

**EFFICACY OF GOVERNMENT STRATEGIES IN THE PREVENTION AND
CONTROL OF ORGANISED CRIME IN LIMPOPO PROVINCE**

By

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DECLARATION

I declare that this research is my own, unaided work and without plagiarism. This research is submitted in partial fulfilment of the requirements for a Master of Public Administration degree in the Turfloop Graduate School of Leadership, University of Limpopo. This research is being submitted for the first time before the degree or any examination of the University.

Signature.....

Date.....

DEDICATION

This dissertation is dedicated to my husband Matsosa Mothibi and our two lovely daughters Moloko and Matshidi Mothibi.

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It has been through the power of the Almighty that I was able to undertake this study;

My supervisor Professor K.G. Phago deserves all the accolades as he has been patient with me throughout;

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ACRONYMS

ACU	Anti-Corruption Unit
AFF	Advanced Fee Fund
AFU	Assets Forfeiture Unit
AIS	Assets Investigation Section
ATM	Auto Teller Machine
CBOU	Cross Boarder Operations Unit
CCU	Commercial Crime Unit
CID	Criminal Investigation Department
CIT	Cash In Transit
CITES	Convention of International Trade in Endangered Species
CPU	Child Protection Unit
CPTED	Crime Prevention Through Environmental Design
CTA	Crime Threat Analysis
DHA	Department of Home Affairs
DLC	Distance Liaison Committees
DPCI	Directorate for Priority Crime Investigation
DPP	Director of Public Prosecution
DSO	Directorate for Special Operations
DSSL	Department of Safety, Security and Liaison
ESPU	Endangered Species Unit
FBI	Federal Bureau of Investigation

FCS	Family Violence Child Protection and Sexual Offence Unit
FICA	Financial Intelligence Centre Act 38 of 2001
FIC	Financial Intelligence Centre
FIU	Firearms Investigating Unit
HONLEA	Head of National Law Enforcement Agencies
ICPO	International Criminal Police Organisations
IDCOR	Investigating Directorate Corruption
IDSEO	Investigating Directorate Serious Economic Offences
INTERPOL	International Policing
ISS	Institute for Security Studies
IVCIU	International Vehicle Crime Investigating Unit
MCM	Marine Coastal Management
NACF	National Anti-Corruption Forum
NCIS	National Crime Investigation Services
NCPS	National Crime Prevention Strategy
NDPP	National Director of Public Prosecution
NEPAD	New Partnership for Africa's Development
NICRO	National Institute for Crime Prevention and the Reintegration of Offenders
NPA	National Prosecuting Authority
OCIU	Organised Crime Investigating Unit
OCS	Organised Crime Section

OCPI	Organised Crime Project Investigation
OCRCP	Organised Crime Response Plan
OCTA	Organised Crime Threat Analysis
OCU	Organised Gangsterism and Drugs
PCLU	Priority Crime Litigation Unit
PGM	Platinum Group Metal
POCA	Prevention of Organised Crime Act 121 of 1998
PRECCAA	Prevention and Combating of Corrupt Activities Act 12 of 2004
RAF	Road Accident Fund
RCS	Regional Crime Squad
RICO	Racketeer Influenced and Corrupt Organisations Act 15 of 1970
SABRIC	South African Banks Risk Information Centre
SACU	South African Custom Unit
SADC	South African Development Community
SALRC	South African Law Reform Commission
SANAB	South African Narcotics Bureau
SANDF	South African National Defence Force
SAPS	South African Police Service
SARPCCO	South African Regional Police Chiefs Coordinating Organisation
SARS	South African Revenue Service
SCCU	Special Commercial Crime Unit

SIU	Special Investigating Unit
SFU	Syndicate Fraud Unit
SOC	Selected Organised Crime
SSA	Statistics South Africa
STEP	Street, Terrorism Enforcement and Prevention
STF	Syndicate Fraud Unit
SVU	Serious and Violent Crime
TAC	Total Allowance Cash
TCO	Transnational Criminal Organisation
TRT	Tactical Response Team
UNITA	Uniao Nacional para a Independencia Total de Angola
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
VAT	Value Added Tax
WCO	World Custom Organisations
WTO	World Trade Organisation

ABSTRACT

The aim of this study was to assess the effectiveness of the measures in the prevention and control of organised crime by government agencies based in Limpopo Province. The research was qualitative in nature and semi-structured interviews were conducted with 12 law enforcement officers from the DPCI, DSSL, SAPS, Home Affairs, SARS Customs and Excess, AFU, and the NPA PCLU. Data was analysed through thematic analysis. The results revealed that the government strategies in Limpopo still require concerted efforts in the prevention and control of organised crime. The government has identified measures to fight organised crime and has adopted the criminal justice response/ institutional and the legislative response to the crime. The measures taken by various units are found to be ineffective in dealing with organised crime since organised criminal networks are often flexible, dynamic, innovative and resilient. Furthermore, corrupt activities and collusions by law enforcement officers hinder the effective implementation of the strategies to control organised crime. The findings of the study show that there is coordination and communication among the law enforcement agencies such as the DPCI, SARS, Home Affairs, and the NPA PCLU, among others. This coordination is envisaged through intelligence, information sharing and interoperability. The study highlighted poor implementation of the multi-agency approach as one institution is expected to facilitate and lead the prevention of organised crime (which is the DPCI). The findings further highlight, for example, that the smuggling of illegal cigarettes is currently a challenge for the provincial government as a highly committed organised crime. The study recommends for the development, by the government, of an Organised Crime Threat Assessment in order to effectively recognise the need for responses, which should be based on a sound understanding of the nature and characteristics of the organised crime environment. In addition, it recommends for the development of an Organised Crime Response Plan to align efforts to identified critical organised crime threats. The study further recommends for the adoption, by the government, of relevant multi-agency approaches in addressing organised crime – both operational and policy or regulatory – which will underpin a whole-of-provincial government approach to organised crime.

KEY WORDS: Organised Crime, Criminal, Crime Prevention, Crime Control, Effectiveness, Coordination.

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CHAPTER 1

GENERAL ORIENTATION

1.1 BACKGROUND OF THE STUDY

The growth of organised crime syndicates has caught South African law enforcement agencies unprepared. Shaw (1998) in Gastrow (2013) reveals that this has been similar in Russia where the growth of organised crime has been a feature of political transition to a democratic order. The above-mentioned author further argues that the initial signs of organised crime in South Africa can be attributed to the so called Chinese Traid societies. Reference is being made to secret Chinese criminal societies that first appeared in the 17th century. These societies influenced the formation of various secret societies in the world. In South Africa, comparable forces to the Chinese Traid societies have also taken place. Before the demise of the apartheid regime, South Africa was not considered to have had an organised crime problem (Gastrow, 2003).

According to Gastrow (2013), the advent of democracy in the country heralded an increase in organised criminal activities. The South African Police Service (SAPS) indicates that when apartheid ended, border controls were weakened, thus creating new potential areas of operation for organised crime. Shaw and Kemp (2012) point out that similar problems also occurred at a time when transitional criminal operations were expanding. For example, East Asian, Nigerian and East European syndicates bought into the local South African criminal operations, which they expanded. The advent of democracy in the Republic of South Africa (RSA) had a definite impact on policing. The transition from the apartheid regime to the current democratic dispensation had premeditated priorities that left organised crime almost unattended as more persistent issues were pursued. This has created a sufficient opportunity for organised crime syndicates to establish their operations in South Africa (Roelofse, 2009).

However, various stakeholders joined forces with the law enforcement agencies to prevent and control organised crime. Currently, the Directorate for Priority Crime Investigations (DPCI), popularly known as the Hawks, heads the prevention and control of organised crime. The DPCI works with the Department of Safety, Security and Liaison (DSSL), SAPS Crime Intelligence Unit, National Prosecution Authority (NPA), South African Revenues Services

(SARS) Custom Unit, Department of Roads and Transport Anti-Corruption Unit and the Department of Home Affairs Counter Corruption and Security Unit. It is therefore imperative that this study investigates the efficacy of government measures in the prevention and control of organised crime in Limpopo Province. In this regard, the study undertakes to determine the level of coordination by various stakeholders in the prevention and control of organised crime.

1.2 PROBLEM STATEMENT

The story of the evolution of organised crime in Africa demonstrates in part that it is precisely as states undergo transition towards a more sustainable state-building path that they are most vulnerable to infiltration by organised criminal groups (Shaw, 1998). Shaw and Reitano (2013) argue that weak capacity for governance in state institutions and their inability to provide stable regulatory frameworks and deliver services to marginalised populations mean the occurrence of Africa's economic growth in the last decade. Furthermore, the above-mentioned authors maintain that state-building and economic stabilisation have been the main concerns, with insufficient or no attention paid to the nascent role of criminal actors and their impact on governance, the rule of law and development. This has meant that the increasing stability, economic growth and stronger infrastructure in many states in sub-Saharan Africa, Nigeria, Zambia and Malawi have also facilitated the growth of transnational organised crime networks.

In recent years Africa has developed a significant and worsening organised crime problem (Roelofse, Oliver & Kgosimore, 2012). But despite the growth of illicit activities on the continent, the past decade has not seen sufficient body of knowledge on organised or serious crime and illicit trafficking in the African context. There is even a dearth of scholarship regarding the efficacy of strategies in the prevention and control of the organised crime issue holistically across the continent. However, a number of previous studies have pointed out that organised crime is on the increase in South Africa. For example, a study by Gastrow (2013) suggests that the rise of organised crime can be ascribed to the fact that South Africa has porous borders where contraband can be smuggled by just walking across the borders. Organised crime is bound to manifest in different ways because its presence is influenced by predicate offences.

While there are many studies that have looked at organised crime, such the one by Gastrow (2013), little is known about the level of coordination amongst law enforcement agencies in the prevention of organised crime and the magnitude of the challenges faced in the prevention of this form of crime in Limpopo Province. This study was undertaken to address this gap, by specifically investigating the efficacy of measures in the prevention and control of organised crime in Limpopo Province. As earlier highlighted, such effectiveness and efficacy of the crime prevention and control measures is usually determined in relation to the level of coordination by various stakeholders.

1.3 RATIONALE FOR THE STUDY

The province's proximity as a major centre for the neighbouring countries such as Botswana, Mozambique and Zimbabwe strategically places it as an ideal criminal business gateway or destination. Roelofse (2013) highlights the rise in the smuggling of illicit trade, especially illegal cigarettes through the borders. It is, therefore, necessary to investigate the nature of administrative efficacies in the application of measures designed to prevent and control organised crime in the province.

1.4 SIGNIFICANCE OF THE STUDY

This study sought to contribute to literature pertaining to the efficacy of government systems on organised crime in Limpopo Province. It is anticipated that the study of this nature could contribute towards the expansion of knowledge on the nature of public governance in relation to organised crime, including the challenges faced in its prevention and control. The study of this nature can also contribute towards the improvement of practitioners' work to ensure a safer and crime-free province. Furthermore, this study could help review and develop policies that would effectively tackle organised crime.

1.5 AIM OF THE STUDY

The aim of the study is to investigate the efficacy of measures in the prevention and control of organised crime in Limpopo Province.

1.6 OBJECTIVES OF THE STUDY

- To describe the measures taken in the prevention and control of organised crime.

- To determine the level of coordination by various law enforcement agencies in the prevention and control organised crime.

1.7 RESEARCH QUESTIONS

- What are the strategies applied in the prevention of organised crime?
- To what extent is the level of coordination by various law enforcement agencies in the prevention and control of organised crime?

1.8 CONCEPTUALISATION

1.8.1 Organised Crime- Organised crime refers to the structure of a chain of events and an interaction process in which different individuals and groups participate in different ways at different stages (Obokata, 2010). In some literature, the term organised crime generally describes a group of people who act together on a long-term basis to commit crime for a gain (Levi, 2007). In the present study, organised crime is viewed as a structure of chain of events by a group with the aim of committing crime. Several other descriptions and definitions of crime in the context of organised crime are discussed below:

- **Crime-** Crime is defined as an unlawful activity, that is, an act at variance with either a prohibition or an injunction, and which is punishable by law. Crime is defined as an act that contravenes the law (Roelofse, Oliver & Kgosimore, 2012).
- **Crime Prevention-** Crime prevention is defined by Bezuidenhout (2011) as an attempt to reduce and deter crime and criminal activities.
- **Crime Control-** Crime control refers to methods taken to reduce crime in a society (Lab, 2011).
- **Crime Prevention Strategy-** Crime prevention strategy refers to the range of strategies that are implemented by individuals, communities, organisations and all levels of government to target various social and environmental factors that increase the risk of crime, disorder and victimisation (Bezuidenhout, 2011).

1.8.2 Efficacy- Efficacy is equal to effectiveness and refers to the degree to which something is successful in producing a desired result (Kruger, 2008).

1.8.3 Coordination- Coordination is defined by Christensen and Laegreid (2013) as the unification, integration and synchronisation of efforts of group members so as to provide unity of action in the pursuit of a common goal. Minnery (2008) writes that coordination is the purposeful alignment of tasks and efforts of units in order to achieve a defined goal.

1.9 ETHICAL CONSIDERATION

The following ethics will be taken into considerations:

1.9.1 Permission to Conduct the Study

The researcher sought permission from the individual officers employed by the SAPS, DSSL, DPCI, SARS, the Department of Transport, the Department of Home Affairs, and the NPA before conducting the study.

1.9.2 Informed Consent

The researcher informed the participants about the nature and purpose of the study before it was conducted. The participants were requested to sign a written consent form before participating in the study. Lastly, the participants were informed that their participation was voluntary.

1.9.3 Privacy, Anonymity and Confidentiality

The researcher ensured that anonymity and confidentiality were properly maintained. The participants' data was not be linked to their names or any other identifier. The researcher used the participants' pseudo names rather than their real names. The tape recording and notes taken during interviews were only accessed by the supervisor and researcher.

1.9.4 Respect for Persons

Dignity and integrity of the participants was ensured. It was also explained to the participants that their participation was not intended to use them to achieve the researcher's goals. By contrast, the intention was to learn from them.

1.10 OUTLINE OF THE DISSERTATION

The summary of each chapter takes the following format:

Chapter 1

General Orientation

This is the initial and introductory chapter which contains the background to the study, which forms the basis of the understanding of the study. The chapter outlines the statement of the problem, the aim and objectives of the study, the research questions, conceptualisation, ethical considerations and outline of the dissertation.

Chapter 2

Literature Review

It is in this chapter literature pertaining to the prevention and control of organised crime is highlighted. Findings by various scholars are discussed in order to highlight how the government responds to organised crime.

Chapter 3

Government Response to Organised Crime

The efficacy of government measures in the prevention and control of organised crime are discussed in this chapter. Government's responses are highlighted, including legislative developments in response to organised crime.

Chapter 4

Research Methods

This is where the techniques and the methodology of the study are explained as well as how the study was conducted. This section reveals the nature of the population, the sampling methods, and how the data was collected.

Chapter 5

Research Findings, Analysis and Interpretation

The research findings collected through structured interviews with safety agencies involved in the prevention of organised crime are presented and analysed in this section. Thematic analysis is used to analyse the data.

Chapter 6

Conclusions, Recommendations and Implementations

This is the final chapter of the study. It gives the main conclusions drawn, and the recommendations made pertaining to the critical issues raised. Critical issues that warrant further research are identified.

1.11 CONCLUSION

The background to the study is discussed and the research problem is provided. The major aim and objectives of the research are also presented in this chapter. Furthermore, the study highlights the rationale of the study and the concept delimitation is provided. The division of the dissertation is presented and the literature pertaining to government's responses to organised crime is reviewed in the following chapter.

CHAPTER 2

LITERATURE REVIEW ON ORGANISED CRIME PREVENTION AND CONTROL

2.1 INTRODUCTION

The study of organised crime is a relatively new departure in criminology. It began first in the United States in the late 1960's when Donald Cressey was appointed head of the Presidents Commission on Organised Crime. This set the wheels in motion for extensive research in the area. The problem of defining the concept dominated the study of the area for many years, and perhaps even to this day. This is evident from many academics (Pace & Styles, 1983; Von Lampe, 2001 in Lambets, 2006; Albanese, 1995; Maltz, 1976; Gastrow, 2003; Siphon, 2009; Lebeya, 2012; Roelofse, 2013; Goga, 2014).

The advent of democracy in South Africa heralded an increase in organised criminal activities. When apartheid ended, border controls were weakened, thus creating new potential areas of operation for organised crime. This also occurred at a time when transnational criminal operations were expanding; just like 'legitimate' multinational businesses, East Asian, Nigerian and East European groups bought into local South African criminal operations and expanded them, or contracted subsidiary organisations to conduct their work for them. Stricter controls at points of entry into North America and most European states, Southern Africa's favourable position on the drug trafficking routes between the Far and Middle East, the Americas and Europe, and its accessibility *via* land, sea and air, made it a lucrative area for illegal business.

Given these factors, in 1998 a report by the World Economic Forum cited South Africa as having an organised crime problem second only to Columbia and Russia. In truth, the report provides an inaccurate reflection of the actual extent of the problem in the country. Primarily, the growth of organised crime has been much more fragmented and (although there are notable exceptions) does not involve former members of the security establishment to the same degree as in the former Soviet Union. Like Russia, however, the growth of organised crime has been a feature of the political transition to a democratic order. The opening up of

borders, the weakening (or inappropriateness) of the state policing institutions and volatile regional contexts have all contributed to the growth of organised crime. However, whether the state has been overwhelmed by organised crime since 1994 is disputable, according to Goga (2014). South Africa is far from being a criminalised state, and it will be argued that over the last 20 years, the state has taken strong legislative, regulatory and enforcement measures to combat organised crime, with mixed levels of success. Therefore, this chapter seeks to review literature pertaining to responses by various criminal justices agencies in the prevention and control of organised crime. The definition of organised crime by various scholars is highlighted below.

2.2 UNDERSTANDING ORGANISED CRIME

Donald Cressey developed the most influential model of organised crime in the late 1960s. In 1967 he was appointed head of the President's Task Force Commission on organised crime, and was to undertake the first major analysis of the subject. The Task Force Report gained great credence when it was released, and Cressey, after the publication of his book, 'Theft of a Nation' in 1969, became known as an expert in the field (Albini, 1988 in Gastow, 2003). He referred to organised crime as the 'Confederation' which he later referred to as the Cosa Nostra. The literal translation of this is 'this thing of ours'. He painted a picture of a secret illegal underworld which was infiltrating the legitimate business world. He claimed that their activities of choice were 'extortion, usury, illegal sale of lottery tickets, chances on the outcome of horse races and athletic events, narcotics and untaxed liquor'. The real threat identified was that illicit profits were making their way into legitimate businesses. People who lived in deteriorated parts of cities were the most vulnerable and worst affected. Cressey believed that organised crime would flourish when there was a 'break down in law and order', which was caused by alliances forged between organised criminals and public officials (Maltz, 1976). This breakdown of law and order that Cressey describes is not dissimilar to Merton's theory of anomie in 1938.

Albini (1971) describes Cressey's idea of organised crime as 'one consisting of a bureaucratic organisation, with a hierarchy of ranks, a code of conduct for members, and one above all that functioned as a secret society.' Fulcher and Scott (2007) further outline the code of conduct that Cressey believed governed the Cosa Nostra. This code comprised five principles. The first of these was loyalty. This was expressed by respecting business interests

of other families and remaining silent about the operations of the family. The next two principles are both linked with masculinity; they are honour and courage. These principles required respect for women and senior members, and the ability to withstand punishment without complaint. Commitment to the family's way of life was also a prerequisite. Finally, and possibly, in Cressey's analysis, the most important principle was rationality. This refers to the extent to which organisations develop in complexity in their desire to attain an 'announced' criminal 'objective' (Cressey, 1972 cited by Albin 1971). Rationality is the principle by which the family moves higher along the spectrum of organised crime. At the most advanced and sophisticated level, the family is at its most rational. The most developed organisation in Cressey's analysis was the Cosa Nostra, which had evolved so that it had 'a "Commission" that oversees, plans, and coordinates' (Albin, 1971) a complex web of illicit activities.

Organised crime is a chameleonic kind of crime that epitomizes and adapts to the legislatively designed criminal environment of each country. In support, Schulte-Bockholt (2006) states that organised crime is an ideological chameleon that changes its colours in accordance with the environment in which it is generated. Lunde (2004) submits that attempts by law enforcement and other agencies to provide a single definition of organised crime have been confounded by the fact that underworld activities are, by their nature, kaleidoscopic, constantly responding to shifts in market conditions and exploiting the myriad money-making opportunities provided by the legitimate overworld. Obokata (2010) states that there is no single way to describe 'organised crime' as it takes a variety of forms in practice. Buscaglia, Gonzalez-Reiz and Ratcliff (2005) state that one of the ways of constructing a law or definition is to import it from outside but adapt it to work effectively in the cultural context of one's own country.

Defining organised crime in the manner proposed by the UN's treaty means that a very wide range of criminal activities fall within the definition. Other definitions, however, generate different kinds of difficulties. One approach – now widely regarded as outdated – limits the definition to criminal organisations that are highly structured with a clear division of labour and a definite hierarchy (Lebeya, 2012). Because criminal groups seldom conform to this conception, the definition has been largely abandoned. In its place, the SAPS once proposed a definition which states that organised crime is an organised criminal activity which implies any combination or conspiracy to engage in a criminal activity as a significant source of

income or livelihood, or to violate – or aid, abet, facilitate, conceal or dispose of proceeds of the violation of – criminal laws relating to prostitution, counterfeiting, money laundering, narcotics or the corruption of law enforcement officials or other public officials or employees. Again, this approach to the question covers a lot of ground with the result that if one uses this definition of ‘organised crime’ as the basis for asking how well South Africa is doing in combating the organised crime threat, then the answer depends on the extent to which crime in South Africa is committed by groups of people for financial gain. This means that to the extent that our crime is committed in this fashion and for this reason, it can also be seen as organised crime. And, although there is no definitive answer to this question based on high-quality empirical work, it stands to reason that by using this definition of organised crime, a very substantial proportion of crimes committed for gain also fall under organised crimes if only because they are committed by groups of criminals, many of which will come together to commit more than one crime.

This definition of organised crime, then, would make it applicable to a large proportion of our criminality, including, for instance, most robberies (including house robberies, hijackings, bank robberies and even muggings) and burglaries. It would also include all but the smallest of smuggling operations (of legal, illegal and grey goods). It would include groups of civil servants co-operating in corruption and groups involved in large frauds. Gastrow (2003) argues that using this kind of approach to understanding organised crime and, therefore, the trends in organised crime and the effectiveness of state responses, means that one way of looking at the problem is to examine how trends in those crimes committed by groups have evolved over time.

In this regard, the key types of crime captured in police statistics in which groups are involved, and which are committed for material gain, are incidents of serious property crime (robbery, burglary and car theft) as well as drug-dealing. Police statistics for these crimes suggest a significant increase in the activities of ‘organised criminal groups’ in the country between 1994 and 2006, if the definition of ‘organised criminal groups’ is left wide open (Institute for Security Studies, 2008).

According to Goga (2014), the conceptualisation and definition of organised crime is contentious. Researchers, policy makers, law enforcement bodies and the judiciary have all

used a variety of terms to describe a myriad of criminal activities and criminal groups that could be considered ‘organised’ crime. In part, this is based on historical and contextual understanding of organised crime related to crime control efforts in the United States and is therefore primarily rooted in conceptions of the American ‘mafia’. Organised crime has come to refer to both continued criminal activities and various types of criminal groups. Gastrow (2013) argues that ‘on a technical level there is no definitive reason why organised crime is not a catch-all term that could be applied to all businesses that break the law or government departments that commit ongoing crimes’, and that ‘the distinction between organised crime and other types of crime was incoherent and was based on popular stereotypes rather than persuasive arguments as to why conventional organised crime is qualitatively different from white-collar crime, government crimes and terrorist activities’.

Within South Africa, there are a variety of definitions of organised crime. The Prevention of Organised Crime Act of 1998 (POCA) is noticeably devoid of a clear definition. POCA does, however, list criminal activities that would be covered by the law, as well as offer fairly broad traits of membership to a criminal group. Importantly, there must be a group committing the crimes, and there are stipulations over the types of crimes to be considered organised crime. The South African Police Service (SAPS) has relied on a variety of terms and definitions and often uses the South African Police Service Act 67 of 1995 as reference. The Act defines organised crime as circumstances amounting to criminal conduct or an endeavour thereto which requires national prevention or investigation or crime which requires specialised skills in the prevention and investigation thereof. For purposes of this study, organised crime has been taken to refer to a broad range of serious economic and organised crimes that could be punishable under POCA, including criminal activities that would traditionally be seen as ‘white collar crime’ as well as crimes perpetrated by large ‘street gangs’.

2.3 ORGANISED CRIME PREVENTION IN SOUTH AFRICA

In 2008 the Institute for Security Studies (ISS) reviewed the effectiveness of the state’s response to organised crime, and indicates that the review of what the existing crime and drug-use statistics can tell us about the state of organised crime in the country results in somewhat pessimistic conclusions. ISS (2008) maintains that since 1994, most forms of

serious property crime have risen, with strong indications that drug-use (and hence drug-dealing) has also grown. Since both serious property crime and drug-dealing are often the work of groups of repeat offenders (the core of some definitions of ‘organised crime’), it is hard not to conclude that organised crime is depressingly alive and well in South Africa, and that its activities have grown over the past 15 years. This is an important (and sobering) point of departure when looking at the way in which the criminal justice system has responded to the challenge posed by organised crime since it suggests that however many strategy documents have been written, however many structures have been established, and however many projects have been run, the fact is that a large amount of crime is committed by people who cooperate and conspire to commit them; and that as far as can be discerned from the crime statistics, their activities in 2006 were significantly higher than in the mid-1990s.

But any discussion on the success or otherwise of the criminal justice system’s response to organised crime cannot let the matter rest at that. There are a number of reasons for this, the most compelling of which is that using these crimes as a gauge of activities of organised crime, while helpful on one level, is also misleading because it will tend to imply that the threat posed by organised crime to a society coincides with the threat posed by these types of crime. On the one hand, this has the potential to over-state the impact of organised crime because some proportion of the incidents reported to the police will have been the work of individuals, or of groups who commit only one crime, while some crimes will have been committed by groups of opportunists, rather than of people actively working together to plan and perpetrate their crimes. On the other hand, Gastrow (2003) in ISS (2008) argues in favour of this approach to assessing the state of organised crime in the country risks, under-stating the effect of those involved in organised crime because, while many of the negative effects of their work will show up in these crime statistics, others will not. Chief among these other effects are:

- Activities relating to extortion and/or protection rackets, which, apart from the direct costs to those affected, have the additional consequence of negatively affecting economic activity;
- The impact of organised criminality in corrupting state institutions and undermining the integrity of financial services institutions; and
- The effect of the activities of some groups of organised criminals – notably those involved in high-profile crimes – on popular perceptions of the state of crime in the country, on government’s ability to secure law and order and, flowing from this, on the quality of governance generally.

