



# Country Report to the Twelfth United Nations Congress on Crime Prevention and Criminal Justice

Salvador, Brazil, 12-19 April 2010

A/conf.213/G/Republic of South Africa  
English



REPUBLIC OF SOUTH AFRICA

The United Nations Congress on Crime Prevention and Criminal Justice is a global high-level platform to share information and experiences on the criminal justice system, at the domestic, regional and international levels.

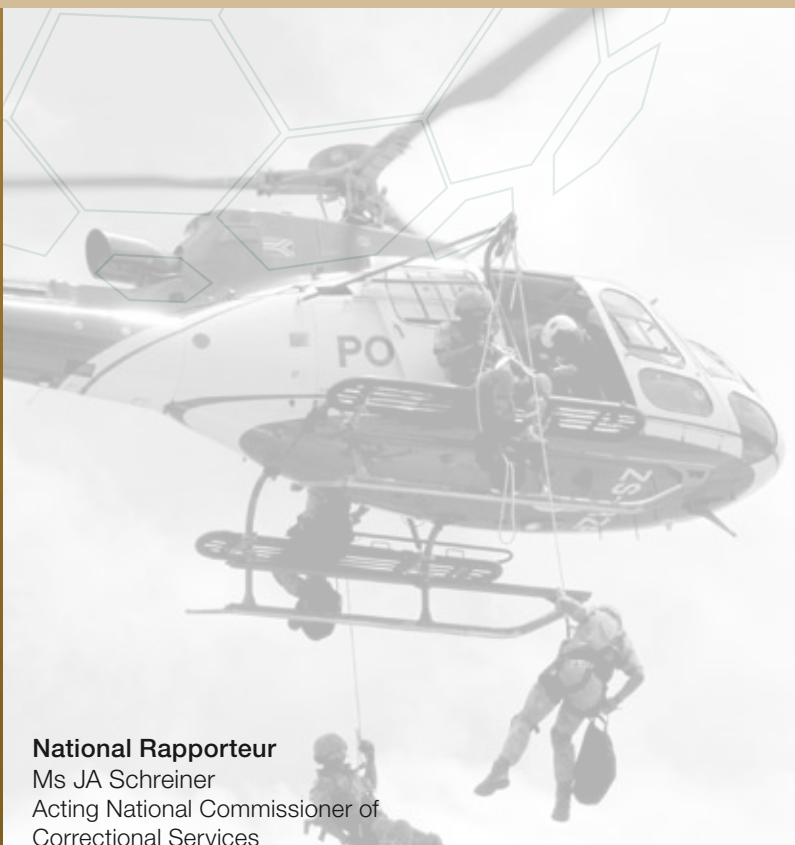


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Salvador, Brazil, 12-19 April 2010



**National Rapporteur**  
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# I. Introduction

1. This report has been prepared in line with the guidelines of the 12th United Nations Congress on Crime Prevention and Criminal Justice. Furthermore, the report, the introduction in particular, has been prepared in line with the United Nations standards and guidelines on the preparation of country reports. The introduction is meant to give context to this report. Therefore, this Report, in terms of structure and content, is based on the above guidelines.

## A. Population, ethnic and demographic characteristics

2. The population has, since the advent of democracy, grown from 43 million to 48 million according to the South Africa statistics of 1999 and 2007 respectively. The number has been added by immigrants from Europe, Australia, Asia, Africa, the Americas and other parts of the world. Africa constitutes a large number of immigrants, especially those from countries ridden by conflicts.
3. South Africa, with its eleven official languages and its increasing population, is faced with another challenge of access to justice. Although there is consistent education and public awareness campaigns on the criminal justice and human rights system, this remains a challenge. The South African Legal Aid Board has limited resources to ensure universal access to justice. Organised crime committed by sophisticated syndicates puts a strain to enforcement agencies.

## B. Economy and Poverty Alleviation

4. Although the economy of South Africa has been growing steadily after the attainment of freedom and democracy, the challenges of under-development and poverty are still immense in South Africa. Poverty, inequality and unemployment, which are the legacies of apartheid rule based on racial oppression, remain a challenge in South Africa. Our education system is being transformed to generate the required skills aimed at increasing the economy and easing the high level of unemployment. South Africa, like a number of countries, has not been spared by the global economic crisis; and this has increased the level of unemployment.
5. Despite these challenges, the Government has made progress, after 15 years of democracy, in addressing the above legacy. The Government of South Africa has provided houses, electricity, water and sanitation to a number of disadvantaged groups, including immigrants. There is a rural development strategy, which is meant to address

the plight of communities and women in rural areas. The Government's anti-poverty strategy is a vehicle aimed at harnessing all resources in a manner that ensures that there is measurable impact on poverty eradication, and the Social Security Assistance Programme remains the most significant anti-poverty strategy (see a full 15 year review report on the website of the Presidency [www.thepresidency.gov.za](http://www.thepresidency.gov.za)).

## C. South African Government and Legal System

6. The South African legal system is based on the Constitution of the Republic of South Africa of 1996. Our erstwhile Roman-Dutch and English (hybrid) legal system has been replaced by the constitutional legal system. The Roman-Dutch and English law and statutory law is applicable to the extent that it is not inconsistent with the Constitution. The Constitution is founded on the following values: human dignity and equality, non-racialism and non-sexism, supremacy of the constitution and the rule of law, and universal adult suffrage and multi-party system of democratic government. The Republic of South Africa, as one sovereign and democratic State, is founded on these values.
7. The Government is constituted by the legislature, executive and the judiciary. We have a three-tier Government, namely the national, provincial and local governments. As required by the Constitution, these governments function concurrently, however, there are other competencies such as the judiciary, which are reserved for the national government. There is cooperative governance amongst these three tiers of government.
8. The judiciary consists of the Constitutional Court, Supreme Court of Appeal, High Courts and Magistrates Courts. There is a move to establish an integrated judiciary system, the Superior Courts Amendment Bill is aimed at achieving that. We also have national human rights institutions, which support democracy and complement the judiciary.

## D. South African Law Enforcement Agencies

9. The Police, National Prosecuting Authority, National Security Agency and other law enforcement agencies serve as administrative measures in the fight against crime. The specified agencies work in an integrated fashion under the JCPS Cluster, and are complemented by the other law enforcement agencies. These agencies coordinate their activities in fighting crime and share information and technical skills.

### E. South Africa's Response to Crime: Organised Crime

10. The Government of South Africa, working together with all South Africans has been intensifying the fight against crime and corruption in order to build cohesive, caring and sustainable communities.
11. Speaking on the occasion of the State of the Nation Address on 3 June 2009, the Honourable President, Mr. Jacob Zuma, said the following in this regard:  
***“Together we must do more to fight crime. Our aim is to establish a transformed, integrated, modernised, properly resourced and well-managed criminal justice system. It is also critically important to improve the efficiency of the courts and the performance of prosecutors and to enhance detective, forensic and intelligence services.”***
12. This work has started in earnest. The Criminal Justice System (CJS) Review facilitates the work in this regard and promotes facilitation and coordination across all departments. The CJS Review is coordinated by the Minister of Justice and Constitutional Development, who also leads the Justice, Crime Prevention and Security (JCPS) Cluster, comprising the inter-ministerial cluster of departments which are all involved in improving the efficiency of the CJS. The JCPS Cluster is one of the inter-ministerial committees in South Africa that was established to instil and retain an integrated and synchronised approach to policy formulation and coordination of crime prevention and combating, as well as criminal justice administration activities.
13. In his 2010 State of the Nation Address, the President declared 2010 as “the year of action”, during which focus will be on implementation and performance outputs. The following outputs have been identified:
  - Addressing the overall levels of crime
  - Improving effectiveness and ensuring integration of the criminal justice system (CJS)
  - Combat corruption within the CJS cluster to enhance its effectiveness and its ability to serve as a deterrent against crime
  - Manage perceptions of crime among the population
  - Combating cyber crime
  - Increase effectiveness and integration of border management
  - Secure the identity and status of citizens
14. In addition, to ensure a safe 2010 FIFA Soccer World Cup in South Africa from 11 June to 11 July

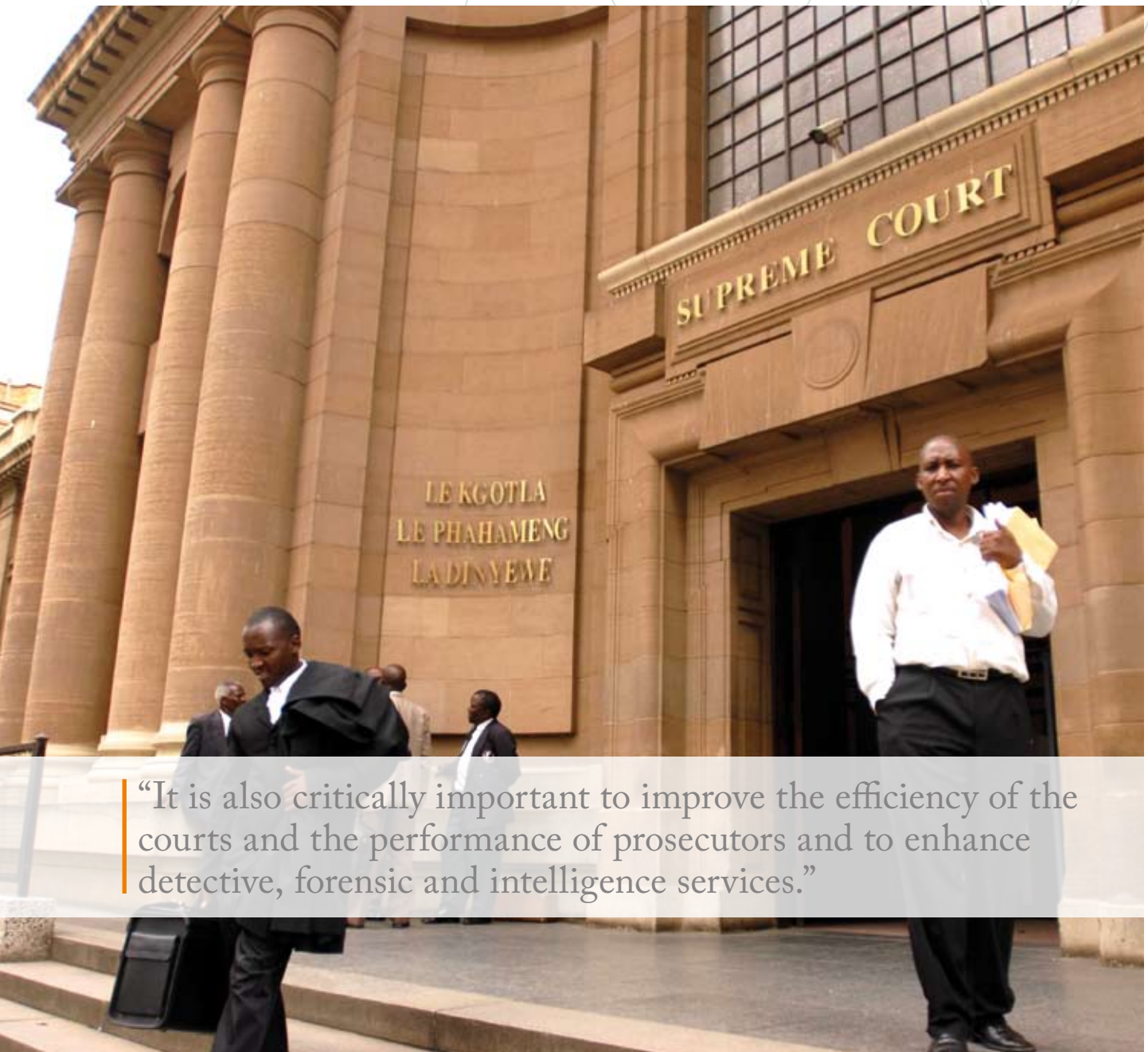
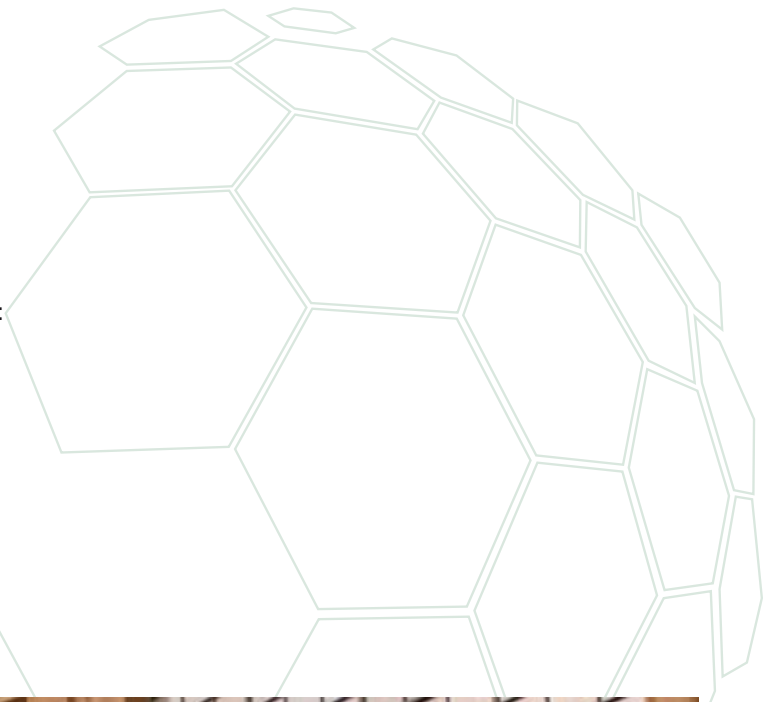
2010, the South African Parliament promulgated the 2010 Soccer World Cup Special Measures Act. This law, together with coordinated management of the event through the JCPS Cluster in conjunction with FIFA and the Local Organising Committee, forms part of Government's efforts to protect all stakeholders and visitors during the upcoming World Cup event.

