

Crime Typologies

Only study guide for
CMY3702



**DEPARTMENT CRIMINOLOGY AND SECURITY SCIENCE
UNIVERSITY OF SOUTH AFRICA
PRETORIA**

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Printed and published by the
University of South Africa
Muckleneuk, Pretoria

CMY3702/1/2016–2016

60159154

InDesign

HSY_Style

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INTRODUCTION

CMY3702 CRIME TYPOLOGIES

Welcome to the module, CMY3702, entitled “Crime typologies”. We hope you will find the module interesting and informative. This module focuses on the taxonomy (classification) of crime, and certain specific crime typologies at both the national and international level.

We wish you success with this module and hope that you will find the study material useful and relevant to your career and daily life.

Two approaches have been adopted in compiling this study guide:

- A practical functional or pragmatic approach to the objectives of criminology has been followed. We assume that the subject has important social relevance and this approach therefore encompasses communities that demand service. Information is made available to you for the primary purpose of gaining greater insight into and a better understanding of the typologies of crime.
- The second approach is to provide guidelines to help solve problems in the criminal justice environment. You have to master the information supplied in this study guide to enable you to apply it in your everyday life.

This study guide has been developed in accordance with the six broad principles that guide curricula at Unisa, namely, the Unisa Curriculum Policy (Framework for the team approach in curriculum and learning development) (Unisa 2011:1). The six broad principles guiding curricula at Unisa are the following:

learner-centredness

- responsiveness
- accountability
- curriculum structure
- quality assurance
- impact

This module aims to help you understand crime typologies. We encourage you to think critically and to expand your knowledge and problem-solving skills concerning the various typologies of crime — including their nature and extent.

Another aim of the module is to encourage you to take an active interest in the prominent crime types we are going to study as they are reflected daily in the media (TV, radio and newspapers). We want to make you aware of crimes as phenomena and to help you develop a responsible attitude to preventing crime by using your knowledge of criminology and related abilities in everyday life. We encourage you to become involved in the search for solutions to these high-profile crimes at the local, national and international levels.

The reading and learning skills you have already acquired form the basis for mastering the study material for this course. We introduce the basic concepts related

to each crime to help you develop the communication, thinking and social skills that are necessary to identify and discuss criminology-related issues at the local and international levels. We hope to develop your ability to think logically and extend your field of experience by teaching you to draw your own conclusions and form new opinions. We would like to teach you to observe (by reading your study guide and being sensitive to crime-related matters reported in the media and manifested in your daily environment), to collect information, to summarise the information, and to arrange it in a meaningful and coherent manner.

OUTCOMES-BASED OUTPUTS

The above outline relates to certain critical (generally formative) and specific (developmental) outcomes or intended results of learning (in terms of knowledge, insight, attitudes, values and skills).

CRITICAL LEARNING OUTCOMES

This module aims to achieve specific critical learning outcomes. Studying this module should enable you to acquire the following:

- *Criminological literacy.* With knowledge of the concepts related to the subject and a scientific approach, you should be able to identify course-related problems and even to develop a critical viewpoint by means of creative thought.
- *Global and contextual perspectives.* You have to develop an awareness of what causes crime and how crime can be prevented. We refer extensively to the taxonomy of crime and certain prominent and topical crime types to provide you with a contextualised perspective on the reality of crime.
- *A sense of responsibility.* Open distance learning focuses on self-study which requires a high level of commitment, perseverance and a sense of duty. The self-evaluation multiple-choice and paragraph/essay-type questions at the end of each theme provide opportunities for you to organise and manage your own learning activities.
- *Communication skills.* The topical nature of the contents of this module should encourage you to take an active interest in the crime-related events you come across daily in the media. You will learn to visualise the reality of crime and to expand your field of experience in order to draw logical conclusions and form new opinions. Developing your language abilities will enable you to communicate meaningfully on the subject matter with colleagues and friends. Acquiring good writing skills will help you to express your thoughts in writing.
- *Reading and research skills.* You should be able to observe accurately (information in the study guide, the prescribed book, tutorial letters and everyday events locally, nationally and internationally), and to collect, analyse, order and critically assess information. Reading and research skills will help you to explore criminological topics scientifically and to formulate questions when necessary.
- *Collaboration in a group and community context.* You have to acquire the ability to think and reason critically. You should be able to identify the causes of crime, make assumptions and discuss these assumptions in a group/community context (e.g. by participating in crime prevention programmes).

PERSONAL SKILLS

You will be given the opportunity to develop the following skills:

- *Learning skills.* You acquire learning skills by, for example, ignoring irrelevant information, dealing with controversial information, drawing conclusions and considering different viewpoints.
- *Schematic skills.* These skills come into play when important facts have to be separated or correct options have to be chosen (e.g. multiple-choice questions in assignments or the examination)

SKILLS IN SYNTHESIS

You acquire these skills when you become conversant with the procedure of selecting and collecting information from the study guide, summarising this information and arranging it to form a meaningful and coherent whole (e.g. when you review sections of the module in preparation for the self-assessment exercises).

- *Positive values.* If you focus on basic human rights (the rights of both the victim and the offender) and on concepts such as natural justice, you will develop a comprehensive system of positive or law-abiding values such as honesty, good citizenship, sound human relations and freedom.

SPECIFIC LEARNING OUTCOMES

When you have completed this module, you should

- have acquired sufficient knowledge, insight into and understanding of the study material to answer a range of multiple-choice questions based on the contents of the study guide (for self-assessment, assignment and examination purposes)
- have become an independent, resilient and caring citizen
- have developed a critical understanding of the African continent with its histories and challenges
- be able to apply the discipline-specific knowledge competently, ethically and creatively to solve real-life problems
- have developed skills to analyse and evaluate the credibility and usefulness of information and data from multiple sources

OVERVIEW OF THE COURSE

This module covers five (5) themes. Note that these themes are related and should not be studied separately.

Theme 1 deals with the classification of crimes in accordance with the South African Code of Crimes. Different crime classifications (typologies) are explained and analysed, serious crimes versus priority crimes are explained, criteria for determining priority crimes are examined, and the prioritisation of crimes in various countries is explained.

Theme 2 deals with the structure, characteristics, explanation and prevention of organised crime. The concept of organised crime is defined, the structure of organised crime in South Africa and in other countries is explained, ways of combating organised crime are examined, and specific types of organised crime are considered.

Theme 3 deals with the nature, causes, motives, explanation and prevention of conservation crime. Conservation crime/criminology is defined, different types of conservation crime are examined and the motivational and contributory dynamics, aetiology, theories and prevention/control of conservation crime are explored and explained.

INTRODUCTION

Theme 4 deals with the nature, causes, explanation and prevention of white-collar crime. Sutherland's definition of white-collar crime is explained, theft and regulatory offences are discussed, and the causes and theories around white-collar crime are analysed and explained.

Theme 5 deals with public order and victimless crimes. Public order and victimless crimes are defined, problems surrounding the classification of public order and victimless crimes are examined, drug use and prostitution as victimless crimes are analysed, intervention measures are discussed and victimless crimes are explained.

NATURE OF THE STUDY PACKAGE

The study package consists of this study guide and various tutorial letters. The tutorial letters concentrate on administrative matters and assignments. The study material in the study guide is divided into five themes as explained above. Multiple-choice self-assessment questions follow at the end of each theme. The answers to these questions should help you to assess your progress and to achieve the learning and theme outcomes.

There are no prescribed or recommended books for this course.

Assignments

Tutorial Letter 101 contains the assignments for this module. When you have handed in these assignments and passed them, you may write the examination. These assignments (comprising multiple-choice questions) have been designed to promote the development of your knowledge, insights, values, attitudes and skills.

Both the assignments and the examination will contain multiple-choice questions.

THEME 1

Crime Taxonomy

CONTENTS OF THE STUDY UNIT

- 1.1 Introduction
- 1.2 Definition of concepts
- 1.3 Crime classification
- 1.4 Contemporary crime categories
- 1.5 South African crime categories
- 1.6 Serious versus priority crimes in South Africa
 - 1.6.1 South African serious crime categories
 - 1.6.2 South African priority crimes
- 1.7 Priority crimes in various countries
- 1.8 Summary
- 1.9 Self-assessment questions
- 1.10 Answers to self-assessment questions
- 1.11 References

STUDY UNIT 1

Crime taxonomy

LEARNING OBJECTIVES

After completing this study unit, you should be able to

- outline the reasons why crime is classified
- distinguish between the South African Police Service and the Department of Correctional Service's broad crime categories
- debate national and provincial crime trends in South Africa
- highlight the Priority Crimes Litigation Unit's foci on priority crimes in South Africa
- compare American, Australian and England and Wales's differing and overlapping priority crimes.

1.1 INTRODUCTION

Countries all over the world have their own crime taxonomies, as well as special crime categories which are perceived as serious and/or priority crimes. Legal classifications of crime and criminal codes are established by a society, depending on what it perceives as socially damaging, and to serve as a stern threat to members of that society. Every society has a different and changing set of values, and what is judged a criminal act in one country may not meet the crime criteria in another country or even in the same society at a later date (Bartol & Bartol 2008:33).

In South Africa legislation determines what constitutes a criminal act. However, specific crime categories (e.g. contact versus property-related crimes) are stipulated by the South African Police Service and crime statistics are interpreted and recorded nationally. Most South African offenders are violent and aggressive, as opposed to America where the majority of offences are neither serious nor violent (Bartol & Bartol 2008:35; DCS website 2008). This study unit focuses on crime classification, South African crime categories, and national and international serious and priority crime trends.

According to Stevens (1990:127) and the SAPS 2012/13 Annual Report (2012/13:114–115) the identification of crime as the most important social problem in the study of social sciences led to its becoming one of the most important themes in the study of social science. For example, in South Africa there are many cases of murder and attempted murder. Therefore, knowledge and understanding of crime concepts is very important in order to combat and prevent crime, hence the definition of concepts below.

1.2 DEFINITION OF CONCEPTS

CRIME

According to Stevens (1990:128) and Snyman (2008:4), crime, from a juridical approach, is a transgression of the law and if the transgressor is found guilty by the court, the state may impose punishment.

CRIME PATTERNS

Crime patterns describe the incidence of the different types of crime in a specific year. For example, A. Contact crime, B. Contact-related crime, C. Property-related crime, and so on below (Stevens 1990:128; SAPS 2012/13 Annual Report 2012/13:114–115).

CRIME TRENDS

Crime trends are the increases and decreases in the different types of crime in a specific year. For example, in A1 Contact crime: murder, the police report indicates that reports received 15|609 in 2011/2012 and 16|259 in 2012/2013; therefore, the reported cases of murder increased by 650 cases (Stevens 1990:128; SAPS 2012/13 Annual Report 2012/13:114–115).

CRIME STATISTICS

Crime statistics are numbers that comprise all the information regarding crime, scientifically arranged and tabulated in order to give a total picture of the crime problem. For example, the police report shows the total number of complaints reported relating to murder in A1: murder (Stevens 1990:128; SAPS 2012/13 Annual Report 2012/13:114–115).

CRIME CLASSIFICATION

In Criminology, crime classification refers to the division or arrangement of crime data into specific classes. Classification is based on the fact that data on certain crimes show definite underlying similarities (such as property taken without permission, i.e. property-related crimes) (Herbig 2004:55–56).

1.3 CRIME CLASSIFICATION

Crime classification is necessary to determine a) common factors shared by certain crimes (e.g. the use of violence and weapons); b) a data record of types of crimes (i.e. to develop crime database used for statistical analysis of crime trends and crime patterns); c) activities that constitute crimes (i.e. outline and stipulate acts that are considered criminal and against the law); d) answers as to why people commit particular crimes (i.e. to establish the motives for involvement in criminality), and e) crime prediction (i.e. to determine risk factors in respect of future involvement in crime and/or to predict crime trends according to geographical areas).

The purpose and function of crime classification are, in essence, to gain an impression of various types of crime, permitting crime to be broken down into particular

groups to reveal primary commonalities and ensure a richer understanding of crime typologies. Familiarity with particular crimes is vital for detecting, combating and preventing them.

This means that the facts about certain crimes have to be ordered into particular classes based on similarities or common features (Herbig 2004:55).

Classification can describe and explain an unchanging phenomenon in a community, facilitating its identification, clarification and prediction. Classification also provides a basis for the treatment and prevention of the specific phenomenon. The opposite also holds true, namely, that crimes that are vaguely classified and do not receive the deliberation they deserve are insufficiently addressed (as seems to be the case with natural resources or conservation crime) (Herbig 2004:55–56).

Herbig (2004:55–56) believes that failure to classify and/or recognise conservation crime as a unique crime category could promote rigid and ignorant perceptions of this type of crime among criminological scholars and conservation officials. Insight into conservation and conservation crime issues will therefore be impaired and underdeveloped. This lack of interest and consequent ignorance could cause an escalation in the general perception that natural resources crimes are unimportant and/or less pertinent than other forms of contemporary crime.

Efficient crime classification should encompass the following: uniform criteria, comprehensiveness, simplicity, no ambiguity, durability, feasibility and applicability. Prospective crime classifiers should, however, remain aware of the fact that the parameters of certain forms of crime are still changing and that crime classification in such instances should proceed with caution (Herbig 2004:55–56).

1.4 CONTEMPORARY CRIME CATEGORIES

According to Herbig (2004:55–56), an assessment of the criminological literature reveals a plethora of different viewpoints and approaches to crime classification/categorisation. He lists a number of different methods for and approaches to crime classification:

— *Bonger's classification*: economic, violent, sexual and political crimes

— *Stumpff's classification*: heavy and light criminality, crimes committed at an early and late age, conflict and habitual crimes

— *Carey's classification*: violent crimes, conventional and professional crimes, political crimes, crimes against the social order and white-collar crime

— *Schafer's life trend typology*: occasional criminals, habitual criminals, abnormal criminals and conventional criminals

— *Reid's typology*: violent crimes, property crimes, business crimes, organised crime and terrorism

1.5 SOUTH AFRICAN CRIME CATEGORIES

Different crime categories exist within the South African criminal justice system. For example, the South African Police Service (SAPS) classifies crimes differently

from the Department of Correctional Service (DCS). According to the SAPS, the national broad categories of crime include contact crimes, contact-related crimes, property-related crimes, crimes heavily dependent on police action for detection, and other serious crimes. The DCS's categories of crime include economic, aggressive, sexual, narcotics and other crimes.

TABLE 1: SAPS 2012/13 ANNUAL REPORT (2012/13:114–115); SAPS WEBSITE 2007/2008 AND DIFFERENT CRIME CATEGORIES DCS'S ANNUAL REPORT (2012/2013:- 12–13) (DCS WEBSITE 2008)

SAPS	DCS
1. Contact crimes: common robbery, rape, attempted murder, robbery (aggravated), assault (common), murder, assault (GBH), indecent assault	1. Economic: fraud, house breaking and entering, and theft
2. Contact-related crimes: arson and malicious damage to property	2. Aggressive: murder and armed robbery
3. Property-related crimes: burglary at residential and business premises, and theft of motor vehicles or from motor vehicles	3. Sexual: all sex-related crimes (i.e. rape and indecent assault)
4. Crimes heavily dependent on police action for detection: illegal possession of firearms and ammunition, drug-related crimes, and driving under the influence of alcohol and drugs	4. Narcotics: drug-related crimes
5. Other serious crime: all theft not mentioned elsewhere, commercial crime and shop-lifting	5. Other: public disorder, some traffic crimes and by-law offences

Interpretation problems may exist regarding the DCS's "broad" crime categories. For example, no distinction is made between types of "sexual" offences/crimes. Whether an offender is a paedophile, an infant rapist, a serial rapist or a gang rapist, or has committed an incest-related offence, the type of crime recorded in the DCS's file, as well as on the offender's prison identity card, will merely stipulate "sexual crime(s)" with no further specification. The same is true in respect of criminals such as cash-in-transit robbers, ATM bombers, serial murderers, kidnappers and arsonists, who are all grouped together (irrespective of the type of violent and/or aggressive crime committed) under the broad crime category of "aggressive" crimes/offences without naming and/or specifying the crime. This means that unless an offender's SAPS 69 (i.e. an official police document that outlines specific current crimes committed as well as previous crimes committed (i.e. the criminal record)) accompanies the offender to prison and is placed in the DCS's file system, little is known about the nature, extent and circumstances of the crime(s).

ACTIVITY 1.1

Please note that Activity 1 is based on *Statistics: the most serious crimes – South African Police Service 2012/13 Annual report* (Police reports, detection rates; and court conviction rates).

Have a look at the excerpts from the *South African Police Service 2012/13 Annual Report* below and then answer the following questions.

- (1) Identify the crime trends in the total number of complaints reported, as well the total number of incomplete complaints for each crime under the following subheadings: 1) Police reports; 2) Police detection rates; and 3) Court convictions by subtracting figures for 2011/12 from those of 2012/13. (SAPS Annual Report 2012/13:114)
- (2) Identify crime patterns according to class under the following subheadings: 1) Total complaints reported (2012/13 subtract 2011/12 figures); 2) Police detection rates (2012/13 subtract 2011/12); and 3) Court convictions by subtracting figures for 2011/12 from those of 2012/13.

3.1 SAPS

According to Govender (2012:12), the SAPS has been managed by various national commissioners each with a different strategic leadership style. He goes on to emphasise that leadership is a mutual process involving both workers and leaders. After the launch of a new democratic South Africa in 1994, the then President Nelson Mandela appointed Major-General George Fivaz as the first national commissioner. He served from 1995 to 1999. His mandate was to transform the police from a highly militarised, undemocratic structure and to introduce leadership with clear policies. He actively involved subordinates in the decision-making process, sharing problems and soliciting inputs from both the community and their superiors (Minister and Deputy Minister of Police).

George Fivaz was followed by Jackie Selebi. He became the new national commissioner on 1 January 2000. His mandate was to provide strategic leadership to the SAPS. Some of the highlights of his tenure include the following:

- He provided strict leadership and demanded certain things.
- His management team felt intimidated by his threats of being fired.
- His provincial management used him as a role model to intimidate their subordinates to achieve their targets or face dismissal.
- He closed area structures and specialised units and increased the appointment of black senior officers.
- He was a leader who made decisions on his own and told his subordinates what to do.
- He became acquainted with all the top criminals being investigated for being involved in syndicate crimes by the SAPS Organised Crime Unit (Govender 2012:12).

The State President suspended Selebi in 2007. Soon afterwards he was charged with corruption (Govender 2012:12–13).

TC Williams was appointed SAPS acting national commissioner from 2007 to 2009. He participated in strategic decision-making whenever possible. He left it up to his subordinates to make individual decisions on policing (Govender 2012:13).

On 2 August 2009 Bheki Hamilton Cele was appointed as the third national commissioner of the SAPS after Jackie Selebi. During his term of office there was an increase in incidents of police brutality involving innocent citizens and criminal suspects alike. He urged the police to retaliate with the maximum force allowed by the law to defend themselves. The Public Protector also presented a report on the violation of tender procedures by him. He was relieved of his duties in 2010 (Govender 2012:13).

On 24 October 2011 President Zuma appointed Lieutenant General Nhlanhla Sibusiso Mkhwanazi as SAPS acting national commissioner. He served until 2012.

After Mkhwanazi, President Zuma appointed a new and fourth national commissioner of the SAPS on 12 June 2012, General Mangwashi Victoria Phiyega.

Do you remember Andries Tatane? Where did he live? What happened to him? What is your view on the cause of his death?

Andries Tatane, a 33 year-old South African citizen, was killed during a service delivery protest in Ficksburg, Free State province, in South Africa. Seven police officers were accused of his murder and assault. They were subsequently acquitted in the Ficksburg Regional Court because the state not could prove beyond reasonable doubt that they had killed Tatane (*City Press* 31 March 2013; SAPA 28 March 2013).

On 12 June 2012 President Jacob Zuma appointed General Mangwashi Victoria Phiyega as the fourth national Commissioner of the SAPS and she was welcomed by the then Minister of Police Mr Nathi Mthethwa. At the time of her appointment there were some who believed that she was not suitable for the position. Why do you think this was the case? What is your view regarding her appointment as police commissioner?

It was during her term of office that, on 16 August,

- 34 mineworkers were killed by the police and as many as 87 were injured
- some mineworkers are still unaccounted for
- many mineworkers were shot in the back
- in the aftermath the police arrested 260 mineworkers
- allegations emerged that 190 of the arrested mineworkers were tortured by the police (Hattingh 2014:1; South African Police Service 2014:2)

A commission of enquiry led by retired Judge Ian Gordon Farlam was appointed to investigate the Marikana incident. What is your opinion about the reasons for the killing of mineworkers?

1 POLICE REPORTS

With regard to the total number of incomplete complaints below, Makhada and Roelofse (2013:98) highlight some of the reasons why complaints may be incomplete. In a case study conducted in Musina, Limpopo Province, they mention the failure of witnesses to testify and acquittal of suspects.

Failure of witnesses to testify

The researchers found the following facts:

THEME 1: CRIME TAXONOMY

- 18% of reported cases of burglary were withdrawn because witnesses did not arrive at court to testify
- 9% of reported cases of burglary were withdrawn by the complainants when their stolen property was found and they were not interested in pursuing the matter any further.
- In six of the reported cases of burglary Zimbabweans were the suspects and they were released on bail. Subsequently they disappeared and could not be traced. The cases were later dropped.
- Two of the reported cases were withdrawn because the witnesses had died and in one case the suspect had also died.
- Another two cases were withdrawn because suspects were minors (Makhada & Roelofse 2013:98).

Acquittal of suspects

In 1,68% of reported cases of residential burglary the accused was acquitted because the suspect could not be linked to the crime, despite that fact that the suspect was seen at the crime scene and was found in possession of the stolen property taken during the burglary (Makhada & Roelofse 2013:98).

CLASS	Total number of complaints reported				Total number of complaints incomplete		
	11/12	12/13	Increase/decrease (±)		11/12	12/13	Increase/Decrease (±)
A. CONTACT CRIME							
1 MURDER	15 609	16 259			28 237	24 712	
2 ATTEMPTED MURDER	14 859	16 363			6 391	5 976	
3 ROBBERY WITH AGGRAVATING CIRCUMSTANCES	101 203	105 888			32 975	31 253	
4 COMMON ROBBERY	52 980	53 540			7 388	6 975	
5 ASSAULT GBH	192 651	185 893			21 134	18 738	
6 COMMON ASSAULT	181 670	172 909			23 982	21 481	
7 SEXUAL OFFENCES	58 212	63 057			17 109	15 414	

B. CONTACT-RELATED CRIMES (crimes against property)							
1 ARSON	6 418	6064			1 485	1 379	
2 MALICIOUS DAMAGE TO PROPERTY	122 221	121 113			12 146	11 548	

C. PROPERTY-RELATED CRIME							
1 BURGLARY-RESIDENTIAL	245 531	262 113			33 630	33 330	
2 BURGLARY-NON-RESIDENTIAL	70 041	73 630			9 254	9 496	
3 THEFT OF MOTOR VEHICLE /CYCLE	59 097	58 370			28 787	27 962	
4 THEFT FROM MOTOR VEHICLE	130 475	139 658			11 393	11 333	
5 STOCK THEFT	30 949	29 894			6 135	5 216	

D. CRIME HEAVILY DEPENDENT ON POLICE DETECTION							
1 ILLEGAL POSSESSION OF FIRE-ARMS AND AMMUNITION	14 461	14 872			861	1 346	
2 DRUG-RELATED CRIME	176 307	206 825			753	758	
3 DRIVING UNDER THE INFLUENCE	69 441	71 065			925	1 775	

THEME 1: CRIME TAXONOMY

POLICE REPORTS	Total number of complaints reported			Total number of complaints incomplete		
	11/12	12/13	In-crease/de-crease ±	11/12	12/13	In-crease/de-crease ±
1 THEFT (OTHER).....	377 432	362 816		53 883	53 196	
2 FRAUD	88 050	91 569		39 942	41 690	
3 SHOPLIFTING	71 848	71 309		388	436	

2 POLICE CRIME DETECTION RATE

With regard to reported cases, Makhada and Roelofse (2013:93) analysed cases of burglary in the Musina area, Limpopo Province. The aim was to establish whether Zimbabweans were the main perpetrators of burglaries.

Of all cases reported to the police, about 76% were closed as undetected. Reasons given were that the suspects were unknown; no arrest had been made and that the available resources could not trace and detect the suspects in question. The implication is that there is a high probability that perpetrators may not be arrested and this may encourage perpetrators to commit more crime. On the other hand this may also discourage victims from reporting cases (Makhada & Roelofse 2013:93).

CLASS	DETECTION RATE		
	11/12	12/13	Increase/decrease ±
A.CONTACT CRIME			
1 MURDER	12 295	11 928	
2 AT-TEMPTED MURDER	9 860	10 187	
3 ROBBERY WITH AGGRAVATING CIRCUMSTANCES	30 556	30 489	
4 COMMON ROBBERY	21 510	20 770	

5 ASSAULT GBH	168 385	160 999	
6 COMMON ASSAULT	159 746	149 275	
7 SEXUAL OFFENCES	47 223	50 761	
B. CONTACT-RELATED CRIMES (crimes against property)			
1 ARSON	3 305	3 080	
2 MALICIOUS DAM- AGE TO PROPERTY	66 076	64 690	

C. PROPERTY-RELATED CRIME			
1 BURGLARY- RESIDEN- TIAL	54 225	54 549	
2 BURGLARY- NON-RESI- DENTIAL	13 911	14 207	
3 THEFT OF MOTOR VEHICLE / CYCLE	8 246	7 598	
4 THEFT FROM MOTOR VEHICLE	15 963	16 103	
5 STOCK THEFT	9 546	9 538	

CLASS	DETECTION RATE		
	11/12	12/13	Increase/ decrease ±
D. CRIME HEAVILY DEPENDENT ON POLICE DETECTION			
1 ILLEGAL POSSESSION OF FIRE-ARMS AND AMMUNITION	14 763	15 690	
2 DRUG-RELATED CRIME	176 025	206 660	

3 DRIVING UNDER THE INFLUENCE	69 454	71 777	
E. OTHER SERIOUS CRIME			
1 THEFT (OTHER)	135 034	129 383	
2 FRAUD	46 587	47 004	
3 SHOPLIFTING	71 645	71 290	

3 COURT CONVICTIONS

Conviction rate of burglaries

In respect of conviction rates, Makhada and Roelofse (2013:98) analysed the SAPS Annual Report (2008/2009) and found that the conviction rates for residential burglaries were at 21,8% (2007/2008) and 23,02% (2008/2009). For non-residential burglaries the conviction rates were at 22,7% (2007/2008) and 23,4% (2008/2009).

In the case study of both the residential and non-residential burglaries it was found that in on 10 out of 237 cases reported the evidence gathered and presented in court resulted in convictions (Makhada & Roelofse 2013:98).

The use of forensic analysis

In 27% of recorded cases perused for the study of forensic evidence, the suspects' fingerprints and tool marks were found at the crime scene although the suspects had not been arrested (Makhada & Roelofse 2013:98).

In 7,59% of the cases reported the owners had cleaned and/or had fixed their properties before forensic officers arrived. This was due to the fact that they were scared that the suspects would come back. Others claimed that they were not aware that they ought not to have cleaned and fixed the buildings before the forensic expert had come. A factor that may have caused the owners to clean or fix their property was the time lapse between the time when the crime was reported and the time when the forensics team arrived at the crime scene. This fact was not specified in the case dockets (Makhada & Roelofse 2013:99).

In 6,32% of cases, the police failed to summon forensic analysts to the crime scenes of burglaries (Makhada & Roelofse 2013:98).

Unavailability of witnesses

According to the research, only in 33,75% of the reported cases were there witnesses who had information. A number of witnesses were not prepared to testify in court while others did not turn up in court. Unfortunately, no reason for witnesses not testifying was given in the case dockets (Makhada & Roelofse 2013:100).

