unbiased court, usually in the area where the crime was committed
- to question any witnesses that gives evidence during the trial and evidence used against them
- to ask for a lawyer. If a lawyer cannot be afforded, the State must help to apply for Legal Aid to pay for a lawyer.

If an offender is denied any of these rights, he or she may be able to take the court's decision on appeal. This means that a higher court has to reconsider the case on the basis of asking whether the accused had a fair trial.

Individualising the offender

In courts every day in South Africa, the hundreds of “faceless” offenders become known to society and we see them as individuals for the first time. It is sometimes hard for the community to accept that these perceived “monsters” come from their very own communities. However, the court must individualise them and find an appropriate way of dealing with them. The court does not deal with them as alleged criminals in a general sense or from a general point of view, but as individuals. Each particular case heard by a court of law must be dealt with in accordance to its own merits and particular surrounding circumstances.

5.5 The trial phase

During this stage of the trial we see the critical parties involved.

To read what happens when the trial begins, go to Unit 3 to understand the court processes as well as unit 4.

When you are done with your reading go to: 5.5.1 Beyond reasonable doubt.

5.5.1 Beyond reasonable doubt

The main question that the presiding officer has to consider in arriving at a final decision is whether the prosecution has proven “**beyond a reasonable doubt**” that the crime(s) were committed by the accused. If not, the accused must be acquitted and be freed. Obviously, in such case, no sentencing can occur.

However, if the judge comes to the conclusion that guilt has been proved beyond a reasonable doubt, the accused are found guilty and convicted. Such a verdict will then be followed by the sentencing of the convicted offenders. This is what was meant with one of the requirements of a crime namely that “the act or conduct must be punishable by law”.

Sentencing is the sanction that the State (through the mandate of the courts) imposes due to the offender being found guilty of “breaking the law” in the form of committing a crime. You will remember from unit 3 that a crime is conduct that is punishable by the State and which is regarded as a breach of defined legal rules. It is important to note that not only the definition of a crime should be clearly described, but also the punishment thereof.

After the accused are **convicted**, the prosecution generally addresses the court on the kind of sentences that the State have in mind for the accused. “Convicted” does not mean the same as sentenced, as it merely refers to the verdict of guilty or not guilty. Sentencing follows a conviction and a verdict of guilty.

The legal representative of the accused may also address the court on the kind of sentence that he deems fit for his client. In cases that involve serious crimes, including violent crimes or sexual offences, the prosecution often presents evidence on the impact of the crime on the victim(s) and the community, as well as any relevant previous convictions that the offenders may have.

5.6 An important moment in the trial

Normally, sentencing (which can obviously only occur after conviction) is not dealt with immediately after conviction and finding the accused guilty. In most instances, a postponement is allow for both the prosecution and defense to prepare their arguments and to lead evidence for the purpose of sentencing. In our story, the case is postponed, for the reason that is explained below.

The judge has to consider an individualised sentence for each of the individuals in our story. This, in general, means that each convicted offender's unique circumstances are taken into account when the judge passes sentence. We will refer to the

individualisation of offenders throughout this unit, as you will note.

To read what happens during the sentencing, go to Unit 4.

When you are done with your reading go to: 5.6.1 More about punishment and sentencing

5.6.1 More about punishment and sentencing

Different forms of punishment can be handed down in a court of law.

They range from:

- **Punishment**, where the offender is deprived of his or her freedom for example when a prison sentence is passed down. Correctional supervision (house arrest) is also an option
- The payment of money (*a fine*) or the loss of property (forfeiture of property or paying compensation to someone)
- Providing a free service such as *community service*
- A *loss of privileges*, such as the cancellation or suspension of one's driver's license.

Mitigating and aggravating factors

The judge or magistrate also considers mitigating and aggravating circumstances when sentencing an offender. Aggravating factors are those factors that aggravate or magnify the crime and mitigating factors those aspects that lessen the severity of a crime.