15. South Africa remains committed to the continued transformation of the judiciary, promotion and protection of human rights and the upholding of rule of law. Therefore, in the fight against crime, we need the judiciary which is sensitive not only to rights of perpetrators, but victims, especially women and children.
16. This report reflects the considerable developments that have taken place within the context of crime prevention and criminal justice in South Africa during the period 2005 to 2010. During this period all relevant national departments namely Justice and Constitutional Development, Correctional Services, Police, and Social Development were characterised by a focus on service delivery.
17. The aim of the report is firstly to provide the background of the South African criminal justice system. As this is only the third opportunity since 1995 for South Africa to submit a report on criminal justice matters, the report enables the reader to gain a clear understanding of the present situation in South Africa.
18. Secondly, the report deals with the eight topics as stipulated by the organisers of the congress. These topics are preceded by a topic on International Instruments, which set the scene and obligations of the State parties to such instruments.

The topics are as follows:

- |         |  |
|---------|--|
| Topic 1 | Children, youth and crime  |
| Topic 2 | Provision of technical assistance to facilitate ratification and implementation of international instruments relating to the prevention and suppression of terrorism |
| Topic 3 | Making the United Nations guidelines on crime prevention work  |
| Topic 4 | Criminal justice responses to the smuggling of migrants and trafficking in persons, and links to transnational organised crime                                       |
| Topic 5 | International cooperation to address money laundering based on existing and relevant United Nations and other instruments  |

- Topic 6 Recent developments in the use of science and technology by offenders and by authorities fighting crime
- Topic 7 Strengthening international cooperation in fighting crime related problems: practical approaches
- Topic 8 Crime prevention and criminal justice responses to violence against migrant workers and their families



“It is also critically important to improve the efficiency of the courts and the performance of prosecutors and to enhance detective, forensic and intelligence services.”

## II. International Instruments

### A. Organised Crime Instruments, signed ratified or acceded to by South Africa

19. South Africa has ratified or acceded to the following organised crime and corruption conventions

| Date Signed      | Country      | Title   | Dates                |
|------------------|--------------|---|----------------------|
| None             | Multilateral | United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances | 14 December 1998 (a) |
| 14 December 2000 | Multilateral | UN Convention against Transnational Organised Crime   | 24 February 2004 (r) |
| 14 December 2000 | Multilateral | Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children  | 20 February 2004 (r) |
| 14 October 2002  | Multilateral | Protocol against the Smuggling of Migrants by Land, Sea and Air                                 | 20 February 2004 (r) |
| 14 October 2002  | Multilateral | Protocol against the Illicit Manufacturing of and Trafficking in Firearms                       | 20 February 2004 (r) |
| 09 December 2003 | Multilateral | UN Convention Against Corruption  | 22 November 2004 (r) |

### B. Terrorism Instruments signed, ratified or acceded to by South Africa

20. South Africa has ratified or acceded to the following counter-terrorism conventions and protocols:

| Date Signed | Country      | Title  | Dates   |
|-------------|--------------|--|---|
| 1963-09-14  | Multilateral | Convention on Offences and Certain Other Acts Committed On Board Aircraft (Tokyo Convention)   | 1972-05-26(a)<br>Entry into force:<br>1972-08-24  |
| 1970-12-16  | Multilateral | Convention on the Suppression of Unlawful Seizure of Aircraft  | 1972-05-30 (r)<br>Entry into force:<br>1972-06-29 |
| 1973-12-14  | Multilateral | Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents   | 2003-09-23 (a)<br>Entry into force:<br>2003-10-23 |
| 1979-12-17  | Multilateral | International Convention against Taking of Hostages  | 2003-09-23 (a)<br>Entry into force:<br>2003-10-23 |
| 1980-03-03  | Multilateral | Convention on the Physical Protection of Nuclear Material  | 2007-09-17 (r)<br>Entry into force:<br>2007-10-17 |
| 1988-02-24  | Multilateral | Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 | 1998-09-21 (a)<br>Entry into force:<br>1998-10-21 |
| 1988-03-10  | Multilateral | Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention)   | 2005-07-08 (a)<br>Entry into force:<br>2005-10-06 |
| 1988-03-10  | Multilateral | Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. (SUA Protocol)   | 2005-07-08 (a)<br>Entry into force:<br>2005-10-06 |

| Date Signed | Country      | Title  | Dates  |
|-------------|--------------|--|--|
| 1991-03-01  | Multilateral | Convention on the Marking of Plastic Explosives for the Purpose of Detection | 1999-12-01 (a)<br>Entry into force: 2000-01-30 |
| 1997-12-15  | Multilateral | International Convention for the Suppression of Terrorist Bombings           | 2003-05-01 (r)<br>Entry into force: 2003-05-31 |
| 1999-07-14  | Multilateral | OAU Convention on the Prevention and Combating of Terrorism                  | 2002-11-07 (r)<br>Entry into Force: 2002-12-06 |
| 1999-12-09  | Multilateral | International Convention the Suppression of the Financing of Terrorism       | 2003-05-01 (r)<br>Entry into force: 2003-05-31 |
| 2004-07-08  | Multilateral | Protocol to the OAU Convention on the Prevention and Combating of Terrorism  | 2007-03-25 (r)                                 |
| 2005-04-13  | Multilateral | International Convention on the Suppression of Acts of Nuclear Terrorism     | 2007-05-09 (r)<br>Entry into force: 2007-07-07 |

*Accession (a); Ratification (r); Acceptance (A); Approval (AA); Succession (d); Consent to be bound (p)*



The Constitution of the Republic of South Africa defines the rights of the child by stating that a child must “not be detained except as a measure of last resort...” and for the shortest possible time period.

### III. Children, Youth and Crime

#### A. Introduction

21. Section 28(1) (g) of the Constitution of the Republic of South Africa of 1996 defines the rights of the child by stating that a child must “not be detained except as a measure of last resort ...” and for the shortest possible time period. In addition, under sections 12 and 35 of the Child Justice Act, 2008 (Act No 75 of 2008), a child may be detained only for the shortest appropriate period of time, and has the right to be detained separately from persons over the age of 18 years. According to the Children’s Act, 2005 (Act No. 38 of 2005), a child is defined as a person under the age of 18 years.
22. On 9 March 2010, 1 117 children were detained in the facilities of the Department of Correctional Services, of which 441 were awaiting trial. As at 31 January 2010, there were approximately 5 000 children accommodated in secure care facilities. The numbers of children awaiting trial in prisons have decreased significantly during the past five years because of the continued concentrated attention towards the management and prioritisation of all matters relating to children in conflict with the law, and especially those awaiting trial.

#### B. Developments

23. Since the 11th UN Congress of 2005, South Africa has introduced a range of new laws, programmes and policies regarding the management of children and youth in conflict with the law. The Inter-Ministerial Committee (IMC) was established to deal with the entire child and youth care system for children at risk. This resulted in many children being released from prison since 1995.
24. Foremost among these initiatives is the Child Justice Act, which came into effect on 1 April 2010. One of the primary objectives of the Child Justice Act is to establish a criminal justice system for children in conflict with the law. The main purpose of the new Criminal Justice System for Children is to ensure that children’s matters are managed in a rights-based approach and to assist children in conflict with the law to turn their lives around and become productive members of society. This is being overseen by a National Steering Committee on Child Justice, which consists of the Directors-General of the various Departments concerned and which is chaired by the Director-General of the National Department of Justice and Constitutional Development. This committee will monitor the implementation of the Child Justice Act, 2008 and the National Policy Framework on Child Justice, to ensure coordination between departments and civil society in this regard.

25. Many NGOs are being capacitated by Government through various initiatives, including funding, to implement the Act. This resulted from inter-sectoral collaboration between all the relevant government departments and civil society organisations involved in the Criminal Justice System. The most notable of these include the Child Law Centre, the National Institute of Crime Prevention and the Reintegration of Offenders (NICRO), Khulisa, Childline, the Restorative Justice Centre, BOSASA and others. These civil society organisations are also part of the inter-sectoral committee on child justice issues.



26. A separate criminal justice system for offenders under the age of 18 years has practically been established during the past ten years through the implementation of the Interim National Protocol for the Management of Children Awaiting Trial. This means that children who allegedly commit crimes, will not be handled in terms of the normal criminal law, but special procedures will be applicable to such children.
27. However, if the child does not complete a diversion programme successfully, the child may be taken back to court for an inquiry into the reasons for failing to do so. If the reason was no fault of the child, s/he will be assisted in completing the said programme or will be diverted into another suitable programme. Regarding sentencing, a child who has been found guilty of a crime must first be sentenced to a non-custodial sanction, if possible, to ensure that the child learns to accept responsibility for his/her crimes and give back to the community. Certain non-custodial sanctions’ programmes may also be considered and only in the last resort and usually only for the most serious and violent crimes, will children be sentenced to direct imprisonment.