The crucial point about these consequences of activities of organised crime is that not all forms of organised crime generate them equally. Thus, while it may be that a group of muggers regularly targeting pedestrians in the street conforms to the definition of an organised crime group, their impact on economic activity, the integrity of key public and private sector institutions, and of the perception of government and governance, are much less significant than are the activities of a Cash In Transit heist gang, a car theft syndicate, a group that extracts protection money from businesspeople, or a group involved in transshipping narcotics. It is the peculiar and specific impact of this kind of organised crime that necessitates the development and implementation of particular strategies aimed at a more narrowly defined set of organised criminals. It is to the efforts of the criminal justice system in this regard that this report now turns.

2.3.1 Pursuing the Most Serious Organised Criminals

Gastrow (2008) writes that it is far from obvious how one is to define and delimit the nature of the problem of those kinds of organised criminality whose impact on the society in which they operate is 'more serious' than the myriad groups of repeat offenders committing muggings and burglaries and the like. Certainly, one cannot distinguish these groups simply on the basis of the nature of the crimes they commit since, under the right circumstances, the impact of the activities of any group of drug-dealers or burglars, fraudsters or hijackers, muggers or pimps might be regarded as more or less serious than the impact of other groups. Similarly, from some points of view, drug-dealing may, in some circumstances, result in less social harm than violent crime, but, conversely, the impact on a society of a single drug-dealer involved in transshipping narcotics through South Africa who manages to corrupt senior police officers may be greater than the impact of many violent criminals. One possibility, then, is to distinguish these groups on the basis of the scale of their operations: those who commit more crimes or whose crimes are more serious (as measured by the value of the losses caused or the impact on society or their cross-border links, for instance) might be treated differently from those who commit fewer crimes or whose individual crimes generate relatively lower costs. Other factors might be the permanence or otherwise of the structure they create, its size and the degree to which they are actively engaged in corrupting state officials.

Lebeya (2012) maintains that it is not possible to draw lines around those forms of organised crime that are to be regarded as more serious. It is, however, useful to make the distinction and so, for the purposes of this report, we will designate groups involved in those kinds of more serious organised crime as ‘syndicates’ in order to distinguish them from organised crime groups in general. In this regard, we do think that much could be made of a definition proposed by the SAPS, which focuses on the persistent, deliberate nature of the criminal enterprise and which has it that ‘Organised crime is any serious crime which is systematically and persistently committed on a continuous basis or determinate period by a consciously concerted organised criminal group of two or more persons or a criminal enterprise, in pursuit of an undue financial or other material benefit’. The great merit of this approach to narrowing the scope of a discussion of ‘organised crime’ from a discussion of ‘groups of repeat offenders’ is that it helps to focus on more business-like forms of criminality. It is, nevertheless, possible to envisage circumstances in which this definition will not work unambiguously to include or exclude the activities of a particular criminal group as a ‘syndicate’.

If there is no precise way to determine what does and does not qualify as a syndicate (as opposed to the more general concept of organised crime), it is clear that such a distinction is useful from a policy-making point of view, as well as from the point of view of law enforcement agencies tasked with pursuing those involved. It is perfectly reasonable and desirable, after all, for a state to deploy its scarce law enforcement resources in a way that will maximise the return on investment. In such a context, it has proved to be both wise and necessary for law enforcement agencies to treat the activities of syndicates differently from those of other criminals, even when the latter work in groups and commit more than one crime. Ultimately the differences in the approach to syndicates relative to other forms of criminality boils down to two interrelated factors: differences of method and differences of law enforcement structure. The principal difference between law enforcement’s approach to syndicates relative to its approach to other forms of criminality is that the focus is on investigating an individual (the ‘target’ or ‘subject’) rather than a crime.

Shaw and Reitano (2013) argue that essentially, the agency responsible for the investigation will receive information that creates a suspicion that a particular person (or group) is involved in criminality. Having made that determination, the agency will seek to investigate those suspicions, frequently using unconventional methods such as the cultivation of ‘sources’ who

already know the subject (and who may be accomplices of his), or through the planting of ‘agents’ who are law enforcement officials and who will try to penetrate the subject’s network of associates. Because these techniques require particular skills and significant resources (and must often be deployed over substantial periods of time), because they demand a higher level of security than is usual in other investigation, and because they must conform to complicated legal requirements, governments and law enforcement agencies around the world usually entrust these investigations and operations to specialised units and, often, to separate organisations. This is true, too, of South Africa after 1994, a period which has seen significant developments in the way the criminal justice system approaches the challenges posed by crime syndicates. Broadly, these developments can be divided into two main categories:

- (i) changes made to the law and to police powers to facilitate the fight against organised crime; and
- (ii) structural changes within the criminal justice system.

2.3.2 The Evolution of the Criminal Justice Strategy

Goga (2014) postulates that the criminal justice system inherited by democratic South Africa was ill-prepared for dealing with organised crime, and, especially, with syndicates. There were two interrelated reasons for this:

- (i) the apartheid state, obsessed as it was with fighting the liberation movement, had devoted little time and energy to thinking about, and dealing with organised crime; and
- (ii) the fact that the apartheid state was so nearly a police state, and the fact that the country was less integrated into global circuits of commerce and migration than most meant that transnational organised criminals had little interest in the country.

The result of these two phenomena was that the organised crime threat faced by the apartheid state was smaller than it might have been, and that the newly-democratic state was quite ill-prepared to deal with the growing threat of organised crime as the country’s legal system liberalised and opened its borders. These processes offered organised crime significant new opportunities, as the state’s repressive capabilities weakened and, importantly, as a widening web of ties – commercial as well as inter-personal – were established with the rest of the world.

This, according to Siphon (2009), created the kind of links that make it plausible for ambitious criminal networks to piggyback their activities on (and hide their activities in) legitimate trade flows and patterns of human movement: suddenly it was far easier to smuggle contraband (whether of drugs, stolen vehicles or 'grey goods') simply because there was more cross-border traffic. This, combined with the effect of growing crime levels in South Africa – something that is both a result of an increase in organised crime activities, as well as something that may have attracted more and more people into the 'industry' – explains why there is such a strong consensus now that the organised crime threat grew after 1994.

The rise in organised crime, as already suggested by ISS (2008), Gastrow (2013) and Roelofse (2013), was not something that existing state institutions were particularly well-equipped to address. The police, who had first begun to devote dedicated resources for addressing organised crime only in the early 1990s, lacked the skills, the experience, the technical resources and the networks of informers they needed to deal with the challenge. Given the stupendous changes that were going on in the police service during the transition, as well as the general loss of skills as many experienced officers left, initial efforts to build sufficient capacity to deal with the problem were not especially successful. Indeed, by the late-1990s, government had begun to feel that the police were simply not able to deal with this challenge, and thus decided that a wholly new agency was needed. However, even such a design is no guarantee for successful impact. Preventive measures must also be implemented in appropriate ways. This study has illustrated that, with regard to implementation, the responsabilisation of all persons and organisations involved in prevention as well as the performance of the programme itself is important.

2.3.3 Responsibilisation of Persons and Organisations

Garland (1996) in Lambrets (2006) finds that the main characteristic of prevention is the so-called responsabilisation strategy towards non-law enforcement agencies. Garland (1996) argues that with this strategy, persons, agencies and organisations have to be activated and inter-agency structures established. From the evaluation of the three preventive measures, it can be concluded that responsabilisation does not come easy. First of all, there are some basic conditions for successfully activating representatives. Representatives must be aware of abuses in order to act against them. Furthermore, a certain level of integrity is needed to execute and comply with the measure. These two conditions for organised crime prevention were emphasised in earlier research (Van de Bunt & Van der Schoot, 2003).

Holtman and Domingo-Swart (2008) state that in the early 1990s, organised crime justly became an important topic on the political agenda. Thus, it was no surprise that before that time, there was a generally low level of awareness of the risks of organised crime. Consequently, increasing the awareness of financial service providers, administrative authorities and the civil service apparatuses was an important first step. The findings here illustrate that the responsabilisation process and the raising of consciousness has not proceeded smoothly, neither in the private nor the public sector. Problems related to private agencies were expected as these are commercial institutions, organisations and persons with their own economic interests. This was especially the case with the financial service providers.

Obviously, cooperation with law-enforcement authorities could interfere in these actors' special relations with their clients. Moreover, the little responsibility ascribed to the institutions made them feel like unpaid 'watchdogs' that just had to pass on information to the law enforcement agencies. It is no wonder that the financial institutions were at first unwilling to comply with the disclosure obligation. However, these institutions changed their attitudes rather quickly as the new disclosure obligation gave them more responsibilities for which they could apply the obligation for their own interest; it improved the transparency of the system and prevented internal fraud. This willingness was also supported by the awareness that any relationship with money laundering and organised crime would damage their reputation and subsequently harm their businesses. Thus, in addition to awareness and integrity, the findings of this study indicate another condition for responsabilisation: the preventive measure must align with agencies' and organisations' own interests. This is no easy task, as the preventive approach requires a change in business culture of the selected representatives. Nonetheless, when this is achieved, good cooperation will follow.

2.3.4 Inter-Agency Structures

Next to raising consciousness and activating persons and organisations, the responsabilisation strategy implies the establishment of inter-agency structures. For this, new structures of cooperation and information exchange have been implemented worldwide. Lambrets (2006) argues that such cooperation could be more difficult than bringing into action the traditional criminal justice system. Persons and organisations of the legitimate environment all have their own competences and instruments. In order to exclude those who are involved in

organised crime, these persons and organisations must be informed of possible irregularities and involvement in criminal activities. This means that they need relevant and reliable information. Shortcomings in the available information can be crucial, since being informed is one of the basic conditions of organised crime prevention (Van de Bunt & Van der Schoot, 2003). Moreover, whereas the police could provide some of this information, special arrangements had to be established enabling the exchange of sensitive information. This means that for the activation of new ‘watchdogs’, information from police departments might need to be made accessible.

2.3.5 Performance of the Programme

Lambrets (2006) finds that in order to implement a programme, it is important to define clear objectives at the beginning, and to maintain them during the implementation. This is vital since lack of such clear objectives could result in net-widening. Net-widening implies that measures are broadened, in terms of which more subjects or behaviours are drawn in. A preventive approach based on controlling risks will always be subject to net-widening, unlike a repressive approach, which is based on legal definitions. However, regarding organised crime prevention, it is necessary to remain focused on the possible impact of measures on the specific phenomenon.

Research by Albanese (1995) demonstrates that net-widening can contribute to the effectiveness of an intervention. Clarke (1980) argues that displacement is influenced by criminals’ knowledge of alternatives. This means that protecting a whole class of facilitators reduces the alternatives available. Thus, bringing all financial service providers under the anti-money laundering obligations will hinder possible displacement, and make the intervention more effective. Based on this reasoning, it is also likely that administrative authorities’ monopoly in certain economic dealings implies an enormous restriction of possible displacement. This reasoning is strengthened by the knowledge that offenders are not always attracted to other alternatives. Clarke (1987) refers to choice-structuring properties, which imply that the readiness to substitute one offence for another depends on the mutual characteristics of the original planned offence and the alternative.

2.3.6 Exposing the Impact of the Preventive Measures

The study by Gomes-Capedes (1999) reveals that the impact of the preventive measures was determined by the observed outputs and the plausible outcomes. Regarding the observed outputs, the programme evaluation uncovered the negative effect of problems in implementation. In fact, the various activities of the measures can be grouped into three categories. First are those for which it is impossible to ascertain the outputs, as there is simply too little insight. In other words, data are lacking from which to derive the outputs. For example, for the anti-money laundering intervention, no clear summary of the exact number and scope of money laundering investigations could be found. It was certainly impossible to determine the extent to which these investigations are based on transaction information.

The second category of measures is those for which enough information is available to show some of the outputs, but the outputs are not those implied by the original objectives. This goal displacement is ascertained in the anti-money laundering intervention, the integrity approach and in the Van Traa approach. Based on this goal displacement, it is unlikely that these measures will meet their actual objectives, or in fact prevent organised crime. The third are successful measures, which resulted in observed outputs that respond to the original objectives. Notwithstanding the problems in the implementation described above, the measures did result in some outputs. For example, the anti-money laundering intervention has supported various criminal and financial investigations.

Lamberts (2006) asserts that the preventive measures probably do have some effects. However, these outputs are related to individual cases, and it is still impossible to estimate the impact of these outputs on organised crime in general. Based on these aspects, we must conclude that organised crime prevention could be effective in theory, but problems in implementation have limited actual outputs. In other words, a plausible programme theory is a necessary condition for organised crime prevention, but it is not a sufficient one. Authorities must invest in the implementation of such measures. Up until now, implementation shows some shortcomings, which makes it unlikely that the evaluated preventive measures will have a great impact on organised crime. This implies that the preventive measures taken against organised crime are probably scarcely effective. However, this is no reason to give up on organised crime prevention. On the contrary, the plausibility of the programme theories justifies new efforts in further development of these measures and the amelioration of the implementation problems.

2.3.7 Some Boundaries of Organised Crime Prevention

Organised crime prevention implies the exclusion of criminals and criminal organisations from services in the legitimate environment. Excluding people in order to control risks is the central aspect of the actuarial justice that characterises crime policy. Empirical research by Bunt and Van de Schoot (2003) illustrate that organised crime is a complex phenomenon with complicated constructions that are difficult to uncover. This means that regarding preventive measures the good guys might suffer from the interventions aimed at bad guys. Because organised crime prevention interferes in the lives of many people, the authorities must guarantee a balance between protecting people's privacy and protecting their (people's) safety, for instance, by fighting crime. It was discovered a large threat emanating from organised crime justifies interference in people's daily lives.

Huisman and Klerks (2003) conducted a study that highlighted the screening approach as a response to organised crime. This approach aims at organised crime, but also at activities that can cause serious social impacts. Moreover, this approach is specifically focused on those sectors that are deemed vulnerable to abuses by criminal organisations, which already makes the measures much more specific than if no sectors had been selected. It is remarkable that measures to prevent organised crime in general are so unspecific, since they imply a serious invasion of privacy. With the anti-money laundering intervention coming into force, the legislator sacrificed part of the banking secrecy.

The reporting obligation applies only to the financial advising activities of these professionals, which are comparable to services provided by other financial service suppliers. Professional secrecy regarding activities to defend a client's legal position remains intact. Nonetheless, the reporting obligation interferes in the specific relationship based on trust between legal professionals and their clients. Accordingly, the professionals argue that the division of tasks into financial advising and judicial advising is theoretical and cannot hold in practice. However, the costs of intruding on people's privacy cannot be calculated, as it is not something material. Neither is the cost of invasion of people's privacy fixed. Privacy interests and the need to protect privacy are subject to complex flows in the political arena, as well as

in public debate. In fact, as long as crime control exists, authorities must find a balance between fighting crime and protecting people's privacy.

Lamberts (2006) maintains that in realising new preventive measures, authorities should make more use of private agencies, given that these agencies offer services that might be abused by criminal organisations. It will probably be difficult to get through the commercial armour. However, when the 'name and fame' of agencies are at stake, they might quickly develop into reliable partners to fight crime.

The research by Gastrow (2013) recommends that the authorities should realise that cooperation between various public agencies will not necessarily proceed smoothly. Preventive measures require an approach supported at all levels by all authorities involved. Obviously, the official decisions have to be taken at a higher level. But still, the belief that preventive measures are useful, and in fact essential in the fight against organised crime should be internalised at the other levels as well. Here, more efforts should go out to the individual civil servants.

Authorities should realise that an integral inter-agency approach is vital in preventive measures. On the one hand, the preventive approach aims at the facilitation of circumstances provided by all kinds of public and private agencies and organisations. On the other hand, the operation of the preventive approach is based on information extended by law enforcement agencies to help determine whether or not one is dealing with organised crime. Thus, preventive measures are performed independent of penal law, but they require criminal proceedings to achieve breakthroughs. Moreover, such an integral approach is not self-executing. This means that law enforcement agencies must actively pass information on to persons and organisations who can interfere in facilitating circumstances. For this, the law enforcement agencies should partly remove their focus from the core activities of criminal organisations to the logistic processes of these activities. Public and private agencies, in turn, should not wait for information, but undertake action themselves. For this cooperation, particularly for the exchange of information, various collaborative initiatives have been established at different levels and on various subjects.

2.3.8 Legal Developments

To respond to organised crime, there were also legal developments. South Africa eagerly embraced the approach of attacking criminal profits, or the proceeds of crime. In 1992 the Drugs and Drug Trafficking Act 75 of 1969 was promulgated. De Koker (2008) argues that this law supplemented common law, and broadened the criminalisation of money laundering to include those who did not report suspicious transactions related to drug trafficking. The Proceeds of Crime Act 76 of 1996 broadened the scope of the statutory laundering provisions to all types of offences, and followed international conventions that sought to combat organised crime by following financial flows.

In 1998, the Prevention of Organised Crime Act (POCA) 121 of 1998 was passed. Strongly influenced by the Racketeer Influenced and Corrupt Organizations Act (RICO) of 1970 in the United States, POCA was a dedicated piece of legislation designed to limit organised crime, and was touted as integral to fighting both organised and commercial crime. It is possible to use POCA across a broad range of criminal activities, and according to Mujuzi (2008), POCA is aimed ‘at dealing with a wide range of criminal activities, some of which are quite commercial in nature’. He further states that the Constitutional Court held that ‘the wording of POCA as a whole makes it clear that its ambit is not in fact limited to so-called “organised crime offences”’, and that ‘the primary object of POCA is to remove the incentive for criminal activity’.

Lebeya (2012) finds that using ‘follow the money’ and/or ‘proceeds of crime’ approaches and financial penalties to prosecute criminals is a common law enforcement tactic, and POCA follows this tradition to ‘take the profit out of crime’. It is argued that these approaches, along with more global cooperation, have made it increasingly difficult to move money across borders, and to launder illicit financial flows. POCA has been successfully used in a number of commercial crimes as well as in more traditional gang activities. Its strong forfeiture laws have enabled the state to confiscate anything from cars and houses to multimillion rand businesses.

Following proceeds of crime as an investigative strategy has become popular with crime investigators, partly because it changes the standard of proof required. Moreover, asset forfeiture also provides finances to continue to investigate cases, as a portion of the confiscated assets is used to fund the investigation. In order to strengthen the ability of the

state to follow illicit money flows, the Asset Forfeiture Unit (AFU) was established in May 1999 in the Office of the National Director of Public Prosecutions.

In line with POCA, a number of laws and by-laws were passed to set stronger regulations against money laundering and the proceeds of crime. These included the Financial Intelligence Centre Act 38 of 2001 and the Financial Intelligence Centre Amendment Act 11 of 2008 (FICA). The origins of FICA can be traced back to 1996, when the South African Law Commission published a Money Laundering Control Bill as part of a report entitled Money laundering and related matters. An analysis of money laundering laws by Goredema (2003) reveals that, after the flurry of activity in the early 2000s as the South African state set up legislation, regulations and sector-specific guidelines, by 2004 criminalising money laundering was substantially complete, and institutions, primarily in the banking sector, had to comply with a number of prescriptions. South Africa has also ratified international conventions and joined the Financial Action Task Force (FATF), and has strong local laws that govern banks and financial institutions. The South African Revenue Service (SARS) is a well-run institution, and its regulatory and enforcement arm is highly regarded. In addition, South Africa has a strict exchange control system that determines compliance with exchange control regulations. De Koker (2008) argues that 'this system has certainly made South Africa a less attractive destination for foreign criminals'. Furthermore, post-9/11 concerns over terrorism have increased the strength of governments to follow money, and in South Africa, this is legislated through the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004.

Goga (2014) conducted a study on globalisation, which is touted as a cause of organised crime and transnational organised crime. One of South Africa's success stories over the last 20 years lies in the use of 'follow the money' approaches, global cooperation and the harsh line taken on forfeiture laws. If one analyses the implementation of money laundering laws and the work of the Financial Intelligence Centre (FIC), it is possible to see the quantitative effectiveness of measures taken by the South African government. Goga (2014) finds that according to the FIC annual report, 'investment in the FIC's work also yields tangible gains for public finances'. During 2012/13, the FIC had available funds of R245, 3 million, but recovered R1, 171 billion for the fiscus as a result of its efforts. This represents a value adding growth on investment of 377% for the South African taxpayer. The FIC has also been

able to work in tandem with other bodies to provide financial intelligence, and has been integral to a number of convictions and arrests.

In general, South Africa's anti-money laundering (AML) framework compares favourably with models in place in the European Union and the United Kingdom. Furthermore, both the SAPS and prosecuting bodies are increasingly adept at using legislation such as POCA to combat crime. Despite this, analysts such as Naylor (2003) remain critical of these approaches, citing ineffectiveness and a concern over civil liberties. In many proceeds of crime cases, the onus is on the state to prove a balance of probability rather than beyond reasonable doubt. This in turn has made it easier for law enforcement officials to pursue cases where there is little evidence. Furthermore, in South Africa 'follow the money' approaches have been unable to pick up on the bartering of goods through informal channels such as drugs for abalone or cattle for cannabis, which has long been a mainstay of the industry. It was argued by Gastrow (2003) that the cannabis trade underpinned the drug trade, as cannabis was used as a bartering system. This could explain how foreign drugs were purchased in South Africa at such a low price, despite the exchange rate. The response by the South African government to organised crime has been mixed. After 1994 the state was faced with an increase in organised crime that mirrored the experience of many post-transition societies. At the same time, the new government needed to manage the integration of the security forces, and dealt with a variety of other dysfunctions caused by the legacy of apartheid. This task was made more difficult by globalisation, liberalisation and the weakening of border controls. Since then, the state has implemented strong measures against organised crime, including following many of the Financial Action Task Force (FATF) recommendations with regard to money laundering.

However, a number of serious challenges remain. Research by Minnaar (1999) and Roelofse (2013) suggests that communities are increasingly turning to informal sources of authority, including organised criminals, suggesting a breakdown in relations between the police and communities. Failure to stem this tide is likely to result in the growth of organised crime in these communities, including the development of youth gangs into more organised structures. Similarly, corruption in the police force remains high and the state has been unable to find an effective means to limit it. Police have been accused, and convicted, of a variety of organised crime activities. Without police corruption, organised crime is unlikely to succeed. It is

argued that ‘the SAPS actively undermined its corruption control mechanisms’ through, inter alia, disbanding the Scorpions, the former anti-corruption agency of the SAPS.

Goga (2014) analyses state response to organised crime in South Africa and writes that over the past 20 years, the South African state has put in place measures that could significantly limit the form of crime. Legislation remains strong and it is continually updated. Although popular narrative of South Africa as a state being overrun by organised criminals seems exaggerated, the failings of the state include the removal of successful operations, institutions and systems, and failures at the upper echelons of police management. The inability to systematically address these failings will lead to the continued existence of, and increases in, organised crime in South Africa.

2.4 CONCLUSION

Literature pertaining to organised crime prevention and control has been reviewed. Various areas explored by various scholars were highlighted in the chapter. Though literature has been reviewed, there is still a need to explore how government responds to the organised crime pandemic by assessing the efficacy of government measures in the prevention and control of organised crime. Government measures to combat organised crime in South Africa will be discussed in detail in the next chapter.

CHAPTER 3

GOVERNMENT MEASURES TO COMBAT ORGANISED CRIME IN SOUTH AFRICA

3.1 INTRODUCTION

The previous chapter provides literature pertaining to organised crime prevention. In this chapter, the responses by various criminal justice agencies in addressing organised crime are discussed. Various developments, especially institutional and legal developments, will be highlighted. The South African state has taken a number of steps to limit organised crime since the end of apartheid. These can broadly be broken down into changes in specialised policing, and in new approaches to combating organised crime, primarily by ‘following the money’ and ‘taking the profit out of crime’. The SAPS is the largest of the law enforcement

bodies in South Africa. Yearly reviews of state performance have highlighted organised crime, ineffective operation and integration, and corruption as serious persistent issues. Although the state was arguably in a weakened position after the end of apartheid as a result of the loosening of border controls and the transition from a police force to a police service, the legislature and law enforcement began taking steps against sophisticated organised crime soon after it was identified as a problem. Various units were developed to address organised crime in South Africa such as the SAPS Commercial Crime Unit (CCU), the Anti-Corruption Unit, the Directorate of Special Operations (DSO), the Directorate for Priority Crime Investigations (DPCI), the Assets Forfeiture Unit (AFU), the Finance Intelligence Center, the SARS Customs and Excise Unit, and Border Policing. There were also legal instruments to address organised crime such as the Prevention of Organised Crime Act (POCA), the National Crime Prevention Strategy (NCPS), and the Financial Intelligence Centre Act (FICA), among others. Furthermore, various legislations were passed in response to organised crime in South Africa.

3.2. GOVERNMENT MEASURES TO COMBAT ORGANISED CRIME

After 1994 South Africa serves as a period which has seen significant developments in the way the criminal justice system approaches the challenges posed by crime syndicates. Broadly, these developments can be divided into two main categories: (i) changes made to the law and to police powers to facilitate the fight against organised crime, and (ii) structural changes within the criminal justice system. These developments and their impact will each be explored below.

3.2.1 CRIMINAL JUSTICE RESPONSES

Although the SAPS is by far the largest and most important of the country's law enforcement agencies, it is not the only one. Importantly, from the point of view of the fight against syndicates (as opposed to 'groups of repeat offenders'), other institutions also have a role to play. The specialised units and task teams to be discussed below function independently, creating a variety of organisational problems relating to co-ordination, overlapping investigations, and organisational isolation, among others. For this reason, this section is divided between in terms of discussion of developments in the police, and all other criminal justice agencies that were developed to prevent and control organised crime in South Africa.

3.2.1.1 The SAPS Commercial Crime Unit

Various new institutions were established outside the SAPS to deal with corruption and organised crime. This includes the Specialised Commercial Crimes Unit (SCCU) located within the SAPS, but with a high level of interaction with other institutions such as the specialised courts established in 1999 with a team of dedicated prosecutors. To indicate the importance of this unit in context, only 15 commercial crimes were prosecuted in Johannesburg in 1997, but by 2007 there were over 700 such prosecutions in Pretoria and Johannesburg.

3.2.1.2 The SAPS Anti-Corruption Unit

On the initiative of the National Police Commissioner in 1995, a National Anti-Corruption Unit (ACU) was established in January 1996 within the SAPS. In terms of its mandate, the unit is tasked with the investigation of any “serious offence” within the SAPS. What constitutes a “serious offence” is left entirely to the discretion of the national and provincial commander of the unit. This unit has no separate legislation underpinning its existence. The following Acts provide the legal framework within which it operates:

- The Police Act of 1995;
- The Criminal Procedure Act of 1977; and
- The Corruption Act 94 of 1992.

The Anti-Corruption Unit is not independent, but forms part of the SAPS. This arrangement, according to Huschle (2012), is something that potentially hampers its effectiveness (Unit’s), since it is not an ideal situation for the police to investigate one another. The objectives of the ACU include the reduction of corruption within the SAPS by increasing detection, apprehension and/or dismissal of offenders. It hopes to achieve this by:

- Encouraging, empowering and protecting witnesses;
- Developing a code of conduct as well as a mechanism for reporting corruption;
- Promoting an awareness of the consequences of corruption;
- Increasing the risks of and reducing the opportunities for corruption; and
- Increasing the resources of the ACU.