In our story, the previous convictions of two of the offenders were considered as an aggravating factor. If we look at our four offenders, each one has unique life circumstances, each poses a different risk to society and they all have distinct needs when they are punished.

Factors that are considered by the sentencing judge to reduce the severity of the crime are referred to as mitigating factors.

Previous convictions and the failure to respond to earlier sentences are good reasons for choosing a more severe sentence.

However, if one has no prior convictions, it might lead to the reduction of his or her sentence. Hence, it is considered a mitigating factor. Previous convictions show how little respect the offender has for the law and that justifies sentencing the offender accordingly.

Assisting the police in obtaining evidence against other offenders or maybe obtaining stolen goods may lead to a reduction of sentence. Also offences that are premeditated lead to a more severe sentence but if the offence was not planned, it can lead to a lighter sentence. Being a young offender is also treated as a mitigating factor because somehow it is believed that young people have not had enough experiences to distinguish between what is wrong and what is right. Offenders who show remorse and those who were provoked by the victim also receive lighter sentences. Rehabilitation is also considered an important aspect when sentencing those offenders who show good rehabilitating prospects and those who are likely to re-offend receive a less severe sentence.

Rights of victims and witnesses

Victims and witnesses also have rights which protect them and ensure that they are not unfairly treated or further traumatised by the justice process. Due to the nature of the court process, individuals testifying may feel they are being harshly treated.

The National Prosecution Authority works hard to make sure that all victims and witnesses appearing in court are treated with respect and dignity. State Prosecutors will do their best to protect their interests and make sure that witnesses not cross-examined unfairly. There is right to cross examine and a prosecutor can, amongst others, object to intimidation of witness or rudeness towards them.

5.7 What happens to Christiaan Pringle, our 15-year old accused?

To know what happens to Christiaan Pringle we need to understand diversion.

Although we made reference to diversion earlier, we didn't look at the purposes of this approach very closely.

The objectives of diversion are to:

- Deal with a child outside the criminal justice system in appropriate cases
- Encourage the child to be accountable for the harm caused by him or her
- Promote the reintegration of the child into his or her family and community
- Promote reconciliation between the child and the person or the community harmed by the child's actions
- Prevent the child from having a criminal record.

5.8 What happens if things go wrong?

Although legislation and policies govern the criminal justice process that guide the legal process and give role players their mandate, things may go wrong. One commonly cited problem relates to the criminal docket.

5.9 The post-trial phase

The final cog in the post-trial phase of criminal justice process is the Department of Correctional Services. You will recall that both Robert Blom and Calvin Sibanda in our story have been sentenced following their convictions and are now in the custody of the Department of Correctional Services.

To read what happens to Robert and Calvin, go to p 16, Chapter 5: Entering the Correctional System, by clicking on the link named: [Robbery of Shiny Things Jewellery Store](#)

When you are finished reading go to: 5.9.1 The role of the Department of Correctional Services.

5.9.1 The role of the Department of Correctional Services

The Department of Correctional Services involves those functionaries responsible for carrying out the orders of the presiding officer (magistrate or judge) and the sentence imposed on the offender during the trial.

An important task of the Department of Correctional Services is to provide a safe and healthy environment for all inmates. Functionaries within Correctional Services are tasked to ensure the safety of inmates, as well as the security of all personnel and society. Another important task is to assist offenders in their rehabilitation process.

Apart from correctional officials, there are also experienced professional officials, such as social workers, psychologists, and educationists. They have to provide need-based care programmes and services.

Individualised correctional sentence plans

In the discussion above we refer to an individualised approach to offenders during the trial and sentencing phase. This approach does not stop there. When an offender enters the correctional environment, he or she undergoes an assessment phase. The purpose of the assessment is to determine the offender's security risk and criminal profile.

After determining the offender's level of risk to him- or herself and others and when his or her criminal profile has been put together, a needs-based correctional sentence plan is drawn up, together with individualised interventions that may be required.

Correctional efforts target all elements associated with offending behaviour and focus on the offence for which a person was sentenced.