### **C. Oversight and monitoring bodies**

28. The constitutional time limit for detaining persons in police custody is a maximum of 48 hours without them being charged. However, the police policy prescripts are that children's cases should be prioritized and they should not be detained in police custody for longer than 24 hours. The police are monitored by the Independent Complaints Directorate (ICD) on various issues such as the detention and death of persons in detention (including children) which must be investigated by this directorate.
29. The Human Rights Commission is vigilant on the violation of human rights. The interventions of this commission are vigorous when children are concerned to ensure that the dignity of children is upheld and that their rights are respected.
30. The Ministry on Women, Children and Persons with Disabilities was established in 2009 and it is situated within the office of the Presidency. Its mandate is to coordinate the advancement and protection of the rights of women, children and persons with disabilities, as well as the coordination of compliance with South Africa's obligations under international instruments.
31. The Department of Social Development established the Central Drug Authority (CDA), to advise the Minister of Social Development and Government in particular, on the prevention, treatment and combating of drug abuse. One of the pillars of South Africa's Drug Master Plan focuses on children and youth.

### **D. Treatment of children and youth offenders**

32. During the awaiting-trial and pre-sentencing periods, children in conflict with the law are accommodated in secure care facilities known as Child and Youth Care Centres. Children may be sentenced to reform schools in post-sentencing periods.
33. Legal Aid South Africa (LASA) has established a policy whereby all children accused of crimes have an automatic right to legal representation by LASA, irrespective of the means test. In terms of the Children's Act of 2005, children involved in children's court-proceedings also have the right to apply for a legal aid lawyer in all 366 Magistrates' Courts in the country.

### **E. Policy development process**

34. The Government of South Africa rigorously promotes the process of broader consultation with lobby groups, civil society organisations and

communities in general about the development of its policies. This is in line with the provisions of the Constitution, which promotes a participatory approach in which all interested parties are afforded an opportunity, through public debates to voice their opinions.

### **F. Sexual offences amongst children and youth**

35. The draft National Policy Framework for the Management of Sexual Offences, in terms of the Criminal Law Amendment (Sexual Offences and Related Matters) Act, 2007 (Act No. 32 of 2007), proposes various approaches to the management of child victims and witnesses. Specialised services have been introduced to assist child witnesses. The services include provision of intermediaries, intermediary rooms with one-way-mirror facilities, puppet dolls, court preparation officers, etc.

### **G. Inter-sectoral collaboration**

36. The Inter-Sectoral Committee on Child Justice (ISCCJ) coordinates the management of matters affecting child offenders at national, provincial and local level. It develops action plans and monitors the implementation thereof. Prior to the promulgation of the Child Justice Act, 2008, the interim Protocol for the Management of Children Awaiting Trial was adopted by Cabinet in 2001 and the Standing Orders for the Treatment of People Awaiting Trial were put in place in 1999. These policies and legislation have had the overall impact of reducing pre-trial detention in police facilities.
37. The ISCCJ, which is mandated, amongst other matters, to coordinate services directed at children and youth in conflict with the law, collates monthly statistics on the services rendered. This includes the total number on assessments of all arrested children, those referred to diversion programmes, home based supervision, secure care facilities and alternative placements. This forum also looks into challenges and gaps in child justice matters, and facilitates case flow management. Lobby groups, civil society organisations and communities are part of this forum in which watchdog or oversight functions are also fulfilled.
38. The relevant government departments have put in place systems to monitor and fast-track children's cases at local, provincial and national level, and have agreed on timeframes for the management of children awaiting trial.

## IV. Provision of Technical Assistance to Facilitate Ratification and Implementation of International Instruments Relating to the Prevention and Suppression of Terrorism

### A. Introduction

39. South Africa has made major advances in complying with its international obligations relating to terrorism. It is well documented that the Government of the Republic of South Africa unequivocally condemns acts of terrorism. It also advocates a multilateral approach, led by the United Nations and its structures, in combating terrorism.
40. South Africa has a comprehensive legislative framework and dedicated capacity to combat and prevent terrorism in all its manifestations. The primary legislative instrument for this, the Protection of Constitutional Democracy Against Terrorist and Related Activities Act (2004 (Act No. 33 of 2004)), came into operation on 20 May 2005.

### B. Protection of Constitutional Democracy Against Terrorist and Related Activities Act 2004 and other legislation to address terrorism

41. The Protection of Constitutional Democracy Against Terrorist and Related Activities Act, enables South Africa to give effect to its commitments in international organisations such as the United Nations, the African Union and the Non-Aligned Movement and various international instruments to prevent and combat terrorist and related activities.
42. The Act provides for measures to prevent and combat the financing of terrorist and related activities and provides for special investigative measures such as an investigation by the National Director of Public Prosecutions, prior to the institution of any civil or criminal proceedings, freezing orders in respect of property owned or controlled by an entity which has committed the offence of terrorism and the cordoning off of areas and stopping and searching of vehicles and persons suspected of terrorist and related activities.
43. Provisions in the Act allow authorities to freeze assets pursuant to United Nations Security Resolutions S/RES 1267 (1999) (Al Qaeda and Taliban) and S/RES 1373 (2001) (financing of terrorism). In terms of section 25 of the Act, for instance, the President must, by proclamation in the Government Gazette, and other appropriate means of publication, give notice that the Security Council of the United Nations, under Chapter V11 of the Charter of the United Nations, has identified a specific entity as being:
  - an entity who commits, or attempts to commit, any terrorist and related activity or participates in or facilitates the commission of any terrorist and related activity
  - an entity against whom Member States of the United Nations must take the actions specified in the Resolutions of the Security Council, in order to combat or prevent terrorist and related activities.
44. In terms of section 23 of the Act, the National Director of Public Prosecutions may make an ex parte application to a judge in chambers for a freezing order in respect of property of persons suspected of being involved in terrorist activities.
45. The Act further provides for terrorism offences linked to the unlawful use of explosives, hijacking of, or damage to fixed platforms on the sea, taking of hostages, kidnapping of, or attacks on internationally protected persons, hijacking of ships, harbouring of persons who committed the offence of terrorism, hoaxes and attempts to commit the offence of terrorism.
46. There is also a legal duty placed on any person who suspects that any specific person intends to commit or has committed an act of terrorism or is aware of the presence of any such person at any place, to report this state of affairs to the police. The penalties provided for in the Act are quite severe. Any person who is convicted of an offence listed in the Act is liable, in the case of a sentence by a High Court, to a fine or imprisonment for a period up to life imprisonment (25 years being mandatory). In the case of terror financing a High Court can, for instance, impose a fine of up to ZAR 100 million or imprisonment up to 15 years.
47. The Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 as a specific legal mechanism to combat terrorism, is supported by the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) and the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).
48. In terms of Chapter 6 of the latter Act, the National Director of Public Prosecutions may by way of an ex parte application to the High Court apply for the civil (non-conviction) recovery of property if there are reasonable grounds to believe the property concerned is the proceeds of unlawful activities or is property associated with terrorist and related activities.

49. This process is effected by means of so-called preservation of property orders and forfeiture orders, the latter of which is not affected by the outcome of criminal proceedings or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.
50. The Financial Intelligence Centre Act, 2001 established South Africa's Financial Intelligence Centre and imposed certain duties such as record keeping, the identification of clients and the reporting of certain transactions to the centre on institutions and persons who might be used for money laundering purposes and the financing of terrorist and related activities.

### **C. Complementary legislation**

51. The above-mentioned statutes are not the only legal mechanisms available to address terrorism. Apart from common law offences such as murder, high treason and sedition which can also be utilised to combat this scourge, there are statutory provisions available to address situations which relate to terrorism, such as the:
- Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998)
  - Civil Aviation Offences Act, 1972 (Act No. 10 of 1972)
  - State of Emergency Act, 1997 (Act No. 64 of 1997)
  - Regulation of Gatherings Act, 1993 (Act No. 205 of 1993)
  - National Conventional Arms Control Act, 2002 (Act No. 41 of 2002)
  - Explosives Act, 2003 (Act No. 15 of 2003)
  - A variety of other statutes.

### **D. Assessments of South Africa's capacity to deal with terrorism**

52. During June 2008 a multilateral delegation of the United Nations Security Council's Counter Terrorism Executive Directorate (CTED) visited South Africa to assess the country's national capacity to implement United Nations Security Council resolutions on terrorism and to continue and enhance the dialogue and cooperation between South Africa and multilateral bodies dealing with terrorism. The CTED delegation held in-depth discussions with a number of government departments and bodies tasked with the function of countering terrorism and conducted site visits to a number of destinations/offices in South Africa. On conclusion of the visit, the delegation presented a positive report to the Security Council's Counter-Terrorism Committee, concluding, inter alia, that South Africa is compliant with the codification of terrorist offences, as stipulated in international

counter-terrorism instruments, in its domestic criminal law.

53. The Financial Action Task Force (FATF) undertook a mutual evaluation of South Africa during 2008 and 2009 to assess the country's anti-money laundering and financing of terrorism measures in place and to determine South Africa's compliance with the FATF's forty (40) recommendations (on combating money laundering) and nine (9) special recommendations (on combating terror financing). On Special Recommendation I (Implementation of the UN instruments), South Africa received a "Largely Compliant" rating. According to the FATF, South Africa has demonstrated a strong commitment to implementing anti-money laundering and terror financing systems which has involved close cooperation and coordination between a variety of government departments and agencies. The mutual evaluation report was adopted in February 2009 and is accessible on the FATF's website.

## V. Making the United Nations Guidelines on Crime Prevention work

### A. Introduction

54. The UN guidelines on crime prevention have remained the authoritative document globally giving direction to member states regarding crime prevention. The Government of South Africa acknowledges that crime cannot be solved by law enforcement agencies alone but that communities must assist in fighting crime. Therefore, government has formed partnerships with business, faith-based organisations, civil society, volunteer structures, individuals and community-based structures.

### B. Emerging trends in crime prevention

55. Major global trends that affect all regions of the world and impact on the safety and security in both developing and developed countries, at national and local levels, include terrorism and what has been termed the urbanisation of political violence. Other trends are the continuing expansion of transnational organised crime, corruption and trafficking, and the rapid growth of cities with increasing rates of migration to urban areas and across borders.

56. Youth violence, youth gangs, gender-based violence and the availability and use of firearms are concerns that continue to be addressed in South Africa. While some progress has been made, the protection of women and children remains a priority of the South African Government and proactive and reactive interventions to support the protection of women and children have been implemented. This includes the introduction and implementation of domestic violence and sexual offences legislation, the Children's Act aimed at child protection, while the Child Justice Act provides for special child justice mechanisms. A comprehensive Victim Empowerment programme has also been implemented and an Integrated Restorative Justice Programme is currently being developed. These programmes are described in more detail elsewhere in this report.

### C. Measures to integrate crime prevention strategies into economic, political and social development

57. The South African Government's approach to crime prevention is contained in two policy documents, namely the National Crime Prevention Strategy (NCPS) and the 1998 White Paper on Safety and Security.

58. To give effect to the above, the National Crime Combating Strategy (NCCS) was compiled. The

NCCS contains two elements. The first element focuses on a selection of geographic areas with the highest recorded crime levels. Police resources are directed to these areas, largely in the form of high density, search-and-seizure type operations. The aim is to improve service delivery in these areas and once crime has been stabilised, to initiate medium-term social crime prevention programmes. The second element of the NCCS focuses on organised crime and involves the investigation of syndicates by specialised investigation units.