The functions of the SAPS ACU are the following:

- To investigate all allegations of corruption and related aspects in the SAPS.

- To initiate and implement an anti-corruption awareness programmes.
- To develop and maintain an effective integrated information system that supports its investigation.
- To co-ordinate all anti-corruption investigations in the SAPS.

Gottschalk's (2010) position is that a reduction in the reporting of corruption in the police service, rather than conviction rates, is regarded as the measure of efficacy for the SAPS ACU, and is related to their preventative approach.

3.2.1.3 The SAPS Border Policing

The Border Police was established on 11 August 1995 as a national component within the Division Operational Response Services to ensure the effective policing of South Africa's international borders. The key role players in terms of regulatory functions on South Africa's borders are:

- The Department of Home Affairs
- The South African Revenue Services
- The South African Police Service
- The South African National Defence Force
- The Department of Trade and Industry
- The Department of Transport
- The Department of Health
- The Department of Agriculture

The Department of Home Affairs (DHA) designates ports of entry and handles the administrative control of the entry and departure of persons. Customs and Excise, a division of the SARS, is responsible for the designation of a specific port of entry that may be used for the importation and exportation of goods, as well as for the administrative control and levying of excise duties and taxes on imported or exported goods. The Departments of Trade and Industry, Environmental Affairs, Health and Agriculture are also involved in the administrative control at ports of entry. For example, the imposition of quarantine measures on perishables and livestock is the joint responsibility of the Departments of Health and Agriculture (Gottschalk, 2010).

The main functions of the Border Police are the prevention and detection of cross border crime, and the illegal movement of people and goods into and out of South Africa, both internally and at the country's borders. Vermeulen, Van Damme and De Bondt (2010) find that the Border Police critically perform functions on an agency basis for the DHA (Immigration) and SARS (Customs and Excise). In this section, the following aspects will be discussed to highlight the duties of the Border Police: command and control of the Border Police; their functions and responsibilities; the collective approach of the National Interdepartmental Structure for Border Control; initiatives to improve border control; projects to address cross border crime, specifically organised crime; co-operation and communication; and information management.

Command and control of the border police: The Head of the Border Police has authority regarding all activities of the component. The Deputy Heads of Operations report directly under the command of the Head, and are responsible for all operational functions executed by their respective subcomponents. The Deputy Head of Development and Support Services also resorts directly under the Head and is responsible for the development of training, the management of infrastructure, and the support functions of the component, as well as for liaison and co-ordination with the intelligence community on relevant matters. The Operational Heads of Sea, Air and Land Borders, and of the Internal Tracing Units report under the direct command of the relevant Deputy Heads of Operations, and are responsible for the national management of their respective subcomponents. The Provincial Head of Operational Response Services is under the direct command of the Provincial Commissioner for the purpose of operational functioning. Provincial Managers/Co-ordinators are accountable to the Provincial Head of Operational Response Services for the day-to-day management and operation of all border police activities in their respective provinces. Unit commanders, whose status is similar to that of station commissioners, are accountable to their respective Provincial Managers/Co-ordinators.

Functions and responsibilities: The aim of the Border Police is to ensure the effective and efficient policing of South Africa's international borders. Their vision is to establish and maintain an integrated, well-managed and sustainable border police infrastructure that can meet South Africa's needs to control and police its international borders. The main purpose of the Border Police is to prevent and detect cross border crime. The primary function of the

component is derived from section 205 of the Constitution of 1996 and the Police Act 68 of 1995. Therefore, the Border Police assumes responsibility for:

- the prevention of cross border crime (line functions);
- the detection of cross border crime;
- the enforcement of the law applicable to cross border crime; and
- intelligence and investigation (secondary support functions).

The support functions are primarily undertaken by the National Detective Service in terms of a co-operation agreement in support of the line functions of the Border Police. Borderline control is the responsibility of the SANDF as set out in a bilateral agreement. However, it remains the responsibility of the SAPS (Border Police) until the SANDF is in a position to perform this function in its entirety (Gottschalk 2010). Ad hoc functions regarding immigration control and customs and excise are agency functions that are also rendered by the Border Police on behalf of the DHA (Immigration) and SARS (Customs and Excise).

The objectives of border policing include:

- the execution of acceptable and effective approaches and methods to control and police South Africa's international land, sea and air borders;
- the control and policing of the illegal movement of contraband, narcotics, weapons and vehicles;
- the control and policing of illegal movement of persons;
- the co-ordination of all related activities and the involvement of all role players to ensure a multidimensional approach aimed both at internal issues and external borders; and
- the development of capacity, personnel information and the technological resources required to meet operational objectives in an effective, efficient and sustained manner.

Within the ambit of the illegal (transnational) movement of people and goods, Gottschalk (2010) reveals that the aim of border policing is, among others, to:

- detect corruption;
- detect and identify fraudulent documentation;
- detect illegal trade in human beings, drugs, vehicles and firearms;
- take action against any form of assistance given to illegal immigrants and smugglers;

- stop the illegal movement of criminal elements across borders: detect illegal people and goods with the aim of eradicating source points within the country;
- plan and launch joint operations in the Southern Africa sub region to curb the activities of criminal organisations;
- complete and implement project plans of the National Crime Prevention Strategy (NCPS) (1996) to address vehicle crime, illegal firearms and organised crime; and
- ensure that border crossings occur as uncomplicated and speedily as possible without compromising effective crime prevention.

3.2.1.4 The National Prosecution Authority Priority Crime Litigation Unit (PCLU)

The PCLU plays a crucial role in the prevention and controlling of organised crime in South Africa. The unit's specific role in the prevention of organised crime includes undertaking prosecution of those involved in organised crime, amongst others. The PCLU is not an investigative unit, but relies on its investigations from SAPS and the DPCI. The PCLU, however, provides legal support to such investigations to ensure that prosecutions are not prejudiced by defective investigations. For example, the PCLU provides guidance to investigators in the drafting of legal processes such as applications for search warrants. It is responsible for the institution of all prosecutions arising from cases falling within its mandate. Chipeta (2009) points out that the complexities of cases dealt with by the PCLU are such that successful prosecutions would not result without the adoption of a multi-disciplinary approach. Therefore, the PCLU actively engages with government departments, controlling bodies and agencies who may enhance the investigations and prosecutions dealt with by the unit. As a result, the PCLU has working agreements in place with numerous stakeholders. The international nature of the cases dealt with by the PCLU is such that it is required to develop expertise in the field of mutual legal assistance and extradition. The unit closely engages with other components of the NPA and the Justice Ministry in these fields. The expertise of the PCLU has been recognised to the extent that assistance in these fields in matters not falling within its mandate is often requested.

In order to contribute to a reduction of crime, in particular organised crime, the PCLU engages in proposing legislative amendments where applicable, and provides training and seminars to agencies responsible for the enforcement of laws falling within its mandate. In order to strengthen the capacity of other components of the NPA, the PCLU conducts legal

research relevant to prosecutions and furnishes legal opinions. The unit's prosecutors also conduct prosecutions and other legal processes.

3.2.1.5 The Directorate of Special Operation

One of the most visible specialised units established after 1994 was the Directorate of Special Operations (DSO), commonly known as the Scorpions. The Scorpions came into operation in January 2001 to investigate and prosecute serious organised crime and corruption in cooperation with other units (Goga, 2014). Under the NPA, the DSO employees selected the cases that they investigated. Despite complaints over the manner in which the DSO operated, they were seen to be effective, with a high conviction rate. The successes of the Scorpions included limiting the terror activities of People Against Gangsterism and Drugs (PAGAD), taking down high-level platinum smugglers, high profile drug dealers and Chinese abalone smugglers.

The DSO was a significant player in chasing down sophisticated commercial crimes, including investigating Brett Kebble and Johannesburg Consolidated Investment (JCI). The DSO also went after political cases, and was drawn into the allegations of corruption around the arms deal, leading to the arrest and conviction of Schabir Shaik. Yet the DSO also came under criticism for its tactics, cherry picking cases and perceived political agenda (Mashele, 2006). Despite the recommendations of the Khampepe Commission in 2006 to retain the Scorpions, the DSO was disbanded in 2008 and incorporated into the SAPS. It was replaced by the Directorate for Priority Crimes Investigation (DPCI), known by the moniker 'the Hawks'.

3.2.1.6 The Directorate for Priority Crime Investigation (HAWKS)

On 6 July 2009, the Minister of Police, Nathi Mthethwa, launched the Directorate for Priority Crime Investigations (DPCI) led by Deputy National Commissioner Anwa Dramat. The DPCI replaces the DSO as the country's elite criminal investigation unit. Like the Scorpions, the new directorate has been given an attention-worthy nickname, the 'Hawks'. The SAPS Amendment Act 57 of 2008 provides for the establishment of the DPCI. In an attempt to ensure the integrity of the new unit and assuage public concerns over lack of independence, the Amendment Act provides strict guidelines for integrity, recruitment, accountability, and

the transfer of powers from the DSO to the DPCI. Some of these represent significant improvements when compared to the NPA Act.

The DPCI (“the Directorate”) is mandated to prevent, combat and investigate:

- National priority offences, which in the opinion of the National Head of the Directorate, need to be addressed by the Directorate, subject to any policy guidelines issued by the Minister in concurrence with Parliament;
- Selected offences not limited to offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act 2 of 2004); and
- Any other offence or category of offences referred to it from time to time by the National Commissioner, subject to any policy guidelines issued by the Minister and approved by Parliament.

“National priority offences” is defined as organised crime, crime that requires national prevention or investigation, or crimes that require specialised skills in the prevention or investigation thereof, as referred to in section 16(1) of the SAPS Act 68 of 1995. Crimes mentioned in section 16(1) include:

- crimes committed by persons in a position of trust and making use of specialised or exclusive knowledge;
- crimes in respect of the revenue or expenditure of the national government; or in respect of the national economy or the integrity of currencies;
- crimes of which the proportions require national investigation or prevention in the national interest;
- crimes committed across national and international borders;
- crimes where international requests for assistance are made in the investigation or prevention thereof;
- crimes which a Provincial Commissioner requests the National Head of the Directorate to investigate on a national level, with the National Head of the Directorate having the power to make the final decision on whether the crime shall be investigated on a national or a provincial level; and
- crimes in respect of which investigation thereof by members under the command of a Provincial Commissioner will detrimentally hamper the prevention or investigation of national priority offences.

A Schedule of offences which are also regarded as national priority offences has been inserted in section 16 of the SAPS Act 68 1995. These crimes, inter alia, relate to the security of the Republic and international obligations of the Republic in respect of terrorism, war crimes, genocide and crimes against humanity, the non-proliferation of weapons of mass destruction, the non-proliferation of firearms, the combating of mercenary activities and the control of conventional arms. The focus of the Directorate is on serious organised and transnational crime, serious commercial crime and serious corruption. The policy guidelines of the Minister, as approved by Parliament, determine the parameters of the mandate of the Directorate. In essence, the policy guidelines provide for:

- offences selected by the National Head of the Directorate;
- offences that must be addressed by the Directorate;
- offences that may be addressed by the Directorate;
- offences referred to the Directorate by the National Commissioner;
- the conclusion of Protocol(s) for the identification of possible offences that may be selected by the National Head of the Directorate as well as Protocol(s) in respect of national priority offences not selected by the National Head of the Directorate; and transitional arrangements.

In respect of the offences or category of offences which the National Commissioner may refer to the Directorate, their prioritisation must be aligned with the priorities and objectives of the Department of Police and the National Commissioner. The establishment of the DPCI was, however, not welcomed by all and therefore, its jurisdiction was highly challenged. Below is a synopsis of the nature of the discrepancies that were identified within the unit:

Challenges in the Jurisdiction of the DPCI: The SAPS Amendment Act 57 of 2008 was subsequently challenged by Mr Hoge Glenister in 2008 on constitutional grounds. The case, Hoge Glenister v President of the Republic of South Africa and Others, was heard in the Constitutional Court in September 2010 and the judgement, commonly known as the Glenister judgement, was passed on 17th March 2011, effectively invalidating the above mentioned legislation.

The Constitutional Court declared the offending legislative provisions establishing the DPCI constitutionally invalid to the extent that it did not secure adequate independence. To remedy

the deficiencies, the SAPS Amendment Act 10 of 2012 was approved by Parliament and assented to by the President on 14th September 2012. On the 27th November 2014, the Constitutional Court delivered its second judgement on the constitutionality of certain sections of the SAPS Amendment Act 10 of 2012, which was enacted to remedy the previous defects of the 2008 version. It was found that some of the provisions of the SAPS Amendment Act were still inconsistent with the constitutional obligation to create a structurally and operationally independent anti-corruption unit. It was further determined that the DPCI was not sufficiently insulated from political interference, and in an unusual step, decided to delete some provisions of the Act pertaining to the powers granted to the Minister of Police. Furthermore, it was discovered that there was undefined jurisdiction of the DPCI. Section 17 B (a) of the SAPS Act 57 of 2008 stated that the purpose of the DPCI is “to prevent, combat and investigate national priority offences, in particular serious organised crime, serious commercial crimes and serious corruption”. However, the judgement stated that the ‘sections that provided for the jurisdiction of the DPCI are scattered in different parts of the SAPS Act’. As such, it makes it difficult to identify the offences that the DPCI is empowered to prevent, combat and investigate.

3.2.1.7 The Assets Forfeiture Unit (AFU)

Based on an international experience, specifically the American approach, the National Director of Public Prosecutions set up a specialist unit — the Asset Forfeiture Unit (AFU) - in May 1999 to ensure that South Africa’s new forfeiture legislation is used effectively. AFU was established to focus on the implementation of Chapters 5 and 6 of the Prevention of Organised Crime Act 121 of 1998. The unit was set up in order to ensure that the powers in the Act to seize criminal assets would be used to their maximum effect in the fight against crime, particularly, organised crime. The AFU has been involved in intensive litigation since its inception. The complexity of the work of the AFU is illustrated by the fact that it is at present litigating about 30 different legal and procedural issues, apart from a host of constitutional issues. However, the law has certainly become more settled as the AFU has now managed to obtain High Court judgements on a large number of these issues. The first major litigation was on whether the Act applied to crimes committed before the Act came into operation. Since the Act was amended in this respect, there has been no serious litigation on this issue, although some have tried to argue that the amendment is unconstitutional.

Powers and Functions: The focus areas that the AFU has identified for itself include:

- The seizure of large amounts of cash associated with the drug trade;
- The seizure of property used in the drug trade or other crime;
- Corruption;
- White collar crime;
- The targeting of serious criminals; and
- Violent crime.

Conclusions drawn by Keightley (2009) are that the AFU succeeded in dealing with corrupt officials as this was highlighted as a priority. Action in a form of dismissal was taken against Piet Meyer, the former head of the SAPS Organised Crime Unit in KZN, and new actions were taken against corruption in Mpumalanga (Gray and Nkambule), two Deputy Masters of the Pretoria High Court (Januarie and Stewart), the Head of Customs in the Northern Province (Harmse) and employees of the Road Accident Fund (Mokhabukhi). The AFU has set itself two major strategic objectives, namely:

- to develop the law by taking test cases to court, and creating legal precedents that are necessary to allow the effective use of the law; and
- to ensure that asset forfeiture become used as broadly as possible so that it becomes an important weapon in the fight against crime.

The AFU has sought to advance both these objectives at the same time. Inevitably, there was initially more emphasis on the development of the law, but the emphasis has increasingly shifted to increasing the volume of cases. It was further decided that the AFU should take responsibility for the enforcement of anti-money laundering legislation. Goga (2014) asserts that it is an international trend for asset forfeiture and money laundering to be combined because there is a large overlap in the legal and investigative work that is required.

3.2.1.8 The Finance Intelligence Centre (FIC)

The FICs strength is in developing the ability to analyse data from public and government sources in order to proactively understand and react to strategic and operational risks relating to money laundering, organised crime and terror finance (Ntema, 2010). The FIC focuses towards striving to predict the ultimate intent of individuals, corporations and nations through

the analysis of their financial activities. Such ability improves the way government institutions manage risk and provides a powerful tool to support policy-making in the sector. The FIC continues to improve its systems and ability to analyse big data. During 2013/14, the FIC's membership in the Justice, Crime Prevention and Security cluster was formalised, further strengthening and aligning the contribution of its financial intelligence products to national security and crime-fighting priorities. According to Goga (2014), the FIC is an active component of the Anti-Corruption unit and its vulnerable sector management programme, which focuses on integrity concerns in the public sector. During 2013/14, most of the law enforcement authorities' 1 799 investigation requests made to the FIC related to money laundering, corruption or fraud. The FIC provided financial intelligence products based on these requests and also referred an additional 870 cases to law enforcement for investigation. The FIC also focuses on national security and crime fighting priorities.

3.2.1.9 The South African Revenue Services (SARS) Customs and Excise Unit

In terms of the SARS Act 34 of 1997, SARS is tasked with the mandate to collect all revenues that are due; to ensure maximum compliance with legislation; and to provide a customs service that will maximise revenue collection, protect the borders and facilitate trade.

- **Role of SARS Customs:** The unit is the first line of controls at our borders to secure the South African economy and society by administering the movement of goods into, from and through South Africa at and between the ports of entry. Its strategic goals and outcomes include the following:
 - Trade facilitation
 - ✓ Facilitating legitimate trade
 - ✓ Assisting trader to comply
 - ✓ Optimising the use of trade schemes
 - ✓ Implementing and contributing to the development of trade policy and instruments
 - Border security
 - ✓ Implementing international Customs requirements
 - ✓ Promoting South Africa as a secure trading partner
 - ✓ Working with other agencies in government to coordinate border security
 - Economic and community protection
 - ✓ Controlling market entry through clearance of goods, collection of duties and taxes that are due

- ✓ Preventing the smuggling and illegal movement of goods across borders
- ✓ Protecting national industries against harmful, unfair trade practices

SARS Customs contributes to South Africa's development as a globally competitive economy. Customs are the first-line of control at the country's borders to secure the South African economy and society by administering the movement of goods into, from and through South Africa. Customs undertakes this mission by facilitating legitimate trade, fighting smuggling and fraud and securing our borders. Trade, economic and social security responsibilities require that Customs protect national industries against harmful and unfair trade practices such as dumping, subsidised goods and enforcing safeguards; protecting society against the importation of hazardous, harmful and dangerous goods by controlling the movement of goods; and enforcing our country's intellectual property rights rules. In addition, through the application of international trade and Customs rules and standards, Nkosi (2011) argues that Customs enables South Africa to meet its international obligations and establish a reputation as a safe and secure trading partner. In this regard, SARS administers an efficient tax system and reduces the compliance burden by advocating the value of compliance and creating a culture of good citizenship across all sectors of society and the economy. A successful South Africa will improve the prosperity of its people and that of Africa.

- **SARS Custom Unit as Drivers for Change:** SARS Customs operates in a global environment where it has to constantly balance the needs of the international community, the regional community as well the national imperatives as determined by our government. The environment in which we operate has undergone significant change in the past few years. Lambrechts (2012) maintains that rogue traders and organised crime syndicates exploit international trade supply chains through the evasion and avoidance of duties and taxes, the smuggling of goods, money laundering and trade in counterfeit goods thereby threatening national economic security. At an even higher level of concern, international trade supply chains are being used to transport illicit goods that are harmful to our citizens. Lebeya (2012) writes that Africa, and certainly Southern Africa, have not yet managed to fully harness the process of globalisation in order to reap significant benefits from greater global integration. Nkosi (2011) identifies weak infrastructure and poor trade facilitation services as some of the main impediments. This is also recognised

in the New Partnership for Africa's Development (NEPAD), which identifies the reduction of delays in the cross-border movement of people, goods and services as one of its sectoral objectives.

Since 1994, the South African government has been actively promoting economic growth by fostering international trade, productive investment and implementing economic and social policies geared towards poverty reduction and job creation. Trade policies in particular, have aimed at liberalising and stimulating trade to harness it as an engine for development. The beneficial impact of those steps is reflected in the positive growth trend in South Africa's share of world trade. There is, however, scope to significantly increase our share of international trade, especially within the context of the government's Accelerated and Shared Growth Initiative (ASGI-SA), which aims to further accelerate South Africa's economic growth, including its share of international trade. According to Nkosi (2011), the full benefit of these initiatives will only be harnessed if the government can effectively execute these initiatives. SARS Customs, being an integral part of the trade supply chain, has the challenge of implementing these initiatives along with other government agencies involved in a seamless manner, adding real value to our economy.

- **Trends in Customs Crimes:** False documentation and round tripping were identified by Hubschle (2012) as the common trends in customs crimes. A reliance on paper based Customs and shipping documentation; inadequate controls at international land borders; lack of border controls at the South African Customs Union (SACU) exits and; the lack of co-ordination between all departments responsible for border control provided opportunity to evade high rates of duties and Value Added Tax (VAT) during this period. Customs related Cross Border Crime trends prevalent ranged from round tripping of goods through the SACU border posts and Beit Bridge, to the evasion of payment of VAT, to the use of false customs and shipping documentation, to the evasion of payment of high rates of duty. Hubschle (2012) highlights under-valuation as another trend in custom crimes. Under-valuation of goods and the use of false values to evade the payment of high rates of duty, particularly in electronics and textiles and clothing items became prevalent. Also prevalent was increasing volumes of illicit goods entering South Africa through SACU land-border posts. VAT losses through round-tripping of goods still remained widespread, with VAT evasion on fictitious exports estimated at R100

million per month. When it was realised, Customs also established that the postal system was being abused to smuggle smaller quantities of illicit goods.

3.2.1.10 The Organised Crime Unit (OCU)

Although the most important effect of the restructuring of specialised units over the past decade has been the redeployment of resources away from various units towards police stations, specialised components remain among the most important tools available to the police in the fight against organised crime. In this regard, the most important structure is the OCU, which has a wide mandate to investigate a broad spectrum of crime as long as it can be viewed as organised. The crucial point about the OCU is its mandate to use unconventional and covert investigative techniques that are so crucial when dealing with organised groups of repeat offenders. In essence, it is the job of the OCU to run covert investigations (called ‘projects’) into any organised crime syndicate of which it becomes aware.

The OCU ran projects, the majority of which relating to narcotics, the theft or hijacking of motor vehicles, fraud or corruption, and various forms of theft, including house-breaking and stock theft. Lebeya (2012) argues that one of the difficulties that arises for a unit like the OCU is that it can only undertake projects against syndicates when it becomes aware of their existence and operations. In this regard, a concern at the moment is that although the SAPS ran a bottoms-up process aimed at getting all police stations to identify organised groups of criminals five years ago, the process has not been repeated. This seems to be the source of frustration for the OCU which, as a result, is forced to rely on its own sources – both in the community and in the Police Service – to identify syndicates. For obvious reasons, this is somewhat more ad hoc a process than it would be if it were supplemented by a station-driven process of identifying organised criminal activities. It should be noted that a station-driven process is not always fool proof, could attribute significantly to the ability of the OCU to prioritise its work (Nkosi, 2011).

3.2.1.11 Other Institutionalised Responses

The response to organised crime does not only require the putting of laws in place; it also requires the putting together of institutions to enforce such laws. With the promulgation of the South African Police Service Act 68 of 1995, the legislature has under section 16 legally established the Organised Crime Units. The SAPS joined the International Criminal Police Organisation (ICPO) known as INTERPOL of which the National Police Commissioner

Jackie Sello Selebi became the Deputy President for the Africa region, and ultimately, the President. The SAPS also became a member of the South African Regional Police Chiefs Coordinating Organisation (SARPCCO). It furthermore participates in the Heads of National Law Enforcement Agencies (HONLEA), an organisation geared to deal with drugs and drug trafficking in the region.

The SAPS has further established a number of various specialised units that were geared to deal with various manifestations of organised crime. These units include the Cross Border Operations Unit (CBOU); the International Vehicle Crime Investigation Unit (IVCIU); the Special Task Force; the Organised Crime Investigation Unit (OCIU), the Selected Organised Crime (SOC); the Border Police/ Railway Police/ Precious Metals and Diamonds Units (PMDU) [formerly known as Diamonds and Gold (D&G)]; the Fraud Units; the Syndicate Fraud Units (SFU); the Office for Serious Economic Offences (OSEO); the Commercial Crime Units (CCU); the Aliens Units; the Serious and Violent Crime (SVU) [formerly Murder and Robbery (M&R)] Units; the Family Violence Child Protection and Sexual Offences Units (FCS) [formerly Child Protection Units (CPU)]; the Endangered Species Units (ESPU); the Gang Units; the Trucks Hijacking Units; the Transit Theft Units; the Firearms Investigations Units (FIU); the Anti-Corruption Units (ACU); the Motor Vehicle Crime Investigation Units; the Special Task Force (STF) Units; the Tactical Response Team (TRT) Units; and the Tracking Units.

The Commercial Branch was established in 1947 with jurisdiction to investigate countrywide, and was called Johannesburg Company Fraud Staff. In 1969, the Branch was expanded with offices in Cape Town, Pretoria, Durban, Bloemfontein, Port Elizabeth and Klerksdorp. The Branch was, during the period 1988-1997, reorganised in order to deal with the increasing challenge of commercial crime resulting in the establishment of 12 Commercial Crime Units, 13 Syndicate Fraud Units and 43 Fraud Units. On completion of the first phase of the restructuring of the Detective Service in 2000-2002, the Commercial Branch comprised of 17 Commercial Crimes Units and one Serious Economic Offences Unit. When the SAPS lost all its members belonging to the original Office for Serious Economic Offences, and who were legislated to become Investigating Directorate Serious Economic Offences (IDSEO), they started to build another unit from scratch (Lebeya, 2012).

The Organised Crime Intelligence Unit (OCIU), which is the predecessor to the Organised Crime Investigation Unit, was the first unit created to deal directly with organised crime. As the abbreviation of both are the same, it has at times confused researchers who are of the view that the current OCIU is synonymous with the then OCIU. Amongst some of the activities of the Organised Crime Intelligence Unit, which is a distinguishing factor compared to the current unit, was to compile an Organised Crime Threat Analysis (OCTA) in order to have a global insight into the activities of crime syndicates.

The South African Government appointed a Commission under Police Commissioner, General Hennie de Witt to look into the restructuring of the South African Police (SAP). As a result, the SAP was restructured into five divisions in 1990-1991. One of these five divisions, which was a merger between Criminal Investigation Department (CID) and the Security Branch (SB) called the Crime Combating and Investigation Division, came into effect on 01 April 1991. As Gastrow (2003) puts it, senior members from these divisions wanted to ensure that members from each side did not gain control of the new division.

The National Crime Investigation Service (NCIS) was established in South Africa in 1994 to operate in the same way as the Federal Bureau of Investigations (FBI), the Australian Federal Police (AFP) and the Regional Crime Squads (RCS) in America, Australia and England respectively. In doing this, twenty (20) operational offices were established primarily with the South African Narcotics Bureau (SANAB) detectives. The detectives from Vehicle Theft Units and Crime Intelligence and Commercial Branch were later added. According to Lebeya (2012), these units were called National SANAB. According to Eksteen in Lebeya (2012), the operational problems with this setup was that organised crime offices and some specialised units such as SANAB and Vehicle Theft Units worked as rivals, and in some instances, against each other. The organised crime units focussed primarily on narcotics, and to a lesser extent, on stolen vehicles.