Robert is placed in an anger management programme and has to consult a clinical psychologist on a regular basis. Calvin is placed in a training programme to equip him with the necessary skills to be able to find a job upon his release. He also needs to attend an anger management programme. All needs-based programmes and services are aimed at improving their chances of social acceptance and effective reintegration back into their communities.

These programmes and services for Robert and Calvin will also work towards maintaining their personal well-being and they can use the gym for physical fitness. Certain programmes also aim to improve their social functioning, health care as well as spiritual, moral and psychological wellbeing.

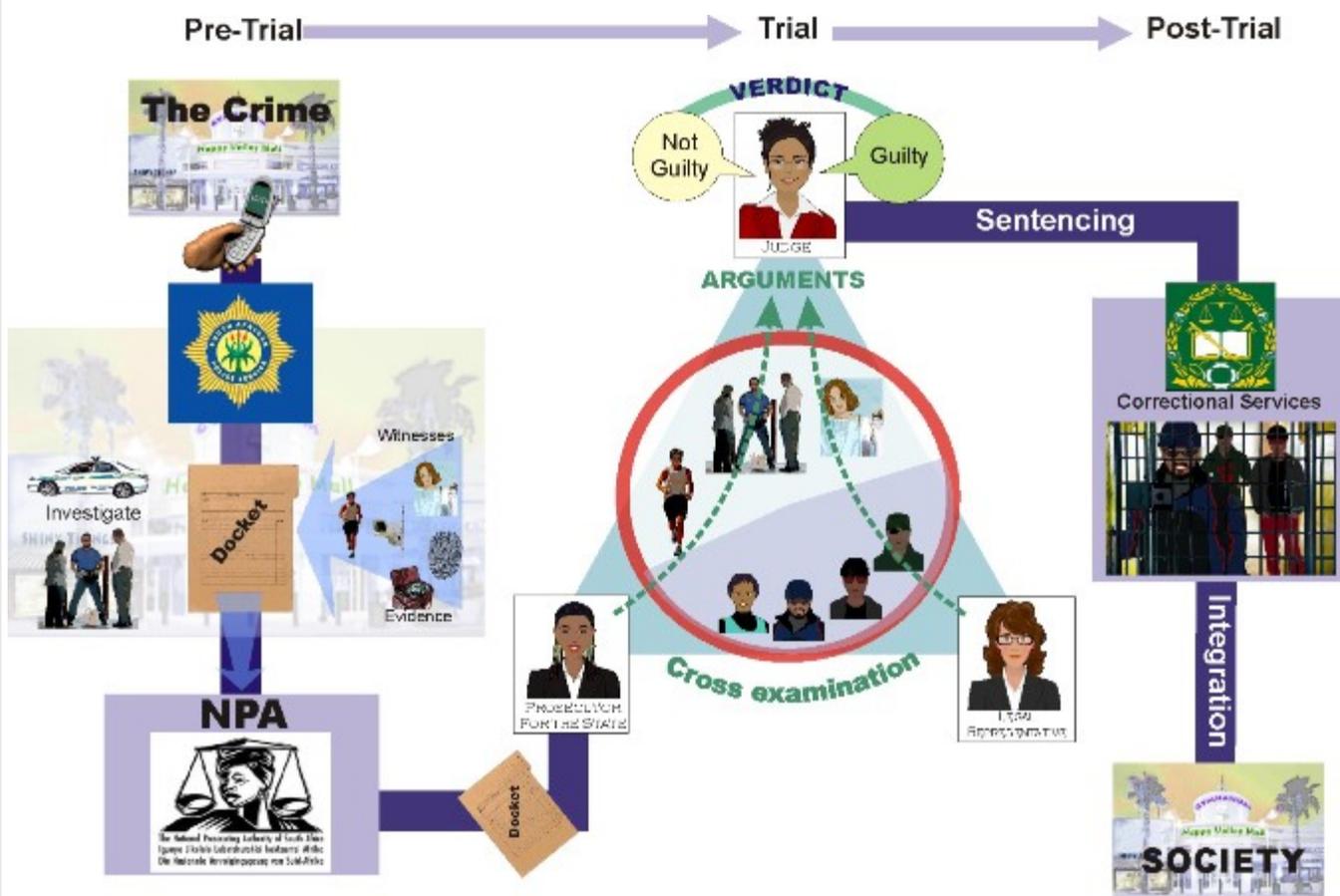
All correctional efforts are aimed to target all elements associated with offending behaviour and focus on the offence for which a person was sentenced. Relationships with their families also receive attention and forms part of the process of preparation for reintegration into the community. In this regard, social reintegration programmes are important. These programmes prepare offenders for their eventual release.