59. In addition to crime reduction strategies, several new laws, policies and structures have been developed, all of which are relative to the prevention of crime and victimisation.

These cover the following areas:

- Organised Crime. Specialised legislation and agreements such as the Prevention of Organised Crime Act, 1998 as well as a Framework Document of the Organised Crime Initiative empowers the South African Police Service (SAPS) and the National Prosecuting Authority (NPA) to effectively address organised crime.
- The Framework Document's main objective is to provide for efficient and effective court directed investigations into organised crime matters to ensure successful prosecution and forfeiture of criminal assets. The NPA has developed a national framework for prosecutions. Working closely with the NPA, the Directorate of Priority Crime Investigation Operations (DCPI) has been established within SAPS to investigate a range of more serious criminal activity.
- The NPA's Asset Forfeiture Unit (AFU) supports the police and other law enforcement structures in all aspects of forfeiture. The SAPS investigates criminal activity generally and has allocated the responsibility for investigating money laundering to specific specialised units.
- The South African Revenue Service (SARS), which includes the Customs Service, is responsible for revenue collection and the investigation of tax evasion and evasion of customs duties and works closely with law enforcement agencies on money laundering matters.
- Sexual offences and domestic violence. The Domestic Violence Act, 1998 (Act No. 116 of 1998) and the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 32 of 2007) have been implemented. The monitoring mechanism and the national

policy framework required by the legislation on sexual offences are currently being developed.

- Firearm related offences: SAPS has focused on operationalising the Firearms Strategy (FS) to address the proliferation of firearms and ammunition. This included implementing revised legislation pertaining to firearms control (Firearms Control Act, 2000 ( Act No. 60 of 2000) and implementing the Firearms Control Regulations of 2004. Reducing the number of firearms in circulation is an important part of government's strategy to combat serious and violent crime.
- Furthermore, the Firearm Control legislation provide special powers to the Minister of Police to declare an amnesty to address the reduction in the number of illegally possessed firearms and ammunition in circulation in South Africa. Such an amnesty was declared by the Minister of Police and was executed on 11 January 2010 by the SAPS for a period of three months which will end on 11 April 2010.
- Corruption: The Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) established new and broader categories of corruption with much harsher sentences.
- Children's rights: The Child Justice Act, 2008, that provides additional protection for children, both as victims and offenders, has been introduced recently. This Act protects the rights of child offenders and establishes a restorative justice approach by introducing diversion programmes, and providing additional sentencing options and rehabilitation opportunities for young offenders. Revised legislation on sexual offences also contains provisions that ensure better protection of child victims of sexual offences.

#### ***D. Measures to strengthen the role of crime prevention within the rule of law at local, national, regional and international levels***

60. The integrated development planning process of the South African government requires local government to develop integrated development plans, in consultation with all stakeholders. These plans should also provide for addressing locally identified causes and contributing factors to crime. Local integrated development plans form the building blocks for integrated planning and budgeting processes at provincial and national level and makes provision for crime prevention to be addressed in an integrated manner.
61. In addition, cities appoint elected councillors to the portfolio of safety in Mayoral councils to ensure that at local sphere, even in cities without a municipal police department, safety concerns of citizens receive attention.
62. At provincial and national level members of the executive are appointed to take responsibility for safety and policing and also form part of the government clusters responsible for Justice, Crime Prevention and Security. The JCPS clusters at national and provincial level include departments with the responsibilities for crime prevention, namely Departments of Social Development and Police, to ensure an integrated approach to crime prevention.
63. Important aspects of crime prevention are also taken up in international collaboration through international instruments and co-operation with international bodies like the UNODC and UNICEF. These include co-operation to improve responses to sexual offences, building capacity in the Criminal Justice system, combating trafficking in narcotics and persons and combating terrorism.

#### ***E. Progress made by member states in applying the guidelines for the prevention of crime***

64. The guidelines have been included in the policies of the South African Government that inform the crime prevention processes. Progress has been made in the application of the guidelines. A more systematic mechanism to assess the use and impact of the guidelines is being considered. This would include the development of a specific set of indicators linked to the guidelines such as those used for the Millennium Development Goals, to allow for international comparison.
65. It is considered useful to provide for contextual application of the guidelines and monitoring tools within a regional context given the fact that crime is not confined to national borders. Application of the guidelines in regional specific contexts with recommendations that apply to the different countries in the region would enhance implementation.

#### ***F. Good practices in the development and implementation of crime prevention programmes for crime prevention at local, national, regional and international level***

66. South Africa has recognized from the beginning of the NCPS process that partnerships are a key success factor. In many areas of cooperation and partnerships, lessons were learnt and such efforts manifested in the following good practices: the growth of sector-specific partnerships on crime prevention in which private organisations, organ-

ise internally first and engage with government as a sector or industry instead of as individual business entities, for example the banking industry, the retail industry and the security industry.

67. The criminal justice sector approach ensures that coordination is being addressed in a cluster of law enforcement agencies. The cluster approach assists in ensuring that information systems can be integrated and performance measured across the system. The Inter-Sectoral Steering Committee for Child Justice is one example of how work is managed on a cluster basis. Planning within the cluster is executed on a multi-year basis, linked to a medium term strategic and expenditure framework. Reporting structures are also established at provincial and national level for heads of departments and members of the executive that report to the Cabinet.

68. There is structured community engagement through Community Police Forums which is a requirement of national legislation. These forums are to be established at every police station to ensure that policing is informed by community needs and that policing accountability is enhanced from local to national level.

69. Civil society is included in structures that address sector-specific challenges. For example, academic and advocacy organisations are part of the structures established to address child justice, child protection and gender based violence.

#### **G. Main obstacles in the development and implementation of programmes for crime prevention at central and local level**

70. The main obstacles in the development and implementation of programmes for crime prevention have been identified and the following aspects are being put in place to deal with the obstacles:

- Strengthening social crime prevention in the social and development sectors and creating organs responsible for its implementation, with resources where needed.
- Addressing specific areas of organised crime such as drug trafficking, trafficking in human beings and illegal immigration.
- Improving coordination among different government bodies involved in crime prevention at different levels, and aligning their performance measurement mechanisms.
- Disseminating knowledge to local governments and stimulating their active participation in crime prevention.
- Developing training programmes to address a lack of expertise in crime prevention.
- Making use of advanced technology to improve crime prevention strategies

- Devising evaluation mechanisms to determine impact and/or potential impact of all activities intended to enhance crime prevention.

#### **H. Training of criminal justice professionals and community personnel to enhance the effectiveness of crime prevention strategies**

71. Within the security and criminal justice cluster in South Africa, departments have an obligation to provide training to all employees within its ranks. Knowledge and skills are further attained and developed by:

- Encouraging universities, colleges and other relevant educational institutions to offer basic and advanced courses in criminal justice related matters. These courses are also presented internationally, or in Africa and countries in the SADC region.
- Working with the educational and professional sectors to develop certified and professional qualifications.
- Improving the capacity of communities as well as responding to their needs.
- Providing inter-departmental training to members of all departments involved in programmes like victim empowerment, domestic violence, child justice and child protection.

#### **I. Steps taken to enhance the dissemination of relevant crime prevention knowledge to local authorities and national governments**

72. There is direct engagement with local authorities and government departments to:

- Discuss and inform them how they can assist in crime prevention, especially as crime impacts the community at large.
- Explain the advantages of partnerships in preventing crime.
- Provide information and communication tools by means of publications, websites, workshops and seminars on the impact of crime.
- Discuss the potential for investment in community safety, roles and responsibilities and tools available for developing crime prevention programmes.
- Provide funding to develop evidence-based interventions; implement and assess these interventions.

#### **J. Crime prevention strategies that are effective in involving citizens, schools, community organisations, non-governmental organisations and the private sector, as well as other components of civil society**

**(i) Crime prevention initiatives (partnerships)**

73. Partnerships are an integral part of effective crime prevention, given the wide-ranging nature of the causes of crime and the skills and responsibilities required to address them. This includes partnerships between departments and government institutions, community organisations, non-governmental organisations, the business sector and private sector.

74. The partnership principle includes:

- advancing knowledge of the importance of this principle and components of successful partnerships, including the need for all partners to have clear and transparent roles.
- fostering the formation of partnerships at different levels and across sectors
- facilitating the efficient operation of partnerships.

**(ii) Integrated crime prevention programmes**

**South African Victim Empowerment Programme**

75. The Victim Empowerment Programme was initiated through the National Crime Prevention Strategy which aimed at reducing victimisation/offending, repeat victimisation/offending and preventing victimisation through the delivery of services. The

programme was initiated in 1998 and is led by the JCPS Cluster of government. South Africa commemorated the tenth anniversary of the Victim Empowerment Programme in August 2008.

76. The objectives of the programme include:

- developing, monitoring and implementing policies, directives and instructions aimed at improving services to victims of crime
- sensitising and training relevant personnel to render a professional, victim-friendly service
- assist in establishing shelters, one-stop centres and victim-support rooms. In South Africa, victim support rooms are provided at police stations for all victims of crime, but specifically for victims of gender-based crime and violence.

**National Policy guidelines for victim empowerment**

77. The policy guidelines provide a framework for sound interdepartmental and inter-sectoral collaboration and most importantly, for the integration of effective institutional arrangements for a multi-pronged approach. They also guide the development of sector-specific victim empowerment policies, capacity development and greater emphasis on the implementation of victim empowerment programmes by all relevant partners. Finally, the policy is based on the principles of



Community policing is defined as a policing approach that seeks to form a reciprocal partnership between the community and police to improve levels of safety.



restorative justice that promotes a victim-centred approach to criminal justice.

### Victim's Charter of Rights

78. This government initiative details the rights of victims and minimum standards of service that victims are entitled to when they require assistance. The Charter provides guidelines on how victims may exercise their rights in practice and contains contact details of entities that can assist victims.

### Anti-rape strategy

79. All departments are encouraged to participate in the Interdepartmental Management Team (IDMT) for the Rape and Sexual Offences Programme. This programme focuses on prevention, as well as improving criminal justice responses and support to victims of sexual offences. One focus area of the IDMT is to oversee the roll-out process of the Thuthuzela Care Centres (TCC). The aim of these care centres is to better protect the rights of women and children by providing support to victims of domestic violence, sexual violence and abuse. TCCs provide improved services (health and welfare) and initiate processes for effective reporting and prosecuting offences in a dignified and caring environment. The services are offered to victims in a one-stop centre staffed with qualified professionals.

### Community policing

80. Community policing is defined as a policing ap-

proach that seeks to form a reciprocal partnership between the community and police to improve levels of safety. The police and the community work together to identify problems and also to develop solutions. At the same time, the approach enables the community to hold the police accountable for the delivery of policing services that address their needs.

81. Furthermore, the formation of CPFs as outlined in the South African Police Service Act, 1995 responds to the constitutional imperative of section 199 (8) of the Constitution of the Republic of South Africa which argues for transparent and accountable oversight to be outlined in national legislation. The South African Police Service Act outlines the functions of CPFs as follows:
- Establishing and maintaining a partnership between the community and the Service
  - Promoting communication between the Service and the community
  - Promoting cooperation between the Service and the community in fulfilling the needs of the community regarding policing
  - Improving police services to the community at national, provincial and local levels
  - Improving transparency in the Service and accountability of the Service to the community
  - Promoting joint problem identification and problem-solving by the Service and the community.