The Investigating Directorate: Organised Crime and Public Safety (IDOC), which operated separately from the SAPS, was established in respect of the offences and categories of offences specified in the Schedule. These offences included extortion; kidnapping; the Intimidation Act 72 of 1982; the Diamonds Act 56 of 1986; and some crimes that are committed in an organised fashion or which may endanger the safety or security of the public, or any conspiracy, incitement or attempt to commit any of the above-mentioned

offences. South Africa established the National Anti-Corruption Forum (NACF) on 15 June 2001 at Langa, Cape Town. While the intention was to have the forum led by civilians, the Minister of Public Service and Administration later assumed the Chairpersonship and Administration on 21-11-2002 as the appointed chair could not take the Forum off the ground. This body ensures that everybody in civil society, business and the public sector play a role in fighting corruption.

The Investigating Directorate Corruption (IDCOR) that was established to deal with offences relating to corruption did not become operational until the formal legal creation of the Directorate of Special Operations (DSO), which became operational on 01 September 1999. As acknowledged by the NPA, it was, in essence, built on the successes of the existing Investigating Directorates. It became a legal entity on 12 January 2001 in terms of Proclamation R3 of 2001 published in the Government Gazette No 21976 of 12 January 2001. Since it is often the case that the purpose of organised criminals is primarily for financial benefit, the financial investigation capacity that was established included the Special Investigation Unit (SIU); the Investigative Directorate on Organised Crime (IDOC); the Special Commercial Crime Units (SCCU) (1999); and Organised Crime Section (OCS). On 14 March 1997, President (Dr) Nelson Rolihlahla Mandela, as he then was, established the Heath Special Investigating Unit in terms of the Special Investigating Units and Special Tribunals Act 74 of 1996. Judge Willem Heath, who was succeeded by Hofmeyr, headed the Heath Commission. The name of the unit was changed to the Special Investigating Unit (SIU). Rather than dealing with criminal matters, the unit focuses on the civil part of activities which are approved by the State President. Several units were established while others were disbanded. There were also legal developments in response to organised crime in South Africa.

3.2.2 LEGAL DEVELOPMENTS

It was argued earlier by Goga (2014) that the state's response to the threat of organised crime can be split between structural developments and legal developments. As already suggested, the dividing line between the two is not always clear since legal innovation often requires (or results) in structural changes. In this regard, the two most important new tools placed in the state's anti-organised crime armoury are contained in the Prevention of Organised Crime Act 121 of 1998, and the (partly-overlapping) Financial Intelligence Centre Act 38 of 2001, the passage of which has resulted in the establishment of the AFU and the FIC. But the most

important consequence of these acts is not the creation of these institutions, but of new legal tools. This section describes these tools and suggests that the state has not yet begun to use them with the vigour or effectiveness that it should have done.

3.2.2.1 The National Crime Prevention Strategy (NCPS) 1996

The development of the NCPS began after the South African President, in his opening Parliament address in 1995, called for more attention to be paid to solving the problem of crime. The Ministry of Safety and Security responded to this call with a dual approach: the police were asked to develop an operational plan for improved and intensified policing (this became known as the Community Safety Plan), and the civilian staff of the ministry were tasked with the development of a longer-term crime reduction approach. The early phase of the development of this approach was led by one of the minister's civilian advisors, who drew together a small team of civilian experts on crime and policing matters. When this committee proposed the development of a wide-ranging anti-crime strategy, a new group of government officials was set up to take forward the development process. Later, a group of officials and consultants from six government departments namely, the Departments of Safety and Security, Health, Social Development, Home Affairs, SANDF and Education (chaired by another of the minister's civilian advisors) became known as the NCPS strategy team.

The development of the NCPS was a slow process, reflecting a universal lack of experience in crime prevention and in working co-operatively in an interdepartmental style. Participation from most departments was erratic, and it was hard to secure commitment to the process in the absence of clear political commitment and direction. By the end of 1995, an outline of a proposed national crime prevention strategy was presented to cabinet, which mandated the team to proceed with the development of the strategy.

According to Newham (2005), the initial communication of the strategy was distorted by the virtually simultaneous publication of the SAPS "Police Plan" for 1996/97. This was the first time the police had published their plans for the financial year and the event received as a result of overwhelming media attention. The police plan primarily emphasised reactive policing issues and did not draw on the preventive approaches contained in the NCPS. The publication of two major anti-crime policies within a fortnight of each other served to confuse the public and the media, and undermined the government's intended message about a new commitment to long-term and comprehensive prevention approaches to the problem of crime.

The policy framework provided by the NCPS envisages crime prevention as the shared task of all sectors of government and civil society. It sees prevention happening on four "fronts" represented by the four pillars of the strategy:

- enhancing the deterrent (preventive) effect of the criminal justice system by increasing efficiency and certainty in the system;
- blocking opportunities for crime in physical environments and in systems by redesigning environments and systems, using an approach known as crime prevention through environmental design (CPTED);
- public education programmes about crime and its prevention, as well as programmes aimed at changing the moral climate of the society into one which does not tolerate violence or law-breaking; and
- tackling the multinational dimensions of the crime problem through more effective border security and building strong and developmental relationships with neighbouring and friendly countries.

Newham (2005) asserts that the NCPS provides a broad architecture within which specific problems of crime should be "disaggregated" in order for appropriate prevention strategies to be developed. The crimes of major concern to the government were identified as:

- crime involving firearms;
- organised crime;
- white-collar crime (economic crime);
- gender violence and violence against children;
- violence associated with intergroup conflict;
- vehicle theft and hijacking; and
- corruption within the criminal justice system.

The four-pillar framework and the seven priority crimes should be viewed as a matrix in which each of the pillars offers a variety of methods to prevent each type of crime, thus building a range of "tools" which would, over time, reduce the occurrence of that type of crime.

The NCPS, a cross-departmental plan aimed at achieving greater co-ordination, serves as the cornerstone of state strategy against criminality (Newham, 2005). The NCPS outlines a comprehensive set of programmes that deal with organised crime. NCPS implementation, however, has on occasion, been characterised by a complex set of committees, and has been

plagued by failure of all stakeholders to set clear objectives for delivery. A key weakness of the NCPS was neglect to confront the country's growing illegal drug trade. A draft strategy for the control of illegal drugs has now been formulated. However, the strategy is regarded as too ambitious (it is based on the British drug prevention plan), ignoring the weakness of provincial and local government structures. The strategy has been some time in the making, and it is not clear under which department it should fall when it is released.

One area where some progress has been made, however, is the drafting of legislation which aims to tighten the legal framework in which organised criminals operate. This includes the drafting of legislation aimed at allowing, among others, the confiscation of profits of crime, and the prevention of money laundering. These initiatives were taken largely as a result of foreign pressure, particularly from the United States and Great Britain. Newham (2005) writes that most of the battery of legislation is regarded by international experts as being comprehensive, although law enforcement officers and prosecutors concede that it is one thing to have a comprehensive set of laws, and quite another to enforce them.

3.2.2.2 Drug and Drug Trafficking Act 140 of 1992

South Africa embraced the approach of attacking criminal profits, or the proceeds of crime when in 1992, the Drugs and Drug Trafficking Act was promulgated. De Koker (2008) argues that this law supplemented common law, and broadened the criminalisation of money laundering to include those who did not report suspicious transactions related to drug trafficking. The Proceeds of Crime Act 76 of 1996 broadened the scope of the statutory laundering provisions to all types of offences, and followed international conventions that sought to combat organised crime by following financial flows.

3.2.2.3 Prevention of Organised Crime Act (POCA) 121 of 1998

In 1998, the Prevention of Organised Crime Act (POCA) 121 of 1998 was passed. This Act was influenced by the Racketeer Influenced and Corrupt Organisations Act (RICO) in the United States of America. POCA became a dedicated piece of legislation to limit organised crime. As such, it was touted as integral to fighting both organised and commercial crimes. It is possible to use POCA across a broad range of criminal activities. According to Camilier (2011), POCA is aimed 'at dealing with a wide range of criminal activities, some of which

are quite commercial in nature'. He further states that the Constitutional Court held that 'the wording of POCA as a whole makes it clear that its ambit is not in fact limited to so-called "organised crime offences", and that 'the primary object of POCA is to remove the incentive for criminal activity'.

Using 'follow the money' and/or 'proceeds of crime' approaches and financial penalties to prosecute criminals is a common law enforcement tactic. Accordingly, POCA intends to follow this tradition to 'take the profit out of crime'. It is argued by Amilier (2011) that these approaches, along with more global cooperation, have made it increasingly difficult to move money across borders, and to launder illicit financial flows. POCA has been successfully used in a number of commercial crimes as well as in a more traditional gang activities. Its strong forfeiture laws have enabled the state to confiscate anything from cars and houses to multimillion rand businesses.

The purpose of POCA, which is set out in the long title to the Act includes:

- the introduction of measures to combat organised crime, money laundering and criminal gang activities;
- the prohibition of certain activities relating to racketeering;
- the provision for the prohibition of money laundering and for an obligation to report certain information;
- the criminalisation of certain activities associated with gangs; and
- the provision for the recovery of the proceeds of unlawful activity; and for the civil forfeiture of criminal property that has been used to commit an offence, property that is the proceeds of unlawful activity or property that is owned or controlled by, or on behalf of, an entity involved in terrorist and related activities.

An analysis of the Preamble and the long title of POCA by Bjelopera (2011) suggests that the Act is focussed and intended to deal mainly with three types of offences, namely: organised crime, money laundering and criminal gang activities. Mallory (2012) argues that POCA, by its very title, deals with organised crime. This suggests that there must be some element of organised crime before a prosecution for racketeering, money laundering and gang related activity could be instituted. POCA creates a number of offences. From the outset, it is imperative to take note of the 28 offences that have been created by POCA before embarking

on the discussion. These offences may be grouped into four categories, namely: patterns of racketeering activities, proceeds of unlawful activities, criminal gang activities and administrative activities.

Due to the fact that aggravating circumstances usually attract a heavy sanction, it is worth noting that in terms of Section 9(3) of POCA, if a court, after having convicted an accused of any offence, finds that the accused was a member of a criminal gang at the time of the commission of the offence, such finding shall be regarded as an aggravating circumstance for sentencing purposes. The importance of establishing that a person is a member of any criminal gang is therefore, according to Lambreschts (2012), paramount as it determines the aggravating circumstances for meting out a proportional sentence.

- **Offences relating to racketeering activities according to POCA:** The term ‘racketeering offence’ creates confusion as racketeering as such is not criminalised in the Act. However, the legislature has not clearly defined racketeering. De Koker (2008) argues that racketeering is originally an American term for the organised blackmailing of businesses by intimidation and violence. He concludes that globally, the term has since been employed more widely to refer to organised crime in general. A pattern of racketeering activity is defined as the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1, and includes at least two offences referred to in Schedule ONE of POCA, of which one of the offences occurred within ten years (excluding the period of imprisonment) after the commission of such prior offence referred to in Schedule ONE.
- **Receive, use, invest or retain the proceeds of racketeering activity:** Section 2(1)(a) of POCA provides that any person who receives or retains any property derived, directly or indirectly, from a pattern of racketeering activity; and \knows or ought reasonably to have known that such property is so derived, further uses or invests, directly or indirectly, any part of such property in acquisition of any interest in, or the establishment or operation or activities of any enterprise within the Republic or elsewhere, shall be guilty of an offence. Again be liable on conviction to a fine not exceeding R1 000 million, or imprisonment for a period up to imprisonment for life.

Kruger in Nkosi (2011) identifies the elements of contraventions of Section 2(1)(a) of POCA as the existence of an enterprise; a pattern of racketeering activity; the accused directly or indirectly, received or retained property, derived from a pattern of racketeering activity; the accused knew or ought reasonably to have known that the property was derived from a pattern of racketeering activity; the accused directly or indirectly used or invested any part of such property, to acquire any interest in any enterprise, or to establish any enterprise, or to operate any enterprise, or in the activities of any enterprise. In terms of the specimen charge sheet that depicts the elements of an offence, he advances the accused; received or retained property; the property; derived from; a pattern of racketeering activity; used or invested property; in the operation of the enterprise. An analysis of subsection 2(a) of POCA indicates that the elements of contraventions of this subsection include the following:

- The accused must have received or retained property;
- There must be a pattern of racketeering activity;
- There must be an enterprise within the Republic or elsewhere;
- The property must have been derived directly or indirectly from a pattern of racketeering activity.
- The accused must have known or ought to have reasonably known that such property is derived directly or indirectly from a pattern of a racketeering activity.
- Participation or involvement must be in a Schedule one offence.
- The accused must have used or invested, directly or indirectly, any part of such property in acquisition of any interest in, or the establishment or operation or activities of, any enterprise, within the Republic or elsewhere.
- **Receive or retain the proceeds of a racketeering activity:** Section 2(1)(b) of POCA stipulates that any person who receives or retains any property, directly or indirectly, on behalf of any enterprise; and knows or ought reasonably to have known that such property is derived from or through a pattern of a racketeering activity; within the Republic or elsewhere, shall be guilty of an offence and be liable on conviction to a fine not exceeding R1 000 million, or to imprisonment for a period up to imprisonment for life. An analysis of this subsection indicates that the first six elements of contraventions of Section

2(1) (a) are applicable in this subsection. The distinctive elements applicable in this section are the following:

- The accused must have received or retained the property on behalf of any enterprise.
- The property must have been received or retained within the Republic or elsewhere.

- **Knowingly use or invest the proceeds of a pattern of a racketeering activity:**

Section 2(1)(c) of POCA provides that any person who uses or invests any property, directly or indirectly, on behalf of any enterprise or in acquisition of any interest in, or the establishment or operation or activities of any enterprise; and knows or ought reasonably to have known that such property derived or is derived from or through a pattern of a racketeering activity; within the Republic or elsewhere, shall be guilty of an offence and be liable on conviction to a fine not exceeding R1 000 million, or to imprisonment for a period up to imprisonment for life. An analysis of this subsection indicates that elements 3-5 of the elements under the act are applicable and that the distinctive elements of contravening this section are the following:

- The accused must have used or invested property; and
- Such usage or investment of property must be on behalf of an enterprise.

- **Acquisition, maintenance or control of any interest through a racketeering activity:**

Section 2(1) (d) of POCA provides that any person who acquires or maintains, directly or indirectly, any interest in or control of any enterprise through a pattern of a racketeering activity; within the Republic or elsewhere, shall be guilty of an offence and be liable on conviction to a fine not exceeding R1 000 million, or to imprisonment for a period up to imprisonment for life. In terms of the specimen charge sheet that reflects the elements of an offence, Kruger submits the accused; maintained an interest in or control of enterprise; the enterprise; and a pattern of a racketeering activity. An analysis of this subsection indicates that elements 2, 3 and 6 under 4.2.1 act are applicable, and a distinctive element of contravention of this subsection is that the accused must have directly

or indirectly acquired, maintained interest or controlled any enterprise through a pattern of a racketeering activity.

- **Conduct racketeering as a manager, employee or an associate:** Section 2(1)(e) of POCA states that any person who, whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of a racketeering activity; within the Republic or elsewhere, shall be guilty of an offence and be liable on conviction to a fine not exceeding R1 000 million, or to imprisonment for a period up to imprisonment for life. In terms of the specimen charge sheet that reflects the elements of contravention of this subsection, the elements required to prove that the offence under this subsection has been committed are the following:
 - There must be an enterprise;
 - The accused must directly or indirectly conduct or participate in the conduct of an enterprise;
 - The accused must be a manager or an employee or associated with the enterprise;
 - The enterprise's affairs must be identifiable;
 - Participation must be ongoing, continuous or repeated participation or involvement.

- **Management of the operations of an enterprise:** Section 2(1)(f) of POCA states that any person who manages the operation or activities of an enterprise, and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of a racketeering activity; within the Republic or elsewhere, shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 million, or to imprisonment for a period up to imprisonment for life.

- **Conspiracy or attempts to violate the provisions of section 2(1)(a-e) of POCA of 1998:** Section 2(1)(g) of POCA states that any person who conspires or

attempts to violate any of the provisions of paragraphs (a), (b), (c), (d), (e) or (f), within the Republic or elsewhere, shall be guilty of an offence and be liable on conviction to a fine not exceeding R1 000 million, or to imprisonment for a period up to imprisonment for life. Conspiracy, attempt and incitement are inchoate crimes. Inchoate crimes can be defined as acts which are committed in anticipation of the commission of a principal crime. The inchoate crime that is not covered in this subsection is incitement.

Common law, which was applicable in South Africa before the promulgation of the Riotous Assemblies Act of 1956, conspiracy was defined by Dean, Fahsing and Gottschalk (2010) as an agreement of two or more individuals to commit a criminal or unlawful act or a lawful act by unlawful means. Section 18(2) (a) of the Riotous Assemblies Act of 1956 provides that any person who conspires with any other person to aid or procure the commission of or to commit any offence, whether at common law or against a statute or statutory regulation, shall be guilty of an offence and liable on conviction to the punishment to which a person of actually committing that offence would be liable. As explained by Snyman (2008), the definition of conspiracy is not confined to acts relating to riotous assemblies but covers any crime.

An attempt in POCA is restricted to the crimes mentioned in section 2 only. The elements of a criminal attempt are wrongful intent to commit an offence and unlawfulness. The legislature has incorporated the offences of attempt and conspiracy in POCA to attract heavier punishment for those acts that are related to organised crime as opposed to those crimes related to other crimes. While the element of jurisdiction is the same as element 4 under the paragraph, the analysis of this subsection indicates that the unique elements of this offence include the following:

- The agreement to commit an offence must be at least between two persons; and
- The accused must conspire or attempt to violate any of the provisions of paragraphs (a)-(f) of Section 2(1) of POCA of 1998.

In terms of Section 2(4) of POCA, prosecution for the contravention of the provisions of Section 2 of POCA shall only be undertaken if so authorised in writing by the NDPP. One of the distinguishing characteristics of prosecution in terms of Section 2 of POCA is the unconventional court process where evidence of hearsay, similar facts or previous convictions are admissible as provided in Section 2(2) of this Act.

(i) Offences relating to the proceeds of unlawful activities according to POCA

Offences under this chapter are divided into three subcategories. These subcategories are under Sections 4, 5 and 6, and they are generally referred to as the proceeds of unlawful activities.

Money laundering: Money laundering is not a common law crime. It is a phenomenon highly intertwined with organised crime. According to UNODC (2009), the concept of money laundering originated in the USA. The outlawing of money laundering is a core element in the fight against organised crime. According to the UNODC Annual Report of 2009, money laundering is defined as the method by which criminals disguise the illegal origins of their wealth and protect their asset bases in order to avoid suspicion of law enforcement and to prevent leaving a trail of incriminating evidence. It concludes that money laundering empowers corruption and organised crime.

Bovenkerk (2011) recognises that money laundering is a vital component of all forms of organised crime. They raised extreme concerns about the ability of organised crime to infiltrate legal financial markets, and its attempts to control sectors of national economies through the laundering of illicit proceeds, which continue to represent grave threats for their countries and their national economies. In terms of the SADC Protocol on Combating Illicit Drugs, money laundering is defined as engaging, directly or indirectly, in a transaction that involves money or property which is proceeds of crime or receiving, processing, conceiving, disguising, transforming, converting, disposing of, removing from, bringing into any territory, money or property which is proceeds of crime. Bullock, Clarke and Tilley (2010) observe that money laundering has been described or defined in different ways. In support of their argument, they point out the following:

- Money laundering is the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate.
- Money laundering is the process of taking the proceeds of criminal activity and making these proceeds appear legal.
- Money laundering is the act of converting funds derived from illegal activities into a spendable or consumable form.

Botes (2005) defines money laundering as the conversion or transfer of property, knowing that such property is derived from a criminal activity, for the purpose of concealing the illicit nature and origin of the property from government authorities. He also quotes the definition of money laundering as adopted by Interpol's General Assembly in 1995 as any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources. In a dissenting voice that is blurred by close interpretation, he further argues that the term dirty money is a misnomer, as the only major cases in which it is necessary to launder specific banknotes are kidnap ransoms and bank robberies, which are fairly rare activities for organised crime in general.

According to Van Jaarsveld (2011), an example of money laundering is the value of the sales of cocaine, which is estimated at the value of \$122 billion yearly. In terms of the Financial Intelligence Centre Act (FICA) of 2001, money laundering is defined as an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds of unlawful activities, which constitutes an offence in terms of Section 64 of this Act or Sections 4, 5 or 6 of the Prevention Act 121 of 1998. The phrasing of this definition is underscored by the Proceeds of Crime Act 2002, which defines money laundering as an act which: constitutes an offence under Sections 327, 328 and 329; constitutes an attempt, conspiracy or incitement to commit one of those offences; constitutes aiding, abetting, counselling or procuring the commission of one of those offences; or would constitute any of the above offences if done in the United Kingdom.

Money laundering is defined by Allum (2010) as an act of accounting or fiscal act to bypass the law. He limits the concept to those acts which are intended to hide the sources of assets by pretending to be originating from other legitimate sources. Any other money transactions

which are not intended to result in such legitimisation should, therefore, not be considered money laundering but money-channelling. He, however, concedes that money-channelling may be the first step in money laundering. Amir (2011) observes that organised criminal groups do not usually have a legal way to spend their illicit profits, and therefore, have to hide as much of their revenue as possible. Goga (2014) believes that organised crime groups generate large sums of money by activities such as drug trafficking, arms smuggling and financial crime.

The process of changing the face of dirty profit into “clean money” stream requires the penetration of a legitimate business by organised criminal groups and it is called money laundering. Sipho (2009) explains that the term laundering is not confined to cash, but is used because money laundering techniques are intended to turn ‘dirty’ money into ‘clean’ money. UNODC (2009) states that money laundering is a process of changing illicitly acquired wealth into what appears to be licit. There are as many definitions of money laundering as are authors.

POCA, according to Lebeya (2012), which is a multi-pronged law, has not defined money laundering. The Act has two sets of money laundering provisions, which are: general money laundering offences involving proceeds of all forms of crime; and offences involving proceeds of a pattern of racketeering activities. Section 4 of POCA is dedicated to money laundering. De Koker (2008) states that money laundering refers, in general, to any act that obscures the illicit nature or the existence, location or application of proceeds of crime. Botes (2005) argues that the overall objective of the money laundering operation is the concealment of the illegal source of the proceeds of crime in order to convey the impression that the proceeds are derived from a legitimate source. He describes money laundering as the washing of dirty money through various channels until all traces of illegal activities have been removed. He points out that money laundering can be regarded as a process during which three essentially complex concealment steps, which are placement, layering and integration, might be taken. De Koker’s (2008) dissenting view is that not all money laundering schemes necessarily reflect these stages because a single act can constitute the offence of money laundering.

According to Minnaar (1999), Botes (2005) and Roelofse (2013), organised crime syndicates infiltrated South Africa in the 1980s and set up companies in order to create a legitimate veil

behind which dirty money could be safely laundered while the security forces were preoccupied with the liberation movements. Unfortunately, they have not mentioned any of the companies in support of this view. They believe that the South African regime of the 1980s participated heavily in money laundering while assisting organisations such as Uniao Nacional para a Independencia Total de Angola (UNITA) that fought against governments and that were seen as supporters of their enemies. They have not explained how this was done. They correctly observed that there are very few real successful prosecutions against money launderers in South Africa.

The money that is being laundered is the proceeds of crime, which is, in fact, fundamental property. In terms of POCA, property means money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof. The proceeds must have been generated through an illegal activity. The Prevention of Organised Crime Second Amendment Act inserted a definition for “unlawful activity” into POCA of 1998. In terms of this definition, an “unlawful activity” is any conduct which constitutes a crime or which contravenes any law, whether such conduct occurred before or after the commencement of POCA and whether it occurred in South Africa or elsewhere.

Assisting another to benefit from the proceeds of unlawful activities: Section 5 of POCA provides that any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby - (a) the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or (b) the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way, shall be guilty of an offence and liable in terms of Section 8 to a fine not exceeding R100 million, or to imprisonment for a period not exceeding 30 years.

The analysis of this section by Marlon (2008) indicates that the unique elements of contravention of Section 4 are applicable except element 7. This element is replaced in Section 5 of POCA with the following: Such proceeds must be used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way.

Acquisition, possession or use of proceeds of unlawful activities: Section 6 of POCA provides that any person who (a) acquires; (b) uses; or (c) has possession of property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person, shall be guilty of an offence and liable in terms of section 8 to a fine not exceeding R100 million, or to imprisonment for a period not exceeding 30 years. The analysis of this section by Newton (2011) indicates that the elements of contravention of Section 5 of POCA are applicable except that the element indicated under the paragraph is replaced by the following in Section 6 of POCA: The accused must acquire, use or be in possession of the proceeds of criminal activities of another person.

- **Offences relating to criminal gang activities according to POCA**

Offences under POCA chapter are called gang related offences. These offences include both membership of a criminal gang and criminal activities of a criminal gang. A criminal gang is defined as including any formal or informal ongoing organisation, association, or group of three or more persons, which has as one of its activities, the commission of one or more criminal offences, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of a criminal gang activity. According to Snyman (2003), the words included at the beginning of the definition mean that the court can also find that a group of persons with which the accused is associated with was a criminal gang in spite of the fact that the group has no identifiable name or identifying sign or symbol. Gastrow (2003) defines a criminal gang as consisting of an organised group of members which has a sense of cohesion, is generally territorially bound, which creates an atmosphere of fear and intimidation in the community, and whose members engage in a gang-focused criminal activity either individually or collectively.

A pattern of criminal gang activity is defined as including the commission of two or more criminal offences referred to in Schedule 1: provided that at least one of those offences occurred after the date of commencement of Chapter 4, and the last of those offences occurred within three years after a prior offence, and the offences were committed- (a) on separate occasions; or (b) on the same occasion, by two or more persons who are members of, or belong to, the same criminal gang. Logically, it does not make sense as to why the

legislature defines a criminal gang as consisting of three or more persons, but requires that a pattern of criminal gang activities is committed by two or more persons.

Snyman (2008) argues that the crimes created in Section 9 of POCA overlap with those covered in the rules of criminal law governing participation in crime (as co-perpetrators or accomplices) and the anticipatory crimes, that is, attempt, conspiracy and incitement. His view is that these crimes are unnecessary in POCA. However, the state has alluded to the fact that the other laws, including common laws and statutory laws, were insufficient to deal with the scourge of organised crime.

Gastrow (2013), who argues that gangs differ from criminal groups because of the level of organisation, concedes that under certain circumstances, the criminal activities of gangs do amount to organised crime. His distinction blurs when he states that one of the most notorious of these organised criminal groups was the Msomi gang who operated from Alexandra. This confusion has also visited Ince, who points out that two of the most notoriously violent criminal gangs in the world are Sicilian Mafia and the Chinese Triads. These are well known “traditional” organised criminal groups that have been referred to by various organised crime researchers.