CLASS	CONVICTION RATE		
	11/12	12/13	Increase/decrease + -
A. CONTACT CRIME			
1 MURDER	4 583	6 372	
2 ATTEMPTED MURDER	1 812	2 603	
3 ROBBERY WITH AGGRAVATING CIRCUMSTANCES	5 170	7 454	
4 COMMON ROBBERY	3 459	4 280	
5 ASSAULT GBH	28 450	31 249	
6 COMMON ASSAULT	28 722	27 740	
7 ySEXUAL OFFENCES	6 685	12 324	
B. CONTACT-RELATED CRIMES (crimes against property)			
1 ARSON	294	388	
2 MALICIOUS DAMAGE TO PROPERTY	8 823	9 554	
C. PROPERTY-RELATED CRIME			
1 BURGLARY-RESIDENTIAL	12 401	15 223	
2 BURGLARY-NON-RESIDENTIAL	3 583	4 574	
3 THEFT OF MOTOR VEHICLE / CYCLE	1 505	1 927	
4 THEFT OUT OF/FROM MOTOR VEHICLE	2 770	3 351	
5 STOCK THEFT	1 533	2 015	

CLASS	CONVICTION RATE		
	11/12	12/13	Increase/decrease +_
D. CRIME HEAVILY DEPENDENT ON POLICE DETECTION			
1 ILLEGAL POSSESSION OF FIRE-ARMS AND AMMUNITION	4 410	5 577	
2 DRUG-RELATED CRIME	96 927	116 776	
3 DRIVING UNDER THE INFLUENCE	13 078	12 244	
E. OTHER SERIOUS CRIME			
CLASS			
1 THEFT (OTHER)	25 118	28 314	
2 FRAUD	14 510	17 234	
3 SHOPLIFTING	43 747	43 314	

1.6 SERIOUS VERSUS PRIORITY CRIMES IN SOUTH AFRICA

According to Kotzé and Strydom (2008:20) and Pretorius (2008:81), crime is one of South Africa's most serious problems. South Africa is experiencing high crime rates, including violent crimes such as murder, attempted murder, robbery, assault (common and grievous bodily harm (GBH)), hijackings, mutilation of victims and rape.

In South Africa, the focus on serious and priority crimes has constantly shifted since the 1980s. During the 1980s, bank robberies and political crimes (i.e. violent unrest and politically motivated killings) were perceived as serious crimes; during the 1990s the focus shifted to vehicle hijackings, taxi violence, crimes involving firearms, and women and child abuse. With the new millennium, attention shifted to crimes such as cash-in-transit and armed robberies, and currently the focus of South Africa's crimes include ATM bombings, terrorism, missing persons, human and child trafficking, environmental crimes and corruption.

1.6.1 South African serious crime categories

The SAPS distinguishes between the following serious crime types (SAPS Annual Report 2012–2013; SAPS website 2012/2013):

- *Contact crimes*: robbery (common and aggravating), rape, attempted murder, assault (common), murder, assault (GBH), indecent assault
- *Contact-related crimes*: arson and malicious damage to property
- *Property-related crimes*: burglary at residential premises, burglary at non-residential premises, theft of motor vehicles or from motor vehicles
- *Crimes heavily dependent on police action for detection*: illegal possession of firearms and ammunition, drug-related crime, driving under the influence of alcohol, and drugs
- *Other serious crimes*: all theft not mentioned elsewhere, (including theft of cell phones and garden tools), commercial crime, and shoplifting
- *Subcategories of aggravated robbery*: carjacking, truck-jacking, cash-in-transit robberies, bank robbery, robbery at residential premises, and robbery at business premises

Contact crime frequently affects victims in one or a combination of the following ways (SAPS Annual Report 2012/2013; SAPS website 2012/2013):

- death as an immediate or delayed result of the degree of violence used
- injuries of various degrees, including permanent, disabling injuries
- psychological trauma, which may also be of a permanent nature
- loss of and/or damage to property

Contact crime figures for 2012/2013 compared to data recorded during 2011/2012 show an overall increase of 2,10%. Noteworthy during the current reporting period (2012/2013) is an increase of 4,63% in robbery (aggravating) and 4,16% in the incidence of murder. During 2006/2007 these crimes increased by 4,6% (robbery — aggravating) and 2,4% (murder) respectively. Detailed docket, geographical and timeline analyses of contact crimes corroborate that at least two-thirds of all contact crimes are strongly related to alcohol and other substance abuse and are mainly associated with informal settlements in mega-townships (SAPS Annual Report 2007–2008; SAPS Annual Report 2012–2013; SAPS website 2007/2008).

Although accounting for only 5,0% of contact crime and 2,0% of all serious crimes, the increases in some of these subcategories are of extreme concern. When 2012/2013 crime figures are compared with those of 2011/2012, the following increased statistics are noteworthy. The trio crimes (robbery at business premises, robbery at residential premises, carjacking and truck-hijacking) increased (44 317–42 = 2 125) by 5,04%.

It is interesting to note that 66% of all aggravated robberies are street/public robberies and that most of these robberies occur in central business areas and the black mega townships (e.g. Khayelitsha, KwaMashu, Umlazi and Nyanga). Ordinary people are robbed of their money, cell phones or other valuables at gun or knifepoint. Car hijackings and house robberies most frequently occur in the more affluent suburbs of Gauteng (e.g. Sandton, Honeydew, Douglasdale, Brooklyn and Garsfontein (SAPS Annual Report 2007–2008; SAPS website 2007/2008).

Some contact crimes are social or domestic in nature and occur in social environments (i.e. in the privacy of homes). Social contact crimes include sexual offences, for example rape, assault (whether GBH, common or indecent), murder and attempted murder. These crimes generally occur between people who know each other (i.e. friends, acquaintances and relatives). Docket analyses indicate that 89% of both assault (GBH) and common assault cases, 82% of murders, and 76% of rapes in the sample that was studied, involved people who knew each other. Fifty-nine per cent of the attempted murders occurred under similar circumstances (SAPS Annual Report 2012/13:112; SAPS website 2012/2013).

According to the former Minister of the Department of Correctional Services, Mr Sibusiso Ndebele (MP), offender population outlay, the total inmate population of South Africa was 150 608. Of these, 45 730 (30,4%) were remand detainees and 104 878 were sentenced offenders. When the National Offender Population Profile of September 2012 is viewed it is found that many offenders were detained for the following crime categories: economic, aggressive, sexual and narcotics. What is alarming is that perpetrators sentenced to life imprisonment increased from about 400 in 1994 to more than 11 000 in 2013. More than a third of those incarcerated were youth. Children as young as seventeen (17) years of age have committed serious crimes (DCS website 2012/13:12-13).

1.6.2 South African priority crimes

The prioritisation of crimes may differ from one country to the next, from city to city, town to town and suburb to suburb. Prioritisation may even differ in urban and rural settings. Priority crimes are committed in the community and have real consequences for the population who live with the threat of crime, as the likelihood is that anyone can become a victim of crime and may suffer financial or physical harm as a result or even loss of life (Maree 2004:5–10).

Priority crimes are determined by consulting various crime information sources, for example official crime data from the police, judicial and prison statistics, crime surveys, self-reporting studies and media reports. A listing of priority crimes ensures more responsive police foci and action, community projects (e.g. neighbourhood watch programmes), and the installation of more sophisticated crime prevention measures (e.g. electronic fencing, alarm systems and cameras) (Maree 2004:7).

Post-1994, the South African Crime Prevention Plan identified the following national priority crimes (Maree 2004:9):

- crimes involving firearms: e.g. armed robbery
- white-collar crimes: e.g. corruption, bribery, blackmail, embezzlement, computer crime, tax evasion, fraud, and theft by people in responsible positions
- crimes against women and children: e.g. rape and domestic violence
- violence related to intergroup and political differences: e.g. xenophobia and political killings (with political motives)
- vehicle theft and hijackings
- paramilitary activities

In response to the above priority crimes, the Priority Crimes Litigation Unit (PCLU) was created on 23 March 2003 by Presidential Proclamation. The PCLU is a specialist prosecution unit of the National Prosecuting Services (NPS) and the Unit manages and directs investigation and prosecution of the following priority crimes:

- proliferation of nuclear and other weapons of mass destruction
- proliferation of conventional (military) weapons (e.g. transferring military equipment without the requisite conveyance permits)
- all forms of terrorism
- mercenary and foreign military assistance and activities (plots to overthrow a government)
- the Statute of Rome (International Criminal Court)
- intelligence-related activities
- prosecutions arising from the work of the Truth and Reconciliation Committee (TRC)

- the Missing Persons' Project (i.e. persons who disappeared as reported by the TRC, excavations and exhumations)
- selected civil claims
- NPS, mutual legal assistance and extradition
- legal research and furnish legal opinions (Ackermann 2007:2–3)

1.7 PRIORITY CRIMES IN VARIOUS COUNTRIES

All countries, to a greater or lesser extent, have crime problems. Countries that experience few problems with crime are characterised either by a homogeneous population such as Japan, or by inhumanly severe penalties for offences. In the Middle East (Saudi Arabia), for example, a thief's hand will be cut off. Violent crimes such as murder and rape are punished by decapitating the offender by sword in public. Would you support the introduction of such stringent measures in South Africa?

International (as well as South African) views of certain types of crime may differ and/or overlap. For example, most countries perceive crimes such as terrorism, missing persons, human and child trafficking, cyber-crimes, environmental crimes, certain economic crimes, drug-related offences, murder/homicide, sexual crimes, crimes against and perpetrated by children (i.e. child abuse, school violence), and property-related crimes as immediate social and criminal threats and problems (depending on current socioeconomic, religious, military and other concerns). Although these crimes represent a global threat to humanity, not all are perceived as priority crimes.

The following section highlights statistics of serious crimes in America, Australia, England and Wales.

American crime statistics reveal that serious crimes include murder, rape, robbery and aggravated assault. The United States Crime Rates index per 100|000 inhabitants for 2007 indicate murder 5,6, rape 30,0, robbery 147,6, and aggravated assault 283,8 (United States Crime Rates 1960–2007).

Australian crime statistics list homicide, assault, sexual assault, robbery and kidnapping as serious crimes. Crime statistics for 2005 to 2006 reveal that most of these crimes are on the increase. "Assault" represents the majority of recorded violent crimes during this period (Australian Crime Facts & Figures 2007:8–9).

Crime statistics for England and Wales reveal that homicide, general violent and sexual crimes, serious wounding, common assault, robbery, vandalism and drug offences are perceived as serious crime phenomena. Violent crime remained stable in 2006/2007 compared to 2005/2006. Recorded crime figures show a 1% drop in violence against the person, a 7% drop in sexual offences, a 3% increase in robbery, and a 10% increase in vandalism during 2006/2007 compared to 2005/2006 (Nicolas, Kershaw & Walker 2007:11).

ACTIVITY 1.2

Try to find European (United States and Australian) crime statistics for the international crime categories discussed in section 1.7. Compare the European crime statistics with the South African and American crime statistics.

1.8 SUMMARY

This study unit reviewed the need for crime classifications and outlined major differences in international and South African crime trends and crime categories. The focus on different and overlapping national and international crime trends was highlighted with respect to murder/homicide, sexual crimes, terrorism, crimes committed against and by children, and environmental crimes that are mostly common global crime threats to humanity albeit not necessarily perceived as priority crimes. In most countries, serious social and crime problems are determined by studying the crime statistics per crime category. In this regard, the crime statistics of America, Australia, and England and Wales revealed that crimes such as murder/homicide, rape, robbery and aggravated assault are universal serious and priority crimes.

1.9 SELF-ASSESSMENT QUESTIONS

QUESTION 1 *Crimes such as selected civil claims, missing persons, nuclear crimes and weapons of mass destruction are perceived as which one of the following crimes?*

- 1.1 priority
- 1.2 serious
- 1.3 global priority
- 1.4 military-intelligence-driven

QUESTION 2 *“Crime classification” refers to one of the following options:*

- 2.1 the categorisation of types of crimes in order to differentiate between crime data, crime statistics and legal definitions representative of criminal acts
- 2.2 the connection between types of crime in order to separate crime data, crime statistics and legal definitions representative of criminal acts
- 2.3 the distribution or arrangement of crime data into precise classes based on the fact that data on certain crimes show distinct fundamental similarities
- 2.4 the partition or arrangement of crime data into segments representative of legal definitions of criminal acts, according to recorded crime statistics

QUESTION 3 *Murder, rape, robbery and aggravated assault are perceived as priority crimes in one of the following countries:*

- 3.1 Australia
- 3.2 England
- 3.3 America
- 3.4 South Africa

QUESTION 4 *Cash-in-transit robberies are linked to one of the following crime categories:*

- 4.1 property-related
- 4.2 noncontact
- 4.3 aggravated robbery
- 4.4 social fabric

QUESTION 5 *The following factors are strongly related to all contact crimes.*

- 5.1 brutality and a disregard for human life

- 5.2 alcohol and other substance abuse
- 5.3 poverty and unemployment
- 5.4 substance abuse and child abuse

QUESTION 6 *Inhumanly severe penalties for offences occur in which one of the following countries?*

- 6.1 South Africa
- 6.2 America
- 6.3 Saudi Arabia
- 6.4 Botswana

QUESTION 7 *Socially motivated contact crimes include which of the following crimes?*

- 7.1 murder, rape and robbery
- 7.2 murder, rape and assault
- 7.3 murder, rape and car hijacking
- 7.4 murder, rape and vehicle theft

QUESTION 8 *The Priority Crimes Litigation Unit (PCLU) is a specialist unit located within the ...*

- 8.1 Department for Serious Crimes.
- 8.2 National Prosecuting Authority, Serious Crimes Division.
- 8.3 National Prosecuting Service, Priority Crimes Division
- 8.4 South African Police Service.

QUESTION 9 *Crimes heavily dependent on police action for detection include*

- 9.1 illegal possession of firearms, drug-related crime, driving under the influence of alcohol and drugs, and rape
- 9.2 drug-related crime, driving under the influence of alcohol and drugs, rape and prostitution
- 9.3 illegal possession of firearms and ammunition, drug-related crime, driving under the influence of alcohol and drugs
- 9.4 corruption of police officials, prostitution, drug-related crime, driving under the influence of alcohol and drugs

QUESTION 10 *According to which crime categories does the Department of Correctional Services categorise offenders?*

- 10.1 violent and serious crimes, narcotics, economic and sexual crimes
- 10.2 economic, sexual, narcotics, aggressive, and other crimes
- 10.3 sexual, violent, robbery, narcotics and other crimes
- 10.4 robbery, sexual, serious contact, narcotics and economic crimes

QUESTION 11 *Debate and outline the different crime categories used by the SAPS and the DCS and discuss possible interpretation problems pertaining to these crime categories. (20)*

QUESTION 12 *Outline the role, function and foci of the PCLU. (15)*

QUESTION 13 *Explain why it is necessary to classify crime. Provide relevant examples for each fact that is discussed. (10)*

QUESTION 14 *Briefly outline national and international foci on different crimes (10)*

QUESTION 15 *Compare property-related crimes with subcategories of aggravated robbery. (10)*

1.10 ANSWERS TO SELF-ASSESSMENT QUESTIONS

- 1 Option 1 — see paragraph 1.6.2.
- 2 Option 4 — see paragraph 1.2.
- 3 Option 3 — see paragraph 1.7.
- 4 Option 3 — see paragraph 1.5.
- 5 Option 2 — see paragraph 1.6.1.
- 6 Option 3 — see paragraph 1.7.
- 7 Option 2 — see paragraph 1.6.1.
- 8 Option 4 — see paragraph 1.6.2.
- 9 Option 3 — see paragraph 1.6.1.
- 10 Option 2 — see paragraph 1.5, Table 1.
- 11 Consult section 1.5 of this study unit and refer to the following in your answer:
 - SAPS crime categories: contact crimes, contact-related crimes, crimes heavily dependent on police action for detection, other serious crimes, and subcategories of aggravated robbery, with examples of each category of crime
 - DCS crime categories: economic, sexual, narcotics, aggressive and other crimes, with examples of each category of crime no distinction between different types of sexual offences/offenders (provide examples)
 - offender identity-card dilemma
 - no distinction between different types of aggressive offences/offenders (provide examples)
 - SAPD 69 docket analysis and its importance
- 12 Consult section 1.6.2, fourth paragraph, and refer to the following in your answer:
 - created by Presidential Proclamation on 23 March 2003 (focus on recent priority crimes)
 - specialist prosecution unit located within the NPS which manages and directs investigations and prosecutions.
 - Priority crimes within its mandate include the following:
 - proliferation of nuclear and other weapons of mass destruction
 - proliferation of conventional (military) arms (e.g. transferring military equipment without the requisite conveyance permits)
 - all forms of terrorism
 - mercenary and foreign military assistance and activities (i.e. plots to overthrow a government)
 - Statute of Rome (International Criminal Court)
 - intelligence-related activities
 - prosecutions arising from the work of the TRC
 - the Missing Persons Project (i.e. persons who disappeared according to the TRC, excavations and exhumations)
 - selected civil claims
 - the NPS, mutual legal assistance and extradition
 - legal research and legal opinions (Ackermann 2007:2–3).
- 13 Consult Section 1.3, first paragraph and refer to the following in your answer:

- common factors shared by certain crimes (e.g. the use of violence and weapons)
 - a data record of types of crime (i.e. to develop a crime database for statistical analysis of crime trends and crime patterns)
 - activities that constitute crimes
 - why people commit certain crimes (i.e. establish the motives for involvement in criminality)
 - crime prediction (i.e. to determine risk factors for future involvement in crime and/or to predict crime trends in terms of geographical areas)
- 14 Consult section 1.7, first paragraph, and refer to the following in your answer:
- International as well as South African crime foci differ and/or overlap.
 - Most countries perceive crimes such as terrorism, missing persons, human and child trafficking, cybercrimes, environmental crimes, certain economic crimes, drug-related offences, murder/homicide, sexual crimes, crimes against and perpetrated by children (i.e. child abuse, school violence), and property-related crimes as immediate social and criminal threats and problems (depending on current socioeconomic, religious, military and other concerns).
 - Not all these crimes are perceived as priority crimes.
- 15 Consult section 1.6.1, first paragraph, and include the following aspects in your answer:
- Property-related crimes: burglary at residential premises, burglary at non-residential premises, theft of motor vehicles or from motor vehicles
 - Subcategories of aggravated robbery: carjacking, truck jacking, cash-in-transit robberies, bank robbery, robbery at residential premises, and robbery at business premises

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THEME 2

ORGANISED CRIME

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STUDY UNIT 2

Organised crime

LEARNING OUTCOMES

After completing this study unit you should be able to

- define the terminology applicable to organised crime
- describe the structure of organised crime
- provide a theoretical explanation of organised crime behaviour
- cite some examples of organised criminal activity
- discuss approaches to the prevention of organised crime.

2.1 INTRODUCTION

Organised crime is a subject that has attracted much attention over the years. Many experts and scholars have studied the topic, all interpreting its meaning and social consequences differently.

Organised crime is an international phenomenon that has a significant effect on the social economy. It functions as an industry that aims to make a financial profit. In so doing, legal activities are infiltrated and this makes organised crime groups complex and diverse. Many governments and law enforcement organisations have long regarded organised crime as a significant policy issue, and this fact is highlighted by the disbursement of elevated levels of resources to deal with it.

Reid (1997:357) states in this regard that the cost of organised crime to society is impossible to determine as it goes beyond the loss of property and life to include the high cost of attempts to control and eradicate it. Organised crime also garners considerable public interest, regularly receives coverage by the printed and electronic media and enjoys a wide following in popular literature.

Organised crime presents considerable risks and challenges to the social, political and economic welfare of countries, and is consequently of particular interest to the criminologist. Much of what the average South African citizen assimilates and understands about organised crime originates in the mass media. Films and television programmes provide a captivating and entertaining picture of organised crime, which is usually associated with the Mafia/La Cosa Nostra and characterised as a predominantly Italian-American phenomenon. Although some elements of truth are present in these films and television shows, much of the information can be regarded as misleading, sensationalist, fragmented and even fallacious.

According to Hough and Du Plessis (1999:4), organised crime in the economic field, and money laundering in particular, forms the life blood of organised crime syndicates globally and in South Africa. The nature of organised crime in South Africa shows similarities with the international experience in that various criminal activities are connected. The drug trade, vehicle theft, weapons smuggling, money laundering

and smuggling of people and human organs across borders may be regarded as the most important activities of organised crime.

In order to conceptualise and contextualise the notion of organised crime, its meaning has to be discussed and an acceptable definition has to be formulated as a point of departure.

2.2 DEFINING ORGANISED CRIME

2.2.1 Organised crime

As a student of Criminology you should by now know what the term “crime” means but do you know the meaning of organised crime? Definitions of organised crime abound, but are for the most part nebulous. Harfield (2008:483) in fact says that the term “organised crime” is frequently used but is difficult to define. Although organised crime has been considered a problem during the 21st century, no unanimity regarding a definition of the term seems to have been established, and no absolute agreement consequently exists with regard to questions such as these:

- What is a criminal organisation or a syndicate?
- When do the criminal activities of street gangs or syndicates constitute organised crime?
- What is the difference between a gang and a syndicate?

These questions have obvious implications in terms of attempts to eradicate and/or control the phenomenon of organised crime.

According to Albanese (2008:509), the United States General Accounting Office (i.e. the investigative arm of Congress) concluded years ago that the absence of consensus in the US Justice Department about a fundamental definition of organised crime has hampered the potential success of crime control programmes designed to combat it. It seems, therefore, that criminologists will have to deal with organised crime as an unclear and somewhat ambiguous concept.

The following may be regarded as some of the more edifying international definitions of organised crime:

- Organised crime is a continuing criminal enterprise that rationally works to profit from illicit activities; its continuing existence is maintained through the use of force, threats, monopoly control, and/or the corruption of public officials (Albanese 2008:509).
- Glick (1995:324) defines organised crime as a continuing, structured collectivity of persons who use criminality, violence, and a willingness to corrupt to gain and maintain power and profit.
- Reid (1997:357) defines organised crime as the highly structured association of people who bind together to make large profits through illegal and legal means, utilising graft and corruption in the criminal justice arena to protect their activities from criminal prosecution.

Wells (2004:2) defines organised crime as any crime for gain that uses deception as its principal modus operandi. From the definition the author deduces four general elements under common law which must be present before a fraudulent crime can exist, namely

- a material false statement
- knowledge that the statement was false when it was made
- reliance on the false document by the victim
- damages resulting from the victim's reliance on the false statement

South African attempts at defining organised crime have sometimes moved into unrealistic directions because of a determination to capture specific structural aspects⁷ with which a criminal organisation will have to comply if its activities are to fall within the definition of organised crime. The focus, it is submitted, should rather fall on the nature of the activities of a criminal organisation. The South African Police Service (SAPS) tended to rely on the definition that is used by Interpol's Organised Crime Unit: "Any group of criminals that have a corporate structure, whose primary objective is to obtain money and power through illegal activities, often surviving on fear and corruption" (The problem of definitions: organised crime in South Africa 1998).

The reference to "corporate structure" has perplexed and side-tracked many a South African police official dealing with organised crime. This is understandable, considering that not many South African criminal groups have clearly identifiable or "corporate" structures. The Interpol definition does not unfortunately take into account the fact that organised crime in South Africa is frequently associated with loose, shifting coalitions of groups and individuals that rely on networks and that constantly enter into new associations, partnerships or alliances, depending on the different criminal objectives they pursue. The majority of organised crime structures in South Africa seem to be informal associations that change daily (The problem of definitions: organised crime in South Africa 1998). The Interpol definition continues to be a subject for debate in the SAPS.

International debates regarding definitions of organised crime seem to have moved away from a focus on structures to the conduct and nature of criminal organisations. A mounting international consciousness that collaboration between countries is essential in countering organised crime has spawned serious attempts at moving towards one internationally acknowledged definition. The reason is understandable: If there is to be amplified international cooperation in engaging organised crime, there needs to be lucidity on precisely what type of criminal conduct international efforts are called to counteract. However, such a universal definition still remains elusive, for the time being at least.

Of interest to the South African debate around a definition of organised crime is the fact that the European Union (EU) approach focuses more on the conduct of members of a criminal organisation than on the structure of the criminal organisation itself (The problem of definitions: organised crime in South Africa 1998).

Organised crime in a South African context may be defined as "those serious criminal offences committed by a criminal organisation which is based on a structured association of more than two persons acting in concert over a prolonged period of time in pursuit of both their criminal objectives and profits" (The problem of definitions: organised crime in South Africa 1998).

Most crime syndicates in South Africa are involved in some form of organised crime in line with the above definition. In this respect "crime syndicates" may be defined as follows: "A crime syndicate is a criminal organisation engaged in the commission of serious criminal offences, based on a structured association of more than two persons acting in concert over a prolonged period of time in pursuit of both their criminal

objectives and profits” (The problem of definitions: organised crime in South Africa 1998). This definition seems to accommodate the generally fluid nature of the way in which crime syndicates are structured in South Africa. They often associate with others in pursuit of specific criminal objectives for profit.

The requirements in the above definitions (organised crime and crime syndicates) of “serious criminal offences” and “acting in concert over a prolonged period of time in pursuit of both their criminal objectives and profits”, are important in considering whether or not the activities of a group of criminals constitute organised crime. However, the lack of clarity about what is meant by “serious criminal offences” does remain a contentious issue and a valid point of criticism.

REMEMBER

Perhaps organised crime does not exist as an ideal type, but rather as a degree of criminal activity or as a point on the continuum of legality. Can we define the fundamental difference between the legitimate harvesting of marine organisms and the poaching of such organisms in many cases as the mere possession of a permit or licence (mandate) from the authorities to do so?

ACTIVITY 1.3

Look up the definitions of organised crime. Highlight the elements of organised crime.

Feedback to activity 1 – Wells states that deception is the principal modus operandi and entails the following elements:

- material false statement
- knowledge that the statement was false when it was made
- reliance on the false document by the victim
- damages resulting from the victim’s reliance on the false document

2.2.2 Money laundering

According to Mazars Forensic Services (2011) money laundering refers to certain offences in terms of the Prevention of Organised Crime Act (POCA) but it can also apply to certain common law crimes such as fraud, forgery and uttering and statutory activities (e.g. corruption), which are dealt with by the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA).

2.2.3 Corruption

According to Snyman (2008:409) corruption is punishable under the PRECCA. Historically, the crime known today as corruption was known as bribery in common law.

Definition of corruption

Anybody who accepts any gratification from anybody else or gives any gratification to anybody else, in order to influence the conduct of the receiver to conduct herself in a way that amounts to the unlawful exercise of any duties, commits corruption (Snyman 2008:411).

The word “gratification” is further defined as follows:

- money, whether in cash or otherwise
- any donation, gift, loan, fee, reward, valuable security, property or any other similar advantage
- the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage
- 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
- any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part
- any forbearance to demand any money or money's worth or valuable thing
- 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 of any right or any official power or duty (Snyman 2008:414).

2.2.3.1 Fake insurance claim in Western Cape as an example of corruption

A Cape Town couple, Denish Nathoo, 56 years old and his wife, Ferial Baboer, 52 years old, appeared in the Bellville Specialised Commercial Crime Court. Ferial ran an outlet in Rylands while Denish operated a store in Cavendish Square shopping centre in Cape Town. Both owned the business called Damjee Bros Jewellers which specialised in jewellery design and manufacturing (News24 2014:1).

At the time the business was insured against loss or theft at the stores with the Zurich Insurance Company. However, the couple was also insured with an insurance company called MUA for loss of household contents. The couple falsely claimed R956 021 and were subsequently paid R758 220 by Zurich. At the same time, they also claimed R292 320 from MUA.

Later some of the jewellery that they claimed had been stolen during a bogus robbery was allegedly found in their home and some in one of their stores (News24 2014:1). They were arrested and charged with fraud.

2.2.3.2 Corruption in KwaZulu-Natal and Free State

According to Cox (2013:1), Paul Hoffman, director of the Institute of Accountability in Southern Africa, confirmed Transparency International's report that 47% of South Africans paid bribes in 2012. He added that South Africa was losing about R30 billion each year to corruption. Have you ever paid a bribe to a traffic officer? A police officer? A security guard?

In the 2011–2012 financial year, the auditor-general found that half of government contracts in the Free State in South Africa had been awarded to politicians and their families without following the requirements of tendering (Cox 2013:1).

2.2.3.3 Corruption reported by the Competition Commission.

Duncan (2013:1) reports that the Competition Commission has announced that a punitive R1,46 billion fine was imposed on the construction industry, spread across

fifteen (15) firms in the sector that engaged in a host of dubious practices including dividing up markets and colluding on tenders.

According to Rehbock (2013:1), 15 construction firms had their penalties reduced by the Competition Commission in exchange for their full and truthful disclosure of bid-rigging activities between 2006 and 2010. The firms, which included Aveng, Basil Read, Murray and Roberts and WBHO, agreed to a settlement of R1,46 billion.

According to the Global Corruption Barometer for 2010/2011, the following statistics are relevant:

- 43% of South Africans reported that they believed that corruption had increased
- 20% had bribed the judiciary
- 40% had bribed registry and permit services, for example, for birth certificates
- 35% had paid bribes in order to avoid trouble with the authorities
- 11% paid bribes to speed things up (Duncan 2013:1)

2.2.3.4 *Bribery and corruption by private companies*

A survey by PricewaterhouseCoopers in its Global Economic Crime Survey 2014 found that there was a higher incidence in every category of economic crime except intellectual property infringement and mortgage fraud. Furthermore, it found that since 2011 bribery and corruption has been the fastest growing economic crime in South Africa (SAPA 2014:1).