82. In view of the above, an enabling framework to support partnership policing has been developed. The aim of this framework is to manage and guide the implementation of diverse partnerships within the various structures of the SAPS. In addition, the framework seeks to ensure the implementation of partnerships, which are accountable and productive to the strategic objectives and direction of the law enforcement agencies of the Republic. This also entails setting up a standardised structure which allows synergy and collaboration among all key parties within partnership initiatives. These key parties may involve the provinces, police stations, government departments, non-governmental organisations, businesses and community police forums. The framework will further facilitate and guide specific output-driven partnerships such as those associated with sport, women, children and youth.

### Ke Moja (I'm fine without drugs) Programme

83. An intersectoral programme drug demand reduction programme informed by the National Drug Master plan programme has been in place since 2007. An interdepartmental action plan to reduce drug abuse, focusing on youth, was launched

in December 2007. The Ke Moja programme provides for empowering youth leaders, using prominent personalities as Ambassadors to promote the Anti Drugs messages and broad based awareness programmes. It involves the Departments of Social Development, Education, Police, Sports and Recreation, Arts and Culture, Health and Correctional Services, the National Youth Commission and the Central Drug Authority.

**K. Good practices regarding diagnosis, audits, monitoring and evaluation of crime prevention strategies**

84. Monitoring and evaluation are included as an integral part of crime prevention practices and are included already during the development of plans and strategies. Examples include:
- Interdepartmental programmes like the Victim Empowerment Policy, 365 Days of Activism Programme to end Gender Based Violence and Child Labour programme
  - Implementation programmes for legislation including the Child Justice Act, Sexual Offences Act and Children's Act
  - Departmental programmes like the SAPS Firearms Strategy, Schools based crime prevention programme and Sector Policing programme.

**L. Coordination among government bodies involved in crime prevention**

85. In South Africa, the most effective and successful ways of ensuring and improving coordination have been the establishment of the JCPS Cluster, which functions at ministerial level. This cluster was established to promote accountability by departments with shared responsibilities. The main objectives of the cluster are to:
- ensure proper coordination and alignment of all government programmes at national and provincial level that deal with Issues of criminal justice
  - facilitate the implementation of priority programmes
  - provide a consultative platform on cross-cutting priorities and matters taken to Cabinet.
86. Crime Prevention also requires that inter-departmental cooperation extends beyond the criminal justice system to include, where necessary, departments responsible for local government, education and social services etc.

**M. The use of advanced modern technology to improve crime prevention strategies**

87. The use of Closed Circuit Television (CCTV) plays an integral role in the proactive fight against

crime. Today, the use of CCTV in business security monitoring and remote CCTV in preventing crime and enhancing public safety has become commonplace. This new technology assists the police to track and arrest suspects. Special attention was also directed to the use of CCTVs in shopping malls, where crime can be recorded while in progress. The pictures are circulated and assist in searching for and arresting perpetrators.

88. The SAPS have introduced the Automated Vehicle Location (AVL) System. This system is able to monitor police vehicles and check if the vehicles are used as deployed.

A performance chart has assisted SAPS to set and assess national performance standards and targets, identify non-performing police stations and introduce corrective measures. The assessment is further utilised to reward exceptional performance.

89. The SAPS utilise the Automated Fingerprint Identification System (AFIS), which is based on electronic fingerprint scans to establish the existence of a criminal record against a national criminal database extensively and successfully. Increasing the use and availability of the AFIS for operational members is a current priority.
90. The South African Government, through the Department of Home Affairs, introduced a new secure passport production system during 2009. The objective of the passport system is increased efficiency and security and was prompted by the high number of fraudulent South African passports being used to enter countries abroad.

**N. Measures and initiatives in operationalising crime prevention guidelines**

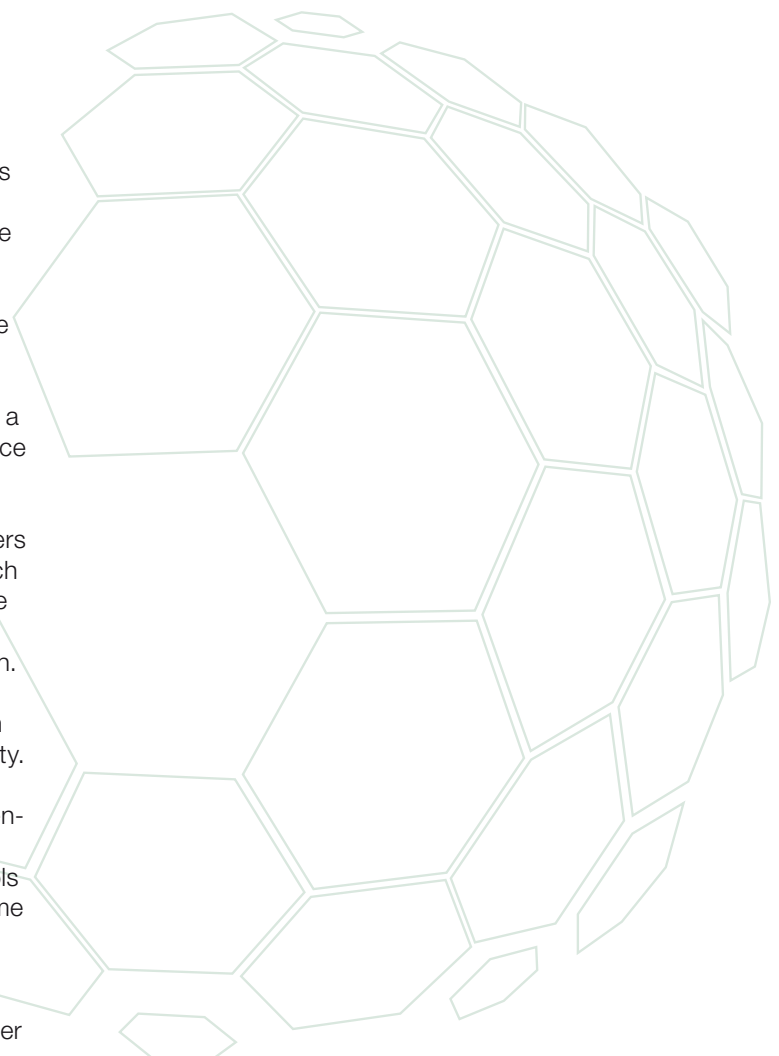
91. An assessment monitoring system with universal and country-specific performance indicators can support countries in operationalising crime prevention guidelines. Member states and relevant international funding organisations should provide financial and technical assistance, including capacity building to developing countries and countries in transition, communities and other relevant organisations for the implementation of effective crime prevention strategies at regional, national and local levels. In that context, special attention should be given to research and action in crime prevention through social development.

**O. Tools and instruments used in the implementation of crime prevention strategies**

92. Specific crime prevention tools in departments

have been developed to allow such departments to effectively implement programmes to enhance crime prevention. Such tools should make provision for supporting implementation with guidelines and capacity building, including assessment requirements from the inception of the programme to allow assessment of impact. The sector policing programme of the SAPS is one such tool. It entails a method of policing used in a small, manageable geographical sector in a police station area, the appointment of a police official as a Sector Commander, who, by acting as a crime prevention official, will involve all role players in identifying the particular policing needs in each sector and addressing the roots causes of crime as well as the enabling and contributing factors, in order to bring about effective crime prevention. This has to be achieved through the launching of informed, intelligence-driven crime prevention projects in collaboration with the local community.

93. Tools used in the implementation of crime prevention strategies are Community Police Forums. Youth desks at police stations are additional tools and instruments that are used to implement crime prevention strategies.
94. Targeted partnerships in a certain sector to address sector specific crime concerns are a further tool, for example with organised business sectors like the banking industry, Security industry, Non-ferrous metal industry or Petroleum industry.



## VI. Criminal Justice responses to the smuggling of migrants and trafficking in persons, and links to Transnational Organised Crime

### A. Introduction

95. South Africa recognises the existence of human smuggling activities. These crimes are perpetuated by transnational syndicates.

### B. Protocol against the smuggling of migrants

96. The Government of South Africa has established an inter-departmental committee on the Transnational Organised Crime Convention (TOC) and supplementary protocols. The Government has also conducted a study on smuggling of migrants that led to the development of a draft Green Paper on Smuggling of Migrants. In the interim, there is the Immigration Act, 2002, as well as the Prevention and Combating of Corrupt Activities Act, 2004, which are being used to address certain aspects relating to the smuggling of migrants.

97. A bill to combat the smuggling of migrants is to be drafted in the near future.

### C. Protocol on trafficking in persons

98. South Africa's responses to dealing with human trafficking is illustrated with its signing and ratifying of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

99. The South African Law Reform Commission (SALRC) was mandated to investigate the issue of trafficking in persons for purposes of law reform. The investigation was aimed at addressing trafficking in persons in the South African context by recommending legislative and non-legislative measures in order to facilitate the effective prosecution of traffickers and the protection of victims of trafficking. The SALRC has finalised its proposals which resulted in the tabling of a comprehensive Prevention and Combating of Trafficking in Persons Bill before Parliament in the middle of March 2010. This Bill deals with human trafficking in all its manifestations. This will make a signifi-



South Africa recognises the existence of human smuggling activities. These crimes are perpetuated by transnational syndicates.

cant impact on the crime of human trafficking as the crime of trafficking will be prosecuted with its own specific sentencing provisions.