The exhibition of uncertainties by influential researchers on the distinction between criminal gang and organised criminal group such as Nkosi (2011) tends to support the view that this distinction is a cosmetic fallacy. A criminal gang and an organised criminal group are one and the same. This writer concludes that a criminal gang should not be categorised as distinct from an organised criminal group. This view is in line with Standingin (Lebeya, 2012) argument that there is no need to have a separate section within POCA for criminal gangs. The crimes created by the chapter on criminal gang (Chapter 9) can be accommodated in the chapter on racketeering activities (Chapter 2). Consequently, he suggests that the authorities should consider scrapping Section 4 of POCA.

Violence or threats for violence by a criminal gang : Section 9(1)(b) of POCA states that any person who actively participates in or is a member of a criminal gang and who threatens to commit, bring about or perform any act of violence or any criminal activity by a criminal gang, or with the assistance of a criminal gang, shall be guilty of an offence and liable in terms of section 10(1)(a) to a fine, or to imprisonment for a period not exceeding six years

and if the offence was committed under aggravating circumstances, be liable to a fine, or to imprisonment for a period not exceeding eight years. Snyman (2008) submits that this offence overlaps with the crime of conspiracy as well as intimidation in terms of Section 1 of the Intimidation Act 72 of 1982. This writer agrees with his argument, save that the pattern of a racketeering activity was not covered in other laws. The analysis of this subsection indicates that the elements of contravention of Section 9(1) (b) of POCA are the same as the first two elements of contravention of Section 9(1) (a) of POCA. The third element is replaced by the following: The accused must threaten to commit, bring about or perform any act of violence or any criminal activity by a criminal gang or with the assistance of a criminal gang.

Threats of retaliation in response to violence: Section 9(1)(c) of POCA states that any person who actively participates in or is a member of a criminal gang, and who threatens any specific person or persons in general, with retaliation in any manner or by any means whatsoever, in response to any act or alleged act of violence, shall be guilty of an offence and liable in terms of Section 10(1)(a) to a fine, or to imprisonment for a period not exceeding six years, and if the offence was committed under aggravating circumstance, shall be liable to a fine, or to imprisonment for a period not exceeding eight years. This offence overlaps with the crime of incitement.

The analysis of this subsection indicates that the elements of contraventions of Section 9(1) (c) are the same as the first two elements of contravention of Section 9(1) (a) of POCA. The third element is replaced by the following:

- The accused must threaten a specific person or persons in general; and
- The threat must be retaliation in any manner or by means whatsoever, in response to any act or alleged act of violence.

In considering whether a person is a member of a criminal gang, the court may in terms of Section 11 of POCA, have regard to the following factors, namely, that such person admits to criminal gang membership; is identified as a member of a criminal gang by a parent or guardian; resides in or frequents a particular criminal gang's area, and adopts their style of dress, their use of hand signs, language or their tattoos, and associates with known members of a criminal gang; has been arrested more than once in the company of identified members

of a criminal gang for offences, which are consistent with usual criminal gang activities; and is identified as a member of a criminal gang by physical evidence such as photographs or other documentation.

Causing, contributing or promoting a pattern of criminal gang activities: Section 9(2)(a) of POCA states that any person who performs any act which is aimed at causing, bringing about, promoting or contributing towards a pattern of a criminal gang activity, shall be guilty of an offence and liable in terms of Section 10(1)(a) to a fine, or to imprisonment for a period not exceeding six years, and if the offence was committed under aggravating circumstances, shall, in terms of Section 10(1)(c), be liable to a fine, or to imprisonment for a period not exceeding eight years. The analysis of this subsection indicates that the elements of contravention of Section 9(2) (a) of POCA are the same as the first element of contravention of Section 9(1) (a) of POCA. The second and third elements are replaced by the following:

- The accused must perform any act; and
- The act must be aimed at causing, bringing about, promoting or contributing towards a pattern of a criminal gang activity.

Inciting, instigating, commanding, aiding and encouraging gang activities: Section 9(2)(b) of POCA states that any person who incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about, perform or participate in a pattern of a criminal gang activity shall be guilty of an offence, and be liable in terms of Section 10(1)(b) to a fine, or to imprisonment for a period not exceeding three years, and if the offence was committed under aggravating circumstance, shall, in terms of Section 10(1)(d), be liable to a fine or to imprisonment for a period not exceeding five years.

Before the passing of POCA, incitement was already prohibited in terms of Section 18(2) of the Riotous Assemblies Act of 1956. In *R v Nlhovo*, the Appellate Division ruled that it is a crime at common law to incite another to commit a crime even though nothing further is done towards its commission. The difference is that POCA selects only those crimes in Section 9 while the Riotous Assemblies Act 17 of 1956 encompasses all crimes. This writer is of the view that this section is unnecessary and should be repealed in its entirety.

Causing, recruiting or instigating the joining of a criminal gang: Section 9(2)(c) of POCA states that any person who intentionally causes, encourages, recruits, incites,

instigates, commands, aids or advises another person to join a criminal gang shall be guilty of an offence and be liable in terms of Section 10(1)(b) to a fine, or to imprisonment for a period not exceeding three years, and if the offence was committed under aggravating circumstances, shall, in terms of Section 10(1)(d), be liable to a fine or to imprisonment for a period not exceeding five years. The elements of the contravention of this subsection are the same as the first element of the contravention of Section 9(1) (a) of POCA. The second and third elements are replaced by the following:

- The act must be to cause, encourage, recruits, incites, instigates, commands, aids or advises another person; and
- The purpose must be to join a criminal gang.

Lebeya (2012) highlights that amongst the known criminal gangs that came to the attention of the SAPS were the Americans, the Hard Livings, the Sexy Boys, the School Boys, the Junky Funky Kids, the Skollies, the Majimbos and the Varados. These groups operated in areas such as Mitchell's Plain, Bishop Lavis, Elsie's River, Phillipi, Ravensmead, Manenburg, Bellevue South, Athlone, Kensington, Paarl East, Westbury, Eersterus and Gelvandale.

3.2.2.4 Financial Intelligence Centre Amendment Act 38 of 2001 and Act 11 of 2008

In line with POCA, a number of laws and by-laws were passed to set stronger regulations against money laundering and the proceeds of crime. These included the Financial Intelligence Centre Act 38 of 2001, and the Financial Intelligence Centre Amendment Act 11 of 2008 (FICA). The origins of FICA can be traced back to 1996, when the South African Law Commission published a Money Laundering Control Bill as part of a report entitled Money laundering and related matters. An analysis of money laundering laws by Van Jaarsveld (2011) reveals that, after the flurry of activity in the early 2000s as the South African state set up legislation, regulations and sector-specific guidelines, by 2004 criminalising money laundering was substantially complete and institutions, primarily in the banking sector, had to comply with a number of prescriptions.

South Africa enacted a number of laws, which have, to a certain extent, dealt with organised crime. While these laws may not speak about organised crime per se, they address those activities which are linked to organised crime as predicate offences. These laws include the following: the Riotous Assemblies Act 17 of 1956 that criminalises conspiracies; the Extradition Act 67 of 1962, which provides for the extradition of persons accused or

convicted of certain offences and for other incidental matters; the Customs and Excise Act 91 of 1964, which prohibits and controls the importation, export, manufacture or use of certain goods; the Criminal Procedure Act 51 of 1977, which provides, amongst others, the compelling of recalcitrant witnesses, use co-perpetrators as witnesses, plea bargains, entrapment and severe penal provisions; the Secret Service Act 56 of 1978, which provides for the establishment of an account for secret services that is also used to finance undercover operations; the Intimidation Act 72 of 1982, which provides for the prohibition of certain forms of intimidation of individuals or the public in order to do or abstain from doing any act or to abandon a particular standpoint; and the Diamonds Act 56 of 1986, which provides for the control over the possession, purchase, sale, processing, the local beneficiation and the export of diamonds.

Other laws that deal with organised crime in one way or the other include the following: the International Co-operation in Criminal Matters Act 75 of 1996, which facilitates the provision of evidence, and the execution of sentences in criminal cases, and the confiscation and transfer of the proceeds of crime between the Republic and foreign States; the Marine Living Resources Act 18 of 1998, which provides for the conservation of the marine ecosystem and criminalises some illegal activities regarding certain species; the NPA Act 32 of 1998, which also established the DSO as announced on 29 June 1999 by Mbeki, to deal with all national priority crimes, including police corruption and POCA that focussed on money laundering, criminal gang activities and organised crime; and the Witness Protection Act 112 of 1998, which provides for the protection of witnesses and related persons. Witnesses include those who are to testify on any offence referred to in POCA.

POCA was enacted to, amongst others, introduce measures to combat organised crime, money laundering and criminal gang activities; prohibit certain activities relating to racketeering activities; provide for obligations to report certain information; criminalise activities associated with gangs; provide for the recovery of the proceeds of unlawful activities; and forfeiture of instrumentality to crime. The Firearms Control Act 60 of 2000 which provides for the establishment of a comprehensive and an effective system of firearms control. FICA 38 of 2001, which provides for the combating of money laundering activities and the financing of terrorist and related activities as well as the imposition of certain duties on institutions and other persons who might be used for money laundering, or the financing of terrorist activities. The Regulation of the Interception of Communications and Provision

of Communication-related Information Act 70 of 2002 that was enacted to, amongst others, regulate the interception, monitoring and provision of certain communication as well as the prohibition of telecommunication services, which do not have the capability to be intercepted and the manufacturing, assembling, possessing, selling, purchasing or advertising of certain equipment.

The International Trade Administration Act 71 of 2002, which was enacted to, amongst others, provide for continued control of import and export of goods and matters connected therewith. Contravention of the Explosives Act 15 of 2003, which provides for the control of explosives that are at times used on illegal mining and ATM explosion. The Prevention and Combating of Corrupt Activities Act 12 of 2004, which provides for the strengthening of measures to prevent and combat corruption and corrupt activities. The Criminal Law (Sexual Offences and related matters) Amendment Act 32 of 2007, which provides for the prevention of trafficking in women and children for the purpose of sexual activities.

3.2.3 COMMON CRIMES COMMITTED BY ORGANISED CRIMINAL GROUPS IN SOUTH AFRICA

Organised criminal groups can commit any crime which will advance their chances of benefiting financially or materially. Vermeulen, Van Damme and De Bondt (2010) state that criminals traffic drugs, illegal immigrants, contraband goods, are involved in prostitution rings, and commit crimes ranging from murder, robbery, fraud, burglary, extortion to organised or simple theft in order to make money from these activities. Similarly, Gastrow (2013) exemplifies that the Chinese organised criminal groups were involved in dealing in counterfeit watches, clothing, shoes, electronic equipment, abalone trade, rhino horns trafficking, shark fin trafficking, illegal gambling and drug trafficking. Underneath follow the types of crimes in which organised criminal groups feature.

3.2.3.1 Murder

Murder is the unlawful and intentional causing of the death of another human being. Snyman (2008) states that a person commits murder if he unlawfully and intentionally causes another person's death. The elements of this crime are causing the death of another person, unlawfulness, intention and punishment. Holtmann and Domingo-Swarts (2008) phrases the elements as unlawful killing of a human being by another human being with malice

aforethought. There are only two elements, which are that the defendant must have acted with the necessary, express or implied specific intent to kill, and that the defendant's conduct must have caused the death of another human being. Murder represents the single greatest threat to personal security. It will be very strange to have a criminal group whose purpose is just to commit murder as the ultimate motive. If that was the case, the element of financial or other material benefit was going to be lacking. The basis for this argument is that the main purpose of organised crime is financial benefit. It excludes the crimes of rape, murder, assault and violence against property for the sole purpose of committing crime in the definition of organised crime. The crime is organised where the motive is either financial or other material benefit. Indeed, unlike the old bloody days when bootlegging was one of the chief sources of income for the Mob and the gunfire-tattooed syndicate's enforcement aims, today organised criminals shy away from violence and murder as much as they can.

In an organised criminal group that was investigated under an Organised Crime Project Investigation (OCPI) codenamed "Coffin", a number of murder cases were committed in Kwa-Zulu Natal where the group used this information to defraud insurance companies who insured the deceased. The modus operandi was to insure certain people by using fictitious information, they will then kill them and thereafter cash up the policies taken in their names. In this regard, a combination of murder and fraud, which are repeatedly perpetrated by an organised criminal group, constitute organised crime.

3.2.3.2 Motor Vehicle Theft

In defining theft, Gilbert (2010) states that a person commits theft if he unlawfully and intentionally appropriates movable, corporeal property which belongs to, and is in the possession of another, or belongs to another, but is in the perpetrator's own possession, or belongs to the perpetrator, but is in another's possession, and such other person has a right to possess it, which legally prevails against the perpetrator's own right of possession provided that the intention to appropriate the property includes an intention permanently to deprive the person entitled to the possession of such property. Snyman (2008) defines theft as consisting in an unlawful appropriation with intent to steal of a thing capable of being stolen. Theft consists in an unlawful contrectatio with intent to steal of a thing capable of being stolen. The key elements of this crime are an act of appropriation, in respect of certain kind of property, which is committed unlawfully and intentionally. Lebeyia (2012) lists the elements as - unlawful, appropriation, property, and intention. Any assumption by a person of the

rights of an owner amounts to appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner.

Gilbert (2010) reveals that organised crime is manifested in motor vehicle and truck hijackings in Gauteng. He reached this conclusion after interviewing thirty (30) hijackers who were sentenced to imprisonment for a period of between eight (8) and sixty five (65) years. As proof of his findings, he tabulated crime figures for hijackings of motor vehicles and trucks for the period 1996 - 2000. Interestingly, 50% of these prisoners indicated that they belong to a syndicate, while the other 50% indicated that they do not belong to any syndicate. He further found that 27% belong to gangs whereas 73% do not belong to any gang.

According to Lebeya (2012), South Africa is the major source of vehicles that are smuggled within the SADC region, ranging from 96% to 98% of all vehicles acquired illicitly. During 2006/2007 SARPCCO year (August 2006 - July 2007), the number of motor vehicles stolen in South Africa and recovered in the other SARPCCO member's countries was 1190. Of these vehicles, only 321, which is 27%, were repatriated back to South Africa, leaving 801 pending. In 2010, the figure deteriorated to 260 of 1295, which constitutes 20%. The repatriation of motor vehicles is a challenge in some countries, and it is believed that this problem is going to persist. Some insurance companies have resolved not to send owners for identification, as they do not get the vehicles afterwards. This has the potential of undermining the purpose of SARPCCO joint operations as the thieves will identify and base their operations on the weakness of the responses. As correctly pointed out by Gilbert (2010), the hijacking and theft of motor vehicles in South Africa cannot be controlled without examination of regional factors such as crime bosses who are from within and outside the borders and the markets in Mozambique, Zambia and Zimbabwe.

3.2.3.3 Narcotic Drugs

Van Heerden (2014) submits that drug trafficking is by its nature global in character, requiring the international movement of products from producer countries to the major drug consumer nations. Drug distribution and sales are the primary sources of income for all organised crime groups. He argues that wholesale drug dealing transactions, with the

exceptions of marijuana and synthetic or designer drugs, take on an international character. Legget, Louw, Parry and Plüddemann (2011) agree that drug trafficking is the most popular and profitable economic activity of transnational criminal organisations (TCOs), including mafias- so much so, that it is even considered as their ‘economic mainstay’. They further point out that while drug trafficking remains by far the most lucrative transnational criminal activity, today’s criminal networks have diversified their portfolios in order to reduce risks and to make it more difficult for law enforcement agencies to trace them.

Organised criminal groups care less about the physical and mental wellbeing of drug users. As observed by Pelzer, Ramlagan, Mohlala and Matseke (2007), their involvement in drug trafficking in a particular locality is discernible, amongst others, through the overburdened public health institutions, economic well-being, litter in the streets, the growing number of vacant buildings, the increasing number of teen groups hanging out, broken windows throughout the neighbourhood, prostitutes working openly in the streets, the moving out of long-time residents, increase in divorce, unwanted pregnancies, burglaries, robberies, car jackings, violence and murders. Van Heerden (2014) is correct in submitting that drug consumption does not affect the consumer only because the behaviour of some people, after taking the substance, affects others. In policing drug-related crime, the Drugs and Drug Trafficking Act is applied. As a signatory to the International Instruments, controlled deliveries are used to deal with transnational organised crime. The Drugs and Drug Trafficking Act of 1992 creates nine (9) offences ranging from possession to dealing in these substances. The drug trade is exorbitantly profitable.

On the crime of trafficking in drugs, a number of couriers have, and are still continuously being arrested from the ports of entry, especially from flights that land at O R Tambo International Airport from Sao Paulo. This is a signal of the route used by drug traffickers. These drugs are hidden in cargo, luggage or swallowed, suggesting the role of corruption, Plüddemann, Dada, Parry, Bhana, Vawda and Fourie (2011) ask why tons, ships, cargo planes and containers get all the merchandise through harbours and airports that are equipped with the most sophisticated means of detection. Most of the cocaine consumed in South Africa is smuggled by transnational criminal organisations from source countries such as Colombia, Peru, Bolivia and Mexico. UNODC (2012) acquiesces that for several years, Nigerian organised criminal groups moved substantial quantities of cocaine through Argentina or Brazil to Angola or Namibia for transshipment to Europe, North America, or South Africa. In

assenting to this view, Robinson points that drugs from Brazil are trucked to Colombia and then flown across to South Africa. He concludes that some of these drugs are sold in South Africa while the rest are moved north to Europe. Over and above, some of the cocaine was smuggled directly into South Africa. Accordingly, the importation of cocaine through Colombia and Brazil is one of the major sources of income for the developing syndicates.

Acknowledging the uneasy task of policing problem of drugs, Plüddemann et al (2011) conclude that arrests do not seem to do much to deter future criminal activity, and as a result, the police feel trapped between rising crime rates and an angry, unappreciative citizenry who demands immediate results to unyielding problems. They orate South Africa as a major source country for cannabis (dagga/marijuana), most of which is exported to Europe, North America and Asia. In support of this view, Kopp groups South Africa with Morocco, Nigeria, Afghanistan, Pakistan, Mexico, Colombia and Jamaica as the main producers of cannabis. Furthermore, the largest seizures of cannabis in the world, which were reported in South Africa during 2008, which is 359 tons, implies the existence of organised criminal groups.

3.2.3.4 Robberies

Snyman (2008) defines robbery as consisting of theft of property by unlawfully and intentionally using violence to take the property from somebody else or threats of violence to induce the possessor of the property to submit to the taking of the property. In his draft Criminal Code, he indicates that a person commits robbery if he steals property by unlawfully and intentionally uses violence or threats of violence to take the property or to induce submission to its taking. Lebeya (2010) defines this crime as consisting in the theft of property by intentionally using violence or threats of violence to induce submission to the taking of it from another. He further defines the crime as consisting in the theft of property by intentionally using violence or threats of violence to induce submission to its taking. Snyman (2008) describes robbery as a form of interpersonal violence, a category of contact crime that requires the physical taking of property from another either by threat or by use of force. He defines it as a predatory crime, a typically urban phenomenon, committed violently or accompanied by threat of violence against persons and businesses.

Botes (2005) adopts Felson's (2002) definition that defines robbery as the theft of property by intentionally using violence or threats of violence to induce submission to taking of property

from another. Robbery is differentiated from the primary offence of theft by the additional, aggravating element of force or threats thereof. The South African Banks Risk Information Center (SABRIC) defines bank robbery as the unlawful, intentional and violent removal and appropriation, or attempted removal and appropriation of movable property whilst it is under the control of a bank by means of violence or a threat of violence, where the victim has to believe that the perpetrator will, or is able to use the indicated violence.

Botes (2005) simply puts the essential elements as theft, violence or threats, which cause submission to the taking and mens rea. Lebeysa (2010) concurs with Milton but he adds that the property must have been taken from another person. Snyman (2008) puts forward the elements of robbery as the theft of property, through the use of either violence or threats of violence, a causal link between the violence and the taking of the property, unlawfulness and intention. According to Botes (2005), law enforcement agencies define Cash-in-Transit (CIT) robbery as the unlawful, intentional and violent removal and appropriation of cash while in transit and under the control of a security company. Groups of criminals, usually grouped in more than ten persons, commit cash-in-transit robberies. These groups are heavily armed with similar weapons as those used in bank robberies and do not hesitate to harm their victims. CIT robberies are directly linked to organised criminal groups operating in South Africa and play a central role in the billions of rands that are laundered through the financial system. When caught, the organised criminal group is usually prosecuted for robbery under aggravating circumstances. If the element of repetition is present, they can be prosecuted in terms of POCA.

Business robberies, which are robberies committed against business institutions, are committed by groups of criminals who are usually committing them in groups of more than five persons. These groups are heavily armed and do not hesitate to harm their victims. They make use of similar weapons as those used in bank robberies. House robberies are committed by a limited number of criminals, usually not exceeding five. The suspects make use mostly of pistols, and in some instances, they also harm their victims including raping them. Illegal foreign nationals appear to play a major role. Some goods which have been stolen from these robberies were recovered en route to Mozambique. Suspects who commit house robberies appear also to be involved in house breaking with the intention to commit crime. It remains unclear as to whether this understanding supports the perception of Shelly, who argues that there has been a major organised crime penetration into the State in Mozambique.

Although the crime of motor vehicle robbery or car hijacking is classified as a separate crime from robbery in some countries, it is not a separate crime from robbery in South Africa. Correctly so, Masuku (2003) describes vehicle hijacking as a form of subcategory of armed robbery, which does not constitute a different crime from armed robbery. They explain that perpetrators would, therefore, be charged with “robbery with aggravating circumstances” in court and not with “vehicle hijacking”. Consequently, robbery with aggravating circumstances can be defined as the unlawful, intentional and violent removal and appropriation of movable corporeal property belonging to another. The victim’s resistance has to be overcome and the property obtained by the use of violence against the person.

3.2.3.5 Housebreaking with the Intention to Commit Crime

Snyman (2008) defines housebreaking with the intent to commit a crime as consisting of unlawfully and intentionally breaking into and entering a building or structure with the intention of committing some crime in it. The elements of this crime are: breaking; entering; a building or structure; unlawfully; and intentionally. He further submits the definition as the unlawful entry of the building or structure of another with the intent to commit a crime unless the premises are at the time open to the public or the actor is licenced or privileged to enter.

3.2.3.6 Trade in Endangered Species

Endangered species is a commodity mostly targeted by organised criminal groups who take these species from one country to the other. International Protocols and municipal laws protect these species. Internationally, the Convention on International Trade in Endangered Species (CITES) of Wild Fauna and Flora regulates the trade in all species of wild fauna and flora that are presently facing extinction or may inevitably face it. In terms of Article I (a) of this Convention, species means any species, subspecies or geographically separate population thereof. South Africa is a signatory to this Protocol. Endangered and protected species in the form of wild animals are harvested from the production areas to receivers within and outside the country for their horns, hoofs and tusks, which are in demand for those who intend producing ornaments and jewellery.

3.2.3.7 Precious Metals and Stones

South Africa has promulgated the Precious Metals Act to counter illegal activities relating to precious metals. The Act creates seven offences, which are contraventions of Sections 20(1)(a), 20(1)(b), 20(1)(c), 20(2)(a), 20(2)(b), 20(2)(c) and 20(2)(d) of the Precious Metals Act. There are two types of penal provisions for these offences.

These types are for the contravention of the group of offences in Section 20(1) and Section 20(2). The sentences are a fine not exceeding R1m or imprisonment for a period not exceeding 20 years or to both such fines and such imprisonment in respect of the former and half of the above in respect of the latter. The involvement in illegal activities concerning precious metals cannot be a one-man business. It is unimaginable to find an individual digging, processing and disposing of precious metals alone. These activities require the involvement and cooperation of more than one person. It is for this reason that one finds the contraventions of the Precious Metals to be a highly organised criminal activity.

3.2.3.8 Dealing in Unwrought Gold

Organised criminal groups are involved in trafficking unwrought precious metals. This includes their involvement in illegal mining. South Africa is ranked first in respect of gold and platinum group metal (PGM) reserves. Therefore, it makes sense that organised criminal groups would target this commodity. Refined precious metal means a precious metal that has been refined to or beyond 99.9% purity. Unwrought gold is usually stolen from the mines where some illegal miners in the Free State and Mpumalanga are conducting illegal mining from legitimate mines. The ultimate intention is to export the product. Gastrow (2003) has raised a legitimate concern that, despite the widespread theft of precious metals from mines and refineries, very few of the top illicit and platinum group metal dealers have been arrested.

The Precious Metals Act 37 of 2005 is designed to counter illegal activities relating to the acquisition, possession or disposal of unwrought precious metals. Section 4(1) of the Precious Metals Act 37 of 2005 provides that no person may acquire, possess or dispose of, either as principal or as agent, any unwrought precious metal. The exceptions to this provision are stipulated in (a)-(f). Section 4(3) prohibits possession of any unwrought precious metal unless it is a person contemplated in subsection (1) or is in possession of such precious metal in fulfilment of a contract of employment with any person contemplated in subsection (1). Section 4(4) states that no person may deliver an unwrought precious metal in payment of

any debt owed by him or her, or any other person, or in consideration of any service rendered, or to be rendered to him or her or any other person. The Act further prohibits the acquisition, possession or disposal of semi-fabricated precious metal in the same fashion as the unwrought precious metal.

One of the challenges, as highlighted by Gastrow (2003), is the number of illegal smelting houses in the goldfields of the Free State that stood at 170 in 1997. Smelting is prohibited in terms of Section 4(5) of the Precious Metals Act 37 of 2005. It provides that only a person contemplated in subsection (1) (a), (c), (e), or (f) may make up, smelt or change the form of any unwrought precious metal in his or her possession in terms of that subsection. According to him, 25 syndicates were identified in Welkom. Retrenched mineworkers return to the mine to illegally retrieve gold bearing materials. The legislature has put in place Section 13 of the Act, which stipulates that a person may not transport or in any manner convey any semi-fabricated or unwrought precious metal outside the boundaries of any mine, works or other property or place where such metal is mined, refined or worked with, unless he or she is in possession of the prescribed documentation. In order to curtail the chances of licenced people from conducting illegal activities elsewhere, the law prohibits them from doing business at a place other than the one which has been authorised by the competent authorities. The law further restricts the importation of precious metals. No person may import any unwrought or semi-fabricated precious metal into the Republic unless he or she is issued with an import permit for such specified metal. The importer is obliged to provide a copy to the Forensic Science Laboratory in order to create and maintain a database. To ensure proper checks and balances, the Act authorises the Regulator or the SAPS to inspect any precious metal at any time and take such sample as may be reasonable to establish or confirm the origin and content of such precious metal. Furthermore, the SAPS is empowered to, at any reasonable time, enter with or without a search warrant and search any premises that have a bearing on an investigation.

Not only does the law control the imports of precious metals but the export thereof. No person may export any unwrought or semi-fabricated gold except with the approval of the National Treasury in terms of the Exchange Control Regulations made under the Currency and Exchanges Act 9 of 1933, granted with the concurrence of the Minister. The Act further provides that no person may export any unwrought or semi-fabricated metals of the platinum group except with the written approval of the Minister, which shall be granted subject to the

promotion of equitable access to, and the orderly local beneficiation of such metals. All these laws have been designed to, amongst others, mitigate the involvement of organised criminal groups.