The survey further found that senior management was the main perpetrator of economic crimes committed in South Africa. The profile of the fraudster was male, aged between 31 and 40, has worked for the company for more than 10 years and had acquired a first university degree (SAPA 2014:1).

2.2.3.5 *Money laundering as a form of corruption*

There are three key stages that underpin any instance of money laundering, namely, placement, layering and integration. The three stages are aimed at making dirty money appear to be clean. Some known methods of money laundering include

- structuring (or deconstructing) deposits – this entails breaking up large amounts of money into smaller less suspicious amounts
- depositing money into overseas banks in friendly jurisdictions
- using underground or alternative banking –such as allowing for undocumented deposits, withdrawals and transfers in, for example, the hawala system in Pakistan and the fei chien system in China
- establishing and making use of shell companies. These companies are established specifically for money laundering. They take in dirty money as ‘payment’ for goods or services allegedly rendered although none have actually been provided. Through false invoices and balance sheets, entities like this create business operations and transactions.
- investing in legitimate business – for example, criminal gangs like the Mafia used to clean money obtained illegally through businesses such as laundries (Mazars Forensic Services 2011)

2.2.3.6 *The Kubus scheme as an example of money laundering*

Another form of money laundering is the Kubus scheme which originated in South Africa in the 1980s. Adriaan Niewoudt's grandmother had shown him a milk culture that she used as a skin product. He turned the milk culture into a work-from-home business by selling dried plants that would produce thick milk for R500, which would produce 10 jars of culture a week. In return he paid R100 per week to producers who sent him a teaspoon of culture, making for a break-even within five weeks. Thousands of people invested a reported R140 million in the scheme before it was declared an illegal lottery (iolnews 2004:1).

2.2.3.7 *The Tannenbaum Ponzi scheme as a form of money laundering*

Between 2004 and 2009, Barry Tannenbaum was the director of Frankel Chemical. The company was founded in 1983 as an intermediary in the supply chain of drug compounds. Tannenbaum engaged in the services of a number of high-profile businessmen in South Africa as "agents". These were the original investors in the scheme and at the time were placed at the top of the pyramid. Their task was to sell the idea to other investors by making short-term (eight to twelve weeks) advances for the purpose of enabling the purchase and the importation of pharmaceutical ingredients. The investors were enticed with offers of very high returns by allegedly forged purchase orders to supply the active ingredients for anti-retroviral drugs (used in the treatment of HIV and AIDS) to drug company Aspen Pharmacare. One purchase order was said to be to the tune of R700 million (Schlesinger 2013:1).

What attracted investors to the scheme were two things: Firstly, the Tannenbaums were a well-known wealthy and respected Jewish family in South Africa. Secondly, the Tannenbaums had a close connection to the local pharmaceutical industry. Barry Tannenbaum's grandfather was the founder of South Africa's largest over-the-counter pharmaceutical company, Adcock Ingram, which has been owned by Tiger Brands since 1998. The South African Revenue Service (SARS) subsequently conducted an investigation and came to the conclusion that Barry Tannenbaum was indeed the mastermind and operator of the pyramid scheme. This means that he unlawfully and intentionally deceived investors in getting them to invest in a scheme which was bound to collapse because it was a non-existent company. The South African Revenue Services revealed that Tannenbaum owed nearly R747 million in taxes, interest and penalties as part of the undeclared income earned when perpetrating one of the biggest corporate frauds in South African history (Schlesinger 2013:4).

2.3 INCIDENCE OF ORGANISED CRIME

According to the SAPS Annual Report (2012/13:5–6) the Presidency, together with the Justice, Crime Prevention and Security (JCPS), have developed an outcome-based model and evaluation and monitoring tools in order to realise the broad strategic goal 1, namely, that, "All people in South Africa are and feel safe". This outcome focuses on various areas. One of them is SAPS's Strategic Plan for 2010–2014, which serves as an entry point of the JCPS Cluster value chain and focuses on goals 1 and 2.

Strategic outcome goal 1 is to ensure that all people in South Africa are and feel safe. It states that the goal is to provide police services that will ensure safer communities by performing the following duties:

- reducing the number of all serious crime incidents, contact crime incidents and trio crime incidents (house robberies, vehicle hijackings and business robberies)
- increasing activities to prevent and combat border crimes
- increasing the percentage of court-ready dockets for all serious crimes, contact crime and trio crimes
- increasing the detection rate for all serious crimes, contact crimes and trio crimes, including organised crime and the crimes against women and children
- increasing the conviction rates for all serious crimes, contact crimes and trio crimes

Strategic outcome goal 2 is to ensure that there is adequate availability of and access to the SAPS service points, namely, police stations, satellite police stations, fixed and mobile contact points. The main goal is to improve the levels of service delivery and accessibility to service points by bringing the SAPS service points closer to the communities.

According to the SAPS Annual Report 2012/13:131), the Directorate of Priority Crime Investigation (DPCI) has identified commodities based on the threat assessment to identify and conduct project investigations in addressing national priority crimes. During the 2012/13 financial period the Serious Organised Crime Unit arrested 1 256 persons and convicted 523.

Organised crime in uncut diamonds and unwrought precious metals includes the illegal purchase, theft and possession of uncut diamonds and unwrought precious metals.

Organised crime also includes narcotics. For the 2012/13 financial year 334 arrests were made for the illegal possession of narcotics. The monetary value related to the arrests was R95 181 942,94. Four suspects were also arrested for the possession of equipment and chemicals used for the manufacture of mandrax tablets. The forensic laboratory determined that the chemicals were sufficient to manufacture 16 million Mandrax tablets with a street value of R241 million. All four accused pleaded guilty and were sentenced to 15 years imprisonment, suspended for seven years.

Furthermore, the investigation of serious organised crime led to the confiscation of 2 077 997 kg of cannabis (dagga), 9 103 176 kg of heroin, 114 613 kg of CAT, 25 487 kg of cocaine, 2 545 400 mandrax tabltts, 5 331 ecstasy tablets, 69 626 kg of crystal meth (tik-tik), 0,079 kg of nyaope, and 20,007 kg of LSD.

In addition 41 clandestine drug laboratories with an estimated value of R300 000 each were dismantled.

With regard to illicit mining, the provinces which were affected included Gauteng, Northern Cape, Eastern Cape, Western Cape and Free State. After many investigations into illicit mining were conducted, a Lebanese citizen was arrested at the Oliver Tambo International Airport for smuggling a total of R23 000 000 worth of uncut diamonds. The accused was subsequently convicted.

During another investigation into illicit mining in Germiston, a suspect was arrested for the possession of approximately R1 000 000 worth of unwrought gold (nuggets) already processed.

During investigations into illicit mining in the Northern Cape, one Congolese suspect was arrested for dealing with unwrought gold. In the Eastern Cape another Congolese suspect was arrested for dealing with unwrought gold. In the Western

Cape during a disruptive operation a licence holder was found in possession of R500 000 worth of gold.

During another disruptive operation in the Klerksdorp and Stilfontein areas, five suspects were arrested with gold concentrate to the value of R250 000. In another case information leading to the arrest of one suspect was received at Marikana. The suspect was arrested with R800 000 worth of unwrought platinum.

In the Welkom area, joint operations were conducted resulting in the arrest of 99 suspects. Two vehicles to the value of R100 000 were seized and various equipment used for illegal mining, for example cutting torches, gas bottles and other equipment, was also seized. On 6 June 2012 an illegal refinery was dismantled by the police in Welkom.

Organised crime in non-ferrous metals

Investigations into the theft of copper cable (electricity and rail cable) and related crime resulted in 130 arrests. 40 individuals were convicted for the buying and exporting of stolen copper, the hijacking of trucks carrying copper and fraud committed by scrap metal dealers (SAPS Annual **Report 2012/13:131**).

Organised crime in endangered species

DPCI investigations focused on the following endangered species: abalone and rhino poaching. The investigations resulted in 104 persons being arrested with 49 convicted. Other success stories include the following:

- 1 872 charges of racketeering were restrained
- 20 rhino horns and 5,5 tons of ivory, US\$630 400 and 1 120 000 Vietnamese Dong were seized
- a rhino poacher from Zimbabwe was arrested and convicted. He was sentenced to 10 years imprisonment.

A total of 46 years' imprisonment for the five accused who smuggled abalone from the Eastern Cape to Mozambique (SAPS Annual Report 2012/13:131).

Organised crime in human trafficking

During the 2012/13 financial year, 28 persons associated with human trafficking-related crimes were arrested. They were involved in owning a brothel and soliciting for prostitution, the smuggling of persons, extortion and kidnapping (SAPS Annual Report 2012/13:132).

Organised crime in vehicles

During the financial year of 2012/13, 39 persons were arrested and 41 convictions were secured for the possession of illegal vehicles (SAPS Annual Report 2012/13:132).

Organised crime against the state

With regard to crimes against the state, 56 arrests were made and 25 convictions were secured for crimes including foreign military assistance, high treason and terrorism; contravention of the National Conventional Arms Control Act, possession of firearms and ammunition, dealing and possession of radioactive materials and

Protection of the Constitutional Democracy against Terrorist and Related Activities (POCDATARA).

- ✓ The investigation into the activities of the leader of an organisation called the Movement for the Emancipation of the Niger (MEND) led to the accused being sentenced to an effective 24 years' imprisonment for his involvement in various terrorist-related activities. For example, the accused was involved in planning the detonation of six car bombs which were to explode during the 50th Independence Celebrations in Nigeria.

Organised crime – serious commercial crimes

Serious commercial crime includes the following crimes: serious and priority fraud, serious commercially related theft, like theft of trust funds by persons who are obliged by law to keep trust funds, complex commercial crimes where the services of a chartered accountant or forensic auditor is required during investigation and contraventions of certain commercially related statutes (statutes relating to companies, close corporations, cooperatives, trusts, financial advisory and intermediary services, insurance, counterfeiting of currency, counterfeiting of goods and intellectual property rights crimes, banking related crime, exchange control, estate agents, deceased and insolvent estates, serious corruption and serious computer-related/cybercrime).

- ✓ A total of 11 284 charges were brought forward to 2012/13 and 65 307 new charges were reported. The detection rate increased from 65,02% to 86,1% in 2012/13. A total of 63 094 charges were referred to court. Of that number 2 287 were withdrawn and 546 were closed as unfounded.
- ✓ In the 2012/13 financial year the percentage of court-ready cases for serious commercial-related charges was 56,5% up from 50,0% in 2011/12.
- ✓ During the reporting period 2012/13 government-related fraud and corruption at local government level, a total of 45 public officials were arrested. Fourteen persons including officials and members of the public were found guilty on charges of fraud, corruption and money laundering. One accused was sentenced to 15 years direct imprisonment (SAPS Annual Report 2012/13:132).

A total of 209 suspects were arrested on charges relating to counterfeit card fraud, card skimming and possession of skimming devices. One hundred and thirty-four persons were found guilty of 851 counts relating to counterfeit card fraud. During the 2012/13 financial year police arrested 26 members of organised card fraud syndicates, nine of whom were Bulgarian citizens. Various handheld and ATM-mounted skimming devices were seized. In one incident a Bulgarian man was arrested when he went to remove an ATM skimming device from an ATM while he was under the surveillance of the police (SAPS Annual Report 2012/13:132).

- With regard to company fraud, a company director was charged with 79 counts of fraud and theft involving R9,6 million of company money. In another case a company director was convicted of submitting false information with regard to tender documents. The accused was convicted on 112 counts of fraud and sentenced to a fine of a R1 million or ten years imprisonment (SAPS Annual Report 2012/13:132).
- In the case of vehicle finance theft fraud, members of a syndicate used outsiders to submit fraudulent documents in order to finance eight expensive high-performance vehicles, jointly valued at R6 million. The applications were approved with the assistance of a bank official who colluded with the syndicate. Three suspects were arrested. The case was pending.

- With regard to investment fraud, an accused recruited investments from members of the public, purporting to run a black empowerment company that was trading on the JSE Ltd. An estimated amount of R60 million was solicited from investors. On 8 February 2013 the accused was sentenced to 15 years' imprisonment. In another case involving investment fraud, investors were promised 5% per month return on investment. The scheme collapsed and it was established that investors lost approximately R20 million. The mastermind of the scheme appeared in court. The case was pending (SAPS Annual Report 2012/13:132).
- With regard to occupation-related fraud, an employee who worked in a chemical industry sold liquid fertiliser to businesses. However, certain transactions were not captured on the company's computer system, with payments being diverted to the employee's personal bank account. The company suffered a loss of R63 million. The case was pending (SAPS Annual Report 2012/13:132).

2.4 CHARACTERISTICS OF ORGANISED CRIME

According to Glick (1995:324–325), Reid (1997:358–359) and Lyman and Potter (2004:7–8), the following (in no particular hierarchical order) may be regarded as characteristics/attributes of organised crime:

- *Organisational continuity.* Organised crime groups ensure that they will survive the death or imprisonment of their leaders (are therefore self-perpetuating) and are able to vary the nature of their activities to take advantage of changing criminal opportunities.
- *Hierarchical structure.* All organised crime groups are headed by a single leader and are structured into a series of subordinate ranks. The rigidity of this chain of command may vary. Nationwide organisations may be composed of multiple separate chapters or “families”, each unit generally headed by its own leader who is supported by the group's command hierarchy. Intergroup disputes, joint ventures and new membership are generally reviewed by a board composed of the leaders of the most powerful individual chapters. For example, La Cosa Nostra is currently estimated to include 24 individual “families”, all under the general authority of a “national commission” comprising an estimated nine bosses.
- *Restricted/exclusive membership.* The group formally accepts members after a demonstration of loyalty and willingness to commit criminal acts. After all, if it is not careful, the crime group may accidentally recruit police informers, undercover agents or rebels working on behalf of other criminal organisations. Membership may be limited by race or common background and generally involves a lifetime commitment to the group, which is enforced by violent group action. A person's ability to keep secrets, to follow orders and to fight are important attributes in this regard.
- *Criminality/violence/power.* Power and control are key organised crime goals and may be obtained through criminal activities of one type or in multiple activities. Criminal activity may be designed directly to generate “income” or to support the group's power by means of bribery, violence and intimidation. Violence is used to maintain group loyalty and to intimidate outsiders and a threat underlies all group activity. Specific violent criminal acts include murder, kidnapping, arson, robbery and bombings. Although used only when necessary, violence provides both specific discipline and a general message to others.
- *Legitimate business involvement.* Legitimate businesses are used to “launder” illegal funds or stolen merchandise. For example, illegal profits from drug sales can be claimed as the legitimate profits of a noncriminal business whose accounting

records have been appropriately adjusted. Legitimate business involvement also elevates the social status of organised crime figures.

- *Use of specialists.* Outside specialists such as pilots, chemists and arsonists provide services under contract to organised crime groups on an intermittent or regular basis.

In addition to the above characteristics, it is important to note that organised crime groups are often protected by corrupt officials in the government and/or private sector. Such officials include inspectors who overlook violations, accountants who conceal assets, financial officers who fail to report major cash transactions, law enforcement officers who provide enforcement activity information (e.g. to drug traffickers), and attorneys who have government witnesses intimidated to change their testimony.

REMEMBER

The public also supports organised crime by knowingly or unknowingly purchasing illegal goods and/or “hot” merchandise.

ACTIVITY 1.4

Keep an eye out for newspaper reports relating to organised crime. See how many of the above characteristics of organised crime you can identify in the report. Read chapter 15 on Russian organised crime and the Mafia (La Cosa Nostra) in Vito, GF, Maahs, JR & Holmes, RM. 2007. *Criminology, theory, research and policy*. London: Jones and Bartlett, or any other book on the subject.

2.5 CATEGORIES OF ORGANISED CRIMINAL BEHAVIOUR

Organised crime is a dynamic phenomenon that pervades nearly all segments of society. However, it differs from with other types of criminal activity in several significant ways. The categories of behaviour most commonly associated with organised crime include, but are not necessarily limited to, the provision of illicit services and illicit goods, conspiracy to commit crimes, penetration of legitimate businesses, extortion and corruption. Lyman and Potter (2004:10–11) provide the following exposition of these activities:

Provision of illicit services. Offering illicit services is one of the main enterprises of crime organisations. Illicit services are those that legitimate organisations do not provide and that are proscribed (forbidden) by law. Included are gambling operations that operate outside the law and offer a financial tax incentive for those who use this service; protection rackets, a form of extortion by which organised crime members approach owners of small businesses and offer them “protection” for the business in case of “unforeseen” misfortune such as fire or vandalism; loan sharking, the illegal lending of money at usurious (exorbitant) rates the repayment of which is enforced through violence and intimidation, and prostitution, the sale of sex acts by persons acting as part of a larger organisation. The provision of illicit services, often in concert with illegal goods, is a criminal enterprise that generates money to further the organisation’s goals.

Provision of illicit goods. Like illicit services, organised crime offers illicit goods that are not available from legitimate businesses. Illegal drugs in particular are in considerable demand on the black market and include marijuana (dagga), cocaine and heroin, the sale of which provides organised crime organisations with billions of tax-free

revenue every year. Pornography is another black market commodity that generates exceptionally high revenue annually. Unregistered guns and stolen goods are other products in considerable demand, and illicit dealers sell these at lower prices and with more ease than legitimate distributors.

Conspiracy to commit crime. Another vital category of organised criminal behaviour is conspiracy, an agreement between two or more people to violate the law. In most cases, organised crime members work with each other for the purpose of selling drugs or stolen property, loansharking, gambling and other activities that are commonly known as racketeering. Criminal acts are seldom committed without the knowledge or approval of criminal group leaders. Managers who authorise criminal acts are therefore guilty of conspiring to commit these acts.

Penetration of legitimate business. Because organised crime members have no legal way to spend their illicit profits, they must hide as much of their revenue as possible. The ability to penetrate legitimate business gives the organised crime unit both the chance to conceal its illicit revenue and an opportunity to hide behind a cloak of legitimacy in the community to avoid the suspicion of citizens and detection by the police.

Extortion. Organised crime often infiltrates legitimate business through extortion. In its most elementary idiom, extortion is a form of theft and is defined as “the use or threatened use of violence or force to achieve a criminal end”. For example, organised crime group members could insist that a restaurant make use of their linen service by subjecting those who refuse to violence. Although extortionate practices are used in virtually all aspects of organised crime, they have most commonly been associated with loansharking and the threat of violence against those who fail to repay debts to the organised crime unit.

Corruption. Without the surreptitious aid of public and private figures, such as law enforcement officers, judges/magistrates, prosecutors, mayors and municipal officials, bankers, attorneys, accountants and elected officials at all levels of government, organised crime units would not flourish.

2.6 STRUCTURE OF ORGANISED CRIME

Popular descriptions of the structure of organised crime have their origins in the history of legendary figures such as Al Capone and Lucky Luciano who are often the subjects of books and films. This creates the impression that there is a specific internal hierarchy (such as in the Mafia families) that maintains a code of secrecy with limited membership in which there is a definitive division of roles (Siegel 2004:417). However, research has shown that this description is not applicable to South Africa and for this reason we discuss the structure of organised crime within the context of the South African situation.

(1) A loose association of people

Research findings by Standing of the Institute for Security Studies indicate that organised crime in South Africa is not committed by clearly distinguishable groups consisting of unique offenders. It consists of a loose association of people, including businessmen and corrupt public officials (Standing 2003, as cited in the Polsa Bulletin 3 2003). The success of organised crime may be ascribed to the close cooperation between criminal groups and the economic sector where legitimate businesses are involved in both legal and illegal activities.

Contemporary criminologists such as Hobbs (1997) support Standing's research. Hobbs (in Hughes & Langan 2001:263) holds that organised crime should not be regarded as a separate or exclusive entity that is totally removed from normative civil activities. Organised crime has a complex, pervasive effect on all levels of society, including interaction between criminals and non-criminals. A multitude of loose power relationships is associated with both socially acceptable people (e.g. businessmen, politicians and trade union leaders) and the "underworld".

(2) A complex and adaptable structure

Organised criminal groups undertake a variety of criminal activities. These activities are usually undertaken on a large scale and appear adaptable with regard to the available opportunities and the changing market set up especially for the production or circulation of illegal goods (Hughes & Langan 2001:264). In this way organised crime has kept pace with technological development and makes use of computers to sell pornography or to manipulate the share market.

(3) A business structure

A key characteristic of organised crime is the supply of illegal goods and services (e.g. smuggling human organs, abalone and rhino horn). The success of these illegal enterprises is based on selling such products and for this reason they need some sort of basis so that "customers" have access to these services.

(4) Workers within the structure

Organised crime syndicates require both skilled and unskilled labour. According to Ruggiero (in Hughes & Langan 2001:264), the presence of these diverse workers, which vary from professional to unskilled labourers, is a significant characteristic of organised crime. This diversity is illustrated by means of the illegal drug industry. In this industry they include

- entrepreneurs who purchase drugs from the suppliers and organise their distribution
- dealers who are involved in the transport of these drugs
- importers and wholesalers who make the drugs available to retailers, who in turn sell them to consumers (drug users) (Croall 1998:256)

(5) Economic gain

The primary objective of organised crime is economic gain, but power and status may also be motivating factors (Siegel 2004:417). Organised criminal activities are often quite similar to those of lawful enterprises, but the techniques used to attain objectives are based on conspiracy and coercion. Moreover, crime syndicates do not hesitate to use physical intimidation, violence and corruption to advance their interests. The ultimate goal of organised crime is to obtain a monopoly on economic profit making (Maguire & Radosh 1999:149).

2.7 TRANSNATIONAL ORGANISED CRIME

Undeniably, the most compelling development in organised crime at the beginning of the twenty-first century is the development of transnational organised crime groups and the suggestion that these groups are beginning to collaborate and cooperate in a systematic manner to facilitate the delivery of illicit goods and services on an international scale. According to Lyman and Potter (2004:316), the internationalisa-

tion of organised crime has not resulted from some master plan by arch criminals, but is simply a manifestation of the reactive, transient and flexible characteristics of crime syndicates. These characteristics have allowed them to respond to technological advancements in communication and transport; to market adaptations resulting from the internationalisation of investment capital, financial services and banking; to internationalise manufacturing and increase the segmentation and fragmentation of production across international borders, and to increase emphasis on international and unrestricted trade across borders.

Beirne and Messerschmidt (2006:188) add to this, stating that globalisation has made it easier for syndicates to run their businesses by supporting their money laundering activities and permitting them to expand opportunities that disguise their illegitimate proceeds.

Chepesiuk (in Beirne & Messerschmidt 2006:188) says the following regarding globalisation and drug trafficking:

[I]nternational drug trafficking syndicates were able to take advantage of the revolution in global communication and transportation. Traffickers now use sophisticated technology such as sign interceptors to plot radar and avoid monitoring, and they move their illicit drug profits in seconds to almost any place in the world; they use computers, faxes, and cell phones to coordinate their activities and make their businesses run smoothly.

However, Lyman and Potter (2004:316) maintain that organised crime syndicates are still rooted in local conditions, shielded by local politics and limited by the need to control their local members. For example, the EU has weakened borders and this encourages the free flow of people and goods. The crime syndicates are responding to the new reality. In another example, Nigerian drug traffickers are not responsible for the recent enormous increase in international trade or the heightened flow of people across borders; they merely exploit and manipulate the situation. Their collaboration with Asian heroin producers does not suggest the birth of a new international criminal order; it simply displays the same cooperation as in the worldwide business community.

South African smugglers, like their Nigerian counterparts, use the internet and computers thus taking advantage of new technologies and opportunities. However, the fact remains that the South African syndicates are firmly rooted in economic inequality and pervasive patterns of corruption that are distinctly South African.

It should be borne in mind that organised crime has not changed much over the years. The only difference is that the world has changed and that organised crime has adapted to these changes. Understanding the nature of the changes that have happened in the world is crucial to understanding transnational organised crime in the twenty-first century.

2.8 AFRICAN ORGANISED CRIME

Africa may be considered an important component of transnational organised crime. Its organised criminals take advantage of social, economic and political opportunities to develop their operations. Opolet (in Lyman & Potter 2004:363–364) suggests that an appropriate definition of organised crime on the African continent is “a criminal conspiracy to make a profit quickly and easily through the exploitation of political

instability, disorganised and underfunded law enforcement, pervasive institutional corruption, and the exploitation of entrepreneurial opportunities". This author goes on to identify three types of organised criminal entrepreneur. One type includes established business and commercial leaders and high-ranking public officials who use their economic and governmental positions to personal advantage. Another involves less respectable, "shady" business people who maintain working relationships with government officials and criminal entrepreneurs. The third group is composed of criminal operators engaged in drug trafficking, poaching, smuggling and robbery.

Embedded in Opolet's definition of illicit entrepreneurship are economic problems and the organisation of law enforcement and criminal justice coupled with illicit market opportunities that give rise to a set of social conditions that promote the establishment of organised crime syndicates. Conflict and inefficiency in law enforcement (policing) combined with political corruption and economic dislocation are major factors that lead to the creation of organised crime syndicates in Africa (Lyman & Potter 2004:364).

The core syndicate activity in Africa revolves around black market business crimes that invite participation by highly educated, but frequently unemployed or underemployed young people. According to Kibuka (in Lyman & Potter 2004:364), young employees often find that their jobs fail to guarantee financial security and therefore black market entrepreneurship becomes alluring. In economies typified by high levels of surplus labour, unemployment, poverty and an egregiously poor distribution of wealth and power, crime creates opportunity, and opportunity generates organised crime. The social structures and political-economic factors that create a predisposition to organised crime obviously differ from one African state to another. Although addressing these elements for all African nations falls outside the scope of this theme/module, a succinct description of the South African situation will be useful since it has often been the subject of considerable law enforcement and journalistic scrutiny.

2.9 SYNDICATED DRUG TRAFFICKING IN SOUTH AFRICA

South Africa has for some time played a multifaceted role in drug trafficking. Lyman and Potter (2004:371) believe that prior to the end of apartheid rule, South Africa, as one of the wealthier African countries, had a major consumer market, particularly among affluent whites, for cocaine hydrochloride and hallucinogens. In addition, South Africa has for some time been a major source country for cannabis (dagga), most of which is exported to Europe, North America and Asia. Other drugs such as the opiates and hashish had a very small consumer market in South Africa but were transhipped by a number of trafficking syndicates around the world (Lyman & Potter 2004:371). South American, Asian, United States and European drug-trafficking syndicates have used South African smugglers of gemstones, currency, ivory (also lately rhino horn and abalone), automobile and weapons on a contract basis. According to Grove (in Lyman & Potter 2004:372), firmly established South African smuggling syndicates have simply added drugs to the list of profitable contraband using well-established routes and methods. The selection of South Africa as a drug transshipment depot was not fortuitous. Nigerian drug traffickers began capitalising on the vulnerability of South African borders to create a new drug pipeline for heroin produced in southwest Asia destined for the United States. In fact, Lyman and Potter (2004:372) state that Nigerian syndicates found South African smuggling ventures so profitable that substantial numbers of Nigerian citizens began immigrating to South Africa.

Lyman and Potter (2004:372) assert further that drug enforcement efforts, stricter laws and the tightening of customs inspections in other countries, in concert with serious unemployment and the high cost of living in South Africa, made the country an increasingly attractive site for drug syndicate operations. Internal political instability and the reorganisation and reform (transformation) of law enforcement services also made South Africa especially vulnerable. The absence of a serious internal drug consumption problem has kept drug enforcement from becoming a major law enforcement priority. This lack of awareness and immediacy in all of Africa, particularly in South Africa, resulted in a slow and reasonably ineffective response to the drug trafficking threat (Grove in Lyman & Potter 2004:372).

With the end of apartheid in 1994, South Africa invited international investment and encouraged international trade. That invitation, along with other national characteristics, made South Africa attractive to criminal organisations (Duke in Lyman & Potter 2004:372). These other characteristics included a relatively sophisticated physical infrastructure, well-developed financial institutions operating with few formal controls in terms of money laundering, no currency reporting requirements for large cash transactions, and an underfunded, poorly trained law enforcement establishment that was spread thinly and still contending with the pre-democratic taint of corruption.

With local criminal organisations already involved in gunrunning, vehicle theft and fraud, both US and South African law enforcement agencies became increasingly concerned about the potential for rapid growth of organised crime in a country that was still reforming its political and economic institutions.

Within South Africa itself, a relatively unsophisticated drug distribution infrastructure exists. It is built around a network of street gangs are growing more sophisticated and have become entrenched as a result of the heavy volume of cash associated with the retail and wholesale cocaine trade (Lyman & Potter 2004:373). According to Duke (in Lyman & Potter *supra*), local gangs such as the Hard Livings gang in Cape Town have also caused considerable community concern which led to the shooting and burning of the Hard Livings leader, Rashaad Staggie, by local residents in September 1996.