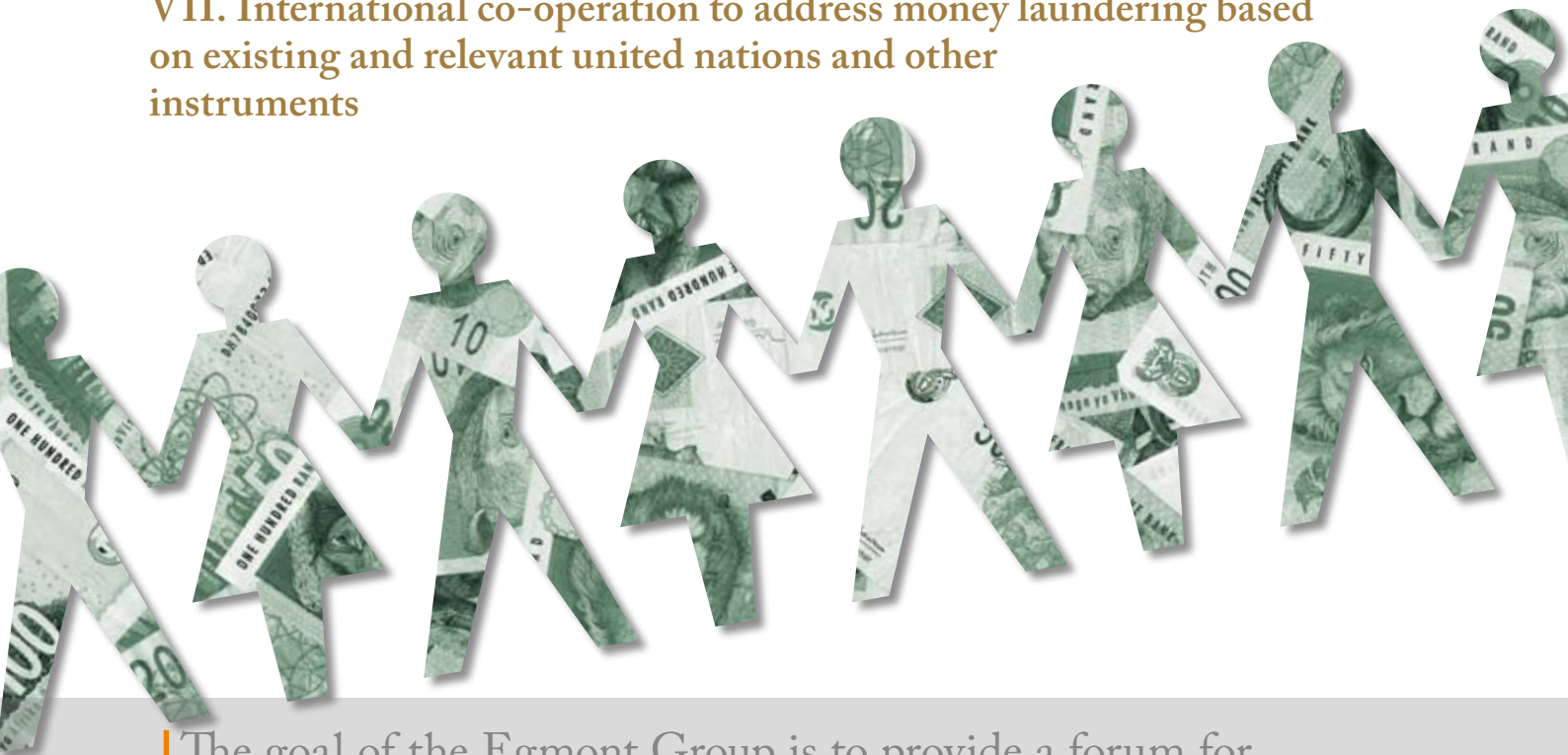
100. In the meantime, South Africa has passed two separate Acts to address trafficking, namely the Criminal Law (Sexual Offences) Amendment Act, 2007, which criminalises trafficking in persons for sexual purposes and the Children's Act, 2005, which criminalises trafficking in children for all purposes.
101. The National Prosecuting Authority (NPA) leads the Human Trafficking Programme, also known as Tsireledzani Programme. Tsireledzani means "let us protect" in Tshi Venda (language of one ethnic group). This is a multi-agency programme to coordinate strategic action against trafficking. A national action plan is currently being finalised for implementation. The programme coordinates preventative initiatives, criminal justice responses, public education and improvement of services to victims of human trafficking.
102. The International Office of Migration has conducted training with immigration officers to sensitise officials in the issues of trafficking. The Department of Home Affairs ran a series of awareness campaigns during Human Trafficking Awareness week from 4 to 10 October 2009 in collaboration with the NPA and other members of the Tsireledzani programme.

#### ***D. Measures to ensure the protection of witnesses and victims participating in criminal proceedings***

103. The NPA designed the Thuthuzela Care Centre (TCC) model in view of protecting witnesses and victims in criminal proceedings. This model prioritises the welfare of such victims by ensuring sensitive management by medical personnel in the collection of forensic evidence during the medical examination, and fast-tracks investigations and prosecution by police detectives and a prosecutor in a dedicated court which has victim-friendly facilities.
104. In addition, the NPA established the Witness Protection Unit (WPU) to facilitate the removal of state witnesses from potentially life-threatening environments, thereby securing their safety to testify without fear of reprisal. The placement of victims of human trafficking that are at risk from alleged traffickers, into the witness protection programme is facilitated with their consent.



## VII. International co-operation to address money laundering based on existing and relevant united nations and other instruments



The goal of the Egmont Group is to provide a forum for Financial Intelligence Units (FIUs) to improve support to their respective national anti-money laundering and anti-terrorist financing programmes.

### A. Introduction

105. The nature of organised crime, in particular, transnational organised crime is such that swift international cooperation is required to enable countries to successfully prosecute alleged offenders.


### B. Existing standards to prevent and address money laundering, including international norms, and domestic legal and regulatory frameworks

106. South Africa became a member of the Financial Action Task Force (FATF) in June 2003. South Africa is compliant with the FATF's 40 recommendations on combating money laundering and its nine special recommendations on combating terror financing. South Africa is also a member of the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) as from August 2002.

107. The South African Financial Intelligence Centre (FIC) also became a member of the Egmont Group of Financial Intelligence Units in 2003. The centre, as a member of the Egmont Group,

has access to the Egmont secure web and has adopted the Egmont principles of exchange of information. It has signed memoranda of understanding to facilitate the exchange of information with various Egmont member FIUs. Further, the centre has regularly concluded memoranda of understanding with countries that may have FIUs or state institutions that perform a similar function to an FIU but are not Egmont members. Between 2007 and 2009 the Financial Intelligence Centre responded to more than 300 requests for information from foreign jurisdictions.

108. South Africa has statutorily criminalised money laundering in the Prevention of Organised Crime Act, 1998 (POCA) which came into effect on 21 January 1999. Money laundering has been criminalised in three separate provisions of POCA, which cover the conversion or transfer, concealment or disguise, possession, acquisition of property in a manner that is largely consistent with the Vienna Convention and the Palermo Convention. The penalties for money laundering in POCA are a fine not exceeding ZAR 100 million or imprisonment for a period not exceeding 30 years.



109. In addition, there is the Financial Intelligence Centre Act, 2001 (FICA). This Act established the Financial Intelligence Centre as the national centre for receiving, analysing and disseminating information on suspected money laundering. The centre was created in terms of section 2 of the FICA and became operational on 3 February 2003.

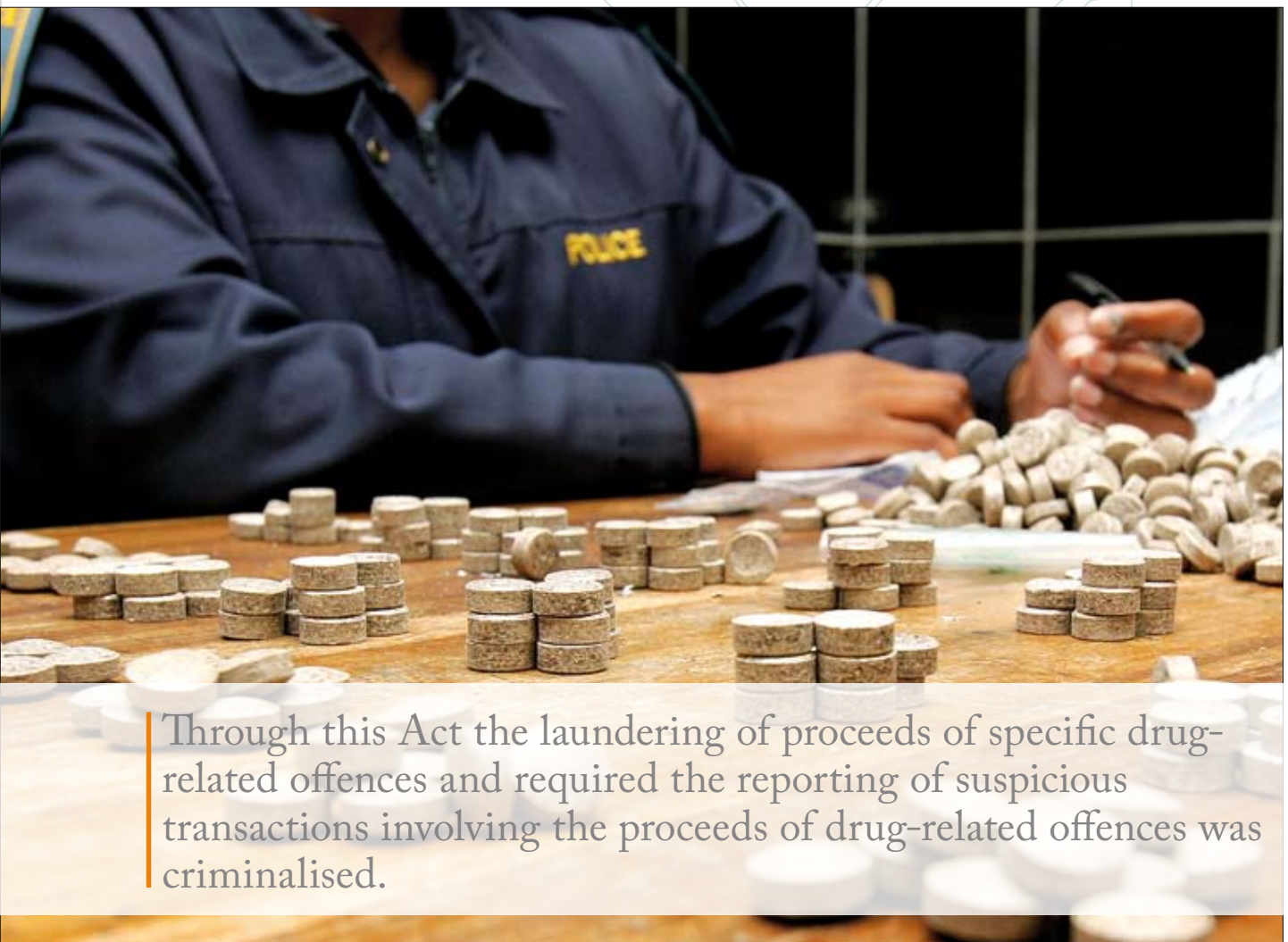
110. Financial institutions covered by FICA, referred to as accountable institutions, are prohibited from establishing a business relationship or concluding a single transaction with a customer before establishing and verifying the customer's identity, and the identity of any person acting on behalf of the customer or on whose behalf the customer is acting.

111. In addition, FICA requires institutions to keep records of their clients' identities and their transaction activities. This ensures that a transaction or a series of transactions can be reconstructed in the course of an investigation, indicating not only what had happened but also who had been involved.

112. With respect to politically exposed persons (PEPs), there are specific requirements that accountable institutions apply to enhance due diligence for such higher risk categories of customers. The centre has direct access to commercial databases that offer further access to information pertaining to registered legal entities and the composition of their governing structures, credit histories of individual/entities, ownership of property and lists related to PEPs.

### **C. Suspicious transactions report**

113. Section 29(1) of FICA requires any person who carries on a business, manages or is employed by such business to report to the Financial Intelligence Centre suspicious and unusual transactions concerning money laundering. The primary source of financial intelligence is suspicious transaction reports (STRs), which contain information received from people/entities/accountable institutions with statutory reporting obligations, namely 19 categories of accountable institutions as listed in Schedule 1 of the FICA as well as persons mentioned under section 29 of FICA. The



Through this Act the laundering of proceeds of specific drug-related offences and required the reporting of suspicious transactions involving the proceeds of drug-related offences was criminalised.

penalties for money laundering in FICA are a fine not exceeding ZAR 10 million or imprisonment for a period not exceeding 15 years.

114. The Financial Intelligence Centre has begun a process of reviewing the current legislative framework with the view of improving South Africa's legal and institutional framework and to strengthen the implementation of measures to combat money laundering and terrorist financing. The enactment of the Financial Intelligence Centre Amendment Act, 2008, is the first phase in this process. Some of the changes include the requirement that every accountable institution must register with the centre. Further, the centre and supervisory bodies would be able to conduct inspections of institutions to ensure compliance with the Act.

***D. Obstacles in international cooperation regarding investigation and prosecution in money laundering cases, including seizure and confiscation of proceeds of crime***

115. With reference to the issues concerning the seizure and confiscation of proceeds of crime, it should be kept in mind that the very nature of assets, including liquid assets, is the ability to transfer and dissipate the assets on short notice. Foreign jurisdictions evoke their own freezing mechanisms to freeze assets, depending on the facts of the case and the ambit of the legislation for the purposes of repatriation to South Africa.