3.2.3.9 Dealing in Unpolished Diamonds

Diamonds were discovered in South Africa in 1882. As Lebeya (2010) puts it, like drugs, diamonds are a high rents commodity that attract gangsters and rebels alike. The Diamond Control Act 39 of 1925, the Precious Stones Act 73 of 1964 and the Diamond Cutting Act 33 of 1955 previously governed diamonds. The Diamond Act 56 of 1986 currently governs them. It creates twenty six offences under sections 25A, (3), 82(a)-82(d), 83(a)-83(e), 84(a)-84(d) and 85(a)-85(i). These contraventions have to be read with Sections 18-24 that regulate the possession, selling, purchasing, polishing, erecting or operating any machine designed or adapted for the polishing of diamonds and exporting. The penal provisions for the contravention of this Act are detailed in Section 87 of the Act.

3.2.3.10 Theft of Non-Ferrous Metals

Non-Ferrous metals are metals that are free of iron or comparatively so. According to Maphango (2005), the minerals that fall under this category are aluminium, antimony, cobalt, copper, lead, magnesium, nickel, tantalum/niobium, titanium, tungsten, zinc and zirconium. The seriousness of theft of Non-ferrous metals becomes noticeable when it directly affects the community. This is usually in the form of termination of a telephone service, non-functioning of the traffic control lights (robots), disruptions of electricity in some locations and the halting of a train service. These metals are usually stolen from existing amenities in the form of electrical cables and telephone lines, and are sold to scrap-metal dealers. Coetzee (2007) submits that criminals are constantly attacking South Africa's national infrastructure: telecommunications, rail transport, mining, petrochemical installations and electricity networks. The cases of Non-Ferrous metals in South Africa remain alarmingly high.

He further argues that because organised crime amasses wealth, corruption is a low cost, low-risk instrument of great utility, both in the present and for the future. His view is that policing this phenomenon by corrupted officials at ports of entries is problematic because once corrupted, they will be corruptible for the second time, and in any event, will always be vulnerable to blackmail. His argument on corruption is based on the fact that the many national frontiers that drugs, arms and people cross to reach the country of destination from

that of provenance would not be so easily overcome were it not for the functioning of a well-oiled system of corruption within many of these countries. If this crime continues at the spiralling level it currently is, transport, telecommunication and related matters will be seriously fettered.

3.2.3.11 Fraud

Snyman (2008) defines 'fraud' as the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another. Gilbert (2010) defines 'fraud' as consisting in unlawfully making, with intent to defraud, a misrepresentation, which causes actual prejudice or which is potentially prejudicial to another. The elements of fraud are: unlawfulness, misrepresentation, prejudice, and intention. Snyman (2008) adds the element of potential prejudice while Milton (2010) adds the element of causing.

The 419 scam is a type of fraud named after Section 419 of the Nigerian Criminal Code. It originated in Nigeria and the perpetrators are mostly Nigerians. This section was used to prosecute offenders and, as a result, Advance Fee Fraud (AFF) has come to be popularly known as "419 Fraud" or "OBT", a Nigerian acronym for obtaining property by false pretences. According to Tanfa (2006) in Lebey (2012), the reason for the 419 scammers being attracted to South Africa is the fact that the country is regarded as a modern society, with the most recent technological development compared to other developing countries. Mofokeng (2010) states that deceptive variant conduct of an advance fee scheme has been used to defraud anyone in the world who is willing to succumb to the temptation offered to make some quick money. The different manifestations of this type of crime include lotto scams where victims are told that they have won a lottery, inheritance scams and black dollar scam. With regards to black dollar scams, people are lured into believing that certain dyed papers are legitimate dollar bills that can be washed clean by a certain expensive chemical. After washing the few legitimate dollars, which are usually placed at the top, the victim falls into the trap and pays the money to the suspects to buy the chemicals, which they will ultimately lose. The 419 confidence scams are only limited by the perpetrator's imagination. However, Tanfa (2006) singles out the following as the most common forms of these fraudulent business proposals: transfer of funds from over-invoiced contracts, contract fraud (COD of goods and services), conversion of hard currency (black money, money cleaning or

“wash-wash”), sale of crude oil at below market prices, purchase of real estate, disbursement of money from wills (benefactor of a will), held for ransom/kidnapping and murder, box method, and “spiritism”. He further lists various categories of business proposals employed by 419 scammers that include forgotten accounts, lottery winnings and left fortunes.

The above mentioned author is of the view that almost all advanced fee fraud is transnational and that it is commonly associated with Nigerians. He argues that the stringent measures by the Nigerian government and the Central Bank have driven the phenomenon to shift to other African Countries such as Ghana and South Africa. He correctly points out that the “victims” know that they are behaving criminally, which inhibits them from complaining. He concludes that the quantity of “419 letters” supplemented by emails is unknown. Sivnarain (2010) point out correctly that this type of fraud usually entails enlisting the services of a prospective victim to assist in an activity of questionable legality, thus providing some assurances that the victim, once defrauded, would be unlikely to report the matter to the police. The victim would, rightly, be apprehensive that he or she had aided and abetted some criminal activity and would be reluctant to make public the fact of his or her gullibility, particularly if adverse media coverage was a possibility. Thus, the offender is able to carry out the scheme repeatedly, sometimes in respect of the same victim, whilst police are faced with difficulties of finding witnesses and securing evidence. Tanfa (2006) argues that advance fee fraud is an organised crime that is complex and is a relatively new universal threat. Advance fee fraud is a form of organised crime that has developed to such an extent that it can be understood as a new form of geopolitics, with its own character and logic, its own structures and support systems. He defines ‘advance fee fraud’ as an upfront payment, by a victim to a fraudster, to allow him to take part in a much larger financial transaction, which he believes will either bring him profit or will result in credit being extended to him. A fraudster is also known as “419er” and the victim who has been invited is said to have been “419ed”. He submits that it is precisely due to the covert activities of organised crime syndicates that the public, in particular, is not aware of the destructive and corroding impact that it has on society. His view is that it contributes to high crime rates and corrupt law enforcement officials that threaten to derail the efforts to defeat such organised criminal activities.

The Road Accident Fund (RAF) is mostly targeted by a group of criminals consisting of lawyers, medical practitioners, drivers and ordinary people who tout for people who are prepared to participate in the scam. The method used is to stage an accident, and for the rest

of the processes such as reporting, medical certificates are arranged. The Commercial Crime Component of the SAPS has established a Team that works closely with the RAF. Other fraud cases include the defrauding of Medical Aid schemes where people will buy items from pharmacies and claim from the schemes. Credit cards are also skimmed and duplicated. Insurance fraud is targeted by clients who report false cases like theft of a motor vehicle, whereas such a vehicle is not stolen. With regards to fuel, cases where fuel was stolen and replaced with water were reported. Some petrol attendants also used stolen petrol cards to steal cash from the service stations.

The RAF fraud is committed by organised criminal groups. In February 2002, the Organised Crime Investigation Unit of Potchefstroom registered an OCPI code-named Eagle Eye, which dealt with fraud against the RAF. The team registered 66 case dockets with 180 charges against 137 suspects involving more than R5 000 000-00. The suspects were claimants, tauters, civilians in the police, police members, traffic officials, drivers, panel beaters, staff at hospitals, attorneys and medical doctors. One hundred and seventeen (117) accused were convicted and sentenced. The charges were withdrawn against 20 suspects who were found to have had no intention of defrauding and were used as state witnesses in terms of Section 204 of the Criminal Procedure Act 51 of 1977. The crime committed is organised crime, but the accused were not charged as such. If the accused were prosecuted in terms of POCA, they may well have been convicted.

3.2.3.12 Trafficking in Firearms

The system that controls firearms in South Africa is the Firearms Control Act 60 of 2000. Firearms, which found their way in South Africa, include those that came from countries which experienced conflict such as Mozambique and Angola. There are also homemade firearms that add to the existing normal pool of illegal firearms. The number of firearms in circulation is minimised by mostly, destructing those that have been seized by the police.

3.2.3.13 Stock Theft

The primary laws used to police stock theft are the Stock Theft Act 57 of 1959 and the Animal Identification Act 6 of 2002. Cases of stock theft are mostly committed along borderline areas. Stock is mostly stolen for slaughtering. Stock theft has been a known crime since the tribal wars where one tribe would fight another and steal their stock.

3.2.3.14 Trafficking in Persons and Human Smuggling

Human trafficking touches about every country in some aspects in that there are sending countries where prospective victims are recruited and transported; transit countries that serve as way stations, and destination countries where vice lords eagerly await fresh supplies of women and children, which is done as a result of poverty in the source countries. Aromaa (2007) professes that human trade is one of the most profitable illegal markets that exists a national, regional and global level, with the black market for illegal immigration permanently changing in the legal framework. She further acknowledges that trafficking as a form of transnational crime is often confused with people smuggling. The reason for this confusion is that they are done by the same criminal groups in connection with human migration. Similarly, Vermeulen, Van Damme and De Bondt (2010) emphasise the importance of underlining the difference between trafficking in persons and smuggling of migrants, as both terms are still often confused. The most distinguishing characteristics are that smuggling requires the elements of consent and transnationality whereas trafficking requires exploitation. It is further pointed out that international human trafficking was previously known as slave trade, which was formally abolished.

i. Trafficking in persons

South Africa was a signatory to the Transnational Organised Crime Convention, which was signed on 14 December 2000 in Palermo, Italy. One of the Protocols supplementing this Convention is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. As observed by Agarwal (2008), the victims could be men, women or children. Lambrecht (2012) submits that law enforcement agencies and research institutions have identified South Africa as a source, transit and destination of human trafficking. This view is compatible with the United Nations High Commissioner for Refugees.

Trafficking in persons is defined in terms of Article 3(a) of the Protocol as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or

other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

In compliance with the Palermo Convention, South Africa is yet to fully criminalise human trafficking as organised crime, which will ensure that the interpretation is the same as those of other countries. However, trafficking in children has been criminalised in terms of the Children's Act. Chapter 18 of this Act is dedicated to trafficking in children by giving effect to the UN Protocol to Prevent Trafficking in Persons and combat trafficking in children. In terms of Section 282, the UN Protocol to Prevent Trafficking in Persons is in force in the Republic and its provisions are law in the Republic, subject to the provisions of this Act. In this Act, trafficking, in relation to a child implies:

(a) The recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within or across the borders of the Republic-

- (i) by any means, including the use of threat, force or other forms of coercion, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control of a child; or
- (ii) due to a position of vulnerability.

(b) Includes the adoption of a child facilitated or secured through illegal means. Furthermore, human trafficking is treated as a predicate offence that may bring about organised crime if it is for sexual purposes. Over and above, transitional provisions relating to trafficking in persons for sexual purposes have been promulgated in the Criminal Law (Sexual Offences and related matters) Amendment Act 32 of 2007 (CLAA of 2007). Trafficking is defined as follows: Trafficking includes the supply, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, disposal or receiving of a person, within or across the borders of the Republic, by means of:

- a threat of harm;
- the threat or use of force, intimidation or other forms of coercion;
- abduction;
- fraud;
- deception or false pretences;

- the abuse of power or of a position of vulnerability, to the extent that the complainant is inhibited from indicating his or her unwillingness or resistance to being trafficked, or unwillingness to participate in such an act; or
- the giving or receiving of payments, compensation, rewards, benefits or any other advantage; for the purpose of any form or manner of exploitation, grooming, or abuse of a sexual nature of such person, including sexual offence or any offence of a sexual nature in any other law against such person, or performing any sexual act with such person, whether committed in or outside the borders of the Republic, and “trafficks” and “trafficked” have a corresponding meaning.

Aromaa (2007) distinguishes human trafficking from human smuggling by noting that human trafficking refers to not only the surreptitious entry of people but also the use of force, fraud, coercion and violence during the process of transportation for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery. According to Cameron and Newman (2008), human trafficking is understood in its transnational form as a criminal activity extending into and violating the laws of several countries. Argawal (2008) notes that human beings that are trafficked to Europe are in search of employment, which is in many cases illegal. He has also observed that illegal migration and illegal employment presupposes illegal operating entrepreneurs. He has further noted that trafficking in human beings is also carried out by enterprises involved in sexual exploitation of young males and females. His conclusion is that organised crime provides a service to these entrepreneurs, as they smuggle human beings on request.

A person (“A”) who traffics any person (“B”), without the consent of B is guilty of the offence of trafficking in persons for sexual purposes. A person who –

- (a) Orders, commands, organises, supervises, controls or directs trafficking;
- (b) performs any act which is aimed at committing, causing, bringing about, encouraging, promoting, contributing towards or participating in trafficking; or
- (c) incites, instigates, commands, aids, advises, recruits, encourages or procures any other person to commit, cause, bring about, promote, perform, contribute towards or participate in trafficking - is guilty of an offence of involvement in trafficking in persons for sexual offences.

The Witness Protection Act 112 of 1998 has also been amended to include human trafficking in the Schedule of offences in respect of which a witness or related person may be placed under protection. A person who has been trafficked is not liable to stand trial for any criminal offence, including any migration-related offence, which was committed as a direct result of being trafficked. A commercial carrier, which brings a person into, or removes a person from the Republic and upon entry into or departure from the Republic, the person does not have the travel documents required for lawful entry into the Republic or departure from the Republic commits an offence. The harsher asylum policies have stimulated the development of a 'migration business', acting on the demand for the many migrants, by supplying them with a visa, transport and prospects for jobs in exchange for money. They argue that this is how the phenomenon of illegal trafficking has increasingly become more organised.

Cameron and Newman (2008) explain that trafficking of people can be done within the same country. She argues that it is always accompanied by the wish by the perpetrator to exploit someone or bringing someone in conditions of slavery. Trafficked persons are deceived or pressurised into economic dependence. A trafficked person pays either a percentage or nothing, is kept in debt bondage, and cannot walk away from the trafficker. Trafficking of women and girls for commercial sex has become a major global problem. The strong pull factor for women, mostly from undeveloped countries, is the unrealistic expectations about the West or by luring them into the sex industry, including local prostitution and other dubious jobs. Aradau (2008) calls this phenomenon "commodification of persons". Generating huge profits for their exploiters, sex slaves form the backbone of one of the world's most profitable illicit enterprises, for unlike narcotics, which must be grown, harvested, refined and packaged, the female body requires no such processing and can be repeatedly consumed.

Accurate observation by Agarwal (2008) reveals that the trafficking of women and children, particularly for sexual exploitation, has dominated national and international discussions concerning human trafficking. She further states that trafficking for forced labour has received limited attention, and the identification of trafficking victims who are exploited through forced labour has even been less successful than in the case of sexual exploitation. While conceding that there is no case law on this matter, Cameron and Newman (2008) argue that human trafficking is a crime against humanity. Their argument is based on the interpretation of Article 7 of the Rome Statute. Crimes against humanity include

enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, sexual slavery, enforced prostitution or any other form of sexual violence of comparable gravity, or other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. Roelofse (2013) submits that the Chinese Triads, who include the Sun-lee On Triad, 14K Triad, Wo Hop To Triad, United Bamboo Gang and Fuk China Gang, are reported to be supplying women to brothels in South Africa.

Trafficking for sexual exploitation is a high profit-low risk activity that destroys the quality of life and sometimes the very lives of victims. Once organised trafficking for sexual exploitation has gained a foothold in a country, it expands rapidly and feeds on the most vulnerable in society, such as women and children. As pointed out by the South African Law Reform Commission (SALRC), trafficking in persons, which is becoming a multimillion industry, is considered part of the activity of an organised criminal group that can be divided into recruitment, transportation and exploitation environment. Observers have argued that organised criminal groups expand following the maximisation of opportunities and minimisation of risks. This argument is companionable with that of Aradau (2008), who states that organised criminal groups operate according to strict rational principles aimed at minimising the risk and maximising profit. In line with these arguments, this writer submits that the fight against organised crime needs the minimisation of opportunities and the maximisation of risks.

ii. Human smuggling

The relevancy of assessing human smuggling in the process of researching organised crime can better be explained by the Ianni's kinship group model, which suggests that such immigrants will engage in criminal activities. This is also supported by Bell's Queer ladder of Mobility theory, which provides that the Italian community has achieved wealth and political influence much later and in a harder way than previous immigrants groups. Excluded from the political ladder and finding few open routes to wealth, some turned to illicit ways in the USA. Blocked opportunity and the "queer ladder" may also explain participation in organised crime by members of the immigrant community in Europe. While admitting the insignificance of the distinction, Albanese (2007) submits that human trafficking and alien

smuggling are distinguished by the added elements of coercion and voluntary participation by those being trafficked and smuggled respectively.

Human smuggling is a voluntary movement by people who want to see themselves at the envisaged destination. It is a commercial transaction between two willing parties who go their separate ways once their business is complete. This phenomenon is termed smuggling of migrants by the UN. It is defined in terms of Article 3(a) of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the Palermo Convention as the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. Aradau (2008) simply explains human smuggling as arising from the desire of people to migrate from where they are to somewhere else. The people use either the legal methods to enter the country, or illegal methods through ungazetted entry points. He further explains human smuggling as bringing someone across the border for money. It is always accompanied by the wish of a smuggled person to be smuggled. Where smuggled, people turn to illegal markets for job opportunities. This may bring them into exploitation or slavery and often turns them into victims of trafficking, which blurs the distinction between smuggling and trafficking.

Despite the fact that it is impossible to have the exact figure of the people who cross through the ungazetted entry points, it is easy to know those who enter through legal borders and remain in the country. It is estimated that there are 3-4 million illegal immigrants in South Africa. Tanfa (2006) believes that there is a lack of control at several airports in South Africa and neighbouring countries. His pessimistic view is an expectation of an even further increase of illegal immigrants into South Africa, compounding most current socio-economic problems, especially the 419-scam type of crime. The information kept by the (DHA) is used to analyse the possible number of foreigners who may have arrived legally in the country and failed to leave. The number of organised criminal groups involved in people smuggling and the number of illegal immigrants facilitated into South Africa are unknown.

However, all indications are that the scale of people smuggling is bigger than that of human trafficking. Smuggling involves an individual who chooses to cross the border illegally, alone or with the help of an expert. He further points out that trafficking is smuggling with coercion or fraud at the beginning of the process and exploitation at the end. Tanfa (2006)

states that amongst the methods used by traffickers include false compartments in trucks, hiding the people and driving through, false travel documents and bribing of border officials. Unlike in Europe, illegal immigration is seen as threat number one amongst the organised crime priorities involving about four million people, whilst this is not the case in South Africa.

3.2.3.13 Theft from Auto Teller Machines (ATM)

Theft from an ATM is done in various ways. This includes jamming machines, cutting the machines by angle grinders and blasting by commercial explosives. The latter is the worst aggressive method deployed by organised criminal groups. This offence is classified as malicious damage to property and theft. A person commits malicious injury to property if he unlawfully and intentionally damages (a) property belonging to another; or (b) his own insured property, intending to claim the value of the property from the insurer. The elements of the crime are damaging; property; unlawfulness and intention. In line with Snyman's (2008) explanation, property is corporeal, movable or immovable and that belongs to the financial institutions.

The seriousness of the crime of malicious damage to property is dependent on the nature of the commodity being damaged. This type of crime forms part of POCA list. As the crime is usually committed by a group of persons who repeats these activities, it is important to prosecute the perpetrators for a pattern of racketeering activity in terms of POCA. As if this is not bad enough, organised criminals have now resorted to a more aggressive approach where they arm themselves with heavy calibre firearms and engage whoever confronts them, which turns the crime into an armed robbery.

3.2.3.14 Illegal Gambling

Pace and Styles (1983) in Lebeysa (2012) believe that gambling has historically been the financial foundation of organised crime until the 1970s when drugs became the major source of revenue. One of the old gambling activities, which have been with South Africans, is Fafi. This is primarily run by the Chinese living in South Africa. In recent days, other nationalities have joined the game. The victims are usually poor African people wherever they are accessible. The gamblers usually run their rounds three times a day. There is also a belief that dreams can be interpreted into numbers where one stands a good chance of winning. It is

further believed that more than 99% of gamblers always lose. Few of these gamblers were killed in an attempt to rob them, as criminals are aware that they are carrying cash while making their rounds. This prompted the gamblers to use bulletproof cars and seem to be operating freely as if their games are legal. Fafi is run by a leader who has people receiving bets on his behalf all over, which constitutes organised crime.

3.2.3.15 Corruption

Organised crime relies on corruption for survival. As His Excellency, the former State President and Deputy President Kgalema Petrus Motlanthe puts it, the pestilence of cancerous corruption menacing the soul of our democracy is a life-and-death matter that chokes off key societal institutions on which our future depends. He further states that corruption is an immoral force, a pestilence that chokes the potential of a blossoming democracy. It hollows out the democratic vision, creating despair where hope was supposed to flourish, instilling pessimism where optimism was supposed to take root. Corruption is not only insidious and ferocious, according to Sivnarain (2010), it is so corrosive and cancerous that it needs to be diagnosed early and be tackled head-on wherever it raises its ugly tentacles, otherwise it institutionalizes itself until good men and women do nothing, which results in justice giving way to injustice. Compatibly, Siphon (2009) submits that in countries where organised crime is most prevalent, investigations into such crimes will be hampered by police corruption and political interference in prosecution and sentencing.

Corruption is criminalised in terms of the Prevention and Combating of Corrupt Activities Act (PRECCAA) of 2004. This Act has repealed the Corruption Act 94 of 1992, which is the first statutory law that repealed the common law crime of bribery. There is a direct link between corruption and organised crime. Corruption does not only give rise to organised criminal groups but also acts as a lubricant for the effective operation and survival of such groups. Corruption is the lubricant which allows the various mechanisms to operate smoothly. Nkosi (2011) submits that organised crime almost always involves corruption.

Generally, the offence of corruption is defined in terms of Section 3 of PRECCAA, as follows: Any person who, directly or indirectly

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

(b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner

(i) that amounts to the

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules,

(iii) designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corruption.

The crucial element of corruption is gratification. Gratification includes:

(a) money, whether in cash or otherwise;

(b) any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage;

(c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;

(d) any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation;

(e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(f) any forbearance to demand any money or money's worth or valuable thing;

(g) any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty;

(h) any right or privilege;

- (i) any real or pretended aid, vote, consent, influence or abstention from voting; or
- (j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.

3.2.3.16 Cigarettes Smuggling

The illegal tobacco trade is a growing scourge that requires greater cooperation and collaboration by all stakeholders to stamp it out. South Africa is rated amongst the top five countries globally when it comes to the trade in illegal cigarettes. Industry research estimates that around 23% (more than 5 billion sticks) of all cigarettes consumed in South Africa in 2014 were illegal. This is almost double the global average. According to Roelofse (2013), the size of the global illegal tobacco trade ranges between 330-660 billion cigarettes a year. These are cigarettes that are smuggled, counterfeited or where tax is evaded. This equates to around 6-12% of global consumption, which deprives government of between US \$20-40 billion a year in taxes.

3.3 CHALLENGES IN THE PREVENTION OF ORGANISED CRIME

A complex problem in addressing organised crime reveals emotional and political fault lines that are difficult to overcome. Such divisions often impede comprehensive and evidence-based discussions that might in turn lead to a more reasoned and balanced approach to the issue. The problem itself is hard to define. The concept of organised crime, the actors involved, the manifestations of criminality, and the relationship between organised crime, the state and society, among other things, differ with each country. Organised crime incorporates a number of different actors and can include insurgents, militant groups and criminals depending on the country. Again, drugs are the most profitable commodities for organised crime in many countries. However, it is not the only outlet for criminal activities. Organised criminals often diversify their activities and tend to have a portfolio of commodities from which to support their organisation. In light of this, organised crime can be assumed to be a constant, regardless of any revised approaches to drugs.

In tackling this problem, any approach must take into account the complications that arise in the implementation of policy regimes which often underestimate the significance of the cultural and local context and the dynamics at play within a state. The current international regime emphasizes enforcement and criminalisation when dealing with drugs and organised

crime. Yet law enforcement can have both positive and negative connotations for the levels of violence. High-value targeting and zero-tolerance policies have proved unhelpful in many cases, perpetuating internal fractions and competition within communities, or failing to achieve the desired effects. Levels of violence associated with organised criminality can vary greatly depending on the locality. Although illegality itself can cause violence to some extent, violence also depends on other factors including the weakness of states, availability of economic alternatives, levels of welfare and public health, law enforcement approaches, the strength of the justice system, and also the age of criminals. More focused law enforcement and deterrence has often proved more useful to wider efforts. There are various constraints that contribute to the difficulty in preventing organised crime. Below is a discussion of how policy constraints hinder the process of dealing with organised crime.

3.3.1 POLICY CONSTRAINTS

Three key constraints that limit policy approaches and hinder a greater reassessment of the problem have been noted:

- The nature and rules of the international drug regime;
- Public opinion and political constraints; and
- A lack of understanding about potential alternatives to the current approach/prohibition.

3.3.1.1 The Nature and Rules of the International Drug Regime

Since the 1960s, attempts have been made at an international level to reduce drug use and to fight the harms associated with drugs, including trafficking, distribution, production and supply. The 1961 UN Single Convention on Narcotic Drugs is based on “[recognising] that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind...”, stating that parties to the Convention were “[conscious] of their duty to prevent and combat this evil...”. Over 25 years later, the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances spoke of “Recognizing the links between illicit traffic and other related organised criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States”.

The ‘war on drugs’ was formally declared in 1971 by US President Nixon, who stated that drugs constituted the “public enemy No. 1” in the US. Drug use and addiction increasingly became seen as an ‘evil’ - an approach that makes it hard to look in more depth at policy alternatives. However, since 1961 the levels of drug use have increased substantially, calling into question the policy of 1988 as well.

3.3.1.2 Politics, Public Opinion and Perceptions

The significance of public opinion in informing and guiding policy and the wider debate was a recurring theme in discussion. Drugs and organised crime is often considered a ‘third rail’ issue: one which politicians consider too dangerous to address and reform. However, while politicians are crucial within the debate, they are restricted by scarce resources, limited political capital and difficult political dynamics. Although politicians often understand the problem, there are few incentives to tackle a policy issue that is very much in flux. Within the political discourse, there is a deficit of informed debate and information. There is a perception that solutions to this problem should be framed in simple answers that the electorate can understand, yet this approach presents the problem of creating oversimplified and counter-intuitive.

As part of the difficulty in encouraging greater debate, there currently seems to be a positive feedback loop, whereby public opinion is shaped by politicians who then feel restricted by an inability to change their position due to public opinion. Public perceptions on drugs are often diverse. Using drugs is seen as ‘cool’ in some areas and some drug traffickers have become aspirational, in the sense that the risks of dealing drugs are offset by the potential lifestyle gains. While the official goal seems to be to stop people from using drugs at all, the unrealistic nature of this aim raises questions of how use can be made less harmful both at a personal and a societal level.