South Africa has for some time been a leading source of marijuana. It is a major local cash crop that is supplied to markets as diverse as Western Europe and Australia. South Africa is also home to a strong indigenous trade in Mandrax (Lyman & Potter 2004:373).

Political and economic reform in South Africa has transformed the patterns of drug consumption in the country. During the apartheid years, cocaine was for the most part limited to whites who could afford it. For the poor in South Africa's slums and townships, the drug of choice or economic necessity was the "white pipe", a mixture of Mandrax and marijuana. Police narcotics officers have reported that the situation has changed markedly since economic redistribution began (Duke in Lyman & Potter 2004:373).

Investigations conducted by the South African Narcotics Bureau identified more than one hundred drug syndicates in the country. The indigenous syndicates still specialise in dagga, Mandrax, heroin and LSD, but the smuggling of cocaine from Colombia and Brazil is becoming a major source of income for new and developing syndicates. The profitability of cocaine has pushed some established criminal organisations into replacing the traditional recreational substances (Lyman & Potter

2004:373–374). (Rhino horn is dealt with in section 2.3 – incidence of organised crime above.)

2.10 FACTORS CONTRIBUTING TO ORGANISED CRIME IN SOUTH AFRICA

At the 9th International Anticorruption Conference held in Durban, Minnaar (1999:2–5) underscored the following factors to which organised crime in South Africa could be attributed:

- renewed international investment in South Africa
- South Africa’s favourable geographical position on the main trade routes between the Far and Middle East, the Americas and Europe
- South Africa’s accessibility via land, sea and air
- a criminological market structure that creates a demand for illegal goods such as drugs, firearms, counterfeit money, vehicles and endangered (scarce) special products
- criminal alliances that work because of community involvement in illegal activities (However, criminal alliances that share the same interests [e.g. the taxi industry] often come into conflict with each other with subsequent outbreaks of violence.)
- the large-scale presence of illegal immigrants involved in crime contributes to competition for scarce goods, services and work opportunities
- social and technological development that creates opportunities for organised crime (e.g. the electronic transfer of monetary transactions to any part of the world within the space of a few seconds)
- poor border control exploited by syndicates to increase cross-border criminal activities (Hijacked and stolen vehicles are smuggled out of the country and sold to neighbouring countries, e.g. Mozambique). The funds such sales generate are used to purchase drugs and firearms which are brought back to South Africa and sold for enormous profit. These firearms are then used in criminal activities such as bank robberies, cash-in-transit heists and farm attacks.)
- corrupt officials such as border police and immigration officials (Such officials are bribed and they contribute to the survival and success of organised crime syndicates.)

Examples of such corrupt behaviour:

- supplying roadworthy certificates and registration documents for hijacked vehicles
- supplying residence permits to illegal immigrants who are involved in organised crime syndicates (e.g. the Nigerian drug syndicates and the Chinese triads involved in abalone (perlemoen) smuggling
- supplying police radios and confidential police information on investigations to syndicates (This makes it easier for syndicate members to avoid arrest. Payments are sometimes made for police dockets [dossiers] to “go missing”.)

Other factors (of a more general nature) that create a favourable climate for organised crime:

- a capitalist system that promotes competition, which in turn means that success is measured in terms of material goods

- relative poverty and unemployment which make some people more susceptible to bribery and therefore promote corruption
- extensive violent and commercial crime reflecting a flawed value system in society
- a lack of trust in the criminal justice system to curb organised crime activities

2.11 THE EXTENT AND NATURE OF ORGANISED CRIME IN SOUTH AFRICA

The South African public knows little about the organised crime phenomenon. People are more interested in visible crime and are more concerned with the incidence of violent crimes such as murder and rape. Students of criminology should, however, be more informed about the nature of organised crime in South Africa.

(1) The extent of organised crime

Organised crime activities are reasonably fragmented which makes it difficult to determine their extent. In 1998, 192 organised crime syndicates were identified in South Africa. The police have identified an additional 500 target groups as potential criminal organisations. Most of these syndicates specialise in the drug trade, vehicle-related crime, commercial crime or a combination of these (Shaw 1998:1–2).

(2) Common characteristics

Although the form and structure of organised crime syndicates in South Africa vary, such syndicates have common characteristics:

- a hierarchy of control, with a specific system for promoting members and payment
- sophisticated procedures, often via legal business interests to launder money obtained by illegal means (Money laundering is the investing or transfer of money from illegal sources to legitimate channels so that the origin of the money cannot be traced.)
- the use of weapons to ensure that “business” routes are protected and potential competition eliminated (Shaw 1998:1)

(3) Cross-border links

The activities of crime syndicates in the drug trade, gold, diamonds and weapons smuggling and vehicle theft are often interlinked. The drug trade in South Africa is consequently connected to vehicle theft and money laundering in Zambia, for example (Shaw 1998:2).

Mozambique is strongly linked to organised crime in Southern Africa. Organised crime in Mozambique can be analysed in the local context where it comprises organised groups or gangs (street crime), and in the international and transnational contexts where the activities of organised groups are extended beyond the state’s borders (Namburete in Hough & Du Plessis 1999:26).

Transnational and international organised crime in Mozambique focuses on drug trafficking and drug consumption. Vehicle theft, gunrunning, money forging and circulation, dealing in ivory and precious stones, bank fraud and money laundering are also prevalent (Namburete in Hough & Du Plessis 1999:27).

Since the end of the 1980s vehicle theft in South Africa intended for sale in Mozambique has increased significantly. The syndicates involved mostly operate in the large South African cities where they steal the vehicles that are sold in Mozambique, either by the perpetrators themselves or by their “agents” or accomplices. Criminals use firearms to threaten and sometimes kill the owners of the vehicles they have targeted. After the theft, they use shortcuts where police surveillance is weak. They modify the vehicles in purpose-built clandestine workshops outside Maputo and Matola, and equip them with new colours, engines and registration numbers.

Gunrunning is another concern. The civil war in Mozambique contributed to the uncontrolled proliferation of arms (either in the hands of civilians or demobilised soldiers). The need to satisfy the demand of the South African market has led civilian gunrunners to recruit members of the defence and security forces. Some of them have supplied the gunrunners with arms stolen from their own barracks for easy money. The growth of violent crime against people and property has resulted in many deaths in Mozambique and in South Africa; such crime has its roots in firearm trafficking from Mozambique (Namburete in Hough & Du Plessis 1999:31).

2.12 ISSUES RELATED TO THE ORGANISED CRIME FACING AFRICA

The portrait of emerging and incipient organised crime groups in Nigeria and South Africa as well as fragments of information available about criminal organisations in other African states, indicates clearly that the 1990s were a period of opportunity for organised criminal groups to develop from loosely affiliated gangs of smugglers and rogues into full-blown syndicates with solid connections to the business and political communities (Lyman & Potter 2004:375). African states should have prevented such development to ensure that smuggling and opportunistic criminal groups did not become permanent parts of the political landscape. Africa consequently presents a series of unique problems and contradictions.

Economic instability and political corruption make the African continent ripe for cultivation by crime syndicates. On the other hand, the absence of strong indigenous markets, particularly in drugs, appears to mitigate the formation of permanently enduring organisations. Lyman and Potter (2004:375) write that the future of African organised crime rests on the response to several issues:

- Will African states meet the economic challenges presented to them?
- Will these nations democratise both their political systems and their economies?
- Will African states move past the era of individual corruption before it becomes institutionalised?

Syndicates in South America, Europe, Asia and the United States await the answers to these questions. If reform is not forthcoming, those syndicates will find Africa a solid investment for the future. Once that investment has been made and transnational crime organisations have secured working relations with indigenous organised crime syndicates, it will be too late to turn back and uproot them. As studies of criminal organisations in the United States, Colombia and elsewhere show, the real factors that attract organised crime are far removed from the criminal underworld. Those factors are associated with corporate boardrooms and government ministries, not the bars and back alleys that are traditionally thought of as organised crime’s domain.

2.13 THEORETICAL EXPLANATION OF ORGANISED CRIMINAL BEHAVIOUR

Why are some criminals but not others involved in organised crime? Is organised crime a deliberate criminal phenomenon or a consequence of some other social problem such as poverty or lack of education? As we search for answers to these questions, we are somewhat perturbed by the fact that little information is available to adequately explain the reasons for participating in organised crime.

Criminological theory is embedded in the causes of criminal behaviour. Such theory considers the characteristics of individuals and society that result in crime. Whether a theory proposes an individual personality or social condition, experts agree that no single theory serves to explain all types of crime. Various theories may in fact be combined to explain a particular crime phenomenon. In this section some of the most germane theories to explaining the organised crime phenomenon, conceived by Lyman and Potter (2004:66–79), will be considered.

2.13.1 Rational choice theory

Some theorists believe that regardless of the reason for committing crime, the decision to do so is a rational choice made after weighing the benefits and consequences of the action. Rational choice theory first emerged in the mid-18th century and was originally referred to as “classical theory”. It was developed by the classical school of criminology through the writings of Beccaria and Bentham. This theory perceived people as free agents who are able to make rational choices in virtually all aspects of their lives. This school states that the members of organised crime syndicates have free will and are able to make rational decisions regarding their involvement in crime and wrongdoing. Policies stemming from this approach dictate dealing harshly and quickly with offenders in an effort to deter them from making such choices again. Little consideration has been given to the offenders’ backgrounds or the circumstances surrounding the crime they committed.

Because offenders were considered to be rational thinkers, punishment for their crimes was based on the pleasure/pain principle. This meant that the pain of the punishment for the offence had to outweigh the pleasure the offender experienced as a reward for committing the crime. So, in theory, the rational offender would realise that it was not worth it to commit the criminal act in the first place. Beccaria also espoused the idea that the punishment should fit the crime.

Rational choice theory suggests that people who commit crimes do so after considering the risks of detection and punishment for the crimes as well as the rewards (personal, financial, etc) for completing the crime successfully. On the other hand, those persons who do not commit crime decide that completing the criminal act successfully is too risky or not worth the benefits. It should be noted that crimes are committed for an array of reasons, including economic, psychological, physical, social and even political reasons.

In the context of organised crime, financial incentives clearly play an important role in a person’s decision to engage in crime. However, it is likely that dynamics other than rational choice can cause a person to commit a crime. For example: Although an enforcer for a syndicate has financial interests in his organisational role, he could also act because of a need for acceptance, respect and trust by other members of the organisation. It is likely that the enforcer understands that his actions could result

in arrest and possibly imprisonment. However, because he believes that his criminal talents or the resources of the organisation will help him to avoid detection, he feels confident that the crime can be carried out with minimal risk.

2.13.2 Deterrence theory

Other theorists believe that crime can be reduced through the use of deterrents. The idea of deterrence, that is crime prevention, is based on the assumption that criminals or potential criminals will think carefully before they commit a crime if the likelihood of getting caught and/or the fear of swift and severe punishment is present. As a rule, deterrents to crime are both general and specific in nature.

General deterrence theory holds that crime may be thwarted by the threat of punishment. If people fear arrest, they will choose not to commit a criminal act. Life imprisonment is an example of a general deterrent. Although evidence indicates the contrary, the purpose of life imprisonment is to discourage people from committing crime because they fear that the state will lock them away for life.

Specific deterrence theory holds that penalties for criminal acts should be sufficiently severe to prevent the convicted criminal from repeating the crime. For example: If a person arrested on a first-time marijuana possession charge is sentenced to spend sixty days in a boot camp designed for first-time offenders, the punishment is intended to convince him/her that the price for possessing marijuana is not worth the pleasure of using it.

Although the effectiveness of deterrence is highly debatable and not supported by empirical evidence, some experts suggest that it can be effective. Wilson (in Lyman & Potter 2004:67), for example, points out that most crimes are committed by a small number of people. Because many courts and corrections components of the criminal justice system embrace treatment instead of punishment, criminals are more willing to risk getting caught. He argues that if the expected cost of committing crime goes up without a corresponding increase in the expected benefits, the would-be criminals will commit fewer crimes.

2.13.3 Psychological traits and personality

Many different views exist regarding the connection between psychological traits and crime. The term “personality” may be defined as a phenomenon of behaviour that is governed by one’s emotions and thoughts and that controls the manner in which a person views life events and makes personal choices.

Specific personality traits have often been linked to criminals, but whether particular personality traits are present in criminals is controversial. However, a person’s personality traits do play a role in his/her day-to-day decision making. A number of personality traits, such as anxiety, behavioural disorders, depression and a short attention span, have been identified in studies of criminal populations. These traits are believed to make people especially susceptible to problems such as substance abuse, promiscuity, and violence and sociopathy. However, the same traits have been found among significant populations that have never been arrested for a crime.

2.13.3.1 *The antisocial personality*

One personality type identified by research in biopsychology is the sociopathic (or psychopathic) personality. The sociopath is thought to be a dangerous, aggressive person who shows little remorse for his/her actions, who is not deterred by punishment, and who does not learn from past mistakes. Sociopaths often appear to have a pleasant personality and an above-average level of intelligence. They are, however, marked by an inability to form lasting relationships. Such a person lacks fundamental traits (e.g. the ability to love and care for others and to experience emotional depth) and displays an unusually low level of anxiety. One problem in understanding the nature of the sociopath is that most research in the area has been conducted on people who already have criminal convictions. The available literature does not allow us to generalise about the behaviour of sociopaths who are successful in avoiding arrest.

2.13.3.2 *The dependent personality*

A dependent personality is also known as an inadequate personality, a passive personality, and an asthenic personality. There are two particularly important characteristics of this personality type. The first is reflected in the definition of DSM- III-R, the psychiatric diagnostic guidelines: “pervasive pattern of dependent and submissive behaviour beginning by early adulthood and present in a variety of contexts.” Persons with this trait have a history of poor social interaction and have been described as “weak and ineffective, lacking energy, passive and nice, but totally inadequate”.

The inability to interact successfully with people at an early age is carried into adulthood. Dependent personality types have maintained a relationship with a significant member of the immediate family – typically the mother or father – well into their adulthood. Of particular interest is the discomfort those with the disorder feel about having maintained the relationship although they did so anyway.

In fact, many dependent personality types actually feel resentment and animosity toward their “significant other” but often state that they don’t know what to do about the relationship. Many of the significant others had made most, if not all, decisions for persons with this disorder.

The second important characteristic of dependent personalities is the over-controlled aspect of their personalities. As a rule, individuals in this category are unable to control their anger, frustration and hostility. The emotional life of these people can best be described by comparing them to a very large, expanded steel coil. The coil, at the time of the person’s birth, begins to be compressed in the person’s psyche. As he/she experiences situations in which frustration, anger and hostility are involved, the giant coil compresses more and more. Each time the person is involved in circumstances that cause stress or anxiety, the tension of this emotional coil increases. A button that can trigger that coil to expand therefore develops, and the person runs the risk of an explosive episode. There is unfortunately no way to predict when or how the coil will be released. When a situation occurs that the person perceives to be hostile, he/she reacts excessively and inappropriately, releasing years of anger and frustration.

2.13.4 Learning theories

Learning theories in criminology emphasise the attitudes, ability, values and behaviours that are needed to maintain a criminal career. Researchers from a number of

disciplines (e.g. sociology and psychology) have studied how individuals learn deviant values and behaviour within the context of family and friends. Experts suggest how people become criminals and how they deal emotionally with the consequences of their activities.

2.13.4.1 *Gangs*

Miller (in Lyman & Potter 2004:73) argues that participation in youth gangs often provides a training ground for future participants in organised crime. During this period of development in a youth gang, useful organised crime qualities are inculcated in apprentices. Miller identified “toughness” and “smartness” (obtaining money by one’s wits) as important values for such development. He also suggests that this crime-community nexus creates the “capacity for subordinating individual desires to the general group’s interests as well as the capacity for intimate and persistent interaction”.

2.13.4.2 *Differential association*

According to Sutherland (in Lyman & Potter 2004:73–74), criminal behaviour is learnt from associations with others, and the propensity for innovating through criminality depends on the strength of these associations. Sutherland argues that criminal behaviour occurs when definitions favourable to violating the law exceed definitions unfavourable to violating the law. Sutherland suggests that factors such as deprivation, limited access to legitimate alternatives and exposure to success models (i.e. pimps, gamblers and drug dealers) create a susceptibility to criminal behaviour.

Sutherland considers “differential association” as a product of socialisation in which criminals are guided by many of the same principles that guide law-abiding people. A study of the doctrine of differential association shows that the sources of behavioural motivation for criminals are much the same as those for conformists (e.g. a desire for money and success). The difference is, of course, that criminals pursue their goals by unlawful means.

2.13.5 Social disorganisation theories

Some researchers link criminality to the social conditions prevalent in particular neighbourhoods. Many of them believe that the reasons crime rates are high in those areas are urban decay, a general deterioration of the ecology of inner cities, and general societal and familial deterioration. Why are the residents of inner-city neighbourhoods who suffer from acute poverty and inadequate employment, and with many single-parent households, prone to criminality? Some theorists suggest that in those socially ravaged areas the necessary social services, educational opportunities, housing and health care are inadequate or totally unavailable, and that this situation exacerbates the problem of disorganisation and criminality.

2.13.5.1 *Relative deprivation*

Some researchers attribute inner-city crime to relative deprivation. This ecological approach suggests that the inequality between communities where the poor and the rich live in close proximity to one another creates a general feeling of anger, hostility and social injustice on the part of inner-city inhabitants. Inner-city youths

experience an increasing sense of frustration as they grow up and experience poverty while they witness those who are well-to-do in nearby neighbourhoods. These youths are able to witness affluence first hand, but they are deprived of its benefits through social discrimination which makes it virtually impossible for them to attain success by conventional means.

2.13.5.2 *Anomie*

The process by which organised crime provides a means for social adaptation begins with the basic definition of success. Merton (in Lyman & Potter 2004:76) argues that an emphasis on “specific goals” often develops in US society. This emphasis becomes “virtually exclusive” and ignores appropriate means for achieving those goals. Sacrifices aligned with conformity to the normative order must be compensated for by socialised rewards. Deviant acts become attractive when expectations of reward are not fulfilled.

According to Merton’s theory of anomie, aberrant behaviour can be viewed as a symptom of the dissociation between “culturally defined aspirations and socially structured means”. He argues that emphasis on the accumulation of wealth as a symbol of success leads to a disregard for considerations of how that wealth was obtained; accordingly, fraud, vice, corruption and crime become increasingly common means of achieving culturally induced success goals.

2.13.6 Cultural deviance theories

Cultural deviance theories assume that slum dwellers violate the law because they belong to a unique subculture that exists in lower-class areas. The subculture’s values and norms conflict with those of the upper class on which criminal law is based. The subculture shares a lifestyle that is often accompanied by an alternative language and culture. The lower-class lifestyle is typically characterised by being tough, taking care of one’s own affairs and rejecting any kind of government authority. This subculture is attractive to many youths in the inner city because role models such as drug dealers, thieves and pimps are readily observable. After all, if social status and wealth cannot be attained by conventional means, an attractive alternative is financial success through the lower-class subculture. As a result, lower-class youths who are for example involved in drug dealing are not really rebelling against the upper class as much as they are striving to comply with the rules and values of their lower-class culture.

REMEMBER

Please note that the above exposition of explanatory theories is by no means exhaustive. Various other theories could also explain involvement in organised crime activities. Students are advised to consult Sykes and Matza’s neutralisation theory as well as the conflict perspective (critical criminology) in this regard.

2.14 TACKLING/COMBATING ORGANISED CRIME

In this section we will briefly examine the strategies that individual states and the international community have implemented to deal with the risks posed by organised crime and drug trafficking in particular (Wright 2006:183–201).

2.14.1 Risk, control and regulatory strategies

Use of the term “control” suggests that the international community can reduce and possibly eliminate the threats posed by organised crime and drug trafficking, at least in the longer term. The idea of control in relation to drug trafficking was certainly a major part of the strategies of many states during the 1970s and 1980s. For example, belief in the eradication of drug trafficking by taking concerted action at the supply end was a key characteristic of the “war on drugs” model. However, the evidence indicates that the total eradication of organised crime may be little more than a pipe dream. Crime groups have an uncanny resilience and if the international community curtails their activities in one field, they simply arise in another.

In fact, the international community has seldom agreed about the nature of organised crime and the steps required to tackle it. There are considerable differences between practitioners, policy makers and criminologists in this respect. While states often talk in very general terms about “controlling” organised crime and drug trafficking, a more exact use of the term presents a number of difficulties.

Both theoretical and practical difficulties stem from the fact that “organised crime” is a contested concept. Like the concepts of democracy and justice, organised crime remains (as a matter of principle) something that will always elicit endless disputes. We can only form judgements about its nature in the specific contexts in which it occurs. If this is correct, it is important to formulate risk-management strategies that respond to the actual threats and challenges posed by organised crime (i.e. South African strategies for South African challenges). On which areas should these strategies focus? Strategies to tackle organised crime need to take account of the social, economic and political domains within which it operates.

Firstly therefore, strategies should focus on taking action to deal with the risks that stem from the social domain. The social context and key relationships that are important to the growth of particular criminal groups should be accurately defined. An attempt should be made to understand the “organisation” of the social domain in terms of complex networks of social relationships (e.g. familial ties, ethnic or geographic origin). States should therefore take account of the prevailing social conditions in formulating a policy or strategy to deal with the problem. This is particularly important in relation to the street gangs from which major crime groups recruit their lower-level operatives. It would for example be unwise to rely on law enforcement measures in an area where local youth unemployment is high.

Secondly, because organised crime challenges the authority of the nation-state, it is also important to adopt measures that correct its worst effects in the political domain. These include specific measures to prevent the corruption of public officials, judges and legislators. Political decision making in this field is also about the allocation of resources to deal with the problem.

Thirdly, it is important to adopt measures that deal with the impact of organised crime in the economic domain. Some analysts suggest that we it is difficult to distinguish a free-market economy, totally unfettered by legal or ethical considerations, from organised crime. However, even the most liberal of states need to adopt regulatory regimes to minimise the effects of fraud and other malpractices. Regulatory strategies and domestic legislation increasingly need to tackle the enterprise model of organised crime, recognising that illicit enterprise lies on a continuum that includes legitimate business activity.

Crystallising from the foregoing is the fact that states should move away from pious rhetoric about the potential elimination/eradication of organised crime and drug trafficking towards pragmatic measures aimed at managing the risks posed by organised crime across all these domains. Policing should, in its widest sense, involve risk management, alongside criminal investigation and other law enforcement activity. Most importantly, the international community and individual states are now making serious efforts to measure and estimate the extent of the problem as part of an integrated approach to risk assessment in the field of organised crime.

2.14.2 Law enforcement: national and international cooperation

In addition to high-level measures that seek to regulate and manage the risks presented by organised crime, investigation and law enforcement play important roles in bringing offenders to justice.

Law enforcement acts against organised crime at several levels. At the first level, national law enforcement plays an important role in tackling domestic organised crime and by implication helps to combat international organised crime as many criminal groups graduate to the international level at some stage. In either case, traditional, reactive investigative methods are inadequate. Investigating organised crime by means of “proactive” intelligence-led strategies has long been the key to dealing with the problem. Proactive policing, making use of surveillance methods, informants and sting operations, has characterised police efforts against organised crime in many jurisdictions for many years. For this reason, the agencies that investigate organised crime (e.g. the now defunct Scorpions in South Africa) have adopted squad, task force or security service-style deployments to deal with it.

The use of “repentant” gang members to give evidence and witness protection programmes to protect them has characterised investigations against the Sicilian Mafia and similar groups. However, a number of dangers are associated with these methods. This kind of policing sometimes emulates the very criminal activity that it seeks to confront. Research has shown that there is a considerable amount of entrepreneurial “trading” between detectives and criminal groups, which at worst can lead to corruption. Such methods do, however, also have cost implications for the police organisation in terms of surveillance costs and the economic and human cost of running informants, especially where officers may feel forced to lie to protect the lives of those who provide them with information.

Alongside these direct methods is a more technical route that involves the use of specialised resources in an integrated intelligence system. Enforcement agencies increasingly make use of intelligence analysis to map associations between actors, events and activities in a network. Such analysis enables them to chart and to evaluate the power and vulnerability of individuals in a crime group. Although there is a tendency among law enforcement agencies to guard their use of specialised electronic techniques, they increasingly make use of them to support bilateral and multilateral cooperation.

At the second level, law enforcement relies on bilateral cooperation between states. Bilateral cooperation plays an important practical role in law enforcement operations. This is especially true of technical assistance and intelligence support for operations. The police and customs authorities of many countries appoint liaison officers to foreign embassies or enforcement agencies. The USA, for example, has FBI agents as

legal attachés at its embassies. In some cases, the extent of cooperation will include direct operational support as well as intelligence and resources.

At the third level, multilateral (joint) cooperation in law enforcement in Europe and elsewhere has increased in the wake of the challenge posed by organised crime and terrorism. One reason for this joint cooperation is the increased mobility resulting from political integration and political and economic migration (e.g. the European Schengen area – a territory without internal borders).

It is at this stage worth reminding ourselves of two important general points in respect of the limitations of law enforcement to deal with organised crime. First, whether it is operating at the national, bilateral or multilateral levels, the Achilles heel of law enforcement is the limit of the control it can exercise. There are legal, jurisdictional and political limitations to activities. The restrictive regime faced by the investigative agencies may be contrasted with the flexibility of organised crime. Unlike organised crime, an agency operating under the rule of law has no extra-legal sanctions to deal with the competition.

Secondly, there are always problems of connecting top-level strategic measures of the kind set out above with the realities of law enforcement on the ground.

2.14.3 International conventions

Organised crime is both a national and an international problem. At the national level, organised crime requires effective crime control policies in terms of substantive legislation and law enforcement. Countries that apprehend offenders or extradite them from places where they have sought refuge initiate criminal proceedings against organised crime groups in their own jurisdictions. There is no international court to deal with them. However, the criminal justice systems of individual states cannot tackle organised crime acting alone. Fighting organised crime requires integrated action by the authorities of all states. International agreements are necessary to encourage and support such action. It has become necessary to change from the merely symbolic approach that characterised early attempts to deal with the problem to one that has more substance.

2.14.4 The role of the United Nations (UN)

In recent decades, the UN has developed a systematic approach to organised crime. In particular, it has sought to limit opportunities for criminal activity by developing clear goals and policies for prevention, and has also sought to reduce the vulnerability of legitimate industry to the depredations of organised crime. Despite these important initiatives, it is deemed prudent to expound upon a particularly eminent initiative, namely, the 2000 UN Convention against Transnational Organised Crime. This Convention had two main goals: The first was to eliminate the effect of differences between national legal systems that blocked mutual assistance in the past. The second was to set standards for domestic legislation so that organised crime may be combated effectively. Under this Convention, governments commit themselves to

- criminalising offences committed by organised crime groups, including corruption and corporate or company offences
- cracking down on money laundering and the proceeds of crime
- speeding up and widening the reach of extradition

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- protecting witnesses testifying against criminal groups
- tightening cooperation to seek out and prosecute suspects
- boosting the prevention of organised crime at the national and international levels (In the RSA the National Crime Prevention Strategy identifies organised crime as a priority.)
- developing a series of protocols containing measures to combat specific acts of transnational organised crime

REMEMBER

South Africa's signing/membership of the UN Convention against Transnational Organised Crime was ratified in 2004. Protocols targeting specific types of crime supplement the Convention's crime-fighting measures. These protocols encompass combating the smuggling of migrants, the trafficking and exploitation of women and children, and the illicit manufacture of and trade in firearms.

After adoption of the Convention, the UN encouraged as many states as possible to ratify it and give effect to the measures it sets out. It is unfortunately still too early to provide an assessment of its effectiveness. However, the Convention clearly provides the necessary political and legal frameworks for international action against organised crime.

ACTIVITY 1.5

Can you think of other ways in which organised crime can be combated?

Feedback to activity 3: Some of the ways to prevent organised crime include legislation aimed at organised crime and the prosecution of members of syndicates, where severe punishment should be meted out.

2.14.5 The role of the Association of Certified Fraud Examiners (ACFE)

The Association of Certified Fraud Examiners (ACFE) is an international anti-fraud organisation which serves as the premier provider of anti-fraud training and education (Wells 2004:xv). Its functions include the following:

- Members of the ACFE have the ability to expand their anti-fraud knowledge and assert themselves in the anti-fraud community by obtaining the Certified Fraud Examiner (CFE) credential. This is a globally preferred certification that includes expertise in fraud prevention, deterrence, detection and investigation (Wells 2004:xv).
- The ACFE oversees the CFE credential by setting standards for admission; administering the Uniform CFE Examination; and maintaining and enforcing the ACFE Code of Professional Ethics (Wells 2004:xv).
- The ACFE is committed to providing educational resources to the academic community and has established the Anti-Fraud Education Partnership to address the unprecedented need for fraud examination education at the university level (Wells 2004:xv).
- The ACFE provides free training and educational materials to institutions of higher learning throughout the world (Wells 2004:xv).
- The ACFE was founded by Dr Joseph T Wells, who was a criminologist and former FBI agent among the many other portfolios he occupied (Wells 2004: xv).