Click on the link below and have a look at some of these programmes that the Department of Correctional Services offers. Keep your notes regarding these programmes, as you will be referring to these when you do your assignment:

<http://www.dcs.gov.za/AboutUs/Programmes.aspx>

An overview of the criminal justice process

Now you have experienced the criminal justice system through the telling of a story and have met all the important functionaries that contribute towards building a safer and more just society. See the diagram below which depicts this story.



5.10 Global challenges regarding crime

Up to this point, we discussed synergy within the South African criminal justice system and we looked at the importance of each component in the system working towards a mutual goal of dealing with crime.

We said that synergy is involved, as each functionary should fulfil his or her function so well that he or she is able to work together with all the other role players in the criminal justice system, each doing their job so efficiently that a criminal case can be processed smoothly and efficiently. Now let us take this idea a little further. Not only can we talk about synergy within our

own criminal justice system, but just think about the benefits of achieving synergy between different criminal justice systems across the world!

Why we need this international synergy

Crimes committed in South Africa have a knock-on effect and the ripple effect is felt in other countries. On the other side, crimes committed in other countries also have an impact on us in South Africa. When assessing the impact of crime on our society, we have to accept that this cannot be done by focusing on the local context only, as we do not live in isolation.

What do we mean when we say that we do not live in isolation? Let us look at crimes or actions that affect those closest to us first. Think of the following examples. If you kill someone, it has immediate repercussions for you. Depending on where you live, these repercussions may differ. Here in South Africa, you will probably go to prison for the rest of your life. If you live in another country and commit the same crime there, you may be executed. In most of the Asiatic countries, including Singapore and Malaysia, the penalty for drug trafficking is a death sentence.

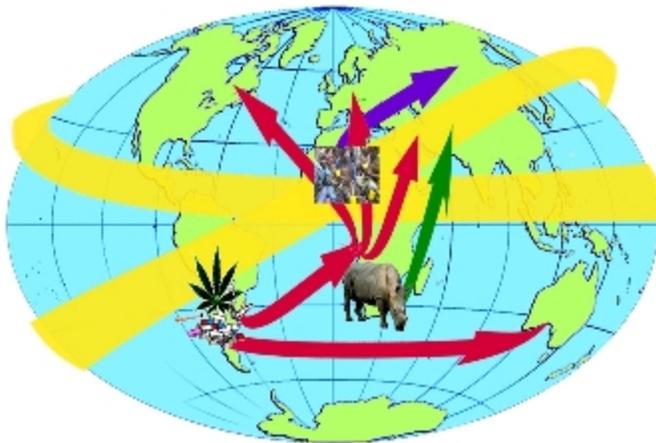
Let us pause for a moment to look at some of the issues and problems that South Africa face.

- Drug smuggling is a worldwide problem that also affects South Africa, because of South Africa's locality in the trade routes. South Africa is on the route of the cocaine trade from South America and the opium trade from the East. This influx of drugs has increased our drug addiction statistics, making our communities more vulnerable to the negative effects of drugs. There is a strong link between drug use, abuse and crime.

Besides drug smuggling, South Africa has problems dealing with the illegal trade in rhino horn and human trafficking, both further examples of global crime. In this unit we will look at the illegal trade in rhino horn.