3.3.1.3 A Lack of Understanding about Potential Alternatives to the Current Approach/Prohibition

One obstacle to assessing policy alternatives is that it is difficult to imagine what might happen in a post-prohibition world, and what might be the unintended consequences of such alternatives. Nonetheless, certain lessons can be drawn from past experiences of prohibition, including the prohibition of alcohol in the US from 1919-1933. Under this prohibition, only the production, trade and sale of alcohol were illegal, not the consumption. Organised crime

groups were able to profit during this period from bootleg liquor but were forced to turn to alternative sources when alcohol was finally re-legalized. The international slave trade could present another alternative comparison in challenging an established regime. Organised crime can negatively impact on various sectors within a country and South Africa is no exception.

Various sectors are highly affected by organised crime in South Africa, and they include among others: governance, security, economic and social policies, public harm and public health, business, and international politics.

i. Governance

Weak governance or the lack of state presence is often highlighted as both a cause and a result of a substantial organised criminal activity. According to Goga (2014), one manifestation of weak governance is systemic corruption of the political process in certain countries, including bribes and threats to local officials. Such corruption can be corrosive, undermining governance systems. Where there is pervasive crime, states become unable to deliver security. In order to improve governance approaches and guide policy processes, the key principles to improve governance include:

- **Accountability and Transparency**

There is a need for adequate mechanisms of accountability and for transparency in policy.

- **Intelligence**

Good intelligence is critical but there are risks if governance structures are corrupt.

- **The Rule of Law and respect for human rights**

Prominence should be given to the rule of law and a robust justice system. Yet drug laws can be phrased badly, and be ambiguous or misleading.

- **Leadership**

Leadership and coordination are paramount – within governments, it should be clear as to who should lead drugs and organised crime policy. Again, be clear as to who should be involved not only at a local level, but also at the national and international levels. Leaders are needed to be early adopters, and set an example that change is possible.

- **Civil Society**

The structure and involvement of civil society is crucial. There have been promising approaches from NGOs, the media and individuals who can play a vital role in fostering initiatives, in supporting society and in keeping governments to account.

- Local Communities

Communities also need a stake in any new system, and must see the benefits and implications of any change for their local area and well-being.

3.3.2.2 Security

It appears that policy on drugs and organised crime as currently designed, or at least as currently implemented, is producing insecure outcomes such as high numbers of deaths and incarcerations as well as general insecurity. Lambrechts (2012) finds that there is, in fact, a growing claim that the current upstream, interdiction strategy is preventing progress. One of the main obstacles to policy reform is the difficulty in imagining a regulated world and its security implications. Changing policy in organised crime is likely to be an emotional process. High-level scenario planning could play a key role in revealing some of the implications of different approaches.

i. Business

A business approach to drugs and organised crime policy would incorporate a consideration of what motivates the economic agents involved in the market. A greater understanding of how the system works as a business model with the language of customers, suppliers, manufacturing, product, and business resilience could inform approaches to the challenges of drugs and organised crime. Although the business approach could be a good premise from which to start, a caveat must be acknowledged: organised crime tends to be more organic, opaque, random and unpredictable than legal business. The Centre for International Governance Innovation (2012) positions that a useful way to describe and approach the issue of drugs and organised crime is an hourglass model, whereby consumers are at the top, suppliers at the bottom, and the distribution process in the middle. Most of the money is in the middle of the hourglass. This is also the point at which there are fewest number of people involved and the least impact on the state's relationship with its citizens. Targeting this area of the value chain seems to be the optimum point to undermine the business model of organised crime. Lessons could be learned for the management of trans-border trade, by

focusing on reducing the value in moving the drugs across a border, and limiting the number of countries that the drugs pass through to reach their final destination.

At both ends of the market (or the hourglass) – primary producers and drug retailers – see a very small proportion of the overall profit attached to the trade. Poor farmers involved in supply or low level dealers are often economically excluded or involved in social supply. The key drivers for these people are most often economic survival rather than vast profit. Globally, enforcement activity centres on these two groups. This is highly problematic, as it tends to alienate people from the state, creating an environment in which organised crime can flourish. If one accepts the ideas that the largest demand is among people who are disadvantaged, then the law enforcement approach cannot on its own handle the problem. Complementary approaches, such as better public health, education etc. are likely to create better social and economic opportunities for people.

In addition, because of the resilience of organised crime as a business, it does not matter where it is pushed, it will reappear elsewhere – the aforementioned ‘balloon effect’. Illegal supply routes move from one part of the world to another, to areas that are less easy to govern. It is, therefore, hard to identify what might be put in place to eradicate supply, but measures could be developed to determine how supply emerges. Around 70% of the value added in supply chain is, in fact, between the border of a country and users in the other country. For example, a kilo of cocaine doubles in value as it crosses the Mexico/US border. Drugs passing through a country, in fact, always seem to lead to an increase in use, Iran, Mexico, Morocco, South Africa etc.

ii. Economic and social policies

Firstly, the issues of social exclusion and poverty are central in drugs and organised crime. There is a danger that through the criminalisation of users, they are pushed further to the margins of society and it becomes increasingly difficult to help them. Although strong links between poverty and drug production have not been evidenced, reducing poverty could be considered a component of addressing drugs and organised crime, though poverty and drug production do not necessarily have strong links.

Secondly, taxation has proved to be a crucial factor in drugs and an organised crime policy in a number of cases: a fair taxation system where labour is not overtaxed and capital and land are not undertaxed can generate economic growth and allow the lowest earners to gain from it. A final issue related to taxation is that organised crime tends to thrive in areas where the presence of the state is absent.

Thirdly, education and public awareness have been highlighted as key components. In some ways, drug education campaigns can be seen as quite dishonest and negative because the decisions that people make are subjective, based on how people feel about an issue. The fact that drugs remain quite popular is arguably because of their positively received resultant effects and a degree of their social acceptance, which is very rarely addressed by education and awareness campaigns.

3.4 CONCLUSION

Literature pertaining to organised crime in South Africa has been reviewed wherein various responses were highlighted. Literature reveals that the responses by the South African government to organised crime has been mixed. After 1994 the state was faced with an increase in organised crime that mirrored the experience of many post-transition societies. At the same time, the new government needed to manage the integration of the security forces and to deal with a variety of other dysfunctions caused by the legacy of apartheid. This task was made more difficult by globalisation, liberalisation and the weakening of border controls. Since then, the state has implemented strong measures against organised crime, including the establishment of the DPCI, and the disbandment of various units such as DSO (Scorpions) and the anti-corruption agency of the SAPS. In the next chapter, research methodologies will be discussed.

CHAPTER 4

RESEARCH METHODOLOGY

4.1 INTRODUCTION

The previous chapter discussed the measures taken in the prevention and control of organised crime in South Africa. The institutional and legal developments in the prevention and control of organised crime were also highlighted. This chapter provides detailed research process in the form of research methodology, that is, population, sampling, data collection and data analysis among others. The chapter is, therefore, divided into various sections in order to provide logic and coherence in its presentation. The first section highlights the area where the research was conducted. Explanation of the methodology that was used in this study, particularly the population and sample size, are discussed in the second section. The third section explains how data was collected and analysed. Data analysis is highlighted in the

fourth section. Thematic presentation is used to analyse qualitative data. The last section presents the limitations of the study.

4.2 RESEARCH AREA

The study was conducted in government's crime prevention agencies operating in Limpopo Province. Limpopo Province is situated at the north eastern corner of South Africa and shares borders with Botswana, Zimbabwe and Mozambique. The province forms the link between South Africa and countries farther afield in sub-Saharan Africa. The province's land is measured at 125 754 km square. It consists of five district municipalities, which are Vhembe District, Sekhukhune District, Capricorn District, Mopani District and Waterberg District.

4.3 RESEARCH METHODOLOGY

Babbie and Mouton (2011) define methodology as a systematic study of processes and principles that guide scientific investigation and research or the study of the processes and principles that guide scientific investigation. According to Creswell (2009), research methodology can be defined as the systematic, methodical and accurate execution of the design, whereby various methods and tools are used to collect data.

The methods used to collect data in any research are dependent on the research design chosen by the researcher. However, no method prescribes or rejects any particular way of data collection. Creswell (2009) asserts that data collection in a qualitative study involves the following aspects:

- setting the boundaries for the study;
- collecting information through observation, interviews, documents, visual materials and establishing the protocol for recording the information;
- enabling a researcher to gauge the language and words of the informants;
- can be accessed at the time convenient to the researcher;
- representing data that is well-thought out because informants have paid attention to the compilation;
- as written evidence, saving the researcher's time and expense of transcribing;
- providing an opportunity for informants to share directly his or her "reality" and
- it is creative because it captures attention visually.

4.3.1 Population and Sampling

According to De Vos, Strydom, Fouche and Delport (2012), population may be defined as the total collection of individuals who are potentially available for observation, and who have the attribute(s) in common to which the research hypothesis refers. Babbie and Mouton (2011) define population as a collection of objects, events or individuals having some common characteristics that the researcher is interested in studying.

Population can be defined as “a group of people, objects or items which samples are taken for measurement” (Mason 2005). In this study, population comprised of all government law enforcement agencies based in Limpopo Province and who are involved in the prevention and control of organised crime. The researcher has interviewed officials from the provincial Directorate for Priority Crime Investigation (DPCI), the Department of Safety, Security and Liaison (DSSL), the South African Revenue Services (SARS) custom unit, the provincial crime intelligence unit, the National Prosecution Authority (NPA), and the Department of Transport (Anti-Corruption Unit and the Department of Home Affairs who are involved in the prevention of organised crime.

4.3.2 Sample Size

The sample was drawn from the population of law enforcement agencies based in Limpopo Province and who deal with organised crime. Participants were selected through purposive sampling, which is a non-probability sampling method. Purposive sampling and snowball sampling were deemed appropriate since the study involve approaching few known individuals in a targeted study population, requesting them to identify other members that would be relevant to the study.

The researcher commenced with several officers from the DPCI, DSSL, SARS Custom Unit, the SAPS Crime Intelligence Unit, the Department of Transport Anti-Corruption Unit, the Department of Home Affairs Counter Corruption and Security Unit and the National Prosecuting Authority Priority Crime Litigation Unit (PCLU), the Specialised Commercial Crime Unit, and the Assets Forfeiture Unit. Others were identified until the researcher was satisfied that the data have saturated. A total of twelve (12) law enforcement officers were sampled to participate in this study, and two (2) respondents are from DPCI, two (2) DSSL,

one (1) SARS, two (2) SAPS, two (2) Transport, one (1) Home Affairs, one (1) PCLU, one (1) SCCU and one (1) was from AFU.

4.4 DATA COLLECTION

For the purpose of this study, data was collected using semi-structured interviews. Semi-structured interviews allow the participants to elaborate on their experiences in their own words while giving some structure of the interview (Goldfinger & Pomerantz, 2014) (see Annexure A). The researcher approached officials from the DPCI, DSSL, SARS Custom Unit, the SAPS Crime Intelligence Unit, the Department of Transport Anti-Corruption Unit, the Department of Home Affairs Counter Corruption and Security Unit and the National Prosecuting Authority Priority Crime Litigation Unit (PCLU), the Specialised Commercial Crime Unit, and the Assets Forfeiture Unit through letters to request permission to gain access in order to interview the officials (see Annexure B). The interviews were conducted in English and an audio-tape was used to record the data, which were later transcribed for the purpose of analysis.

4.5 DATA ANALYSIS

Depending on the nature of the research question and design, and the nature of the data itself, data analysis takes many different forms. De Vos et al (2012) argue that qualitative data is primarily an inductive process of organising the data into categories and identifying patterns (relationships) among the categories. Mason (2005) further argues that qualitative analysis is a systematic process of selecting, categorising, comparing, synthesising and interpreting to provide explanations of the phenomenon of interest. Data analysis entails bringing order, structure and meaning to the mass of time-consuming, creative and fascinating process (Marshall & Rossman, 2006). The method of data analysis chosen for this study was thematic analysis.

Data collected from all the semi-structured interviews with the law enforcement officers involved in the prevention of organised crime was transcribed by the researcher. During this process, the initial thoughts and ideas were noted down as this is considered an essential stage

in analysis. The transcribed data was then read and re-read several times and, in addition, the recordings were listened to several times to ensure the accuracy of the transcription. This process of repeated reading and the use of recordings to listen to the interviews results in data immersion and recording. According to Babbie (2010), it refers to the researcher's closeness with the data.

Following on from this initial stage and building on the notes and ideas generated through transcription and data immersion is the coding phase. These codes identified features of the data that the researcher considered pertinent to the research question. Furthermore, as it is intrinsic to the method, the whole data set was given equal attention so that full consideration could be given to repeated patterns within the data. All initial codes relevant to the research question were incorporated into themes. These helped the researcher to visualise and consider the links and relationships between themes. At this point any theme that was not considered sufficient or relevant were discarded. This refinement of the themes took place on two levels; primarily with the coded data, ensuring that they formed a coherent pattern. Secondly, once a coherent pattern was formed, the themes were considered in relation to the data set as a whole. This ensured that the themes accurately reflected what was evident in the data set as a whole.

Further coding also took place at this stage to ensure no codes had been missed in earlier stages. Once a clear idea of the various themes and how they fitted together emerged, the analysis moved to phase five. This involves defining and naming the themes, with each theme clearly defined and accompanied by a detailed analysis. The final stage or the report production involved choosing examples of transcripts to illustrate elements of the themes. These extracts clearly identified issues within the theme and presented a lucid example of the point made.

4.6 CONCLUSION

This chapter was able to identify and clarify methods that were used in this study. An approach to the scientific methodology relevant to the study was identified. The chapter also provides a detailed description of the data collection methods used in this study, which was semi-structured interviews. The research population and sample, together with the research area, was also provided. Data analysis technique used, which is thematic analysis, was also discussed. Permission was sought from participants from the sampled law enforcement

agencies involved in the prevention of organised crime (see Annexure B). The research findings and interpretations are provided in the next chapter.

CHAPTER 5

DATA ANALYSIS AND INTERPRETATION

5.1 INTRODUCTION

The previous chapter discussed the research methodology, data collection and data analysis instruments. This chapter presents research findings from data collected through the research methodologies and processes that have thoroughly been discussed in the previous chapter. This chapter is divided into three sections. The first section presents data on the measures taken in the prevention and control of organised crime. The effectiveness of the measures taken is presented in the section. The last section presents data on the level of coordination between law enforcements in the prevention and control of organised crime. The presentation of data follows a sequence of semi-structured interview guide used to collect data.

5.2 FINDINGS FROM THE SEMI-STRUCTURED INTERVIEWS AND ANALYSIS

Semi-structured interviews were conducted with 12 law enforcement officers employed in the following units: the DPCI, SARS Custom Unit, the SAPS Crime Intelligence Unit, the Department of Transport Anti-Corruption Unit, the Department of Home Affairs Counter Corruption and Security Unit and the National Prosecuting Authority Priority Crime Litigation Unit (PCLU), the Specialised Commercial Crime Unit, and the Assets Forfeiture Unit. Two (2) respondents are from DPCI, two (2) DSSL, one (1) SARS, one (1) SAPS, two (2) Transport, one (1) Home Affairs, one (1) PCLU, one (1) SPCC and one (1) AFU. All of the respondents hold senior managerial positions and have more than five years experience in the field. Therefore, these respondents are considered to be familiar with all the policies and acts that mandate their active involvement in the prevention and control of organised crime. Furthermore, they have participated in many of the provincial safety strategic planning in response to organised crime within Limpopo Province. The responses to questions are thematically presented and analysed below:

5.2.1 MEASURES TO PREVENT AND CONTROL ORGANISED CRIME

This section undertook to identify government measures taken by safety agencies in the prevention and control of organised crime in Limpopo Province. Below are the themes emanating from the semi-structured interviews highlighting how organised crime is often addressed.

5.2.1.1 Prosecuting and Disrupting People Engaged in Organised Crime (Pursue)

The respondents highlighted that the law enforcement agencies in Limpopo Province have established a strong organisations and effective collaborations to lead work against serious and organised crime led by the DPCI. This has been achieved by ensuring that effective organisations are put in place at provincial level, particularly at the Beit Bridge border. This was the first step in transforming the overall response to serious and organised crime in the province. There are new organisations and units such as the SARS Customs Unit, the Home Affairs Counter Corruption and Security Unit and the Department of Transport Anti-Corruption Unit. These organisations execute their roles and responsibilities, and collaborate with the police and other departments such as the South African National Defence Force.

5.2.1.2 Preventing People from Engaging in Organised Crime (Prevent)

The respondents pointed out that the province prefers to deter people from becoming involved in serious and organised crime by raising awareness of the reality and consequences of organised crime. This is achieved through community engagements and imbizos organised by the Department of Community Safety and Liaison in collaboration with all stakeholders. It was further highlighted by the respondents that the province uses education and communications programmes to deter people from getting involved in organised crime; challenges attitudes to organised crime and the illicit and counterfeit commodities which it provides; and encourages communities to report organised crime and support law enforcement work against it.

The findings are in line with those by Roelofse (2013), who argues that communication and education programmes can influence five of these factors: lack of knowledge – young people do not recognise criminality or its consequences; expectations – people may be accustomed to crime and have grown to expect it; negative peer influences and the absence of positive role models; risky impulsive behaviour coupled with the need for instant material reward; and an absence of other ways to obtain it; and a lack of perceived alternatives.

The DPCI, DSSL, SAPS, Non-Government Organisations such as the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO), schools, youth workers and youth offending teams, have developed educational resources that explain what organised crime looks like, and help young people to understand the consequences of involvement in it. Some of the projects developed by the SAPS in order to raise awareness of radicalisation include Corruption Watch and Operation Fiela. The DPCI further works with charitable and civil society organisations such as NICRO to identify credible role models, including people who have left organised crime, and work conducted in partnership with the SAPS (Crime Prevention Campaigns Held throughout the province).

Reducing demand and improving reporting: the SAPS and the DPCI are already committed to supporting communication projects which reduce the demand for commodities provided by organised crime. The SAPS Amendment Act, 2012 (Act 10 of 2012) introduced the reporting procedures as provided in Section 34(1) of the Prevention and Combating of Corrupt Activities Act, 2004, which stipulates that reporting should be made by any police officers. Failure to report is an offence according to the section. The DPCI has even introduced a reporting guide. Whistleblowing is also encouraged wherein the public can

report organised crime activities and remain protected by the law. The DPCI has worked with the Tobacco Institute of Southern Africa (TISA) to raise awareness about the illegal smuggling of cigarettes in Limpopo Province. The Department of Community Safety and Liaison has collaborated with the SAPS and the DPCI in particular, to encourage the community to report incidences of rhino poaching. The research by Gastrow (2013) revealed the importance of crime reporting. Police Minister Nathi Nhleko revealed in his 2014/2015 speech that 83% of the crime that were reported by community members led to the arrests and charging of 1795947 persons.

Technique Development: The majority of respondents indicated that there are various techniques that were developed to deter people from continuing in serious and organised criminality. Wherever possible, the National Prosecuting Authority Priority Crime Litigation Unit prosecutes those people involved in serious and organised crimes. But where they cannot prosecute, they deter and disrupt engagement in organised crime using a wide range of interventions that complement, and where appropriate, offer an effective alternative to criminal investigations. One respondent indicated that a range of interventions are already in use, including: Financial Reporting Orders; Serious Crime Prevention Orders; Travel Restriction Orders; Director Disqualification Orders; and Sexual Offences Prevention Orders.

5.2.1.3 Increasing Protection against Organised Crime (Protect)

According to the respondents, the province pursues and prevents components in order to reduce threats faced by serious and organised crime. The purpose of Protect and Prepare is to reduce vulnerability. This was achieved through a related but quite different set of programmes, many of which build on work that has been done by POCA, the police and other organisations. Reducing vulnerability means increasing protective security across the public estate. The DPCI provides as much advice as we can to the private sector who are targeted by serious and organised crime, notably through cyber-enabled fraud and, increasingly, through cyber-crime.

Protecting the borders from serious and organised crime: It was revealed by the majority of the respondents that border protection is very crucial in preventing and controlling organised crime in Limpopo Province. The respondents further highlighted that border operations are complex, high-profile and high risk. Effective border security relies heavily on

passenger and freight data. The respondents argued that the province fails to improve both its data acquisition and the analytical capability to effectively identify passengers and goods of possible concern. According to Nkosi (2011), border policing should work with carriers and other commercial partners to increase coverage, timeliness and accuracy of information about passengers and goods.

The respondents posited that organised crime groups attempt to smuggle illicit and dangerous goods such as firearms and drugs, particularly illegal cigarettes from Zimbabwe into the province via large shipments of freight, fast parcel services and through passengers, their vehicles and luggage. The DPCI, SANDF and Border Police use intelligence-sharing with the fast parcel industry, seek opportunities for upstream action against parcels before they reach the border, and carry out more targeted intelligence-led operations against parcels entering the border.

This finding is in line with those by Goga (2014), who stipulates that closer collaboration should be developed between law enforcement agencies dealing with counter-terrorism and organised crime. This is particularly important at the border where they are often dealing with common issues. The respondents revealed that progress has already been made in sharing capabilities and assessments.

Improving protective security in the private sector by sharing intelligence and analysis on threats from serious and organised crime. The respondents maintained that government agencies share intelligence and analysis with private sector representatives about serious and organised crime threats. Intelligence sharing is led by the Provincial SAPS Intelligence Unit. Mofokeng (2010) writes that intelligence sharing is most important in connection with fraud, cyber-enabled fraud and cyber- crime.

Furthermore, the respondents held the view that using intelligence from a range of sources, the DPCI has identified organised groups committing economic crime, and where appropriate, share information with the private sector to allow them to take action. The DPCI works directly with the private sector to advise how they should protect their systems and processes from cyber-crime and fraud. Specific data on known fraudsters is shared with the private sector through the Counter Fraud Checking Service.

Improving anti-corruption systems: Serious and organised crime uses bribery and corruption to evade arrest and prosecution, to commit crime and, in particular, to launder the financial proceeds, according to the respondents. They further that argued organised criminals and groups seek to develop corrupt relationships in areas where they see a great risk or an opportunity. Targets include law enforcement agencies, government and local authorities, and the private sector. The respondents further argue that organised criminals target law enforcement and border agencies and seek to develop corrupt relationships in government and local authorities in order to gain access to data, facilitate claims for benefits and procure public contracts. The private sector, particularly the regulated financial sector, is targeted for the purposes of fraud, and to launder the proceeds of crime.

5.2.1.4 Reducing the Impact of Organised Crime (Prepare)

The police and other agencies have been engaged in work in this area, and this strategy builds on the progress they have made. Prepare reflects the reality that however improved their responses, serious and organised crimes will continue to occur. So there will be victims of organised crime, and it will continue to be affect the province. The respondents stressed that they are prepared in the event of major serious or organised crime incidents which have provincial implications. For example, a threat to provincial systems and infrastructure. Goga (2014) concurs with the findings when he argues that the rapid emergence of a significant organised crime cyber threat makes this imperative. It is also imperative to address the corrosive impact of serious and organised crime on communities, and to ensure that our transformation of the criminal justice system supports people who are witnesses or victims.

Necessary Capabilities: The province, according to the majority of the respondents, ensures that there are necessary capabilities to respond to major serious and organised crime incidents through joint operations by various law enforcement agencies led by the DPCI and the SAPS. They argue that significant improvements have been made in building generic capabilities to respond to, and recover from, a wide range of civil emergencies. Work is also underway to improve the ‘interoperability’ of the emergency services.

Victim Support: The province does not provide the communities, victims and witnesses affected by serious and organised crime with effective criminal justice and other support. Therefore, the communities are vulnerable to organised crime groups. This finding is line

with those by Lebeysa (2012), who argues that organised crime groups have a corrosive local impact, particularly in some of our most deprived communities, and also among communities which are new to this country. In some local areas, organised criminals may be regarded as role models. Organised crime groups (sometimes in conjunction with urban street gangs) may intimidate people into silence. Organised crime becomes an accepted feature of the environment and can more easily continue without disruption.

Disruption Efforts: The province disrupts efforts by organised crime groups to develop a hold over very local communities, say the respondents. This strategy and the activities of operational agencies are supported by the communities. Roelofse (2012) echoes this finding by arguing that communities need to have the confidence to be part of an organised crime response.

Actions Taken: The respondents conceded that there are a number of actions which are intended to address disruptions by organised crime groups in the communities. The actions include the relentless (and visible) disruption of serious and organised criminals by the police and other agencies; more aggressive and visible action to recover criminal assets; local organised crime partnerships (which deals with the impact of organised crime on local communities); and the prevent approach.

Police Trust: The respondents claim that trust and confidence in the police is vital in addressing organised crime in Limpopo Province. Gastrow (2013) maintains that community policing has an important role to play in dealing with crime (including serious and organised crime) through the building of trusted relationships, the gathering of community intelligence and the resolution of community concerns. The DPCI ensures that organised crime is properly monitored in order to develop best practice around police community engagement and neighbourhood policing.

Inclusive Planning: The respondents indicated that the DPCI and the SAPS ensure that community engagement and communication plans are included in planning for law enforcement operations against serious and organised criminals to keep the public informed before, during and after the operational activities have taken place. The DPCI and the SAPS in the province promote the use of community impact statements which allow the courts,

when considering sentencing, to take into account the impact (including fear and intimidation) which particular crimes have had on communities.

Impact of Organised Crime: The respondents posited that organised crime has negatively impacted on the governance of the province. They indicated that the changes in political leadership affected the process of organised crime policy implementation and monitoring. This has further resulted in the rise in organised crime activities in Limpopo Province since its governance is presumed weak and corrupt. Furthermore, due to organised crime activities, the province is failing to attract investors (both national and international investors). This has resulted in the decline in provincial economic growth.

5.2.2 THE EFFECTIVENESS OF MEASURES TO PREVENT ORGANISED CRIME

The questions were intended to assess whether or not the measures identified in the prevention and control of organised crime are effective. The majority of the participants said that the measures are not effective in preventing and controlling organised crime in Limpopo Province. The respondents highlighted the following reasons why the province is not winning the battle against organised crime:

5.2.2.1 Police Methods

Orthodox police methods are too often demonstrably ineffective at dealing with organised crime. The police, charged with guarding the persons and property of ‘legitimate citizens’, labor under a major handicap. With enterprise offences, their position is rendered awkward by the willing participation of so many members of police society; and their actions are often ineffective, since they target only the most visible and vulnerable who are the most easily replaced component of the criminal networks. This, according to the respondents, leaves the illicit market operating largely unscathed. Furthermore, the respondents reveal that with the police are frequently technically unprepared to deal with serious commercial offences involving complex business methods.

Corruption: According to the majority of the respondents, corruption by the officials disturbs the effective curbing of organised crime in Limpopo Province. This finding is in line with those by Goga (2014), who writes that corruption in the police force remains high, and the state has been unable to find an effective means to limit it. Police have been accused, and

convicted, of a variety of organised criminal activities. Without police corruption, organised crime is unlikely to succeed. It is argued that ‘the SAPS actively undermined its corruption control mechanisms’ through, inter alia, the disbanding of the Scorpions and the former anti-corruption agency of the SAPS.