2.15 DIFFERENT ORGANISED CRIME GROUPS

Organised crime is a worldwide phenomenon, extending its tentacles of criminal activity around the globe. Organised crime forms an integral part of the socio-economic structure and political set-up of societies. Whereas terrorist groups have an ideological agenda, organised crime groups chiefly pursue an economic agenda.

Violence or the threat of violence plays a prominent role in their profit-seeking so that these criminal groups can obtain the power to control business transactions. In so doing, money is constantly crossing borders.

No discussion of organised crime would be complete without identifying and expounding on some of the most prominent international players in this arena. A concise overview is therefore provided of the Russian Mafiya and the Japanese Yakuza, as conceived by Walsh and Hemmens (2008:496–497).

2.15.1 The Russian Mafiya

This group is considered to be the most serious organised crime threat in the world today (Ellis & Walsh 2000:534). There has been an explosion of crime in Russia since the break-up of the Soviet Union. The crime, bribery, political and police corruption in Russia are making the Prohibition period in America look positively benign. Organised crime seems to have penetrated Russian businesses and state enterprises to a degree that would be inconceivable in most other countries.

The most important group in Russian organised crime is known as the *vory v zakone* (thieves-in-law), which began as a large group of political prisoners following the Bolshevik Revolution in 1917. The Soviet prison system used this group to maintain order in the general prison population in exchange for many favours. These “elite” prisoners developed their own structural hierarchy and strict code of conduct or “laws” (hence thieves-in-”law”). One of their strictest rules was that there would be absolutely no cooperation with legitimate authority for any reason whatsoever.

Russian organised crime is the biggest factor threatening Russia’s democratisation, economic development and security. It threatens democratisation because if a democratic government cannot control Russia, an authoritarian one will. It threatens the economy because foreign companies are reluctant to make much-needed investments in an economy that is known for the murder and extortion of business leaders. It threatens public security because many police officers and KGB personnel have left public service for the more lucrative opportunities offered by organised crime.

Russian organised crime later moved to the USA with the influx of Russian immigrants in the 1970s and 1980s. Unlike the largely uneducated Italian Mafiosi that came to the USA, many Russian immigrant criminals were highly educated individuals driven out of their own country by economic hardship. Their intelligence made them a real threat, and because of their higher level of criminal sophistication the FBI and CIA have speculated that Russian organised crime groups will present a greater overall threat to American society than the traditional Italian-American crime families ever have.

2.15.2 The Japanese Yakuza

Japanese organised crime (JOC) groups are probably the oldest and largest in the world, with a total membership estimated at 90 000 (Lyman & Potter in Walsh & Hemmens 2008:497). The Yakuza is commonly believed to have evolved from *ronin* (or masterless samurai warriors) who contracted their services out for assassination and other illegal purposes. They also protected the peasants from marauding bandits as a sort of vigilante/law enforcement group. The defeat of Japan in World War II and the ensuing chaos provided the catalyst for the growth of these crime groups. This period saw many gang wars erupt over control of lucrative illicit markets. As in the USA, these gang wars led to the elimination of some gangs and to the consolidation and strengthening of others.

Members of the Japanese organised crime (JOC) groups are recruited from two outcast groups in Japanese society, namely, the *burakumin* (outcasts because their ancestors worked at trades that dealt with dead flesh such as butchery, tanning and grave digging, which were considered unclean in Buddhist religious tradition) and Japanese-born Koreans. Once admitted, a *kobun* has to pledge absolute loyalty to his superiors and generate his own income, a part of which has to be contributed to the *ikka* (family).

The organised crime groups occupy a unique position in Japanese society. Their historical connection with the samurai, their espousal (support) of traditional norms of duty, loyalty and manliness, their support for nationalistic programmes and their “law enforcement” functions (Yazuka neighbourhoods are safe from common criminals) endow them with a certain level of respect and admiration among the Japanese (although, according to Maruko (2003:214), this does seem to be lessening).

The Yakuza are not shadowy underworld figures; their affiliations are proudly displayed on insignia worn on their clothes and on their offices and buildings, and they publish their own newsletters. The headquarters of one crime group, complete with the gang emblem hanging proudly outside, is only three doors away from the local police station (Johnson in Walsh & Hemmens 2008:497).

The police have tended to tolerate Yakuza activity in certain areas, as long as it involves only the provision of certain illicit goods and services demanded by the public, but they have cracked down hard when firearms and drugs are trafficked, or when innocent civilians are harmed.

ACTIVITY 1.6

Many other international organised crime groups exist in the world today. Identify some other prominent groups from library sources and contrast their structures and activities with those of the two groups mentioned above.

2.15.3 The Nigerian 419 scam

The Nigerian Mafia is an organised crime syndicate which is involved in a scam scheme popularly known as the “419” scam, using e-mails and other tools to attract victims. For the purposes of this theme, the Nigerian Mafia will be studied under the following sub-headings: meaning of advance fee fraud, AFF.

Meaning of advance fee fraud (AFF)

An AFF is an upfront payment by a victim to allow him/her to take part in a much larger financial transaction, which he/she believes will result in credit being extended to him or her. The victim is asked to pay an advance fee of some sort such as “transfer tax”, “performance bond” or “money to buy chemicals”. If the victim pays the advance fee, there are often many “complications” which require more advance payments until the victim either quits or runs out of funds. The crime, therefore, involves misrepresentation, corruption and bribery, forgery and money laundering, extortion, kidnapping and even murder of the victim (Tanfa 2006:10).

Characteristics of AFF

The characteristics of AFF include capability, organised crime groups or criminal networks, criminal contacts, managing the risk from criminal contacts and operating on a strict “need-to-know” basis (Tanfa 2006:72–76; Smith 2010:621–622).

- *Capability* – entails some degree of criminal collaboration and infrastructure. Members either join forces to commit a specific moneymaking crime or provide essential logistical support, buy or dispose of illegal goods or launder the proceeds.
- *Organised crime groups or criminal networks* – these are either structured or loose. The New Jersey Commission of Investigation, as well as Enonchong, (Tanfa 2006:72–76) state that a few Nigerian Mafia bosses tightly control Nigerian criminal activities. On the other hand, a sergeant of the East Baton Rouge Parish Sheriff’s Office interviewed a Nigerian informant who stated that there was no formal or informal organisation. When somebody discovers a source of making quick money, he spreads it to his friends, partners.
- *Criminal contacts* – prison provides an ideal place for criminals to network and make trusted contacts. In prison, it has been found that jailed members of serious and organised crime groups have come across other prisoners who provide them with access to new networks or markets.
- *Managing the risk from criminal contacts* – AFF members try to manage risks by working mainly with people they know well and trust. This trust is based on shared experiences gained, for example, through family connections, school, prison or previous criminal collaboration.
- *Operating on “strict-to-know” basis* – this implies that criminal gangs operate on the basis that only associates have a right to know part of the picture. They also steer clear of activity that may link them directly to their crimes by using subordinates or intermediaries for hands-on jobs such as handling illicit materials and dealing with new criminal contacts.

Origin of AFF

- *AFF legislation* – On 1 April 1995 new legislation was promulgated in Nigeria. It was called the Advance Fee Fraud and Other Related Offences Decree (No. 13 of 1995). It prohibited three kinds of conduct, namely, obtaining property by false pretences, doubling, washing and minting of currency (Tanfa 2006:10).
- *Social divisions* – In Nigeria there are over 250 ethnic groups. Nigeria is a federation of states and ethnic groups differ according to their origin and membership of a particular state of the federation, ethnic affiliations, religious beliefs, ideological dogmas and class distinctions (Tanfa 2006:22). The three main ethnic groups are the Hausa/Fulani (Muslims) in the north of Nigeria, the Igbos (Christians) in the South and the Yoruba (Christians/Muslims) in the south-west of Nigeria. The Hausa/Fulani have lagged behind economically, educationally and industrially as well as with infrastructure development. The Igbo are the most educated group in Nigeria and they are known for their aggressive entrepreneurial skills. Hence,

the majority of the 419 scammers come from south-eastern/south-western parts of Nigeria (Tanfa 2006:23; Smith 2010:627).

- *Surface of AFF letters* – around the mid-1980s world oil prices collapsed and it was about this time that AFF letters began to surface. Nigeria's main foreign exchange earner is oil, so when oil prices fell some Nigerians turned to crime to survive by inventing fraudulent schemes such as the AFF. Nigerian criminals took advantage of the fact that they could speak English well and that it was the international language of business. This was coupled with the fact that Nigeria's vast oil wealth and natural gas reserves ranked 13th in the world and therefore the country offered lucrative business opportunities that attract many companies and individuals (Tanfa 2006:26; Smith 2010:618).
- According to the 491 Coalition Website, most 419 letters and e-mails originate from or are traceable back to Nigeria. Literature also suggests that the AFF originated in Nigeria. For example, although some 419 letters originate from other nations, like Ghana, Togo, Liberia, Sierra Leone, Cote D'Ivoire, Democratic Republic of Congo, South Africa and other European and Asian countries, in most cases 419 e-mails are Nigerian in origin (Tanfa 2006:26–27; Smith 2010:620, 628).

The nature and incidence of AFF

The AFF is organised crime that is by nature complex and poorly understood by those outside state organisations, such as academics, analysts and the public (Tanfa 2006:29; Smith 2010:620, 622).

- The fraud involves the payment of advance money in terms of the tax, brokerage, bribes and so on, under the pretence that such payment is needed to conclude a business deal.
- The target victim receives an unsolicited fax, e-mail or letter, often concerning Nigeria, South Africa or another African country containing either money laundering or other illegal proposals, or a legal and legitimate business proposal may be received through the normal channels.
- Variations of the 419 scam include “over-invoiced” or “double invoiced” oil or other supplies and service contracts and the fraudsters want to get the overage (an excess or surplus, especially the amount by which the sum of money is greater than a previous estimate) out of Nigeria, South Africa or another African country. Other scams include crude oil commodity deals, a “bequest” left you in a will, money laundering where the fraudster has a lot of currency that needs to be “chemically cleaned” before it can be used and he needs money to buy chemicals, “spoof banks” where there is supposedly money already deposited in your name, “paying” for a purchase with a cheque larger than the amount required and asking for change to be advanced, fake lottery 419.
- The letters are signed with the names of former African presidents, ministers and their deputies, bank managers, CEOs of companies, military leaders and other big names.
- Victims' addresses are obtained from telephone directories, business journals, magazines or newspapers.
- Perpetrators describe the need to move funds out of Nigeria and seek the help of the victim to provide bank account details of an account in an overseas country as well as so-called administration fees to facilitate the transactions.
- The victim is offered a commission which could be up to 40% of the capital involved.

Forms of AFF

Most common forms of AFF include the following (Tanfa 2006:34; Smith 2010:623-25):

- transfer funds from over-invoiced contents contracts
- contract fraud (COD of goods and services)
- conversion of hard currency (black money, money laundering or “wash-wash”)
- sale of crude oil at below market prices
- purchase of real estate
- disbursement of money from wills (benefactor of a will)
- ransom/kidnapping and murder
- dead expatriates’ bank accounts
- a deceased dictator’s desperate widow

The extent of AFF

The precise extent and impact of fraud and corruption remains unknown in Nigeria but occasional investigations reveal it as massive. With the falling of oil prices, government contracts were extremely lucrative, competition for them fierce and performance standards were seldom enforced. Paying a bribe, padding contracts, taking a “mobilisation payment” and not doing the work, substandard performance, arranging kickbacks, nepotism, or giving inappropriate gifts to the right person were ways to obtain contracts and money. There was a vast layer of middlemen who extracted a living from their positions between the state and private enterprises. In its 2001 and 2002 Internet Fraud and Complaints Centre Report, the American Federal Bureau of Investigation (FBI) put Nigeria at the forefront of certain types of internet crime activity and Nigeria accounted for 15,5% of the total internet crime activity (Tanfa 2006:24–26; Smith 2010:621).

Elite political crimes take many forms, including military coups in which people get killed in the process. Many Nigerians believe that military coups are executed for economic gain by an organisation that wishes to protect its share of the budget and individuals who gain access to corrupt opportunities. Other political crimes include fraud and violence during election campaigns and the use of state power for political ends. If one takes into consideration the fact that the government is the largest source of illegal and corrupt income, then it is easy to understand why the contest to control the government is intense. This contest leads to considerable fraud, manipulation, thuggery and violence during election campaigns, during vote counting and when the results are announced (Tanfa 2006:25).

Added to the elite political crimes above is the working class economic crimes committed by government employees and workers in private business. These crimes are said to be extensive and prevalent although they generally yield small gains as compared to the elite political crimes. The reason for that is that working class people have little power and few opportunities and are more limited in what they can accomplish. It is assumed by Nigerians that every government official, including the criminal justice officials such as the police and judges, is engaged in corrupt activities. For example, to get hold of an application form to acquire a passport, driver’s licence or contract permit of any sort requires the official who issues such forms to be paid a small and illegal fee (Tanfa 2006:25).

Factors influencing AFF

Nigeria is like most developing countries in that it has to import consumer and economic investment goods from developed countries. Therefore, its dependence on imported goods makes it vulnerable to corruption, fraud and economic

elite white-collar crimes by both Nigerians and foreigners. Foreign companies sell second-hand goods as unused items or sell low quality goods which they cannot sell in their own country and often overstate the price of such goods. In the same vein they understate the profits gained in order to pay less tax for doing business in Nigeria. These activities require the cooperation of Nigerian nationals since their signatures are needed on imports permits, sales contracts, consultancy assignments and dictatorship appointments (Tanfa 2006:24).

Furthermore, foreign companies are willing to pay fees in order to increase their profits. The companies have also found Nigerians who are eager to make personal wealth. It is estimated that approximately 6,6 billion naira was lost due to fraud, bribes and kickbacks, direct stealing, extravagant expenditure and general corruption between 1978 and 1982 (Tanfa 2006:24).

2.16 SUMMARY

Organised crime is a complex and controversial phenomenon that has engendered considerable criminological debate. It poses a serious threat to countries worldwide and does not really seem to be abating. This theme has made an attempt to provide a logical exposition of its nature and intricacies in both international and domestic contexts.

2.17 SELF-EVALUATION QUESTIONS

QUESTION 1 *Although little consensus exists regarding the definition of organised crime, most international definitions refer to which one of the following options?*

- (a) drug smuggling
- (b) corruption
- (c) corporate structures
- (d) blackmail

QUESTION 2 *Which one of the following options may be regarded as typical of organised crime?*

- (a) Violence is used to maintain group loyalty and intimidate outsiders.
- (b) Specialists provide services under contract to organised crime groups.
- (c) Membership may be limited and usually involves a lifetime commitment.
- (d) All of the above.

QUESTION 3 *Which one of the following may be regarded as the primary objective of organised crime?*

- (a) power and status
- (b) coercion and violence
- (c) economic gain
- (d) pervasive corruption

QUESTION 4 *Around which one of the following crimes does core syndicate activity in Africa revolve?*

- (a) weapons and drug trafficking

- (b) ivory/rhino horn smuggling
- (c) black market business crimes
- (d) trade in human organs

QUESTION 5 *Which one of the following may be considered a factor that contributes to the incidence of organised crime in South Africa?*

- (a) the extradition of illegal immigrants
- (b) the corruption of officials
- (c) favourable geographical position
- (d) diminishing international investment

QUESTION 6 *Identify the missing word in terms of risk, control and regulatory strategies for combating organised crime. "Policing should, in its widest sense, involve the ... of risk, alongside criminal investigation and other law enforcement activity."*

- (a) identification
- (b) reduction
- (c) prevention
- (d) management

QUESTION 7 *Law enforcement: National and international cooperation may be identified as one of the approaches to combating organised crime. Which of the following may be considered a limitation on the law enforcement approach?*

- (a) It entails limitless control and is therefore too wide.
- (b) Legal, jurisdictional and political limitations apply.
- (c) It functions within a non-restrictive regime.
- (d) It has too many extra-legal sanctions to deal with.

QUESTION 8 *Identify the correct statement/s with regard to the Russian Mafiya.*

- (a) The Russian Mafiya is the most serious organised crime threat in the world today.
- (b) It is probably the oldest and largest group in the world.
- (c) Members of the Russian Mafiya proudly wear affiliation insignia and publish their own newsletter.
- (d) They have an inferior level of criminal sophistication compared to other members of groups.

QUESTION 9 *Which one theory relating to the explanation of organised criminal activities states that "aberrant behaviour can be viewed as a symptom of the dissociation between culturally defined aspirations and socially structured means"?*

- (a) anomie theory
- (b) differential association
- (c) social disorganisation theory
- (d) relative deprivation

QUESTION 10 *On which one type of crime does the main focus fall in terms of transnational and international organised crime in Mozambique?*

- (a) drug trafficking

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- (b) diamond theft
- (c) bank robbery
- (d) human trafficking

QUESTION 11 *Which of the following factors influences AFF?*

- (a) import of passports and sales contracts
- (b) import of consumer and economic investment goods
- (c) human trafficking and kidnapping
- (d) export of consumer and economic investment goods

QUESTION 12 *According to 491 Coalition most 419 letters and e-mails originated from one of the following countries:*

- (a) Ghana
- (b) Togo
- (c) Nigeria
- (d) Liberia

ANSWERS TO SELF-EVALUATION QUESTIONS

- (1) (b) corruption
- (2) (d) All of the above.
- (3) (c) economic gain
- (4) (c) black market business crimes
- (5) (c) favourable geographical position
- (6) (c) black market business crimes
- (7) (b) legal, jurisdictional and political limitations apply.
- (8) (a) drug trafficking
- (9) (a) anomie theory
- (10) (a) drug trafficking
- (11) (b) import of consumer and economic investment goods
- (12) (c) Nigeria

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THEME 3

CONSERVATION CRIME

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STUDY UNIT 3

Conservation crime

LEARNING OUTCOMES

After completing this study unit you should

- have acquired sufficient knowledge, insight into and understanding of the study material to answer a range of multiple-choice questions based on the contents of the study guide (for self-assessment, assignment and examination purposes)
- have developed a critical understanding of the African continent with its histories and challenges
- be able to apply the discipline-specific knowledge competently, ethically and creatively to solve real-life problems
- have developed the skills needed to analyse and evaluate the credibility and usefulness of information and data from multiple sources

3.1 INTRODUCTION

The Arusha Declaration on Wildlife Protection

The following speech by Julius K Nyerere in 1961 is significant:

The survival of our wildlife is a matter of grave concern to all of us in Africa. These wild creatures amid the wild places they inhabit are not only important as a source of wonder and inspiration, but are an integral part of our natural resources and of our future livelihood and wellbeing.

In accepting the trusteeship of our wildlife we solemnly declare that we will do everything in our power to make sure that our children's grandchildren will be able to enjoy this rich and precious inheritance.

The conservation of wildlife and wild places calls for specialist knowledge, trained manpower and money, and we look to other nations to cooperate in this important task – the success or failure of which not only affects the continent of Africa, but the rest of the world (Borner 2014:1).

Despite calls such as this one made more than four decades ago, criminological research worldwide has consistently focused on the more conventional, sensational and higher-profile types of crime in society (especially those involving a readily identifiable victim), ignoring to a large extent crimes in the conservation realm.

Although criminology has over the years indubitably contributed significantly to understanding and addressing the quandary of conventional crime in society, it has barely begun to consider questions and challenges in the conservation realm. The extent and seriousness of natural resources-related crime have only recently been acknowledged, albeit cautiously, in concert with a growing global awareness

of conservation issues. However, it has by no means been fully acknowledged as a field of study in criminology.

The paucity of action taken to date in this arena vividly portrays the central thrust, lifestyle and philosophy of a capitalist system – the notion that humans have a right to make use of all the resources on the planet, that other life forms such as animals (whether terrestrial, avian, aquatic or marine) are there to serve our needs and that humanity has no long-term obligations to future generations or the natural world (South 1998:214).

In the South African context this situation is compounded by a general lack of understanding and awareness of issues such as conservation crime, and an ostensibly apathetic attitude among South Africans generally that would in many other countries be considered morally wrong. Kidd (1998:190) suggests that the outlook of many South Africans has to a large extent been numbed or deadened by widespread concern about rampant ordinary criminal activity that most citizens regard as more serious than offences against natural resources or nature conservation.

The consequences of this attitude unfortunately include a steady decline and demise of South Africa's precious floral and faunal biodiversity. One needs to look no further than the recent abalone (*Haliotis midae*) crisis on our south-western coast to find a relevant example.

For reasons such as these this theme focuses on natural resources crime and criminality within the sphere of Criminology. A postmodern criminology, relevant to the twenty-first century, should have the intellectual breadth and constitutional space to embrace conservation and social issues holistically (and sustainably).

This theme also considers some diverse types of conservation crime, and addresses the motivational and contributory factors, aetiology, prevention and management of conservation crimes in a local and, to some degree, an international context.

3.2 THE DEFINITION OF CONSERVATION CRIME

Firstly, the concept of conservation crime will be defined and will be followed by the definitions of illegal trade in endangered species and the environment, as well as environmental pollution. All these definitions are closely linked to conservation crime.

3.2.1 Definition of conservation crime

Conservation crime may be defined as any intentional or negligent human activity or manipulation that impacts negatively on the earth's biotic and/or abiotic natural resources, resulting in immediately noticeable or indiscernible (only noticeable over time) natural resource trauma of any magnitude.

For obvious reasons, conservation crime may therefore be considered the vanguard of conservation criminology. The definition of conservation includes the definition of illegal trade in endangered species.

3.2.2 Defining the illegal trade in endangered species

When defining the illegal trade in endangered species, various concepts merit closer attention. The first two are the terms “illegal trade” and “smuggling” in endangered species. These two terms should be read in conjunction to clarify what is meant by the illegal trade in endangered species. Illegal trade includes the hunting, capture, possession, import, export or transport of endangered species of fauna and flora as well as the donation or receipt of such species as gifts (Convention on International Trade in Endangered Species of Wild Fauna and Flora, 2009). Smuggling, on the other hand, is the deceitful or unlawful import, export, trade or production of scarce goods (e.g. rhino horn), alcoholic beverages and precious stones.

It is essential to clarify the term “endangered species” and to explain the abbreviation “CITES”. Endangered species are those species on the brink of extinction or those in danger of becoming extinct unless urgent measures are taken to enforce the strict regulation of trade in such species. These species are listed in Annexures I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (or CITES). This Convention, of which the Republic of South Africa has been a member since 1975, is concerned with the regulation and/or prevention of trade in endangered species, both legal and illegal (CITES 2009).

The CITES strives to promote the conservation of endangered species but permits commerce in species of wildlife that can withstand trade pressure.

The Convention lists three categories of protection:

- Appendix I: These species are the most endangered among CITES-listed animals and plants. They are threatened with extinction and CITES prohibits international trade in specimens of these species except when the purpose of the import is not commercial (e.g. for scientific research).
- Appendix II: These species are not necessarily threatened with extinction, but may become so unless trade is closely controlled.
- Appendix III: Species in this category are conditionally tradable in order to help individual countries gain international cooperation in protecting their own native species.

REMEMBER

Species may only be added or removed from Appendices I and II, or moved between them, by a conference of the parties. Species may, however, be added or removed from Appendix III at any time and by any party unilaterally.

3.2.3 Definition of environment

The South African Environment Conservation Act, 73 of 1989, defines the environment as the aggregate of surrounding objects, conditions and influences that affect the life and habits of people or any other organism or collection of organisms (Rabie 1990:3). According to Schulze (1991:16), the environment may be defined as water, soil and air, as well as the interaction between these resources and all creatures.

3.2.4 Definition of environmental pollution

Environmental pollution may be defined as the slow, insidious process of destroying the world by contaminating and killing the earth’s ability to support life (Yesilind,

Pierce & Weiner 1990:1). Corroborating this sentiment, Kidd (1997:121) elaborates somewhat and defines pollution as the introduction by humans into the environment of substances or energy liable to cause hazards to human health, harm to living resources and ecological systems, damage to structures or amenities, or interference with legitimate uses of the environment.

3.3 CATEGORISATION OF CONSERVATION CRIME AND COMPLEXITIES

There are signs that the foundations for an environmental/ecological/green (terms which may all be considered inexact) perspective in criminology have been laid. However, what is required first, for the dual purposes of innovation and consolidation, is the recognition of such a perspective as an unambiguous criminological field, both theoretically and practically. This vision will only be achievable if an accurate, viable and legitimate definition of the conservation crime concept can be formulated.

Until now, the absence of a viable and accurately captioned conservation crime category and definition can probably be ascribed to the fact that natural resources have traditionally been viewed somewhat myopically and dealt with under diverse and vague headings, including clichés such as ecological crime, green crime and/or environmental crime. Such indeterminate terminologies have undermined the delineation of clear and unambiguous parameters for this form of criminality, and have clearly served to marginalise focused and dedicated intervention in this field. The absence of consensus about a fundamental definition of conservation crime has, all things being equal, hampered the potential success of intervention initiatives (both proactive and reactive).

By formulating an unpretentious, authentic and innovative definition of conservation crime (and of course a crime category), this issue should steadily gain recognition as a formal derivative of the mainstream criminological treatise. Such a definition would consolidate research efforts and promote interest in the field and simultaneously extend criminological frontiers and amplify their range.

3.4 JUSTIFICATION FOR THE DEFINITION OF CONSERVATION CRIME/CRIMINOLOGY PHRASEOLOGY

Existing and commonly used conservation crime expressions, namely, environmental criminology, ecological criminology, green criminology and, finally, conservation criminology, should be probed to elucidate the incentive for selecting conservation criminology as the most representative idiom for scientific study of the phenomenon.

3.4.1 *The Sage dictionary of criminology*

An influential publication on criminological semantics was consulted for objective input about the popular idiom used to refer to natural resources criminology. McLaughlin and Muncie (2001 sv environmental criminologist) refer readers seeking more information on this topic to the sections dealing with the Chicago School of Sociology, geographies of crime, and social ecology. These sections offer brief explanations of the relationship between environmental factors and, specifically, urban communities and crime, but do not in any way define or even touch on natural resources crime.

3.4.2 Environmental criminology

Environmental criminology is currently the most commonly used term to describe criminality directed at the natural environment. Although ostensibly an adequate expression of the phenomenon, it is in fact quite the opposite. In criminological circles environmental criminology refers to a growing field that explores how actual criminal events involve interaction between motivated individuals and the surrounding social, economic, legal and physical environments (Brantingham & Brantingham 1998:31).

According to South (1998:212), the term “environmental” in criminology is still principally used in studies of place and the spatial patterning of crime. The focus of these studies is therefore on understanding the criminal event and how it relates to individual motivation, to victims and targets, and to the legal, social and psychological milieu.

The original or traditional context in which the term was formerly and is still used has clearly acquired tenure and using it could lead to unnecessary confusion.

3.4.3 Ecological criminology

Brantingham and Brantingham (1981:13) and Van Heerden (1988:177) describe ecological criminology as being primarily associated with the study of spatial patterns of crime in an urban context. Williams and McShane (1999:54) agree, postulating that an ecological study allows researchers to transcend individuality and, through the collection of social data, gain a sense of the characteristics of large groups of people. Once again ownership of the term has clearly been claimed and is consequently being speciously referred to by those advocating its usage and/or perpetuation in a conservation context.

3.4.4 Green criminology

Although often referred to as green criminology, specifically in the USA, South and Beirne (1998:147; 2007:xiii) use this term to describe the study of crime and its negative impact on natural resources. Firstly, green crime/criminology might easily and erroneously be associated with the so-called greenies or bunny-huggers, expressions used to describe the fanatical, overzealous and activist conservation fringe. This immediately conjures up images of the militant (and often controversial) environmentalist organisation, Greenpeace.

Conservation criminology symbolises a balanced approach and definitely does not favour any particular belief within the natural resources or conservation realm. Secondly, conservation criminology deals with a more focused range of issues than those traditionally and often emotionally labelled “green” issues (e.g. animal rights, animal abuse or cruelty to animals, ecological spirituality and eco-feminism [Agnew 1998:177–179]). Although sometimes highly poignant (and even controversial) subject matter, these green issues categorically do not fall in the field of conservation criminology. Swanepoel (1997:48) even talks of green environmental criminology, confirming, as it were, the ambiguity of the term and illustrating that a combination of already vague terms does nothing to mitigate or promote a focused approach.

3.4.5 Conservation crime/criminology

The study of natural resources crime from a criminological perspective is considered most appropriately explained by the term “conservation criminology”. This expression is proffered as the most suitable for a number of reasons, including the following, which can best be articulated by examining existing crime categories such as violent crime, sexual crime and so on.