5.10.2 Interpol

One gets a better picture of the international synergy between justice systems by looking at Interpol. The International Criminal Police Organization (ICPO), also known as Interpol is an organisation which brings about international police cooperation. Interpol can be seen as a system of 190 countries who work together in the fight against the global threats of crime.



To provide you with an overview of what Interpol is, go to the following link and click:

<http://www.interpol.int/>

Interpol focuses primarily on the following universal problems, namely public safety, terrorism, organised crime, crimes against humanity, environmental crime, genocide, war crimes, piracy, illicit drug production, drug trafficking, weapons smuggling, human trafficking, money laundering, child pornography, white-collar crime, computer crime, intellectual property crime and corruption.

Interpol has a database on international crime and they track criminals and crime trends around the world. They maintain collections of fingerprints and mug shots, lists of wanted persons, DNA samples and travel documents. They analyse all data and release information on crime trends to the member countries.

Now that you have had the opportunity to learn a little about the kind of crimes that have an impact not only on our country, but the entire world, can you see how events that take place in South Africa also have an effect on the rest of the world and vice versa? We live in an era where technology has brought us all so close, no matter where we live. We speak to people wherever in

the world they live. We travel across the globe in a matter of hours. That is why we often refer to it as a “global village”. A message can be sent in a matter of seconds to any destination in the world.

It is impossible for us to know the laws of every country, but understanding that crime, wherever it happens, will be punished, is important, and understanding how the laws of the different countries may be applied and punished differently, is equally important. This emphasises our remark above that we do not live in isolation from the rest of the world.

Up to this point in our studies we have looked at our unique culture, our norms and values and an African way of being. We have tested our knowledge and understanding of how our communities function in an effort to have a just society where members can live in safety. We have looked at our Constitution and how it provides the foundation on which all our laws stand. We have also looked at crimes in our country that our criminal justice system must deal with and we have gone beyond this, by considering the commission of crime in a global context.

ACTIVITY 5.2: Environmental crime

To participate in **Activity 5.2: Environmental crime**, please go to the Discussion forums and briefly answer the following questions:

2. Do you think that protecting the environment is important? Give reasons for your answer.
 4. What are some of the causes of rhino poaching?
 6. How can rhino poaching be prevented?
-

5.10.1 Environmental crime

In South Africa and internationally, environmental harm has become known as a serious criminal activity. This harm may take the form of pollution, poaching, and trafficking of plants and animals. For example, some companies circumvent the law in order to dump their waste products, which can lead to dangerous chemicals leaching into rivers and crops. Unlawful fishing may decimate fish species, and some poachers capture animals like cheetah cubs for the illegal pet trade. Even timber may be illicitly harvested and trafficked, while rhinos are killed for their horns and elephants for their tusks.

Please follow the link to see a short video on some of the different types of environmental crime - <https://www.youtube.com/watch?v=8rEhDRt8gz0>.

Not only do these crimes contribute to the destruction of the environment – affecting the ecosystem and biodiversity – but they destabilise social cohesion and national safety. If one thinks about our iconic Big Five species, which includes elephant, rhino, buffalo, lion and leopard, it becomes clear that poaching has a negative impact on tourism and thus on job creation and the economy. Some people might feel that poaching takes away from an important part of our heritage as South Africans.

Although rhino poaching has received a lot of attention due to its dramatic increase in the past ten years, not enough is being done to stop it. In addition, the illegal trade in other species may often be ignored or even go largely unnoticed (such as that of the pangolin, which is the most trafficked mammal in the world). If rhino poachers are caught, there are other potential criminals willing to take their place due to the financial incentives involved. The leaders of poaching syndicates may often evade detection, since the international nature of the illegal trade and the widespread corruption involved makes policing these crimes very challenging.

To learn more about rhino poaching, please follow this link to a short video - <https://www.youtube.com/watch?v=5V720WR0jNo>.

ASSIGNMENT 5

Assignment 5: Written assignment

So far we have explained that law and justice form an intrinsic part of our daily lives. In order to explore these concepts, we have provided you with the contextual background to the most pertinent issues; we have you engage with newspaper reports and have requested you to reflect on our own experiences and those of others. With this in mind, we now want you to read any of the daily newspapers available to you so that you may develop a sense of the status of crime in our society and of the work of functionaries in the criminal justice system.