5.2.2.2 Organised Crime Prevention Policies

The respondents claim that the organised crime prevention policies have inherent limitations in that they proceed from the assumption that the control through the prosecution of members of organised crime groups is somehow synonymous with the control of organised crime. Such “headhunting” approaches confuse the arrest and prosecution of offenders with the control of activities in which offenders engage. This finding is in line with those by Nkosi (2011), who argues that even when the policies are successful, the strategies remove only some illicit entrepreneurs from the marketplace, thereby strengthening the rewards for those who remain. Again, this outcome may be made more likely by the tendency of law enforcement to prosecute most successfully the smallest and weakest operators. Various policies focus on members of organised crime groups as the object of policy attention, and ignore the environment within which the businesses that comprise organised crime operate.

The respondents further reveal that effective money laundering policies necessitate a degree of international cooperation that cannot always be achieved either because of differences in enforcement resources or in political will. Such strategies also depend heavily on long-term undercover operations, stings and the use of informants, all of which pose difficult ethical problems.

POCA: The respondents argue that POCA is not a model of legislative coherence. It is a legislation that may be described as half-baked, which requires immediate return to the legislative oven. This has, therefore, caused confused and negatively impaired the prevention of organised crime. This finding is supported by Lebeya (2012), who after analysing all the offences created in terms of POCA, concluded that the legislature intended to refer to the offences which are generally known as pattern of racketeering activities, as reflected in Section 2 of this Act about organised crime. When reference is being made to organised crime, it has to be understood to refer to the contravention of any provisions of Section 2 of POCA.

5.2.2.3 Border Control as a Challenge

The majority of the respondents maintained that border control hinders the prevention and control of organised crime in Limpopo Province. The findings are echoed by Goga (2014), who reports that after 1994, the staff complement of the SANDF was scaled down, resulting in the reduction of the number of soldiers at the borders. The SAPS was also downsized as there was no perceptible external threat to the security of South Africa, or to the new-found freedom of all South Africans. Along with the new democratic dispensation in South Africa, a new threat emerged. Transnational organised crime syndicates identified the country as an untapped market for their criminal activities.

Border Policing: According to the respondents, government strategies in Limpopo Province have challenges in the prevention of organised crime as borders are difficult to secure. There are many points of vulnerability, and it is clear that in many respects, border controls are reactive to the new forms of strategies used by those wishing to circumvent them. It was recognised by all respondents that there were occasions when a border guard may well be corrupt or susceptible to bribes, but the real test was whether there is any evidence of systemic corruption of border guard personnel where corruption flows from the top of the organisation to the bottom. It is also recognised that some borders have particular points of vulnerability. These vulnerable points may be at particular times of the day, or at particular times on particular days, or at the point of shift change. These points are not indicators of corruption but are pointers towards the vulnerability of borders to exploitation of weaknesses by those wishing to facilitate the movement of people.

Border Security Assessment: The respondents revealed that the province does assess how to secure a border through a number of potential measures. There have been a number of refusals at a border crossing point, as the level of refusals is one indicator that border guards are engaged in their work and are actively attempting to prevent illegal entry. There are also a number of potential ways in which the province has strengthened borders, including the employment of extra border guards. The provinces has not succeeded in the use of technological devices to prevent organised crime due to lack of financial commitment from the state. And again there are policy implications on how border agencies are structured.

Lack of Scanners at the Borders: Though the province has introduced technological devices, it is still losing the battle against organised crime, specifically the smuggling of illegal cigarettes. According to the respondents, this is due to lack of scanners at the borders throughout the province. An x-ray scanner is capable of scanning containers and freight to detect all illicit products that are crossing the borders.

Common Organised Crimes at the Border: The respondents noted that there is an influx of drugs, specifically illegal cigarettes, great incidences of prostitution, money-laundering, and sudden increase in organised crimes, particularly violent crimes like vehicle-hijackings and cash-in-transit robberies at the borders in province, especially at Beit Bridge Border.

How Border Control is a Challenge: The respondents observed that border control is a serious challenge because of the reduction in the number of SAPS offices and SANDF soldiers at the borders. According to the respondents, budgets cuts in both departments seriously hampered the effective execution of those border control duties. All these factors, accompanied by lack of resources and the gradual degradation of facilities at the border posts, have a negative effect on border control and gave rise to an increase in organised crimes. The respondents have identified corruption as another factor that has become synonymous with border posts and officials responsible for border control activities. The respondents revealed that crime syndicates sometimes bribe police, customs, immigration and SANDF officials to turn a blind eye to crime at the borders involving the smuggling of drugs, cars, prostitutes, endangered species products and firearms across the province. These constricting factors include understaffing, lack of resources, corruption, long borderlines to patrol and the negative perceptions of border control officials held by some of the communities in the vicinity of border posts. Respondents further conceded that the morale and attitude of officials at the border posts is very negative, resulting in a decrease in search and seizure figures by the border police. Lack of co-operation and ineffective co-ordination between key role players in border control was highlighted by the respondents as a challenge in the prevention and control of organised crime in Limpopo Province.

Coordination of the AFU: A major focus of the work of the AFU has been to build an effective working relationship with the SAPS, the DPCI and other law enforcement structures. This is vital to ensure an increased flow of properly investigated cases to the AFU. According to Keightley (2009), the AFU has very consciously set itself up as a support

service to the police to assist them to do the extra work that is necessary for asset forfeiture. However, the respondents have identified the following challenges in the AFU that hinder the prevention and control of organised crime:

Expertise Constraints: According to the respondents, the lines between AFU and the SAPS are not clear because of expertise constraints, “particularly in financial investigations” where the police often do not have the capacity to deal with a case that is perceived as a high priority. The AFU would like to grow the sort of skills required for asset tracking both within the DPCI and the police.

Overlapping Mandates: The findings revealed an overwhelming majority of respondents who maintained that there is significant overlap between the mandate of the AFU and SIU in terms of corruption-related cases, and the units have tended to work very closely together and mutually referred cases to each other. Differences between the two agencies exist especially with regard to special powers and the process of proclamations. The AFU, however, sees itself as having a number of advantages over the SIU, particularly since its process is quicker - not requiring a proclamation process – and they have a much wider ability to freeze assets. With regard to the division of labour between the AFU and the SIU, the latter cannot strictly act with regard to civil servants who have illegally enriched themselves whilst the AFU can, and therefore cases for recovery of state assets from individual public servants have been referred by the AFU to the SIU.

An overwhelming majority of respondents identified the factors below as constraints for Limpopo Province in preventing and controlling organised crime:

5.2.2.4 Organised Criminal Networks are Flexible, Dynamic, Innovative and Resilient in Nature

The respondents revealed that the province is not winning the battle against organised crime because the criminal networks are sensitive to the tactics employed by law enforcement and regulatory agencies and are knowledgeable of legitimate industry practices. This demonstrates a high degree of resilience to traditional organised crime interventions. They seek to balance profit opportunities with attendant risks of detection and prosecution.

5.2.2.5 Organised Criminal Networks are Driven by a Profit Motive

The majority of the respondents highlighted that the battle against organised crime is difficult for the province due to the fact that organised criminal networks are fundamentally driven by a desire to make, and subsequently hide, illicit profits. This finding is in line with those by Lebeya (2012), who writes that the demand for illicit commodities such as drugs is likely to remain strong, driving the criminal economy by providing a strong profit incentive to engage in organised criminal activities. Organised crime can be expected to actively exploit current and emerging opportunities to generate funds or otherwise benefit from a broad range of activities, including firearms, fraud, high tech crime, environmental crime, piracy and counterfeiting, classification offences, people trafficking, identity crime, public sector corruption, money laundering and labour exploitation.

5.2.2.6 Organised Criminal Networks Engage in Criminal Infiltration, Corruption and the Use of Facilitators

The respondents maintained that as serious and organised crime infiltrates various sectors of the economy, its activities are often supported, knowingly or otherwise, by a range of people with access to information, infrastructure, government services, knowledge of institutional weaknesses or access to specialist skills. According to Bovenkerk (2010), 'Facilitators' with specific skill sets (such as information technology specialists, accountants, lawyers and bankers) play a vital role, sometimes unintentionally, in assisting criminal networks operate undetected and seamlessly across both legitimate and illicit markets. Criminal networks employ criminal infiltration and corruption tactics to undertake and conceal illicit activities and launder the proceeds of crime. Networks have established a significant foothold in certain industry sectors. Once these footholds are established, organised crime can more easily operate in and profit from these sectors. These sectors can also become resistant to law enforcement interventions. Criminal networks will continue to seek out individuals within law enforcement and other public sector agencies and industry for the purpose of infiltration, corruption or facilitation to further their criminal activities.

5.2.2.7 Organised Criminal Networks are Clandestine, Operating in the Black Market Economy

The respondents argue that organised crime pervades all parts of society and the economy, much of it operating within an 'invisible', clandestine, black market economy. This makes it

difficult to understand the operations of organised criminal enterprises. Operating outside legitimate systems may also provide organised crime with competitive advantages against legitimate market participants complying with regulatory and government revenue processes.

5.2.2.8 Organised Criminal Networks Maintain a Multi-Jurisdictional and Transnational Presence

The research revealed that serious organised criminal groups with the capacity to operate across several jurisdictions— domestic or international—represent the highest threat to Limpopo Province. They have the capacity to undertake coordinated and widespread criminal activities and cause significant damage to the South African economy.

5.2.3 LEVEL OF COORDINATION BETWEEN LAW ENFORCEMENT AGENCIES

To prevent and control organised crime around Limpopo Province, there should be thorough coordination between the following law enforcement agencies:

- The Directorate for Priority Crime Investigation;
- The Department of Safety Security and Liaison;
- The South African Revenue Services Custom Unit;
- The SAPS Crime Intelligence Unit;
- The Department of Transport Anti-Corruption Unit;
- The Department of Home Affairs Counter Corruption and Security Unit;
- The National Prosecuting Authority Priority Crime Litigation Unit (PCLU),
- The Specialised Commercial Crime Unit; and the
- The Assets Forfeiture Unit.

To explore the level of coordination, the following subthemes highlight the nature and extent of coordination in the prevention and control of organised crime:

5.2.3.1 Intelligence, Information Sharing and Interoperability

The majority of the respondents stated that the province enhances the understanding of organised crime by responding to the challenge of organised criminal networks, which is clandestine in nature and operating in the black market economy.

Intelligence-led approach: The Limpopo Provincial government has made attempts to follow an intelligence-led approach which is a fundamental requirement to successfully respond to organised crime. The approach has informed forward planning and operational deployment of resources in the province. It has also informed policy, regulatory and legislative responses. The difficulty to develop a complete intelligence picture is due to the absence of analysts capable of providing the highest quality intelligence to be coordinated by the SAPS intelligence service.

However, few respondents indicated that province follows the multiagency response that has improved response to organised crime by:

- providing a timely central point of contact for the fast exchange of information between agencies such as the DPCI, SARS, SAPS etc;
- providing a central point for agencies to quickly obtain information to assist with ongoing intelligence operations;
- supporting the working groups by referring key issues for intelligence assessment; and
- developing coordinated multi-agency intelligence focused on a number of key vulnerabilities or critical threats.

5.2.3.2 Targeting the Criminal Economy

The respondents indicated that the province adopted a strong approach to targeting the criminal economy in order to respond to the challenge posed by the profit motive of organised crime coordinated between the DPCI, the AFU, SARS, the SAPS, Intelligence Unit and Home Affairs. The DPCI's objective is to make the business of organised crime unviable—to create an environment that is so openly hostile to organised crime that it disables its activities. In Limpopo Province, tracking the movement of illicit funds and seizing the proceeds of crime are important aspects of any response to organised crime. To achieve this, the respondents argued that the province applies a proactive response across all government agencies.

5.2.3.3 Investigation, Prosecution and Offender Management

The province applies an approach based on investigation, prosecution and offender management designed to meet the challenges posed by flexible, dynamic, innovative and

resilient criminal networks. The investigation, prosecution and management of offenders are key deterrents for organised criminal activities. This approach is facilitated by the NPA, the AFU, and the DPCI. The multi-national nature of organised crime requires an integrated, and whole-of-government approach to intelligence and investigation operations. Chipeta (2009) writes that the successful investigation and prosecution of persons involved in organised criminal activities also depends on responsive and effective mechanisms for international cooperation in criminal matters.

5.2.3.4 Preventative Partnerships with Industry and the Community

According to the respondents, the province follows an approach based on preventative partnerships with industry and the community in order to meet the challenges posed by organised crime groups engaging in criminal infiltration, corruption and the use of facilitators. The partnership is coordinated between the SAPS, Home Affairs, and Transport, among others. This finding is echoed by those by Huschle (2012), who maintains that government has a role to play in alerting the community of the risks associated with organised criminal activities, and promoting a stronger prevention or ‘target hardening’ approach. An understanding of the capacity for organised crime to infiltrate legitimate markets and exploit the broader community is essential to deny opportunities for criminals. Organised crime has actively infiltrated critical infrastructure such as ports, aviation and telecommunications facilities, to facilitate criminal activities.

5.3 CONCLUSION

Data was analysed and interpreted in this chapter. The data was collected using semi-structured interviews with the identified law enforcement agencies involved in the prevention and control of organised crime in Limpopo Province. The agencies include the DPCI, SARS Customs, the NPA PCLU, Home Affairs Immigration etc. The responses were analysed using thematic analysis, which assisted in answering major research questions. The conclusions and recommendations of the research will be presented in the next chapter.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

6.1 INTRODUCTION

The findings and analysis of data obtained through semi-structured interviews with law enforcement officers were discussed in the previous chapter. This chapter aims to provide

concluding remarks on the research problem raised. Recommendations based on data analysed through thematic analysis in the previous chapter are presented in order to highlight measures that can be taken in the prevention of organised crime as well as the assessment of those measures. A summary of the preceding chapters is given below.

6.2 CHAPTERS SUMMARY

Chapter one provided a general orientation to the study where the research problems investigated the effectiveness of measures taken in the prevention and control of organised crime in Limpopo Province. In order to address this specified research problem, the research questions were highlighted. Research questions were developed in order to answer major research questions. Furthermore, the study was contextualised wherein the relevance and significance of the study were explained.

The purpose of chapter two was to critically evaluate the official materials deemed relevant to the study of organised crime. In addition, scholarly work on measures that can be taken to deal with organised crime was used to critique the presented discussions.

Chapter three focused on South Africa's response to organised crime. The criminal justice response and the legislative responses were highlighted. Literature on crimes in organised crime as well as challenges faced in the prevention and control of organised crime was also discussed.

Chapter four discussed the research methodology used to collect data and how such data was analysed. Data was collected through unstructured interviews with law enforcement agencies involved in the prevention and control of organised crime within Limpopo Province. Data collected assisted in providing a solution to the research problem. The study is qualitative in nature and the population and sample selection criteria were discussed.

In chapter five, the research findings were explored and data analysis was made. The analysis was conducted through thematic analysis. Semi-structured interviews were conducted with law enforcement agencies involved in the prevention and control of organised crime in Limpopo Province.

Chapter six gave the summary of the preceding chapters. The main conclusions drawn from the study and the recommendations were made pertaining to the critical issues raised.

6.3 CONCLUSIVE REMARKS FOR THE STUDY

Government crime prevention strategies for agencies based in Limpopo Province continue to face challenges in the prevention and control of organised crime. The government has developed measures to fight organised crime. Evidence was collected with the aim of answering the following research objectives:

- What are the strategies applied in the prevention of organised crime?

This objective was addressed by highlighting the government strategies in response to organised crime. Semi-structured interviews highlighted how provincial agencies tackle issues relating to organised crime. The research highlights the legislative and institutional developments in response to organised crime.

- To what extent is the level of coordination by various law enforcement agencies in the prevention and control of organised crime?

The objective was achieved by demonstrating the level of coordination amongst various agencies based in Limpopo Province in response to organised crime. The research highlights that the DPCI collaborates with the SAPS Crime Intelligence, Home Affairs, DSSL, SARS and the NPA PLCU. The research further indicates the nature of coordination by various agencies where each agency's mandate in curbing crime is demonstrated.

After the analysis of evidence collected through semi-structured interviews with 12 law enforcement officers, the following conclusions were drawn:

- Government crime prevention strategies for agencies based in Limpopo Province have adopted the criminal justice response/ institutional and the legislative response to organised crime.
- There are a number of stakeholders participating in the prevention and control of organised crime. However, the government is still facing a challenge of winning the battle against organised crime.
- The measures taken by various units are ineffective in dealing with organised crime because organised criminal networks are flexible, dynamic, innovative and resilient in nature. Lack of scanners at the Beitbridge Border post also disadvantages the government in preventing organised crime, specifically the smuggling of illegal

cigarettes and illegal immigrants. Furthermore, corruption by the law enforcement officers hinders the effective implementation of the strategies designed to control organised crime. Again, the disbandment of specialised units negatively affects progress in preventing organised crime.

- There is coordination and communication among the law enforcement agencies such as the DPCI, DSSL, SARS, Home Affairs, and the NPA PCLU. This coordination is envisaged through intelligence, information sharing and interoperability. When the DPCI Hawks have a lead, the information is shared through SAPS intelligence and passed to SARS and Home Affairs and this has led to the confiscation of illegal goods and the arrests of organised criminals.
- There is no implementation of the multi-agency approach as one institution is expected to facilitate and lead in the prevention of organised crime (which is the DPCI)
- The findings further reveal that the smuggling of illegal cigarettes is currently a challenge for the province as a highly committed organised crime.

The above conclusions were drawn based on the evidence collected and analysed in the previous chapter. The study revealed measures that can be taken in the prevention of organised crime; and further highlighted the nature and level of coordination by law enforcement agencies in the fight against organised crime. Organised crime can undermine the integrity and security of our borders. It can erode confidence in institutions and law enforcement agencies and damage our economic prosperity and regional stability.

6.4 RECOMMENDATIONS

Based on the findings, analysis and conclusion of the study, the following recommendations are made:

6.4.1 Developing an Organised Crime Threat Assessment (OCTA)

Organised crime by its nature seeks to conceal its activities. This poses challenges for government in attempting to identify the highest level threats and harms to the community. An effective government response requires the alignment of government resources to the priority areas of action. To establish the priority areas of action, a picture of the most significant threats and harms arising from organised criminal activities is necessary. This picture will be provided by the OCTA, which will be developed and shared widely among the

relevant stakeholders led by the DPCI. The OCTA will improve the understanding of organised crime as it relates to the impact on the community, major activities and actors, market vulnerabilities and areas that would benefit from further intelligence or risk analysis. The OCTA will also promote information and intelligence exchange across the law enforcement agencies.

6.4.2 Developing an Organised Crime Response Plan (OCRP)

Recognising the need for responses to be based on a sound understanding of the nature and characteristics of the organised crime environment, the province should develop an OCRP to align efforts to identified critical organised crime threats. Informed by and reflecting the key judgments contained within the OCTA, the OCRP should establish agreed provincial priorities for addressing organised crime, and for enabling agencies to align resources and functions, and for informing capability development requirements. The OCRP should also detail the multi-agency actions plans and deliverables against each priority.

6.4.3 Implementation of Multi-Agency Approaches

Multi-agency approaches, both operational and policy or regulatory, underpin a whole-of-government approach to organised crime. Multi-agency operational approaches such as Task Forces should draw on the skills, expertise, knowledge (including intelligence) and powers across state law enforcement agencies to detect, investigate and prosecute organised crime networks. These approaches should also engage state, territory and international partners to deliver a comprehensive response to specific organised crime threats.

Multi-agency policy or regulatory approaches such as working groups comprising officers from both law enforcement and non-law enforcement sectors should build stronger prevention and disruption measures, including:

- policy, regulatory or legislative initiatives that reduce opportunities for organised criminal activity;
- improved intelligence collection, analysis and sharing capabilities; and
- engagement with business and the broader community in order to raise awareness of organised crime networks, how they operate and the specific risks they present.

Multi-agency approaches could be further enhanced by the development of a Criminal Intelligence Fusion Capability, which would provide for the co-location of agency staff and systems. This would ensure greater efficiency and productivity across agencies.

The following should ensure that the government is able to respond to challenges of clandestine criminal networks operating in the black market economy:

- The use of agreed quality standards of intelligence to drive operational resource allocation, tasking and whole-of-provincial government decision-making in a timely and appropriate manner;
- The establishment of a Criminal Intelligence Fusion Capability to maximise the efficiency of Commonwealth data and intelligence holdings and the use of analytical skills and systems of each agency;
- The development of an organised crime intelligence model to provide clarity and consistency of standards, processes and protocols for intelligence-led policing and law enforcement work to enhance the national picture of organised crime;
- Strong forensic intelligence to underpin the understanding, investigation and responses to organised crime;
- Strong research and development through articulated research priorities;
- Legislative reforms to remove impediments to information and intelligence sharing; and
- Adequate information sharing guidelines or practice notes to clarify the legal ability and need to share intelligence and information where appropriate.

6.4.4 Targeting the Criminal Economy

The following should respond to challenges posed by the profit motive of organised crime in Limpopo Province:

- The use of financial analysts, market specialists, and forensic specialists (particularly computer forensics), to support intelligence, investigation and prosecution functions;
- Strong criminal asset confiscation, including the effective investigation and use of conviction and non-conviction based confiscation under the Proceeds of Crime Act 2002;

- A strong use of taxation information and powers against those involved in criminal enterprises;
- The use of financial intelligence and data in criminal assets confiscation; and
- Strong laws and administrative arrangements underpinning criminal asset confiscation regimes.

The following should respond to the challenges posed by flexible, dynamic, innovative and resilient criminal networks:

- Post-operational assessments to improve the understanding of how organised crime operates, including areas and means of exploitation, and an assessment of the lessons learned from various tactical approaches to intelligence and investigation operations;
- Strong legislation to support the ability of law enforcement agencies to conduct effective operations targeting organised crime spanning multiple jurisdictions;
- Effective mechanisms for the prioritisation of organised crime targets to ensure that finite resources are continually directed towards the reduction of the impact of organised crime;
- Cross agency management teams to determine clear arrangements for investigations and broader strategies that may be required to achieve the results; and
- A national and provincial case management capability.

The following should respond to challenges posed by organised criminal groups engaging in criminal infiltration, corruption and the use of facilitators:

- An industry forum to consider organised crime prevention responses based on strategic criminal intelligence;
- Engagement with the community on specific preventative organised crime issues which would also be articulated through the OCRP; and
- The exchange of criminal intelligence, where appropriate, to assist industry protect critical infrastructure.

6.4.5 Recommendations to improve border policing

The future of effective border policing lies in:

- the recognition of departmental responsibilities and an integrated and co-ordinated approach as prescribed by the Constitution;
- a co-ordinating structure/authority with muscle to co-ordinate the efforts of departments and agencies involved in border control; and
- targeted collective information management and profiling.

The following challenges and realities remain to be addressed:

Resources: Insufficient capacity is a reality not only for the SAPS, but also for other departments involved in border control and is mainly related to the state of the country's revenue resources. This sometimes results in very poor levels of service delivery.

Collective information, intelligence and profiling systems: The absence of these systems leaves operations with an insufficient information base. The lack of information is further compounded by the non-availability of interfaced and updated information systems.

Corruption: The absence of a common value system leads to corruption and maladministration, which pose a serious threat to effective border control.

Co-operation with the SANDF: The SANDF supports the SAPS in borderline control (land, air and sea), but operates under severe financial and other restraints which restrict their operational capacity. Large parts of the South African borderline are thus in fact under no control.

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ANNEXURE ONE

The purpose of this semi structured interview is to describe the measures taken in the prevention and control of organised crime in Limpopo Province. All law enforcement agencies that tackle organised crime will form part of the interview. The responses from the semi-structured interviews will be used in a mini dissertation for a Master of Public Administration of Kholofelo Annah Mothibi. Participants are not forced to participate and the information will be treated with confidentiality.

The responses will enable the researcher to make informed analysis, conclusions and recommendations about the effectiveness of the measures taken in the prevention and control of organised crime in Limpopo Province. The responses will further enable the researcher to respond to the major research questions. Semi structured interviews is makeup of the following four sections:

SECTION A: Personal Information

SECTION B: Describes measures taken in the prevention and control of organised crime

SECTION C: Assesses the effectiveness of the measures in addressing organised crime

SECTION D: Determines the level of coordination by various law enforcement agencies involved in the prevention of organised crime

SECTION A: BIOGRAPHICAL INFORMATION

1. Name

2. **Position**
3. **Department**
4. **Years of Experience**

SECTION B: MEASURES THAT ARE BEING TAKEN IN THE PREVENTION OF ORGANISED CRIME

5. **Describe the measures that are being taken in the prevention and control of organised crime in Limpopo Province?**
6. **Which approach has Limpopo Province adopted in the prevention of organised crime?**
7. **Which organised crimes are commonly committed in the Province?**

SECTION C: THE EFFECTIVENESS OF THE MEASURES TAKEN

8. **How effective are the measures taken to prevent and control organised crime?**
9. **If not effective, explain the challenges faced in the prevention and control of organised crime?**
10. **How does the province promote and encourage reporting and whistle blowing?**
11. **Is there victim support and witness protection?**
12. **Does the province have the necessary capabilities to prevent and control organised crime?**
13. **Which approach is used by the province to disrupt efforts by organised criminal groups to intimidate communities?**
14. **What has been highly prioritised by the province in addressing organised crime?**
15. **How has organised crime impacted on the province?**

SECTION C: LEVEL OF COORDINATION

16. **Is there coordination by various law enforcement agencies to prevent and control organised crime in Limpopo Province?**

- 17. Are the mandates clear between all stakeholders specifically DPCI, NPA PCLU, AFU, SAPS Crime Intelligence, CCU and SARS?**
- 18. Which approach is used to enhance coordination between all stakeholders?**
- 19. Does the province have enough expertise in addressing organised crime?**
- 20. Which mechanisms are used to assess how secure the borders are in Limpopo Province?**
- 21. Are the communities engaged and included in the planning of organised crime prevention?**



DEPARTMENT OF SAFETY, SECURITY & LIAISON

Confidential

Ref : 5/1
Enq. : Helani Tsakani
DATE : 22 January 2016

TO WHOM IT MAY CONCERN

RE: RESEARCH ON EFFECTIVENESS OF THE MEASURES IN THE PREVENTION AND CONTROL OF ORGANISED CRIME IN THE LIMPOPO PROVINCE

1. This communique serves to confirm that Dr Kholofelo Mothibi has been authorised by the Department of Safety, Security and Liaison to conduct research and the following documents will be utilised in order to finalise the research:

- Provincial Crime Prevention Strategy of 2015 will be used to guide the structure of the research.
- The National Crime Prevention Strategy of 1996 and the White Paper on Safety and Security were consulted.
- The findings will therefore assist the Department of Safety, Security and Liaison to gather literature pertaining to organised crime in Limpopo specifically:

- Common organised crime patterns
- Stakeholders
- Challenges faced in dealing with organised crime
- The level of coordination amongst stakeholders

2. I hope you will find the information in order.

Kind regards


MS. NN Tsebe
Head of Department

22/01/16
Date