Violent crime, as sexual crime, property crime, white-collar crime and the like, includes all crimes directed at and/or impacting on another human being. These crimes are not classified as human or people crimes, but rather in terms of the inherent, fundamental element they contain, such as violence, sexual undertones, its organised nature and so forth. The consequences or repercussions of these crimes on the victim’s family unit, occupational environment or even the community are not recognised as a factor.

If one looks at natural resources crime, just because the crime impacts on the natural environment per se, it need not necessarily be termed accordingly. Once again it is the inherent thrust of the crime that should be the critical factor in dictating a designation for classifying such criminality, omitting the essentially restrictive words “green”, “ecological” and “environment”. As in the case of the more conventional examples cited above, this designation should be based on the central theme running through the various forms of such criminality. This core concept in the case of natural resources crime is, of course, conservation. A classification conducted along these lines would agree with regular generic attempts at classification. Armed robbery, assault, murder and so forth are to violent crime what abalone (perlemoen), crayfish and reptile poaching and/or intentional pollution and so on are to conservation crime/criminology.

As the term “violence” incorporates the conduct and negative consequences of a violent crime, so the term “conservation crime” embodies the criminal activities associated with a wide spectrum of wrongdoing directed at natural resources, and it unambiguously identifies a central theme. It then logically follows that natural resources crime should be classified/categorised and referred to as conservation crime and that its study should be termed “conservation criminology”.

3.5 FORMS OF CONSERVATION CRIME

There are two forms of conservation crime, namely, environmental pollution and illegal trade in endangered species. Firstly, we will deal with the environmental pollution.

3.5.1 Environmental pollution as an example of conservation crime

This section examines the effect of the individual on the environment (both animals and plants). Various common forms of pollution of the natural environment are examined as a form of conservation crime. As a prologue to this section, the following quote is considered thought provoking and appropriate:

Today no industry ... can afford to put environmental concerns at the bottom of the corporate agenda ... [we] ... are all environmentalists ... after all ... we all drink the same water and breathe the same air ... long after [the] oil and gas wells run dry the results of [our] handiwork will be evident on the land, in the

waters and in the air. We will pass on to future generations the legacy of our care ... or neglect. Faced with a choice between environmental disregard or environmental concern, there is really no choice (Hair in Huntley 1989:338).

Despite visionary declarations such as this one, pollution continues to be a major threat to our natural resources, both biotic and abiotic. Just as the injudicious and wanton manipulation of faunal and floral biodiversity jeopardises the very existence of humankind, pollution-related crimes have grave implications for the continued wellbeing of our fragile biosphere.

Crimes in the pollution sphere form an important part of the conservation crime matrix. Pollution should be considered just as reprehensible and should be addressed with as much vigour as crimes involving more corporeal and sentient resources. Bear in mind that biotic and abiotic natural resources (e.g. animals and their habitat) are co-dependent on each other, and that an injury directed at one will almost certainly affect the other.

3.5.2 Illegal trade in endangered species as a form of conservation crime

The second form of conservation crime is the illegal trade in endangered species. The conservation of endangered fauna and flora is a controversial and often emotional national and international issue. Many developing countries resent the fact that highly developed industrialised countries want to prescribe to them how they should manage their natural resources when many of their people are in dire socioeconomic need (e.g. prohibiting the selling of stockpiles of valuable animal products such as ivory).

3.6 THE IMPORTANCE OF PUBLIC INVOLVEMENT IN THE ENVIRONMENT SECTION 24 OF THE BILL OF RIGHTS IN THE 1996 CONSTITUTION STATES THAT EVERYONE HAS THE RIGHT -

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

However, these rights (and the environmental legislation to protect them) are meaningless unless the public becomes aware of them and starts taking effective steps to ensure their protection. Governments are unfortunately often tardy or even negligent in implementing or enforcing environmental laws effectively. This is evident from the fact that many Eskom power stations in South Africa are still allowed to operate without desulphurisation equipment in spite of extremely high sulphur dioxide emissions (Schulze 1991:149). Eskom has in fact only recently requested tenders for desulphurisation equipment for its Kusile power station near Witbank, Mpumalanga (Eskom sets aside R5bn for air-quality safeguards at Kusile 2008).

The good news, albeit long overdue, comes at the cost of another environmental concern, namely, the increased water footprint of power stations that use this technology, as enormous volumes of water are required to drive the process. Public involvement and active cooperation are therefore essential for any environmental programme to secure a safe environment for all. Education and awareness programmes, as well as organisations such as Earthlife AFRICA, Groundwork, The Greenhouse Project and Save the Rhino, are vital to create public awareness and ensure active participation in the protection of the environment.

International cooperation is crucial, especially in terms of exchanging information concerning technology, the success or failure of legal remedies, and research findings aimed at controlling and preventing (environmental) conservation crime.

ACTIVITY 1.7

Try to identify some other national and international nongovernmental organisations (NGOs) that endeavour to promote environmental wellbeing on behalf of society.

The 1972 Stockholm Conference was an important catalyst in creating international awareness of the need for protecting the environment as many environmental issues have a global effect (Agrawal 1995:17). A good example is climatic changes caused by global warming and the greenhouse effect due to damage to the ozone layer (Huber 1990:85). Henson and IPCC (in Beirne & South 2007:163) note that the average global surface temperature has increased by approximately 0,8° C and that three-quarters of this warming has occurred since the 1970s, at a rate in many parts of the world that is greater than at any other time during the last 1000 years. In June 1982, the United Nations Conference on the Environment and Development held in Rio de Janeiro called for the enactment of enforceable and effective environmental laws and sanctions with the specific aim of punishing offenders, preventing further transgressions and obtaining redress (Del Frate & Norberry 1993:1). It was also pointed out that most developing countries face environmental damage problems as a direct consequence of human behaviour (often due to ignorance or dire economic need). Developing countries struggle with air, water and marine pollution, deforestation, noise pollution and problems associated with hazardous waste disposal. Wachholz (2007:161) in fact states that the harmful effects of these actions will affect the developing nations and the poverty-stricken most, thus exacerbating existing inequalities in material resources and socioeconomic power.

The developed countries frequently abuse the developing countries by entering into lucrative agreements to dump toxic waste in their waters and on their ground. One such example was the British company, Thor Chemicals, established in Cato Ridge, KwaZulu-Natal, to process thousands of tons of mercury waste from Britain. Cato Ridge was consequently polluted, and four workers died from mercury contamination and a number of others suffered serious injury (Glazewski 1999:28). Prof Dennis Davis, the chairman of the commission of enquiry into this disaster, criticised the government for allowing companies to bring toxic waste in a fairly uncontrolled manner into South Africa. Thor's executives were acquitted on a charge of culpable homicide in 1994, but were found guilty of (negligence) contravening the Occupational Health and Safety Act and fined a mere R13|000 (*Pretoria News* 15 May 1997:20). This may be seen as an example of the punishment not fitting the crime.

ACTIVITY 1.8

Can you think of any other examples of contamination/pollution-related related conservation crime in South Africa?

ACTIVITY 1.9

Compare the punishment of the Thor Chemicals executives with an American case in which a Mr Orkin, a company executive, was fined \$350 000 and ordered to perform 2 000 hours of community service after being found guilty of an environmental (conservation) crime that caused the death of two employees (Cohen 1993:1096). Keep your eye on the media and identify similar incidents for comparison purposes.

The most important principle brought about by the environmental clause in Chapter 2 of the Constitution (Bill of Rights) is therefore that individuals are now the bearers of an environmental right and that environmental integrity is no longer viewed as a collective right. However, the fundamental right to environmental integrity requires positive action and intervention by the state to make it effective (Stacy 1999:51). This fact is underscored by Bullard's (in Stacy 1999) sentiments in this regard, namely, that the current environmental protection paradigm has institutionalised unequal enforcement, traded human health for profit, placed the burden of proof on the victims instead of the polluting industry, legitimised exposure (of people and natural resources) to harmful substances, promoted risky technologies such as incinerators, exploited the vulnerability of economically and politically disenfranchised communities, subsidised ecological destruction, created an industry around risk assessment, delayed clean-up actions, and failed to develop pollution prevention as an overarching and dominant strategy. Although these sentiments essentially apply to the situation in the USA, many parallels may be drawn between this state of affairs and the situation in South Africa.

3.7 NATURE AND EXTENT OF CONSERVATION CRIME

In this section we look at the nature and extent of conservation crime by focusing on environmental pollution, transnational conservation crime, illegal trade in endangered species and the problem of waste.

3.7.1 Environmental pollution

Environmental pollution caused by industrial waste has been referred to as a specific type of corporate violence, comprising actual harm or risk inflicted on workers and the general public as a result of deliberate decisions by corporate executives or managers, or corporate negligence, the quest for profit and wilful violation of health, safety and environmental laws.

An independent company investigated the extent of air pollution above Sasolburg in the Free State province of South Africa. The company identified sixteen dangerous chemicals in the air. Standards established by the World Health Organization were found to have been exceeded eight times (Van der Westhuizen 2000:3). According to Lerato Kasa, chairperson of the Sasolburg Environmental Committee, "Sasol pollutes the air we breathe, causing poor health and bad living conditions while making huge profits for the company. They fund a couple of community projects, thinking we will forget about the pollution. How can we forget when the pollution is

making our parents, brothers and sisters sick? Residents of Sasolburg are running out of patience with Sasol's arrogance. Sasol puts nothing of value into the community whilst taking away the very air that we breathe. Enough is enough" (Sasoil, dirty, dangerous and deceptive: Sasol pollutes poor communities in South Africa (2009).

Corporate executives may therefore sometimes wilfully and knowingly violate safety regulations (Hills 1987:vii). According to Frank and Lynch (1992:17), socially injurious and blameworthy acts by corporations that cause physical harm to their workers, the general public and/or the environment (air, water, animals and plants) can be regarded as a subcategory of corporate crime.

ACTIVITY 1.10

Do you agree with these sentiments regarding corporate crime/violence? Evaluate this opinion within the context and parameters of conservation crime. Prepare an argument to substantiate your answer, and distinguish between acts that cause physical (not conservation-related) harm to workers/humans and acts that have a negative impact (in a conservation sense) on biotic and abiotic natural resources.

The extent of corporate violence is difficult to determine, but according to Frank and Lynch (1992:7), 350|000 new cases of occupational disease are reported each year, and 50|000 to 70|000 workers die from these occupational diseases every year. Zimmer (2007:3) writes that current global statistics show that 2,2 million work-related deaths occur annually, and that between 1,7 and 2 million of these deaths can be attributed to fatal (occupational) diseases. Other researchers estimate that corporate violence kills and injures more people each year than all street crimes combined.

3.7.1.1 *Air pollution*

Air pollution is caused by solid, liquid or gaseous substances in the atmosphere, in concentrations that are harmful to human beings or other living creatures, plants, property or the environment (Agrawal 1995:17). For example, the air in Reiger Park (Boksburg), on the outskirts of the Ekurhuleni Metropolitan Municipality, is hazardous to the health of residents who are exposed to the dust from nearby slimes dams. Almost 99% of the mining material in the dam pits is crystallised silica. If a person inhales this dust over a period of time, he or she runs the risk of developing silicosis. Other conditions from which people in this area suffer include respiratory problems, asthma and bronchial spasms (Harrison 2001:13).

Radioactive material may also be present in these slimes dams. Uranium is mined in the Witwatersrand area and it breaks down into radium and radon, a gas. When this radon gas is inhaled, it changes into solid particles in the lungs. These solid particles can give rise to alpha radiation and ultimately lung cancer.

In populated areas, more than 90% of air pollutants are the result of human actions and, more specifically, industrial activity (Yesilind et al 1990:249). Examples of gaseous pollutants are carbon monoxide, hydrocarbons, hydrogen sulphide, nitrogen oxides, ozone and other oxidants and sulphur oxides. A particulate such as lead is also of serious national concern (Yesilind et al 1990:224).

Air pollution is of greater immediate concern than any other type of pollution because without air (oxygen) we cannot live. Air pollution is caused by rapid industrialisa-

tion, coal combustion and emissions from vehicle exhaust systems, fuel tanks and carburettors, and it particularly affects large cities (Del Frate & Norberry 1993:3). Domestic consumption of low-grade fuels that cause dense smoke is a particular problem in developing countries.

Polluted air is not only harmful when inhaled, but often returns to earth in the form of acid rain. Acid rain is basically precipitation contaminated with harmful pollutants and it has a decidedly negative effect on the proliferation of sensitive organisms or plants as well as the health of the bionetworks which they populate. Soils are often rendered barren by acid rain and entire plant or animal communities can be annihilated under sustained abuse.

Acid deposition also occurs in the absence of precipitation. As much as 20 to 60% of total acid deposition occurs when particles and gases stick to the ground, plants or other surfaces. Acid rain has been shown to have an adverse impact on forests, fresh water and soils, killing insect and aquatic life-forms, causing damage to buildings and having a negative impact on human health.

Conservation crime takes cognisance of the impact of such crimes on human beings as biotic entities and therefore part of the earth's biotic resources. However, this crime category more specifically focuses on the effect of contamination crime on the natural resources asset base. Typically, pollution or contamination incidents that affect human beings will also have a negative impact on some aspects of the natural environment. However, the pollution of some groundwater reserves, for example, has far less media value than the loss of human life, and such issues are subsequently either treated peripherally or not recognised at all.

Intentional or negligent contravention of health regulations that impairs employee health should be classified under a contemporary crime category such as white-collar or organised crime. You should evaluate these borderline cases carefully when you are faced with categorisation challenges. However, the distinction between what qualifies as conservation crime and what does not should in most cases be abundantly clear.

3.7.1.2 *Water pollution*

Water pollution may be defined as the contamination of water to such an extent that it alters the physical, chemical or biological properties of the water so that it becomes harmful or injurious to public health or safety, or to the life and health of animals, plants and aquatic organisms (Agrawal 1995:123). Many serious diseases such as typhoid, dysentery and cholera are spread through polluted water. For example, during the cholera epidemic in KwaZulu-Natal, reports of new cases exceeded 1|000 per day in February 2001. The cholera epidemic in Zimbabwe had, until 7 January 2009, claimed the lives of 1|732 people and the number of cases diagnosed stood at 34|306 (Zimbabwe cholera epidemic death toll stands at 1|778: WHO 2009).

Water pollution is one of the oldest environmental problems and is usually the result of urbanisation, industrialisation and waste disposal. Industrial waste is the major cause of water pollution in developed countries. In the USA tens of thousands of factories use water, and a vast number of chemicals eventually find their way into the water system. More than 20|000 municipal waste-water operations discharge such water into rivers and streams (Yesilind et al 1990:16). Other evidence of the transgression of environmental laws has been presented in a report of the US General Accounting Office, which found that 41% of American industries discharge toxic waste into

public sewer systems (Adler & Lord 1991:788). The following are significant sources of water pollution (Agrawal 1995:125; Yesilind et al 1990:18):

- Sewage and other oxygen-demanding waste contain decomposing organic matter and pathogenic agents. Sewage includes domestic, medical and industrial waste such as animal and food-processing waste, human excreta, soaps and detergents. Sewage disposal is often problematical, so that sewage is one of the largest pollutants of water.
- Industrial waste contains toxic agents such as metal salts and complex synthetic and organic chemicals. Dangerous substances found in industrial waste include arsenic, mercury, chromium, zinc, copper and nickel. Many of these heavy metals slowly build up inside the organism ingesting them and when critical concentrations are eventually reached, the organism dies. Petroleum compounds are also serious water pollutants. Yesilind et al (1990:18) report that there are approximately 10|000 serious oil spills in the USA every year.
- Oil pollution, whether due to nonchalant navigation or the intentional cleaning of ships' tanks at sea, may be considered one of the greatest pollution threats to South Africa's marine and contiguous coastal biota. Unquantifiable trauma is inflicted on these fragile environments, and their recovery, if possible, is extremely slow. A relatively recent major marine oil incident was that of the MV Treasure which sank in the proximity of Dassen Island (Cape west coast). An environmental pollution near miss was when the MV Sealand Express became stranded off Milnerton beach (Table Bay) with many containers of hazardous materials on board.
- Acid drainage from mines is another serious form of industrial waste pollution. Sulphur-laden water leaches acid from the soil when draining from old abandoned mines as well as active mines. Under certain conditions the sulphate compounds in the water are soon oxidised to sulphuric acid which is poisonous. Residents of smallholdings in the Vaal Triangle were granted a settlement of more than R36 million in a claim against Iscor for ground pollution caused by waste water (Van der Westhuizen 2000:3).
- Agricultural waste such as fertilisers, pesticides, biocides and other solid additives pollute the water system. These substances are washed off the land through irrigation, rainfall, erosion and drainage and subsequently leach into rivers and streams where they seriously disturb the aquatic ecosystem. Once deposited into natural (aquatic) systems, these substances also give rise to a process known as eutrophication. Certain plants, especially alien biota, plants and fish (Fuggle & Rabie in Kidd 1997:84), readily assimilate these products into their biomass and burgeon as a result. This in turn leads to natural systems in a macro and/or microsense becoming choked by the sudden (primary) growth. As a result of competition for oxygen and sunlight, this ultimately leads to the demise of the particular ecosystem. Irresponsible use of the enrichment agents mentioned above, without exercising due care for the environmental consequences, most definitely qualifies as a conservation crime. However, such crime is seldom identified and prosecutions are rarely instituted.
- Thermal pollution is caused by chemical industries, fossil fuel and nuclear power plants that use copious amounts of water for cooling purposes and then return this water at a higher temperature to the river, lake or sea from which it was drawn. This outflow interferes with natural conditions in the water, modifies ecosystems and kills animal and plant life.

3.7.1.3 *Solid and hazardous waste pollution*

Solid waste other than hazardous materials and radioactive waste comprises materials discarded by a community such as garbage, food waste, organic material, glass, tin cans, paper and ash (Yesilind et al 1990:159). Waste may be defined as hazardous if it is highly flammable, corrodes easily, and is reactive and/or toxic in nature. Hazardous waste includes acids, toxic chemicals, explosives and other harmful or potentially harmful waste (Yesilind et al 1990:186).

Air, water, solid and hazardous waste pollution can destroy the environment and human life. It can also cause serious illness, often many years after exposure to pollutants. Poisonous substances such as lead, mercury, arsenic and radioisotopes cause severe liver and kidney damage, mental retardation, infertility and foetal abnormalities, gastrointestinal problems and cancer. They can also seriously affect the central nervous system and neuromuscular functioning.

When inhaled, carbon monoxide displaces the oxygen carried by the red blood cells to form carboxyhaemoglobin which reduces the amount of oxygen carried to the body tissue. This dulls mental performance, slows reactions and makes people prone to accidents. Carboxyhaemoglobin is especially harmful to people who suffer from anaemia, heart disease or lung problems. Sulphur dioxide causes both temporary and permanent injury to the respiratory system, irritating the upper respiratory tract and lung tissue. Photochemical oxidants cause eye irritations and nitrogen oxides are harmful to human health, especially that of children (Garg, Bansal & Tiwana 1995:6). In 1984, in Bhopal, India, thousands of people and animals were killed and many more disabled when they inhaled toxic pollutants caused by the negligent actions of a British-owned factory. This tragedy made people more aware of the terrible dangers posed by environmental pollution and crimes in this sphere.

In 1986 an explosion occurred at the Chernobyl nuclear reactor. The radioactivity generated was estimated to be 200 times in excess of the radiation caused by the atom bombs dropped on Hiroshima and Nagasaki (Pretorius 2001:9). Statistics cite actual and potential deaths caused by the accident at between 5 000 and 40 000.

Companies and governments are often unscrupulous and attempt to suppress evidence of the environmental harm their operations caused or of the way in which they apply regulations. Cases in point are the two asbestos mining companies near the towns of Prieska, Kuruman, Penge and Koegas in South Africa. They suppressed research findings during the 1960s that documented the health risks of exposure to asbestos fibres (causing diseases like lung cancer) (*Pretoria News*, 18 June 1997:4). Today, thousands of people in these areas are the innocent victims of serious lung disease and cancer with a resultant poor quality of life and diminished life expectancy.

Some years ago, nearly 4 000 South Africans instituted a lawsuit against the British company, Cape Plc. Thousands of people had contracted asbestos-related illnesses because of this company's mining activities (De Lange 2000:10). The previous government's disregard for rules and regulations in the case of the Thor Company in Cato Ridge cited elsewhere in this theme is another such example.

Your attention is once again drawn to the fact that conservation crimes (e.g. contamination or pollution crimes) have a negative impact on both human beings and natural resources. A conservation crime that causes human trauma and/or mortality will not be classified as a conservation crime but rather, depending on the situation, as a more contemporary one such as murder or culpable homicide. However,

if such a conservation crime affects both groups, then a distinction will necessarily have to be made between the two crimes. Conservation crime is concerned with the impact of crime on natural resource assets. In the past the emphasis was placed on the organised, corporate or white-collar nature of the crime, thus marginalising conservation and promoting indifference towards natural resources.

Example: A company intentionally, in contravention of legislation and foreseeing the consequences, discharges industrial effluent into an aquatic system to avoid payment for removal and/or cleansing. A person unaware of the contaminated state of the water drinks this water and becomes violently ill and/or dies. Fish and aquatic plants also assimilate this artificially enriched water, and over time some endemic and/or endangered species living there dies, eventually rendering the aquatic system sterile.

The company should, whether someone died or not, be charged with either murder or culpable homicide. As the crime affected a person, such a classification is in line with contemporary classification dogma and is not to be disputed. However, the natural environment was also affected and this should therefore be classified as a conservation crime.

Only with regard to contamination or pollution crimes will such segregation of crime categories become necessary. Crimes that affect animals and plants as tangible objects will seldom if ever be categorised as conservation crime.

ACTIVITY 1.11

Can you think of other examples that demonstrate the above situation?

3.7.1.4 *Noise pollution*

The 1972 Stockholm Declaration on the Environment did not cite noise pollution as a major threat to the world. However, modern mechanisation and technological innovations have eventually forced governments to consider noise pollution as a major cause of environmental pollution.

Noise pollution is defined as unwanted or extraneous sound (Yesilind et al 1990:325), or as unwanted sound pumped into the atmosphere, causing a health hazard (Agrawal 1995:195). Noise pollution may also be defined as an excessive, offensive, persistent or startling sound that causes fatigue and physical and psychological problems such as hypertension, deafness and tension (Grewas 1995:222). The word “noise” is derived from the Latin word *nausea*, meaning a feeling of malaise.

The sources of noise pollution can be natural (e.g. thunder) or manmade. Manmade sources of noise pollution may be broadly classified into industrial and non-industrial noise pollution (Agrawal 1995:197). An example of industrial noise pollution is the excessive noise created by industrial machinery used in the manufacturing, iron and steel, textile and paper industries. Non-industrial noise pollution refers to domestic noise caused by appliances and traffic noise created by a continuous flow of vehicles. Noise pollution caused by aircraft is a serious problem in areas close to international airports. Noise caused by theatres, discotheques and carnivals also constitutes a serious problem to nearby residents.

The damage caused by noise pollution is frequently long range and permanent (Yesilind et al 1990:326). It causes stress and tension as well as physical problems

such as deafness, chronic hypertension, heart attacks and stress-related illnesses such as headaches, muscle spasms, ulcers and other ailments of the digestive tract. Note that there is an element of subjectivity in determining the effects of noise pollution since one person may experience a particular noise as excessive whereas another may not (Grewas 1995:223).

From the foregoing exposition it becomes axiomatic that noise pollution, although a distinct form of pollution, does not really fall within the ambit of conservation crime. Noise pollution could, however, agitate wild animals to various degrees, causing them to flee a particular area in search of more tranquil surroundings. Any other form of trauma will be extremely difficult to gauge and/or quantify.

3.7.2 Illegal trade in endangered species

Official statistics on the extent of illegal trade in endangered species (and for conservation crime as a whole for that matter) are not very reliable for a number of reasons. In South Africa, only a small specialised police unit, the Endangered Species Protection Unit (ESPU), which was terminated several years ago and integrated into mainstream policing, dealt specifically with this type of crime despite the fact that South Africa is a very big country with large nature reserves and poor customs control at borders and airports – factors that facilitate poaching and smuggling without the prospect of perpetrators being apprehended.

Attesting to the historic industry of this Unit, Swanepoel (1998:213) provides the following statistics on the Unit's reactive accomplishments: 774 cases of illegal trade in endangered species to the value of R30 million were registered during the period January 1991 to December 1995, in the course of which the following were confiscated:

- 415 rhino horns
- 1 092 elephant tusks
- 34 095 ivory cubes equivalent to 3 410 elephant tusks

Apart from the above, a further 46 cases resulted in the confiscation of the following:

- 17 612 kg of abalone
- 802 exotic birds
- 492 cycad plants

ACTIVITY 1.12

In relation to the reactive accomplishments of the now defunct ESPU listed above and in the context of what has been stated before in this section regarding reactive versus proactive compliance management, how would you interpret the above reactive statistics? Take into consideration the natural resources trauma and mortality that reactive regulation begets.

According to Fitzgerald (1989:13–15), illegal trade in wildlife constituted the second largest illegal market in the world (after drugs) and was worth an estimated US\$10 billion per annum in 1989. In 2005 wildlife trade was still considered the second-largest illegal trade in the world after drugs. The global trade's import value, both legal and illegal, is now estimated at around US\$159 billion per year (Illegal wildlife trade: second only to drugs 2005). Bearing these figures in mind, it is astonishing that comparatively little criminological research has been conducted on the illegal trade in wildlife (Swanepoel 1998:207).

That the international trade in wildlife is big business is evident from the fact that the USA imported and exported wildlife and wildlife products worth US\$962 million in 1981. Today this business is probably much more lucrative. It is also important to consider that an ounce of rhino horn in an Eastern medicine shop may cost more than an ounce of gold (Du Bois 1997:29).

FRIGHTENING FACT

Up to nine out of ten birds caught from the wild for the pet trade die before they reach their destination.

Swanepoel (1998:214) identified three categories of traders in the illegal trade in rhino horn:

- poachers
- runners
- wholesalers

The poachers seem to be the first link in this chain. They are generally local people with a thorough knowledge of the environment, which helps to track the rhinos. In terms of the so-called six lower-class focal concerns of Miller (in Forsyth & Marckese 1993:157–172), although financial reasons are the most important reason for rhino poaching, there are also a number of other reasons:

- *Trouble*. The more trouble one experiences during the poaching process, the more status one earns, especially in rural societies.
- *Excitement*. The challenge of not getting caught by game rangers or the police is very exciting.
- *Being smart*. Poachers enjoy outmanoeuvring law enforcers. They also enjoy exhibiting their knowledge of guns, hunting tactics and use of special equipment during hunting expeditions.
- *Being tough*. Poachers enjoy being tough. They will not allow law enforcers to arrest them and will do whatever it takes to get away, even paying with their lives if necessary.
- *A sense of autonomy*. A sense of independence is at least partially satisfied by illegal hunting. By poaching, these individuals are playing by their own rules.

The runners seem to be the middlemen who transport the rhino horn from the poacher to the wholesaler. Sometimes the poacher supplies rhino horn directly to the illegal wholesale market. In most cases, the poacher and the runner earn more than the average South African by smuggling rhino horn, the money being used to support their families.

In 70,5% of the dockets studied, only one rhino horn was smuggled at a time. This reveals that runners or middlemen are opportunists who choose to become involved in the smuggling process. Illegal traders also seem to focus on a single species during smuggling operations.

In most cases (84,4%), only rhino horn was illegally traded. Very few cases were linked to other products (e.g. ivory or cycads). Most rhino horn recoveries took place away from the scene of the crime in offices, homes and vehicles. Some rhino horns were confiscated at the poaching site. The evidence, the rhino horn, is then handed over to the nature conservation authorities for safekeeping.

The wholesale dealers, who are not necessarily from South Africa, are the big international crime syndicate lords. It is not certain who these wholesalers are as they are very elusive. What is certain is the fact that they earn a lot of money, especially in foreign currency, by selling rhino horn to different markets.

3.7.3 Transnational conservation crime

Environmental harm occurs everywhere and anywhere, and there are important continuities that provide common ground across the globe. Transnational environmental conservation crime is truly global in scope, and reflects broad socioeconomic processes and trends associated with globalisation. The diversity and complexity of such harm can be understood in terms of national borders and international social processes, and the pressures of and limits to economic life shaped by the dictates of 21st-century capitalism (White 2008:115).