***E. Mechanisms of information exchange to counter money laundering, such as supervisory authorities, law enforcement agencies and prosecutors***

116. Information can be shared in various ways, namely by voluntarily sharing, through a warrant or a court order or through national mandate, or by arrangement e.g. a memorandum of understanding. All formal and informal exchange of information is principally based on voluntary exchange of information, except if the information is protected by laws that prohibit sharing. If this is the case, a warrant issued by a magistrate, judge or an order of a competent court will be sufficient to exchange information. Alternatively, institutions like the Financial Intelligence Centre is required by law and through its mandate to share relevant information to persons duly authorised to receive such information.

***F. Risks associated with stringent anti-money laundering regulations and controls in a cash-based economy with strong reliance on the informal sector***

117. There will always be the risk that excessive regulatory burden, often driven by financial stability objectives, has a negative impact on financial inclusion. Increased regulatory compliance costs for service providers often translates into higher charges to consumers and/or a reluctance by providers to service those market segments where these costs cannot be recouped through other phases of a product's value chain. Correspondingly, it is within these segments that informal services flourish, free of the burdens of compliance and oversight.

118. Compliance with Anti Money Laundering (AML) regulation is no different. The South African example is a case in point. The introduction of the FICA in 2001 brought with it a basic requirement of banks and other financial service providers to verify records and store the identities and residential or physical addresses of their clients. The above resulted in a reluctance of the lower end of the market to access such financial products. Not only were basic bank accounts less convenient to open but banks also became more cautious of entering lower end, less profitable market segments. Furthermore, services required by these consumers, such as remittance services became, more expensive to supply. Thus large numbers of transactions continued to be channelled through the informal sector. At present it is reported that less than 50% of remittances are channelled through the formal market in South Africa.

119. This does not imply that authorities need to view the goals of financial stability and inclusion as mutually exclusive in an AML context. They can in fact be complementary, especially when taking risk-based approaches to regulating. In South Africa, the introduction of Mzansi accounts, under exemption 17 to the FICA, presents such a case. This low-cost, low-risk national bank account, launched in October 2004 eased the regulatory burden on account holders by requiring only a valid identification (ID) number for account opening. Transactions were initially limited to deposits, withdrawals, transfers (anywhere in the country) and debit card payments. Crucially, no monthly management fees are charged, and typically several free cash deposits per month are allowed. The uptake of Mzansi has been significant to date with 4.2 million accounts recorded within its first three years of existence.

120. Thus it can be argued that while strict, stringent and all-encompassing AML regulatory burdens will have a negative impact on financial inclusion in cash-based economies, there remains space for regulators to temper the (necessary) goals of financial stability with risk-based policies that enhance the participation of marginalised population groups in formal finance markets.

## VIII. Recent developments in the use of science and technology by offenders and by competent authorities in fighting crime

### A. Introduction

121 Technology related and/or cyber crime is a broad concept which is becoming increasingly important as computer networks become more widespread. It encompasses computer and network-related crime, privacy issues, trust and confidence, and dependability of critical infrastructure.

122. Cyber crime law is based primarily on the Council of Europe's Convention on Cyber Crime. South Africa has signed but not yet ratified the convention. Under the convention, member states are obliged to criminalise:

- illegal access to a computer system
- illegal interception of data to a computer system

- interfering with a computer system without right
- international interference with computer data without right
- use of inauthentic data with intent to put it across as authentic (data forgery)
- interference with data or functioning of computer system
- child pornography related offences.

123. In South Africa there are various pieces of legislation administered by different government departments that impact on cyber security and which can be used to combat cyber crime. Examples are the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) which criminalises unauthorised access, interception of, or interference with data, the South African



Technology related and/or cyber crime is a broad concept which is becoming increasingly important as computer networks become more widespread.

Police Service Act, 1995 which criminalises unauthorised access to or modification of computer material which is under control of the SAPS and the Films and Publication Act, 1996 (Act No. 65 of 1996) which prohibits internet service providers from having their services used for the hosting or distribution of child pornography.

### **B. Enforcement mechanisms**

124. Given the borderless nature of the internet and the challenges it poses in terms of jurisdictional questions, international cooperation and uniformity is of utmost importance so that states learn from each other's efforts in dealing with cyber crime.

To ensure that South Africa follows a coordinated approach in dealing with cyber crime and cyber security, Government published a draft Cyber Security Policy in the Government Gazette on 19 February 2010. The aim of this policy is to:

- facilitate the establishment of relevant structures in support of cyber security
- promote and strengthen international cooperation on cyber security
- build capacity and promote a culture of cyber security
- promote compliance with appropriate technical and operational cyber security standards.

### **C. False application fraud**

125. The main banking products such as vehicle asset finance, loan accounts and savings accounts were targeted by this kind of fraud. Information gathered revealed that in commercial related crimes, syndicates use false identification documents to:

- open accounts in order to obtain credit for the purchasing of vehicles, home loans, other loans and credit in the form of a credit card. This includes cases in which an account is taken over by a fraudster and s/he uses the details of the real account holder to commit fraud.
- buy commodities at retail shops with stolen/cloned/altered cheques or cash such cheques at banks
- obtain credit cards
- commit asset based finance fraud.

126. Internet fraud which forms an integral part of cyber crime includes all types of fraud committed on a personal computer or via the Internet. In 2008/09, altogether 1426 internet -fraud cases were reported.

### **D. Advance fee fraud (4-1-9 letter scams)**

127. Fraudulent letters relating to Advance Fee Fraud (4-1-9 letter scams) are reported daily to the SAPS. Ninety percent of fraudulent letters are sent to recipients via the Internet, inviting them to travel to South Africa to participate in fraudulent scams. Syndicates may revert to kidnapping their victims as a means of obtaining payment from them or their families.

### **E. Identity theft/fraud**

128. Identity theft is one of the latest and biggest challenges in the world. South African criminal law does not provide for a substantive crime such as identity theft per se. This type of crime is addressed by means of common law offences such as fraud and/or theft or statutory offences such as those created by the Identification Act, 1997 (Act No. 68 of 1997).

### **F. Types of Internet related crimes**

129. All Internet payment fraud is based on stolen consumer or merchant identities. Organised crime syndicates target credit card information as well as personal and financial details. Improved remote access to information allows criminals the opportunity to commit various types of fraud without ever physically entering the premises of the victim.

130. The South African Business Risk Intelligence Centre was established by the four major banks in South Africa and Business Against Crime South Africa (BACSA), an NGO, to gather intelligence regarding crimes committed in the banking sphere.

131. Intelligence received from banks and the retail sector as well as intelligence gathered from information supplied are analysed and supplied to the Commercial Crime Component of the DPCI to address, prevent and investigate the crimes.

### **G. Biometrics**

132. South Africa uses an advanced system of machine-readable passports and will introduce a "smart" system of national identification documents, utilising biometric data. South Africa's ports of entry are equipped with ultraviolet lights to detect fraudulent and counterfeit passports. This is reinforced, at certain airports, by document examination machines that assist with the detection of fraudulent and counterfeit passports. Immigration control, supported by the SAPS, is responsible for apprehending cases of fraudulent identity or counterfeit passports, either through human observation or through electronic assistance. With regard to the arrest of holders of fraudulently acquired identity documents and

passports, routine checks are made by immigration officials, supported by SAPS, at all points of entry and they also do passport verification checks in the post-immigration phase if an inspected document raises suspicions.

133. Fingerprint connectivity by the Department of Home Affairs' online fingerprint systems is currently being developed. The National Immigration Information System and Home Affairs' National Identification System have been integrated, thus allowing detection of people who are trying to fraudulently access Home Affairs' services.

#### **H. Media**

134. A partnership between the media and the South African Police Service was launched in June 2007, the purpose of which is to encourage the community to blow the whistle on crime by reporting it anonymously via text messages or reporting it on a dedicated website. The information is passed on electronically to the SAPS' Crime Stop office, from where it is disseminated to nodal points in each of South Africa's nine provinces. Police officers respond to the information and successes are fed back to Crime Stop via the nodal points.

#### **I. Information systems and advances in information and communication technology**

135. Over the past five years, Government focused on modernising and expanding its information and communication technology equipment, and modernising and expanding its applications, its centralised hosting capabilities and its network infrastructure.

#### **J. Identification capability enhancements**

136. The National Photo Image System (NPIS): The facility to capture video images that are digitally stored was a critical success factor for the Integrated Justice System (IJS) for exhibit or identity management purposes.
137. The Fingerprint Enrolment System: This is a facility for digitally enrolling fingerprints. This capability was implemented at 150 sites during 2008.
138. The Geographical Information System (GIS): The SAPS has maintained and enhanced the GIS at 580 police stations and has implemented it at an additional 40 police stations.
139. Firearms control: The first module of a newly developed firearms control system, namely the Firearm Permit System Module, is being deployed. It deals with issuing permits to members of the SAPS and will interface with other resource systems.

140. The Crime Administration System (CAS): The CAS was enhanced to provide a Short Message Service (SMS) capability for improving communication between the public and the SAPS. This reduced the number of phone calls made to supply complainants with information regarding case particulars, including the particulars of the investigating officer. The intention is to keep the public informed of the progress of an investigation, as well as the contact details of involved parties. The postponement date interface was developed to assist the Detective Branch Commander to know which dockets had to be at court.

141. A capability to electronically capture statements on CAS was developed and implemented to enhance readability of dockets by prosecutors and to improve crime intelligence. An interface was developed together with the Legal Aid Board to inform them about detainees that require legal assistance, as prescribed in the Constitution. A document scanning capability was implemented at 122 priority sites countrywide as a first step in the creation of an e-docket capability.

142. Ports of entry and exit: The ports of entry are being upgraded in terms of buildings and information systems and information communication technology. This is a joint venture between the departments participating in the Border Control Operations Coordinating Committee (BCOCC).

#### **K. Information systems developments**

143. Inkwazi System: This system has the capability to store data relating to profiles of wanted people. Additional enhancements were implemented, these assisted Crime Intelligence (SAPS) in their investigations and intelligence gathering.

Circulation system: An interface with Interpol's "Look for me" capability was implemented in order to assist in the tracing of wanted or missing persons. This capability was also implemented on the Mobile Connectivity Device.

144. Biometric Identification and Enhancement Solutions: Seven sets of Biometric Identification and Enhancement Solutions have been procured and rolled out to the SAPS's Local Criminal Record Centre (LCRC). This enables crime scene experts to identify exhibits that cannot be seen with the naked eye.
145. Electronic vehicle monitoring for command and control of SAPS vehicles for service delivery, the Automated Vehicle Location System (AVL): The purpose of this system is to ensure that SAPS vehicles are dispatched effectively for improved service delivery. The system can determine the

whereabouts of SAPS vehicles. Altogether 24 609 vehicles have been fitted with AVL units by 1 March 2009.

146. The JCPS Business Information System: This system assists the JCPS Ministers in defining the cluster's key performance indicators for measuring its performance.

147. Operational Planning and Monitoring System (OPAM): This system was enhanced to cater for all events leading up to a national election, capture policing activities relating to the 2009 Confederation Cup and 2010 Soccer World Cup. This system combines a reporting structure with intelligence capability and a Geographical Information System (GIS).