From your reading above, choose any 5 examples of reports (articles) on criminal activities that you have found interesting and then do the following:

NB: At least 3 articles must be South African and all articles must not be older than 3 months.

Compile a document based on each of the 'cases' you have selected:

1. Provide us with the source of the story, in other words, the title of the report/article in the newspaper, the page number, the name of the newspaper, and the date it was published. E.g.

LAWYERS OF SHAME Pretoria News, p.1, Monday February 20: 2012
PRISONER SHOT DURING HOSPITAL ESCAPE Sowetan. p.2, Tuesday August 28:
2012. (5)

2. Provide a brief summary (**about 150 words for each article**) of what is described in the report and why you have chosen this example. Explain why you find it interesting and give reasons why you believe this story is related to our criminal justice system. (10)

3. Identify the key role players in the article and explain their involvement in the incident from a criminal justice perspective. (10)

4. Write short comments on how you perceive the involvement of the functionaries representing the criminal justice system in these cases. In what way do you think these individuals have served justice? If you feel that justice was not served, provide reasons for this view. (5)

TOTAL MARKS: 30

5.12 Conclusion

As part of our journey into the realm of the social dimensions of justice, we have introduced you to the concepts of law and justice. In Unit 1 we have discussed how as a society we need rules to help us right wrongs and to maintain peace and order in society. Thus in order to regulate our society, we have laws that we have to adhere to. The law also balances the interests of individual members of society with the interests of other members and with those of the community as a whole.

Our justice system, comprising of a criminal justice system and a civil justice system, is the mechanism by which these rules are applied or enforced and forms the focus of our next unit. In unit two we explored the concept of uBuntu and we discovered the Constitution. It is important to remember that the principles infused within the Constitution should influence the function of our justice system.

As students in the College of Law, we assume that you may be interested in pursuing a career in our justice system or more specifically, our criminal justice system. We hope that this unit may have contributed to your understanding of the criminal justice process, by understanding the role of functionaries as mandated by their different institutions and as supported by their specific codes of conduct and work ethics.

Alyce is compelled to follow the provisions of the Child Justice Act, which requires that a preliminary pre-trial assessment of the minor who is alleged to have committed an offence, must take place. This assessment is done by a probation officer. At the first court appearance, Alyce arranges that Christiaan be sent to a place of safety, pending the outcome of the assessment.

The purpose of this assessment is, amongst others, to gather more information on the child and his background, to consider if the child was used by adults to commit the crime (as may be argued in our crime story); what the prospects of diversion are.

At the place of safety, the probation officer, Vanessa Njotini, makes contact with Christiaan. She arranges for a meeting with him, his parents and a social worker. After the session, Christiaan and his parents are reconciled. After eight sessions, the Restorative Justice Centre reports back to the court that Christiaan has been reintegrated into his family, is back at school and accepts responsibility for his behaviour. It also reports that Christiaan is an impressionable child and that he was strongly influenced by Robert Blom and Calvin Sibanda.

On the day of Christiaan's appearance at the Pretoria magistrate's court (which sits as a child justice court if a criminal matter relating a minor child arises), the relevant magistrate notes the contents of the report of the Restorative Justice Centre. Christiaan receives a suspended sentence. The magistrate remarks that the crime in which Christiaan was an accomplice is a serious one and that the suspended sentence is an appropriate sentence under the circumstances. Christiaan is also remorseful and takes responsibility for his actions.

ACTIVITY 5.1: Do people who break the law have rights?

Earlier in this section we have argued that just as all members of society have rights, so do victims of crime and even offenders.

2. Read Section 35 of the Constitution which outlines the rights of arrested, detained and accused persons in the criminal justice process (Unit 2).
4. Share your opinion on this issue with your fellow students in the discussion named: Do people who break the law have rights?

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