3.7.4 The problem of waste

A recent United Nations environmental conference identified three specific areas where hazardous waste requires urgent attention. The conference was held in November 2006 in Nairobi, Kenya, and featured representatives from some 120 governments. The following three issues were of particular concern:

- The proliferation of e-waste generated by the disposal of tens of thousands of computers and other equipment
- The safe disposal of old ships and aeroplanes, which likewise contain metals, chemicals and other contaminants
- The illegal shipping to and dumping of hazardous waste materials in countries made vulnerable by weak regulatory or enforcement systems

Much of the transfer of waste has been from advanced industrialised countries to Third World countries. Consider, for example, the case of Somalia. The Tsunami of Boxing Day 2004 uncovered serious environmental problems in Somalia.

[A]mong more than 400 miles of shoreline, the turbo-charged wave churned up reinforced containers of hazardous toxic waste that European countries had been dumping a short distance offshore for more than a decade, taking advantage of the fact that there was not even a pretend authority in the African failed state. The force of the tsunami broke open some of the containers which held radioactive waste, lead, cadmium, mercury, flame retardants, hospital waste and cocktails of other deadly residues of Europe's industrial processes. As the contaminants spread across the land and in the air, the United Nations said that an unknown number of people died from breathing in toxic dust and fumes. Subsequent cancer clusters have also been linked to Europe's special gift to the country, delivered by that tsunami (Bridgland in White 2008:117).

As Bridgland (2006) and others have pointed out, European companies have long been striking deals with Somali warlords to dispose of their waste. The warlords gained money for their arms, but of course no treatment process and no proper storage of the waste were ever really in the equation. The ongoing violence and political instability also precluded the chance of a clean-up.

As waste management became globalised, countries with civilian unrest, no environmental law enforcement or weak legislative frameworks have become prime targets for illegitimate hazardous waste dealers – who are likewise globalised.

It is estimated that around 500 million tons of toxic waste is discharged worldwide each year, mostly by developed countries. In the US and Europe it costs around US\$400 to treat one ton of toxic waste – it costs a tenth of that to treat that same waste in a developing nation (Chi in White 2008:117).

The biggest exporter of toxic waste is the USA. Hazardous residues and contaminated sludge are the most likely to find a foreign home in a Third World country. The pressures for this are twofold. On the one hand, the USA has seen the closing of many domestic landfills due to public health problems, and increasing public consciousness of the dangers posed by toxic waste. On the other hand, poor countries (and corrupt state officials) may find it financially attractive to offer their land as sites for US waste.

Other European and North American rubbish is dumped in landfill sites and off the coastline of Africa. Plastic waste is buried in giant pits in the Egyptian desert and German and French radioactive waste also finds its way to African states (Bridgland in White 2008:118).

3.8 FACTORS CONTRIBUTING TO CONSERVATION CRIME AND ILLEGAL TRADE IN ENDANGERED SPECIES

3.8.1 Factors contributing to illegal trade in endangered species

The motivational and contributory factors pertaining to the illegal trade in endangered species are varied and frequently depend on the particular species.

- Cultural (causes) issues

There is a big demand for rhino products among Asian communities whose cultural traditions believe rhino horn to be an aphrodisiac for which they are willing to pay large amounts of money. As long as these cultural traditions persist, it will be difficult to control this illegal market (Du Bois 1997:29).

In the African culture, endangered fauna and flora are used by sangomas or traditional African healers for curative purposes or to ward off evil spirits. However, as a result of an education campaign, sangomas are becoming increasingly aware of the importance of protecting endangered fauna and flora and many now work closely with the authorities in an attempt to protect our fauna and flora.

- Economic (causes) issues

The demand for elephant products (e.g. ivory and skins) in the Western world and the huge monetary rewards mean that it is very lucrative for individuals to smuggle these products. Many unscrupulous and immoral dealers have no qualms about becoming involved in illegal get-rich-quick schemes to enrich themselves at the expense of society. Rational choice and neutralisation (consult the literature dealing with crime theories for an explanation of these perspectives), and greed rather than need is the motivating factor here. That illegal trading in these products is lucrative is evident from the many organised crime networks that specialise in the smuggling

and trading of protected fauna and flora in South Africa and the rest of Africa (Du Bois 1997:35).

Illegal trading in protected fauna and flora may also be caused by need and poverty. Rural people who have no income and go hungry every day will become involved in this type of environmental crime if their basic needs for food and shelter are not met.

- Corruption

Unfortunately game wardens are sometimes actively involved in poaching and corruption. They turn a blind eye when confronted with the perpetrators. Cases have been reported in KwaZulu-Natal where members of the Game Guard Force became involved in illegal hunting (Du Bois 1997:35). In the Kruger National Park, a game warden was recently apprehended for slaughtering rhino and disposing of the products for his own profit, and in the Western Cape 15 fishery control officers were arrested on fraud and corruption charges (Van Wyk in Herbig & Joubert 2002:72). The poor salaries generally paid to game wardens and conservation staff may be a factor in these cases.

- Inadequate law enforcement and legislation

According to Du Bois (1997:35), inadequate customs control is a major problem in South Africa. She maintains that customs control is more focused on collecting taxes than on preventing illegal trading in endangered species. Customs control is also inadequate at all ports of entry and exit, making it easy for smugglers to operate largely unchecked and without fear of apprehension. The Department of Customs and Excise is ill equipped to mount effective and continuous operations to prevent and control illegal smuggling.

Anti-poaching strategies are not sophisticated enough and have to be upgraded and properly planned on a continuous basis (Du Bois 1997:37).

International cooperation between police services is problematic as it touches on sovereignty and territoriality. Political and economic interests often hinder police cooperation in the prevention of illegal trading in endangered fauna and flora across borders.

The protection of South Africa's wild fauna and flora is regulated by CITES and other international institutions, but also by the application of various national laws and provincial ordinances. Three laws and four provincial ordinances were applicable before the first democratic election in 1994. After this milestone in South Africa's history, nine provinces were established in place of the previous four, and this caused a further diversification of legislation (Swanepoel 1998:211).

Swanepoel (1998:211) states that laws and regulations are not applied consistently throughout the country. Bearing in mind that there is no national legislation to enforce the CITES treaty, and the fact that different provincial ordinances in South Africa prescribe a maximum fine of R250|000 for illegal trade and a maximum prison sentence of ten years, it is noteworthy that imposed fines varied from only R300 to R30|000 per case between 1992 and 1996.

3.8.2 Factors contributing to conservation crime

In this section we discuss certain motivational and contributory factors in conservation crime, the causes of conservation crime, conservation crime victims as well as various mechanisms that would mitigate and/or prevent such crime.

To facilitate communication of this theme, the various components will be presented within the framework of Cohen and Felson's (three-tier) routine activities theory. Note that criminological theories are used to explain the causes of crime, but may also be used effectively as conduits to present other criminological arguments systematically.

Although this theory is not discussed in great detail, students are urged to refresh their memory with regard to its rationale and core constituents. Conservation crime occurs in a variety of forms, and will in all probability differ considerably in relation to contributory and motivational dynamics and the complexity of each of its various facets. It also has a central shared quality, the direction of an injury to a nonhuman biotic and/or abiotic entity/recipient; in other words, it is victimless or rather there is no human victim (Herbig 2003:127). The non-hierarchical exposition provided here should by no means be considered exhaustive. The discussion merely aims to focus the debate and to stimulate the generation of further ideas and perspectives within the broader conservation criminological discourse.

3.8.2.1 *Presence of motivated offenders (tier one)*

- Financial attraction

Felson (in Siegel 2001:100) maintains that there are always impulsive offenders willing to take the chance, if conditions are right, of committing crime for profit. Many, if not most, conservation crimes are committed with an underlying financial motive. Whether plants or animals are illegally poached, or smuggled, or hazardous waste is discharged into marine and/or aquatic ecosystems, or the atmosphere for that matter, more often than not the activity promises a distinct financial benefit for the perpetrator(s).

Natural resources are widely regarded as free commodities. Schulze (1991:127) suggests that as long as environmental resources such as air, soil and water are freely available at no or very little cost, executives and corporations will not be motivated to preserve them or refrain from polluting them.

In the conservation crime sphere specifically it seems as though the large economic benefits on offer within a relatively low-risk environment, and the comparatively inconsequential penalties imposed on offenders – if and when apprehended – make the temptation of becoming involved in conservation crime virtually overwhelming.

- Poverty

Within developing countries such as South Africa, poverty and economic need may be considered important catalysts in promoting and perpetuating conservation crime.

For example, as disposal facilities for hazardous waste become scarcer and scarcer and more costly in the developed countries, the less developed countries are increasingly targeted as dumping grounds. Lipman (1999:266) has aptly termed this practice “environmental racism”. Owing to stoical attitudes and ignorance, and often being blinded by the benefits on offer, improper storage, transport and/or handling by the

host country leads to leakage or discharge of the waste products, frequently resulting in contamination of its natural resources and the loss of human life.

Poverty also causes impoverished individuals or communities to resort to poaching and/or the illegal exploitation of natural faunal and floral resources – in a sense introducing them to crime. These individuals are manipulated by unscrupulous traders who make enormous profits on the black market but pay the collectors a mere pittance for their efforts. Such illegal exploitation also promotes the formation of crime syndicates that use the profits from their illegal activities to intensify their operations and to finance other crimes. The abalone-poaching phenomenon on the Cape's South Western seaboard is a prime example.

3.8.2.2 *Suitable targets (tier two)*

- Availability of natural resources

Natural resources are by their very nature ubiquitous and readily accessible to all and sundry. Often scarce, valuable and highly sought-after, tangible natural resources are restricted to particular habitats or locales. The concentration of these resources, although making them easier to protect, also makes them especially susceptible to illegal exploitation as whole populations can theoretically be targeted and wiped out in one fell swoop.

On the other hand, many indigenous organisms are widespread throughout the country, making them difficult to protect and facilitating diverse pressures on them by the general populace and criminal elements.

Despite these difficulties, natural resources are generally regarded as infinite by the general populace. Acts directed at their demise, which are often veiled or executed furtively, are not considered as reprehensible as the more conventional types of crime prevalent in society. Lack of public censure for conservation crime has no doubt contributed to the perpetuation of such crime and criminality and promoted its historic and current relegated status.

- Ignorance and lack of awareness

According to Loots (1994:17), there has been little public awareness of the threat to the environment, and the South African public is largely unaware of what constitutes an environmental offence. It is no secret that many historically disadvantaged communities in South Africa still do not regard environmental pollution or the (over) utilisation of the country's natural resources as morally or criminally wrong. Custom and tradition advocate actions that affect the environment and do not necessarily correspond with the modern-day conservation/biodiversity paradigm. This in itself is a dilemma that will require much debate and analysis to find a mutually acceptable solution.

The crux of the matter is, however, that much of society in general is so caught up in the conventional crime wave that is sweeping through the country that they do not give environmental issues more than a second thought.

Loots (1994:18) maintains that only when the public becomes actively involved will environmental laws be more effectively implemented. In the meantime, however, the populace's general apathy towards injudicious manipulation of the environment

will serve to make crime in this sphere especially attractive and lucrative. We can expect it to get a lot worse before it gets better.

- Organism value

Apart from environmental pollution, where the value for the polluter lies in the relatively cost- and hassle-free disposal of waste products into the atmosphere, water or soil, many other organic natural resources have an inherent monetary value that makes them beneficial to trade. Hauck (1999:213), for example, states that dried abalone (*perlemoen*) sells for R6|000 per kilogram on the Chinese black market. Gildenhuis (2002) reports that the value of a single endangered geometric tortoise on the black market is as high as US\$5 000. Even the relatively common angulate (*rooipens*) tortoise found throughout the Western Cape Province fetches between US\$600 and US\$800 on the black market (Gildenhuis 2002). With incentives like these, conservation crime becomes easy to conceptualise.

3.8.2.3 *Absence of capable guardians (tier three)*

- Conservation legislation

According to Burgener, Snyman and Hauck (2001:iv), the White Paper on Conservation stresses the following with regard to conservation legislation:

The fragmented, polarised and inefficient administrative and legislative structures created by apartheid resulted in no fewer than seventeen government departments having primary responsibility for nature conservation prior to the April 1994 election. This situation did not improve with the establishment of new provinces and government structures. Divided responsibilities, together with a duplication of effort, a profusion of laws and, most importantly, a lack of coordination, have been major factors hampering effective conservation of biodiversity.

Bearing in mind that effective law enforcement is paramount to ensuring successful regulation in wildlife trade (Burgener et al 2001:32), the existing legislative environment in which enforcement officials are required to promote resources guardianship is, to say the least, extremely challenging and definitely not conducive to deterrence and biodiversity conservation. Crime flourishes in governmental division and strife. The various law enforcement agencies (Institute for Municipal Law Enforcement of South Africa 2001:12) and the all too often diverse, confusing and inadequate legislation contribute to the illegal exploiter's success (Du Bois 1997:39). To create policy and legislation is one thing, but to execute it successfully is quite another!

- Conservation injunctions

Compounding this legislative predicament are the inconsistent and inadequate penalties imposed by the various provinces for conservation-related transgressions (Herbig 2003:140; Loots 1994:22). It is common knowledge that inadequate penalties have no deterrent value, specifically in a milieu where the price of being caught is considered part of the cost of doing business (Frank & Telecky 2001:78). Loots (1994:22) says that prosecutions (for conservation-related crimes) often fail, and even if a conviction is obtained, its effect is minimal because a fairly low fine instead of imprisonment is imposed. Without effective deterrents, profitable conservation crime will remain an attractive proposition and will continue to attract and encourage exploitation.

Effective deterrence does not only depend on the severity of the punishment, but also on a perceived high risk of detection. Potential offenders will not be deterred by the threat of high penalties if they realise that they are unlikely to be apprehended. It is common knowledge that empty threats rapidly lose their credibility (Herbig & Joubert 2002:72).

- Compliance management

According to Matthee (in Liebenberg & De Vos 2002:27), the environmental rights entrenched in section 24 of the 1996 Constitution must be read in conjunction with the overarching obligation of the state to respect, protect, promote and fulfil the rights in the Bill of Rights (s 7(2)). This section unambiguously places a duty on the state to take reasonable legislative and other measures to improve the environmental situation. This, *inter alia*, implies the development of programmes that avert and/or minimise the disturbance of ecosystems/bionetworks, loss of biodiversity, degradation of the environment as well as the enforcement of legislation and/or directives.

A number of entities in the various provinces undertake or are required to undertake conservation-policing activities. However, many of them do not consider compliance management a primary focus. Moreover, they are seriously under-resourced, especially in terms of manpower, and enforcement in the natural resources sphere is consequently deficient (Herbig 2003:143). Burgener et al (2001:31) state that as interprovincial cooperation in terms of wildlife trade does not appear to be entirely absent, cooperation between the authorities has deteriorated since provincial restructuring in 1994.

These factors in essence sabotage and erode deterrence initiatives and serve to spawn opportunities for crime. In fact, crime in the conservation arena currently appears especially attractive, encouraging participation.

3.9 CONSEQUENCES OF CONSERVATION CRIME AND ILLEGAL TRADE IN ENDANGERED SPECIES

3.9.1 Victims of conservation crime

Conservation crime is often considered a victimless crime because most of these crimes are not directed at a specific victim and are, in the main, not easily discernible.

Ironically, however, most conservation crime, apart from its negative impact on natural resources of a biotic and/or abiotic nature – making them victims in their own right – affects human beings and in the final analysis the survival of the planet as we know it. The real victims of environmental crime are our descendants and future generations who will be faced with a natural resources legacy squandered by their ancestors, without ever having had a say in the matter.

3.9.2 Victims of illegal trade in endangered species

The illegal trade in endangered species not only affects the species itself, but the interest groups involved as well. These victims may be divided into various categories of which the following are considered the most important:

- *Government-controlled national parks.* The fact is that every taxpayer is a co-owner of the endangered species in the parks and therefore has the right to insist on protection of these species. Protecting species ensures an income from ecotourism, which can in turn contribute to the economic upliftment of the country. Failing to control illegal trade in endangered species effectively is an offence – not only against every taxpaying citizen by way of loss of ecotourist income, but also because our natural heritage is being destroyed.
- *Private owners of endangered species.* This group (e.g. the owners of private game reserves) also contributes to the conservation of endangered species. These owners experience heavy financial losses when animals are poached and illegally traded by smugglers.
- *Nongovernmental organisations (NGOs).* Although these organisations are not owners of endangered species, other organisations such as World Wildlife for South Africa (WWFSA) contribute financially and logistically to the protection of endangered species. They donate money, transport, personnel and so on, and therefore they also suffer severe losses because of illegal trade.
- *The species per se.* The species itself is an obvious victim. There is loss of biodiversity and the ecosystem changes when a species becomes extinct. The cruelty involved in some of these crimes, such as hacking off the horn from a wounded, but nonetheless living animal, also means that the species become victims.

3.10 THEORETICAL EXPLANATIONS OF CONSERVATION CRIME

Based on the salient features of conservation crime mentioned elsewhere in this theme, and with due regard to the theoretical subsidiaries already recognised, a theoretical explanation, as opposed to an explanatory theory, can be developed that adequately explains this form of criminality.

When considering the characteristics of conservation-related crime and deviance, the premeditated, clear, but also underlying positivist nuances and attributes of this category become apparent. An appropriate explanation can therefore be sought within the existing framework of both the classical/neoclassical and positivist ideologies.

The overriding model succinctly detailed below draws on and merges, to a greater or lesser extent, elements from Gottfredson and Hirschi's general theory of crime (classical/neoclassical), Bandura's social learning/socialisation theory (positivist), Sykes and Matza's neutralisation theory (positivist), and Cornish and Clarke's rational choice perspective (classical/neoclassical).

3.10.1 Gottfredson and Hirschi's general theory of crime

This theory emphasises lack of self-control in the context of poor parenting and child-rearing practices as key elements that predispose individuals to crime. Crime is the expected result when individuals with poor self-control encounter situations in which crime promises immediate recompense accompanied by relatively low levels of risk. Moyer (2001:153) and Williams and McShane (1999:197) write that Gottfredson and Hirschi believe that self-control is taught in early childhood, implying that parental discipline and management are key factors in explaining delinquent and adult criminal offending. Not all individuals with poor self-control will engage in criminal activities. Although such individuals tend to pursue immediate gratifica-

tion, they will only resort to crime when opportunities arise that allow them to use self-gratifying force.

3.10.2 Application of the theory in the context of conservation crime

Although this general theory is often presented as an inclusive explanation for the cause of crime, a singular application would trivialise the complex process of conservation crime causation. Gottfredson and Hirschi's general theory of crime is only one, albeit integral, part of the total criminal performance. Most conservation crimes bring gratification in some form or other at the expense of natural resources. Intentional pollution in order to avoid high disposal costs, the poaching of abalone, rhino horn and cycads are all examples of activities that provide rewards in a relatively risk-free environment (e.g. poor regulation and compliance capacity, and polarised, divergent and nebulous legislation).

In terms of this theory, individuals with poor self-control will be predisposed to crime in general. This seminal ingredient of the general theory of crime is therefore selected as a vital constituent of the conservation crime explanatory model.

3.10.3 Bandura's social learning theory

Although Gottfredson and Hirschi's general theory of crime adequately explains participation in crime in terms of self-interest and poor self-control, it does not explain why someone would specifically participate in something less conventional such as conservation crime. There has to be something less arbitrary that orientates those with a propensity for crime to become involved in natural resources deviance. Socialisation provides a potential answer to this quandary.

According to Bartol (1995:183), Glick (1995:108) and Williams and McShane (1999:198), Bandura's socialisation theory advocates that all human behaviour is learnt in early childhood by observing (modelling), imitating and/or interacting with role models – parents and family members in particular. Such socialisation can be strengthened or weakened by punishment. Criminal behaviour is therefore viewed as a learnt response to social conditions and life situations.

It is not proposed that the criminal tendency to participate in conservation-related crime is learnt per se, but rather that individuals, through the socialisation process, acquire and assimilate the general civic stereotype regarding natural resources. People learn, albeit incorrectly, in their particular communities that animals and plants are less significant than humans, that they are essentially unspoken for, inexhaustible, and there to be manipulated at will.

These corrupt sentiments are often reinforced in the school environment where nonconformity elicits ridicule and ostracisation. If an individual does have poor self-control and has been subjected to deficient natural resources socialisation, the probability of him/her committing conservation crime is expected to increase exponentially.

3.10.4 Application of the theory in the context of conservation crime

Poor self-control and opportunities in concert with prejudiced socialisation regarding natural resources and their worth are considered particularly relevant in providing

a theoretical foundation for and explaining the genesis and concatenation of conservation crime.

People who are desensitised to and/or ignorant with respect to the sustainability of natural resources and who additionally have poor self-control may therefore be drawn to conservation crime. However, degrees of self-control and prejudiced natural resources socialisation will inevitably sustain an individual's propensity to participate in illegal pursuits, and opportunistic or accidental crime is also bound to occur.

3.10.5 Sykes and Matza's neutralisation theory

The general premise of this theory is that damage caused by criminal action is neutralised in the mind of the offender before a crime is committed. Thus guilt feelings are eliminated, temporarily freeing a potential offender from the moral constraints imposed by society's rules and laws (Siegel & Senna 2000:175). Conklin (2001:217) believes that individuals are able to avoid moral blame and maintain their self-esteem while violating the law if they tell themselves and others that they had no criminal intent or that their behaviour was justified.

3.10.6 Application of the theory in the context of a conservation crime

Offenders with the prerequisite poor self-control and inadequate socialisation can easily justify their actions through a process of neutralisation. They might for example contend that a crime directed at the natural environment is not serious and that they had to exploit natural resources due to circumstances beyond their control (e.g. poverty, a broken home, negligent parents or wayward friends). They might claim that little harm has been done as the natural resources asset base is vast and infinite. Offenders might claim that their crime against the natural environment is a form of retaliation for poor bureaucratic decisions, for example not being issued/reissued with a fishing quota in terms of the new equitable distribution of marine harvesting rights.

Bear in mind, however, that the poor self-control and negative environmental socialisation will fluctuate between individuals. This fluctuation will fundamentally affect the extent to which they will morally disengage, neutralise and/or rationalise about their decision to participate in conservation crime.

3.10.7 Cornish and Clarke's rational choice theory

This theory addresses the rational, lucid and strategic decisions criminals make before they participate in crime. Cornish and Clarke's rational choice theory posits that criminals weigh the pros and cons (a cost/benefit relationship) before they decide to engage in criminal activities.

3.10.8 Application of the theory in the context of a conservation crime

Although someone contemplating conservation crime is already sensitised or inclined towards it, the eventual decision to perpetrate or not to perpetrate the crime remains a cogent one. Cornish and Clarke (1987:934) believe that the final decision to continue, displace and/or amend the criminal's deviant notions is based on economics, and is made entirely voluntarily and rationally.

The rational decisions of criminals to engage in conservation crime are in all likelihood preceded and complemented by neutralisation techniques and the crime may be viewed as the last stage of the process that sets actual participation in an illegal act in motion.

The above theoretical explanation is an example of an integrated and multifaceted approach to explaining crime. It emphasises how positivist and classical-flavoured theories can merge to form an acceptable and highly effective crime explanation model. Since the model is general in nature, it should be viewed as more of a foundation on which to build than a definitive statement on the causes of conservation crime and deviance.

The model, in essence, attempts to illustrate the causal relationships between variables at an unmitigated level. The theoretical explanation introduced in this study theme should be sufficient to stimulate much-needed thought on the determinants and interrelatedness of a wide range of variables in natural resources crime.

Diagram on page 51

3.11 PREVENTION AND/OR MITIGATION OF CONSERVATION CRIME AND ILLEGAL TRADE IN ENDANGERED SPECIES

3.11.1 Prevention and/or mitigation of conservation crime

The prevention and/or mitigation of conservation crime, as with most conventional forms of crime, is no simple matter. Since natural resources trauma cannot readily be mitigated by financial compensation, and as the consequences are more often than not lasting or at least compounding in nature, prevention in this arena should constantly strive for holism and sustainability. The solution would be to prevent as many conservation crimes as possible from actually occurring by intervening during their incipient stages – in essence a total onslaught or zero tolerance short-term approach adopted as a precursor to a proactive approach. It should, in other words, only exist in order to be phased out and replaced with medium to long-term proactive stratagems (Herbig 2008:57). The reactive management of noncompliance should be replaced with the proactive management of compliance.

It is of little use to claim large conservation victories when consignments of abalone and/or rhino horn are confiscated at an airport or roadblock. The resource has been annihilated and cannot be replaced by an insurance policy payout. Poachers will just return to poaching, and middlemen and end-users will patiently wait for another consignment. When the environment has been contaminated, the damage has been done. Clean-up operations can never restore the status quo.

Seen in this context, all conservation crime prevention initiatives should be highly coordinated and applied in concert. It would, for example, be of no use to roll out a countrywide conservation crime-sensitising programme while the statutes remain polarised and tenuous, and/or while organisational compliance or regulation capacity remains inadequate.

A few pragmatic examples of prevention strategies are detailed below.

(1) Judicial system reform

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In the main, natural resources crimes are not afforded a high priority by our courts, and are in many instances trivialised by judicial officers and prosecutors. More often than not this state of affairs leads to inconsistent and insignificant sentences that undermine all deterrence efforts with regard to conservation crimes.

To alleviate these problems, strategically positioned conservation crime courts or even mobile or satellite courts should be considered. These courts should be staffed with adequately trained and sensitised personnel who are au fait with the miscellany of conservation-related issues they can expect to be confronted with.

If those contemplating conservation crime realise that there is a good chance that they will be apprehended and punished swiftly and severely, conservation crime should become proportionately less attractive and could decrease dramatically.

Effective administration of justice would promote deterrence and should be factored into the compliance management equation from the very beginning. This would ensure that conservation crime is addressed in a sustained and holistic manner.

(2) Public awareness and marketing

Public awareness and conservation-marketing campaigns are deemed invaluable specifically in reducing the apathetic societal stereotype about the finiteness and importance of the country's biodiversity assets. Such sensitisation and orientation will simultaneously assist compliance management functionaries with their task and also promote deterrence.

School education and awareness programmes could go far in mitigating entrenched and conservation-biased stereotypes. Emerging adults would then know how to express disapproval of conservation crime.

According to Wals (1994:15), educational reform is an important instrument in modifying and guiding behaviour in a specific direction. It should be a process that leads to autonomous thinking, and it should create awareness of the importance of preserving the natural environment. These awareness and marketing programmes should ideally target all segments of society, not neglecting big business/corporations.

(3) Merging existing conservation agencies into a single unified body

The consolidation and alignment of all dedicated conservation agencies into a single integrated conservation-minded and goal-oriented body would represent the utopia that has long been sought in conservation circles. It would be the answer to many of the challenges faced in the conservation compliance sphere (Herbig 2003:242). The alliance of human resources capacity and expertise, coalescing financial, administrative and operational procedures or resources, the rationalisation of structures, standardisation of legislation or policy and the eradication of duplication and fragmentation in all spheres would facilitate resolute management and promote conservation efficiency on all fronts.

(4) Consolidating and rationalising conservation-related legislation

The overabundance of divergent, confusing and capricious conservation legislation in the statute books is not only undermining deterrence and creating opportunities for conservation impropriety, but is also unquestionably attracting criminal elements to this burgeoning sphere of relatively risk-free illegal activity.

Natural resources legislation has to be consolidated urgently, given the snail's pace at which the wheels of bureaucracy turn. The consolidation of conservation-related legislation under one national law, similar to the National Road Traffic Act of 1996, would be propitious.

(5) Amplification of compliance management and support capacity

Human resources and fiscal capacity are undoubtedly the most fundamental shortcomings as far as conservation crime in South Africa is concerned. Capacity inadequacies are not only found in the dedicated operational conservation compliance, scientific, logistical and support services milieus, but are also clearly present within those organisations and entities entrusted with augmenting conservation compliance efficacy through effective service delivery (e.g. customs and excise).

However, the amplification of compliance/policing/regulation capacity and resources is by no means to be regarded as a panacea. It is merely a logical foundation for the generation of and gravitation to numerous mitigation/suppression (proactive) strategies aimed at combating natural resources retrogression in South Africa.

(6) Informal control measures

Citizens and grassroots organisations should be encouraged to act as informal control systems to prevent environmental pollution by corporations (Cable & Benson 1993:465) and to ensure that law enforcement and state control measures are effectively implemented. It should be borne in mind that the cost of state efforts to clean up environmental pollution caused by its own irresponsible actions or those of corporations are ultimately borne by the public by way of taxation and the effects of pollution on their health. Hence, collective attempts to prevent conservation crime are an important form of informal crime prevention.

3.11.2 Prevention and control of illegal trade in endangered species

3.11.2.1 *Empowerment of rural communities bordering on game and nature reserves*

As long as there is poverty and dire economic need, poaching and illegal trading will remain a problem. The government, the South African National Parks (SANParks) and private owners of game parks and nature reserves in South Africa should become involved in winning the cooperation of local communities and educating them about the importance of protecting our fauna and flora. These communities should be actively involved in operations in these areas and be allowed to become stakeholders and participate economically by selling some of their arts and crafts in the reserves.