148. South Africa's Department of Home Affairs (DHA) is entrusted with issuing enabling documents to citizens and foreign visitors for identification, travel, and/or migration purposes. High quality, accurate, reliable, consistent and trusted data are required for producing the relevant documents. Citizen data and records are kept in different business system databases and in paper files housed in the department's registries and archives. This data form the core of the department's corporate data/information holding.

149. The integrity of corporate data holding is important and this information is used to create docu-

ments that help citizens to access government and other important resources from private sector. These resources vary from grants, pensions, loan access to banks, etc.

150. The following information security projects in the Department of Home Affairs aim to eradicate identity theft:

- Biometrics Access Control Management. This is a combination of biometrics (fingerprints) and smart card to access DHA systems.
- The Intellinx system sends alerts to respective managers about what has been accessed in the system so that irregularities can be known immediately.
- The Intrusion Prevention System to be implemented works by immediately verifying information in a local office instead of going via head office.
- The DHA has also introduced the Advanced Passenger Processing (APP) system. This links airlines with the department's systems to ensure that people boarding flights for South Africa have security clearance. A 24-hour operational centre within the department oversees the functioning of the APP.



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## IX. Strengthening international cooperation in fighting crime related problems: practical approaches

### A Introduction

151. The Republic of South Africa occupies a strategic position in the world when it comes to international law enforcement cooperation. It is clear that South Africa, by virtue of its position in Southern Africa, Africa and the whole world, is an important player in combating trans-national crime.
152. With the hosting of the FIFA World Cup 2010, South Africa's contribution to international law enforcement cooperation will move from strength to strength based on lessons to be learnt from the event and its interaction with, inter alia, former hosting states, international law enforcement agencies and other international bodies.
153. South Africa, being a signatory to the United Nations Convention Against Trans-national Organized Crime and its three protocols, and because it has incorporated the Rome Statute of the International Criminal Court into its domestic law by means of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), is in a position to comply with its obligations in respect of international cooperation. Furthermore, with its membership to Interpol, the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO), and its formal police-to-police cooperation agreements, South Africa is able to comply with the majority of requests for international cooperation.



### B. Mutual legal assistance

154. The Director-General of the Department of Justice and Constitutional Development is the central authority for all matters pertaining to mutual legal assistance and extradition within South Africa. Requests for mutual legal assistance must therefore be directed to the Office of the Director-

General in the Department of Justice and Constitutional Development for processing according to the relevant provisions in the International Cooperation in Criminal Matters Act, 1996 (Act No. 75 of 1996) (ICCMA) or the relevant treaty or convention concerned.

155. With respect to mutual legal assistance, South Africa adopts a flexible approach in dealing with requests, and is able to render a wide range of mutual legal assistance under the ICCMA. South Africa is able to render assistance regardless of a treaty or agreement (although South Africa has a number of agreements in place). There is also no requirement for dual criminality, or where the request is to obtain evidence, there is no requirement that judicial proceedings should have been instituted before assistance can be rendered.
156. Assistance is generally provided on the basis of an assurance of reciprocity, but this principle is not interpreted in an overly strict manner. Neither the ICCMA nor the treaties impose restrictions against requests relating to fiscal matters.
157. The ICCMA specifically provides that the following forms of assistance may be rendered by South Africa:
- requests for assistance in obtaining evidence (including production orders)
  - requests for assistance in compelling the attendance of a witness in certain foreign states
  - requests for the execution of a foreign sentence (fines only)
  - requests for the enforcement of foreign restraint and confiscation orders.
158. Assistance is not restricted to that specified in the ICCMA. Additional assistance, not inconsistent with the Constitution, can be rendered in terms of the ICCMA and includes:
- locating or identifying persons
  - service of documents, including seeking the attendance of persons
  - locating or providing documents, records and articles, including lending of exhibits
  - taking of statements or testimony of persons
  - making detained persons available to give evidence or assist in investigations
  - facilitating the appearance of witnesses or the assistance of persons in investigations
  - search and seizure.
159. In addition to the ICCMA, South Africa is able to render assistance on the basis of bi-lateral

or multi-lateral treaties, and according to the principle of international community. The ICCMA does not mandate any grounds of refusal which can be invoked by the Minister of Justice and Constitutional Development, nor does it regulate how the Minister should exercise his/her discretion whether or not to approve or accede to the request. Jurisprudence has determined that the Minister exercises a policy decision when deciding whether or not to accede to requests.

### C. Extradition

160. With respect to South Africa's extradition framework, the Extradition Act, 1962 (Act No. 67 of 1962) provides for extradition for dual criminality offences, punishable by a sentence of six months imprisonment or more. South Africa can also extradite its own nationals. All extraditions must be consistent with the South African Constitution, e.g. South Africa will not extradite if capital punishment were to be imposed.

161. South Africa has signed extradition agreements with the following countries: Algeria, Argentina, Australia, Botswana Canada, Egypt (in force 2003), India (in force 2005), Iran, Israel, Lesotho

(in force 2003), Malawi, Nigeria, the People's Republic of China (in force 2004), Swaziland, and the United States of America. It is also a party to the EU Convention on Extradition.

162. It should be noted that extradition is not dependent on a treaty. Under section 3(2) of the Extradition Act, the President may in writing consent to surrender a fugitive. Under section 3(3), fugitives may also be surrendered to countries which have been designated pursuant to that section. Currently, South Africa has designated Ireland, Zimbabwe, Namibia and the United Kingdom.

163. Section 1 of the Extradition Act reflects the principle of dual criminality in that it requires an offence, in terms of South African law and the law of the foreign state, which is punishable with a sentence of imprisonment or other form of deprivation of liberty for a period of six months or more. The test for dual criminality is whether the offence in the foreign state is, in essence, the same as a domestic offence. Technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorises or denominates the offence, do not pose an impediment to



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the provision of mutual legal assistance.

**(i) Challenges encountered in implementing pertinent provisions of international legal instruments**

164. With respect to extradition and mutual legal assistance, the problems experienced in most countries are that the process is too lengthy. The international community should look at simplifying international cooperation procedures to ensure speedy finalisation of extradition and mutual legal assistance matters.

165. With reference to the question of overcoming obstacles in exchanging information through mutual legal assistance, there is a standard procedure that is followed when dealing with requests for mutual legal assistance, namely exchanging information through diplomatic channels. In addition to this, however, it would be ideal if member states can establish Central Authorities of contact in the jurisdictions of the respective member states, with the specific intention of expediting the process of requests in instances where the request is urgent.

**D. Police-to-police cooperation**

166. Government, through the Department of Police, has played an important role in conducting joint police operations throughout the region by providing personnel, logistical resources and by providing significant contributions in regional training courses and facilities. South Africa has also demonstrated its appreciation of strong international law enforcement cooperation by seconding officials to the Interpol General Secretariat and the Interpol Sub-Regional Bureau for Southern Africa and by appointing police attachés to a number of countries within the region and beyond. Additionally, various structures and processes exist that coordinate security initiatives at both international and regional South African Development Community (SADC) level.

167. The SARPCCO is a regional police cooperation organisation that was established to promote and strengthen cooperation in combating cross border and related crime. Joint operations continue to yield positive results such as the seizure of stolen motor vehicles, illegal firearms and drugs, arresting persons involved in these crimes, and the disruption of organised crime networks.

168. A multilateral agreement forms the foundation of SARPCCO. In addition to cooperation within SARPCCO, bilateral cooperation with countries on the African continent takes place. Bilateral agreements on police cooperation have been

concluded with Nigeria, Rwanda, Egypt and Uganda.

169. Internationally, bilateral agreements on police cooperation have also been concluded with the Russian Federation, France, Hungary, the People's Republic of China, Portugal, Austria, Turkey, Bulgaria, United Arab Emirates and Malta. Agreements relating to the combating of illicit drug trafficking have been concluded with Brazil, Argentina, Chile and the Islamic Republic of Iran.

## X. Crime prevention and criminal justice responses to violence against migrant and migrant workers and their families

### A Introduction

170. The approach of Government is illustrated in section 205 of the Constitution which states the following: “The objective of the police service is to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of Republic and their property, to uphold and enforce the law and to create a safe and secure environment for all people in South Africa”.

171. The law in South Africa is not intended for the safety of South Africans only but for all individuals within the country. This further emphasises the intention of creating a safe and secure environment for all people in South Africa. If a migrant worker becomes a perpetrator or a victim of crime, be it violent or not, the law is applied equally, just as it would apply to a perpetrator or a victim who is a South African citizen.

### B. Measures to address violence against migrant workers

172. South Africa has seen an increase in the migration of people from neighbouring countries. South Africa has established a unit for the purpose of preventing and counter-acting xenophobia within its immigration services. The counter-xenophobia unit sensitises officials about xenophobia and is active within communities and with other stakeholders to raise awareness. It educates communities and organs of civil society on the rights of foreigners, illegal foreigners and refugees, and conducts other activities to prevent xenophobia. An integration strategy has been presented to Government by the Department of Home Affairs.

173. SAPS has since 2008 begun to develop a process of early warning for crimes and threats against non-nationals. The Crime Intelligence Division of the SAPS makes regular security assessments in respect of xenophobia so that provinces can be notified proactively.

174. The Tsireledzani Programme under the NPA, although it does not specifically address migrant workers, does impact on other aspects where foreign nationals may be affected. The protection of unaccompanied minor immigrants is provided for through the following initiatives:

- The Southern African Immigration Liaison (SAIL): These are airline liaison officers (ALO) from various embassies that work with immigration officials at airports to ensure travellers have the correct documentation and that no

smuggling or trafficking is taken place. The ALOs assist in identifying unaccompanied minors and work together with the International Organisation of Migration (IOM) for their removal from the receiving country, tracing of families in the country of origin and/or refer them for victim assistance.

## XI. Conclusion

175. South Africa is proud of the gains and advances recorded since the last Country Report in 2005 on the Criminal Justice System. However, it acknowledges that the criminal justice system worldwide is faced with various challenges that require the strengthening of intergovernmental cooperation as well as the inclusion of non-governmental agencies, the business community and communities at large in developing a common approach to crime prevention and combating.
176. As criminal syndicates get more sophisticated, by taking advantage of the information technology age and committing money laundering to cleanse their proceeds of organised crime, Governments are to stand united and steadily in fighting these criminal syndicates through cooperation and technical assistance aimed at putting in place the required legal frameworks and administrative measures and ensuring exchange of information and technical experience. To this end the United Nations institutions and donor countries are called upon to assist developing countries in this regard. This will indeed give the international community the power and resources to fight organised crime such as trafficking in persons, especially women and children. The international community should spare no effort in the fight against corruption which has links with organised crime, and terrorism.
177. The emerging crimes and threats require the similar strategy. Trafficking in cultural property, the increasing threat to the environment and to the health of human beings through environmental crime, the growing link between identity theft and organised crime and the emerging illegal mining in conflict situation countries and other countries, are major challenges of the world. The international community should stay on its path of fighting these emerging crimes and threats as they are also a threat to the safety and development of people across the globe, especially those in developing countries. Despite the challenges of the global economic storm, which is slowly clearing, the international community should not relent on its path and should, where appropriate, put resources for this worthy course.



### Useful websites

[www.info.gov.za](http://www.info.gov.za)  
[www.saps.gov.za](http://www.saps.gov.za)  
[www.justice.gov.za](http://www.justice.gov.za)  
[www.dsd.gov.za](http://www.dsd.gov.za)  
[www.dcs.gov.za](http://www.dcs.gov.za)