It is a sad reflection on our society that the SANParks has for many years ignored the arts and crafts of local communities and yet sold arts and crafts imported from Taiwan and other Asian countries in game park stores. Local communities should be allowed to use some of the proceeds from the protected fauna and flora products in a controlled manner and be educated on sustaining these natural resources for the survival and enjoyment of their communities.

3.11.2.2 *Educational and awareness programmes*

Educational and awareness programmes to inform the general public – and especially children – about the importance of preserving our fauna and flora can make a valuable contribution to preventing conservation crime. This can be done by means of lectures, pamphlets and field trips and by encouraging the public at large to become members of environmental organisations.

3.11.2.3 *Interagency cooperation*

There should be more interagency cooperation across borders as well as internally to prevent poaching and illegal trading. Anti-poaching strategies should be launched in conjunction with the ESPU, game guards and conservation officers in the various parks and conservation areas.

As poaching and smuggling of endangered species can no longer be controlled by individual states, international cooperation across borders is extremely important to prevent and control environmental crime (Du Bois 1997:30). International agreements on environmental protection, coordination and the enforcement of environmental regulations should be a priority and should transcend political and economic interests. Du Bois (1997:31) refers to legislation passed in Europe and the USA to accommodate the Regotoire Commission that allows for evidence to be taken anywhere in the Western world by this legal commission as long as there is cooperation between the governments concerned.

3.11.2.4 *Well-trained and adequately paid staff*

One of the biggest problems hampering effective prevention and control of illegal trade in endangered species is inadequately paid staff that are consequently inefficient in the execution of their duties. Poorly paid staff are more vulnerable to corruption and criminal activities. An urgent need therefore exists for more and better paid staff. According to Du Bois (1997:38), the informer system is poorly developed owing to logistical problems and should be upgraded to increase the likelihood of success.

3.11.2.5 *Effective legislation*

Uniform legislation should be adopted to deal with the protection of endangered fauna and flora in all South African provinces. At the moment there are too many statutes and ordinances which complicate effective law enforcement.

Du Bois (1997:40) also states that the current maximum penalties are inadequate.

3.11.2.6 *Effective law enforcement (compliance management)*

Law enforcement units should be well staffed and equipped and proper logistical support should be provided. Technical equipment such as well-maintained vehicles, which should include four-wheel-drive vehicles, motorcycles and helicopters as well as night vision instruments, should be available. Proper infrastructure should be created to make provision for rapid response deployment (Du Bois 1997:38).

ACTIVITY 1.13

A recent South African government initiative is the establishment of environmental management inspectors (EMIs) (the so-called green scorpions). Do some research on these EMIs and determine how they contribute to the conservation of South Africa's natural resources. Once again, contrast the proactive management of compliance with the reactive management of noncompliance.

Customs control at exit and entry points should be well organised and sustained. International cooperation at this level is particularly important to prevent organised crime. CITES, which was established to regulate the commercial exploitation of endangered species, urges governments to designate special ports of exit and entry through which all exports and imports should be channelled. These special exit and entry ports should be controlled by experienced customs officials to prevent and control illegal trade. In the USA, where this system has been adopted, it seems to be effective (Du Bois 1997:36).

Owing to inadequate training of human resources, criminal cases are often poorly prepared, making it difficult to obtain a conviction. Conservation authorities should work more closely with the Director of Public Prosecutions to ensure that cases are prepared well enough to ensure convictions.

3.11.2.7 *Establishing a computer database*

In order to facilitate investigations, an operational planning computer database should be established and, where applicable, expanded as soon as possible (Du Bois 1997:39). Such a computer-based system should be shared with other interested parties and should be regularly updated to keep adequate track of the activities of organised crime syndicates smuggling endangered species.

3.11.2.8 *Allowing controlled trade in endangered species*

Some African countries, including South Africa, have herds of elephant and rhino numbers have grown as a result of responsible conservation methods. However, these increased numbers can no longer be sustained in the parks because of overgrazing. Conservationists are therefore in favour of partial deregulation of the ban on trading in elephant and rhino products. It is envisaged that such income would be used to improve and maintain the parks and for the economic benefit of local communities.

Elephants in the Kruger National Park could be culled to sustain the environment according to Dr Salomon Joubert, the former park's director. The ivory from culled elephants he suggested should be sold to provide an income for the Park. The opinion is that new technological methods to identify ivory and rhino products would permit strict control of the sale of these products. However, the KNP's large mammal ecologist Sam Ferreira said that although the population had decreased by 3,5% per year, it was stabilising. He said in 1994 when the park stopped elephant culling, there were about 8 000 elephants in the park and the population was growing at 6,5% per annum. He further said that SANParks sought to manage the effect of elephants and not the elephants per se. In other words the elephant population is manageable and it has not reached crisis levels (News24 2013:1)

At a conference held in Harare in 1997, however, most of the Western members of CITES were not in favour of such deregulation. Moreover, the African countries consider it presumptuous of Western countries to prescribe to them because people

from the West are not in direct contact with their specific problems. They also believe that partial deregulation would make a meaningful contribution to the prevention and control of illegal trade in endangered species. Part of the income could be used to empower and uplift the rural communities who are directly involved.

ACTIVITY 1.14

Some African countries were in the past granted permission to sell ivory under strictly controlled conditions. What is your opinion in this regard?

3.12 SUMMARY

In this theme we focused on conservation crime categorisation and phraseology complexities as well environmental pollution and the illegal trade in endangered species. We also examined factors that promote and contribute to conservation crime as well as the prevention and control and victims of conservation crime. The issue of transnational conservation crime (pollution) was also discussed and the devastating effects of illegal waste disposal in Third World countries were highlighted.

3.13 SELF-ASSESSMENT QUESTIONS

QUESTION 1 *Which term can best be used to describe crime directed at natural resources?*

- (a) environmental crime
- (b) conservation crime
- (c) ecological crime
- (d) green crime

QUESTION 2 *Which form of pollution is of greater immediate concern than any other type of pollution?*

- (a) water pollution
- (b) solid and hazardous waste pollution
- (c) noise pollution
- (d) air pollution

QUESTION 3 *Which form of pollution is regarded as one of the oldest environmental problems, usually ascribed to urbanisation, industrialisation and waste disposal?*

- (a) air pollution
- (b) thermal pollution
- (c) water pollution
- (d) noise pollution

QUESTION 4 *Which of the following constitute strategies for preventing and controlling illegal trade in endangered species?*

- (a) education and awareness programmes
- (b) transnational and national legislation

- (c) international cooperation and support
- (d) religious and psychological programmes

Choose the most correct option:

- 1 (a)
- 2 (b)
- 3 (c)
- 4 (d)

QUESTION 5 *The illegal shipping and dumping of hazardous waste materials in Third World countries by First World countries is an example of which form of crime?*

- (a) international environmental crime
- (b) white-collar crime
- (c) transnational conservation crime
- (d) none of the above.

QUESTION 6 *Wildlife trade is regarded as the ... biggest illegal trade in the world.*

- (a) fourth
- (b) second
- (c) third
- (d) seventh

QUESTION 7 *The theoretical explanation of conservation crime employs a combination of existing theories. Identify these theories.*

- (a) relative deprivation, general theory of crime, neutralisation, rational choice
- (b) rational choice, neutralisation, anomie, differential association
- (c) neutralisation, rational choice, deterrence, social learning
- (d) rational choice, social learning, general theory of crime, neutralisation

QUESTION 8 *To which conservation crime prevention and mitigation strategy does the following passage refer? "Such sensitization and orientation will simultaneously assist compliance management functionaries with their task and promote deterrence."*

- (a) public awareness and marketing
- (b) judicial system reform
- (c) merging existing conservation agencies into a single unified body
- (d) amplification of compliance management and support capacity

QUESTION 9 *Since which year has South Africa been a member of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?*

- (a) 1937
- (b) 1957
- (c) 1973
- (d) 1975

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QUESTION 10 *Identify the correct motivational and contributory factors pertaining to illegal trade in endangered species.*

- (a) cultural issues
- (b) social issues
- (c) economic issues
- (d) ethical issues

Choose the most correct option:

- 1 (a) and (b)
- 2 (a) and (c)
- 3 (b) and (c)
- 4 (c) and (d)

3.14 ANSWERS TO SELF-ASSESSMENT QUESTIONS

- (1) 2
- (2) 4
- (3) 3
- (4) 4
- (5) 3
- (6) 2
- (7) 4
- (8) 1
- (9) 2
- (10) 2

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THEME 4

WHITE-COLLAR CRIME

REVISED BY MR VZ MTSHALI

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STUDY UNIT 4

White-collar crime

LEARNING OUTCOMES

After completing this study unit you should be able to

- demonstrate an understanding of the structure, characteristics, explanation and prevention of white-collar crime

ASSESSMENT CRITERIA

After completing this study unit, you should be able to answer diverse multiple-choice questions on various sections of this theme in order to demonstrate your understanding and knowledge of and insight into the study material.

4.1 INTRODUCTION

A narrow view of crime would dictate that it is something that low-income or working-class people do; they steal, behave violently, drink to excess or take drugs. However, the scale and the scope of crimes committed by powerful companies and high-income professionals are staggering, as are the consequences for large numbers of people affected by white-collar crime (Watts, Bessant & Hill 2008:187).

In the past, conventional criminologists preferred to focus on working-class crime rather than make corporate crime or the crimes committed by economic and professional elites a central feature of criminological theory and research. For years, researchers neglected crimes committed by more affluent people because factors such as poverty, subculture norms and social disorganisation were regarded as the roots of crime.

In 1939, Edwin Sutherland (Schmallegger 1996:339) gave prominence to white-collar crime in a speech he made in his capacity as president of the American Sociological Association in which he described the criminal activities of the rich and powerful. Since then corporate criminology, that is, criminology relating to both organisations and individuals employed by organisations, has received the attention of both researchers and policy makers.

White-collar crime is in particular attributed to a decline in business ethics, the temptation to steal money and other assets for self-enrichment purposes, and the resourcefulness of offenders.

Interest in white-collar crime has recently surged, primarily because of worldwide publicity surrounding the collapse of, or fraudulent activity in, multinational corporations. The general public has thus become much more aware of insider stock trading, banking fraud, and complex financial conspiracies.

4.2 DEFINING WHITE-COLLAR CRIME

There is no generally accepted definition of white-collar crime although the term is used worldwide. The main problem with a definition is lack of consensus on whether this category of crime should be defined in terms of the offender's characteristics or according to the contravention itself.

Sutherland (Schmallegger 1996:339) became interested in white-collar crime because he was convinced that crimes were also committed by more affluent people. He was of the opinion that crime is not closely related with poverty or with the conditions associated with poverty. The problem was that white-collar crimes were not handled by the law courts but were resolved administratively, particularly when the crimes affected people's occupations.

Sutherland (Walsh & Hemmens 2008:487) identified white-collar crime as a research subject and defined it as "crimes committed by highly placed persons in the process of practising their professions". He wanted to draw the public's attention to the fact that the activities of white-collar offenders were just as criminal as those of conventional offenders such as robbers and rapists. He also noted that white-collar crime was regarded as less serious than street crime (or 'conventional crime') because people in the higher socioeconomic classes had the power to influence the administration of justice.

In the past white-collar offenders were not classified as criminals and consequently this category of crime was not addressed by research and explanatory theories. Sutherland questioned the theories that focused exclusively on criminal activities among the lower socioeconomic classes while ignoring offences committed by the more privileged classes. He specifically advocated the application of his theory of differential association to studies of white-collar crime (Watts et al 2008:188).

Note that Sutherland's approach to white-collar crime focused on activities such as misleading advertising, unfair and exploitative labour practices and illegal financial manipulation. Crimes such as murder, assault or rape committed by the rich and powerful were not defined as crime. Sutherland made this distinction because these crimes were not typically organisational or occupational offences. Sutherland also excluded organised crime or "mob" activities since the perpetrators possessed neither respectability nor high status (Watts et al 2008:195).

Sutherland's original definition of white-collar crime (Walsh & Ellis 2007:399) has been and still is the subject of considerable debate and criticism. The three most important shortcomings of Sutherland's definition are that

- most white-collar offenders do not come from a high status group and that the requirement of high or respectable social status restricted the array of offences that could be examined (Piquero, Piquero, Terry, Youstin & Nobles 2008:586)
- crimes are not only committed by people in high and low-status groups but also by middle-class people (i.e. by people from all social classes or status groups)
- it does not distinguish between crimes committed by individuals for personal gain and crimes committed for the employer, aided and abetted by that employer

Although the actions of individuals are explicitly included in the first part of Sutherland's definition, some crimes committed by individuals seem to be excluded in the second part of the definition which focuses on occupation (e.g. income tax evasion and credit card fraud). Remember, however, that at the time little information on white-collar crime was available.

The limitations of Sutherland's offender-based definition led to the development of an offence-based definition by Edelhertz (Piquero et al 2008:586), who defined white-collar crime as "an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage". This definition was criticised as being too broad and therefore losing sight of the very population that Sutherland wished to emphasise.

An important criterion in distinguishing between white-collar crime and other crimes (or street crime) is the fact that white-collar crime requires planning and organisation as well as deception. That is to say, premeditation and fraudulent activity of some kind is an inherent requirement for the commission of white-collar crime.

In the *Sage dictionary of criminology*, Tombs and Whyte (2010:319–320) define white-collar crime as follows:

A heterogeneous group of offences committed by people of relatively high status or enjoying relatively high levels of trust, and made possible by their legitimate employment.

Please take careful note of the behaviour involved here. The commission of conventional crimes such as robbery and assault are typically characterised by behaviour involving the use of force and stealth. White-collar crime is characterised by planning and deception. Opportunities for crime are frequently offered by a person's occupation or working conditions. The obvious need for preparations of some kind in order to commit this kind of crime is the reason why white-collar crimes are described as rational crimes. To rape a person or steal a car does not necessarily require prior planning. The preparation that is an inherent requirement of white-collar crime indicates the material intention of the perpetrator to commit such crime.

4.3 CATEGORIES OF WHITE-COLLAR CRIME

Sutherland's definition (Watts et al 2008:196–197; Vito, Maahs & Holmes 2007:415) only dealt with individual criminal acts without taking into account the fact that corporations or organisations can commit offences as entities. A dichotomy was consequently created:

- Crimes against organisations are those that take place in major companies, usually at the behest of a lone individual or a small number of people.
- Crimes for organisations involve collective intent to engage in illegal activity by a significant number of players, including high-ranking executives, as a matter of policy and calculation.

Siegel (2008:284) categorises white collar-crime into seven components, namely, stings and swindles, chiselling, embezzlement, client fraud, corporate crime, individual exploitation of institutional position and influence peddling and bribery.

Individual exploitation of institutional position

Individual exploitation of institutional position refers to situations in which exploiters force victims to pay for services to which they have a clear right. In this instance think of water and electricity to which people have a constitutional right but the municipality and Eskom keep hiking the prices beyond the affordability of the poor and unemployed. What do you think?

Influence peddling and bribery

In influence peddling and bribery, the influence peddlers take bribes in order to grant favours to which their co-conspirators are not entitled. For example influence peddling in government involves government workers and office-bearers engaging in official corruption. For example, it is reported that Republican Randy “Duke” Cunningham (R-Calif) resigned from Congress after confessing to accepting \$2,4 million in bribes, including a Rolls-Royce, a yacht and a 19th century Louis Philippe commode. Another example related to this is that on 17 April 2006, where former Governor George Ryan of Illinois was convicted of steering government contracts to people who were willing to give him kickbacks and bribes (Siegel 2008:284–285). In South Africa, think of Tony Yengeni; from 1994 to 2003 he served as a member of the South African parliament for the ruling ANC party. However, in 2003 he was found guilty of fraud in a case linked to a corruption investigation into an arms deal (Parker 2013:2). Another example is that of Sony in the United States. Sony paid \$10 million to the State of New York to settle a claim that accused its promoters of giving gifts to station managers to get songs played (Siegel 2008:285). Can you think of similar cases in South Africa?

Stings and swindles

A swing or sting happens when a white-collar criminal commits a crime in which people use their institutional or business position to trick others out of their money (Siegel 2008:282). For example, when oil prices sky-rocketed, one enterprising swindler, Linda Stelter of Vision Oil Company in Albany, Kentucky, lured investors into risky schemes by claiming that God guided her company’s oil exploration. Other examples include the door-to-door sale of faulty merchandise to passing millions of dollars in counterfeit stock certificates to an established brokerage firm. Swindlers often target the elderly, sick and infirm (Siegel 2008:282). Think of the churches that have sprung up all over South Africa since 1994 with promises of healing people from incurable diseases such as HIV and AIDS while asking the sick to contribute money.

Chiselling

According to Siegel (2008:283), chiselling is a white-collar term used by North Americans, which means using illegal means to cheat an organisation, its consumers, or both on a regular basis. Chisellers may be individuals who want to make quick profits in their own businesses or employees of large organisation who decide to cheat on obligations to their own company or its clients by doing something contrary to either the law or company policy. Chiselling can also involve charging for bogus auto repairs, cheating customers on home repairs or short weighting (i.e. intentionally tampering with the accuracy of scales used to weigh products) in supermarkets or dairies. Chiselling can come in the form of professional chiselling or securities fraud. In professional chiselling professionals use their positions to chisel clients; for example pharmacists have been known to alter prescriptions or substitute low-cost generic drugs for more expensive name brands. In 2001, in Kansas City in the US, a pharmacist, Robert R Courtney, was charged with fraud when it was discovered that he had been selling diluted mixtures of the cancer medication, Taxol, Genzar, Paraplatin and Platinol, which is used to treat a variety of illnesses including pancreatic and lung cancer, advanced ovarian and breast cancer and AIDS-related Kaposi’s sarcoma. In one instance, Courtney provided a doctor with only 450 milligrams of Genzar for a prescription that called for 1 900 mg, a transaction which netted him a profit of \$779. Securities fraud, another kind of chiselling, involves churning, front running and bucketing. Churning is generally committed by stockbrokers, who violate

accepted practices when they engage in churning the client's account by repeated, excessive and unnecessary buying and selling of stock. Front running is another form of broker fraud in which the broker places his/her personal orders ahead of a customer's large order to profit from the market effects of trade. Bucketing involves skimming customer trading profits by falsifying trade information (Siegel 2008:283).

Have you ever been to a pharmacist who says that he or she does not have the prescribed medicine or pills but he/she could give you a substitute without mentioning whether there was a difference in price or not?

Client fraud

Client fraud involves theft by the clients of an organisation that advances credit to its clients or reimburses them for services rendered. Client fraud involves cheating an organisation such as government agencies or insurance companies. Such organisations have many individual clients that the organisation supports financially such as welfare clients, or who are reimbursed for services provided such as health care. Types of client fraud include insurance fraud, credit card fraud, fraud related to welfare programmes and medical aids, and tax evasion (Siegel 2008:286).

In health care fraud some doctors violate their ethical code and engage in fraud when obtaining patients and administering treatment. Some doctors extort or accept under-the-table payments for services that are supposed to be provided free of charge; others solicit payments in exchange for special privileges or treatment (Siegel 2008:286).

Abusive and deceptive health care practices include such techniques as “ping-ponging” which means referring patients to other physicians in the same office, “gang visits” which means billing for multiple services, and “steering” which means directing patients to particular pharmacies (Siegel 2008:286).

Corporate crime

Corporate crime refers to powerful institutions or their representatives who wilfully violate the laws that restrain these institutions from doing social harm or that require them to do social good. Corporate crimes are socially injurious acts committed to further the business interests of people who control companies. The targets (victims) of these crimes include the general public and the environment, as well as company employees. . Some acts include price fixing and illegal restraint of trade (Siegel 2008:288-290).

Examples of illegal restraint of trade and price fixing

A restraint of trade involves a contract or conspiracy designed to stifle competition, create a monopoly, maintain prices artificially or otherwise interfere with free market competition. There are four types, namely (Siegel 2008:289–290):

- *Division of markets* – in terms of this, firms divide a region into territories and each firm agrees not to compete in the other's territories.
- What do you think of big businesses and suppliers of goods in South Africa?
- *Tying arrangement* – here a corporation requires customers of one of its services to use other services it offers. Do you think this would apply to cell phone packages?
- *Group boycott* – an organisation or company boycotts retail stores that do not comply with its rules or wishes. Have you heard of similar practices in South Africa?

- *Price fixing*— companies conspire to set and control the price of a necessary commodity. Which South African companies did the Competition Commission find to have fixed prices?

Deceptive pricing

Deceptive pricing occurs when contractors provide the government or other corporations with incomplete or misleading information on how much it will cost to fulfil the contract on which they are bidding or charge incorrectly once the contracts have been signed.

What is your opinion of the Nkandla saga, where it was found that some of the prices had been inflated?

Other corporate crimes include false claims advertising, negligence with regard to worker safety and environmental crime.

Embezzlement and employment fraud

Embezzlement and employment fraud involve individuals' use of their position to embezzle company funds or appropriate company property for themselves. In such cases, the victim of white-collar crime is the company or organisation that employs the perpetrator, rather than an outsider. Examples of embezzlement and employee fraud include blue-worker fraud and management fraud.

Blue-worker fraud involves employee theft and it is the systematic theft of company property by employees, also referred to as pilferage (Siegel 2008:286). Say, for instance, an employee of Unisa working in the restaurant decides to start a catering business on weekends using stock taken from the Unisa restaurant. Every Friday they remove the items they will require at the weekend with the cooperation of security personnel.

Management fraud includes converting company assets for personal benefit; fraudulently receiving increases in compensation, such as raises or bonuses; fraudulently increasing personal holdings of company stock; retaining one's present position within the company by manipulating accounts; and concealing unacceptable performance from stockholders or shareholders (Siegel 2008:286).

Since the crimes that might be included in a definition of white-collar crime are extensive, categorisation is difficult. Edelhertz (in Reid 2003:278) concludes that the best solution is to classify the various crimes by the general environment and motivation of the perpetrator, and for that purpose he suggests the following:

- crimes by persons operating on an individual ad hoc basis for personal gain in a non-business context (These offenders are free agents, explains Reamer [2003:39], who act alone without any affiliation with an employer or organisation, for example a medical doctor committing fraud by submitting insurance claims for tests and medical procedures that were never performed.)
- crimes in the course of their occupations by those operating inside businesses, or in a professional capacity, in violation of their duty of loyalty and fidelity to the employer or a client
- crimes incidental to and in furtherance of business operations (i.e. corporate crime) but not the central purpose of such business operations
- white-collar crimes as a business or as the central activity of the business

Criticism of Sutherland's definition of white-collar crime led to alternative classifications for such crimes. A useful classification is the elaboration of white-collar crime to include two broad categories of offences, namely, occupational crime and corporate crime (Vito et al 2007:415).

4.3.1 Occupational crime

Green (in Coleman 2002:5; Vito et al 2007:415) defines occupational crime as "any act punishable by law that is committed through opportunity created in the course of an occupation that is legal". Occupational crime therefore occurs in the workplace and is motivated by direct personal gain for the perpetrator who may be of any social status. According to Steven Powell, a forensic auditor, who was quoted by Smit in an article in *Beeld* on 29 November 2003, the following warning lights may be identified in the workplace:

- vague division of authority and duties
- authorisation procedures that are not enforced
- incomplete records
- irregular audits
- crisis management instead of management according to a budget
- too much trust in key workers

Guilty employees do not take leave from work (to "protect" their dishonest actions). They work excessive amounts of overtime without good reason (to cover up irregularities), buy from a single supplier with whom he or she has a good relationship (for personal payment of some kind or other), and overspend on stock (as a reason for excessive expenses).

Beirne and Messerschmidt (2006:195) distinguish between two main forms of occupational crime:

- Occupational theft stems from an abuse of trust between the employee and the employer, for example employee theft and embezzlement. Both these examples affect consumers by increasing the cost of goods and services.
- Occupational fraud is a deliberate workplace deception practised for the purpose of obtaining personal financial gain.

Powell (as quoted by Smit in *Beeld* 29 November 2003) believes that more than 80% of all fraud is committed by employees who have worked for the business for more than five years. Poor internal control contributes to fraud in almost 60% of cases. The type of organisation and industry is a contributory factor in 25% of incidents. Fraud with kickbacks occurs in the fishing, motor and transport industries, and in companies such as banks where employees have access to finances. Other factors that contribute to fraud in the workplace are cooperation with outsiders (23%) and poor business ethics (7%).

Examples of occupational crime:

- An employee sells his/her organisation's confidential information to another company.
- A company employee misappropriates a company cheque book (or steals a cheque from a superior) and makes out cheques in favour of him/herself.
- A company employee uses a company letterhead to "authorise" him/herself to open a bank account in the company's name to which he/she has full signing

powers, then pays company cheques into this account and draws the money for own private use.

- A company employee persuades clients to deposit money into his/her personal bank account on the strength of his/her promise to settle the clients' debts to the company, but then draws the money for his/her own private use.

Furthermore occupational crime can be divided into four types (Vito et al 2007:415-416) and includes:

- *Crimes committed for the benefit of an employing organisation.* Here the employers benefit from the offence. For example, as stated above, where an employee persuades clients to deposit money into his/her account.
- *Crime committed as a result of state-based authority.* Here the offender is "legally" vested with governmental powers to make or enforce laws or to command others. For example the former Minister of Communications, Dina Pule, appointed certain people who did not qualify for certain positions, such as chief operating officer, even though the applicant did not have a matric certificate. The Public Protector later investigated and found that the appointment was flawed.
- *Crimes committed by professionals in their professional capacity.* This involves cases where physicians, attorneys and psychologists commit fraud of one kind or another. For example, psychiatrists are appointed to treat patients as a group but charge for "therapy" that involves sexual contact between patient and physician, generally inflating the cost of treatment.
- *Occupational crimes committed by individuals for personal gain.* These individuals have the same motives as armed robbers. For example, a study of auto repair shops revealed that they may misrepresent the need for a new car battery.

4.3.2 Corporate or organisational crime

Corporate crime comprises criminal activities carried out in a lawful business organisation. It was this category of crime that Sutherland actually had in mind when he defined white-collar crime. Walsh and Hemmens (2008:488–489) define corporate crime as "criminal activity on behalf of a business organisation committed during the course of fulfilling the legitimate role of the corporation, and in the name of corporate profit and growth". Vito et al (2007:416) simply define corporate crime as referring to crimes committed by organisations. They further describe it as the result of deliberate decision making by persons who occupy structural positions within the organisation and that the organisation makes the decisions to benefit itself.

Corporate crimes differ from occupational crimes in that they are not committed for direct personal gain – although certain individuals may benefit indirectly from them. Corporate crimes primarily benefit the corporation and involve a form of collective rule breaking which is designed to advance the goals of the organisation (Joyce 2006:65).

This category therefore includes offences by functionaries of the corporation/organisation to its advantage, as well as offences committed by the corporation as an entity. In other words, organisational crime comprises offences committed by the organisation as a whole or by individual members with the assistance, encouragement and support of the organisation. The target of their crimes can be the general public, the environment, or even their company's workers.

Despite significant contributions in the field of victimology, research on the victims of corporate crime has remained very much a minority interest among criminologists. Just as corporate crime refers to a wide range of events and processes, it is also characterised by a wide range of victims (e.g. crime against consumers, crimes arising out of employment relationships, and conservation crimes such as polluting drinking water) (Tomb & Williams 2008:175).

Examples of corporate crime:

- misappropriation of pension funds
- advertisements that deliberately mislead potential buyers (i.e. false advertising)
- conservation crime such as oil pollution caused by the negligence of ships' crews or illegal disposal of hazardous waste. The dumping of poisonous substances in a river so that fish are killed and the water is made unsafe for drinking is another example committed some years ago by a paper manufacturer in Mpumalanga. The Merriespruit disaster is an extreme example where seventeen people died in a mud slide caused by the negligence of the relevant company. Merriespruit is the name of a mining town situated below a slimes dam that collapsed and flooded the town. This happened in Virginia (Lejweleputswa District Municipality) in the Free State, on the 22 February 1994. The mining company involved was negligent in placing the town in a dangerous position and then failing to maintain the slimes dam wall above it.
- labour offences where workers are exposed to unsafe conditions without proper safety precautions. Investigations into major mine accidents, for example, are particularly aimed at determining possible negligence and inadequate safety precautions to secure the safety of the working environment. Another example is that of rail workers in the Durban harbour area who were exposed to the harmful effects of asbestos poisoning when handling asbestos that was transported by train from Zambia and Zimbabwe to South Africa for further distribution.
- inadequate monitoring of unsafe products. In the 1960s, thalidomide was a drug prescribed for pregnant women to counteract nausea and was later found to be the cause of babies being born with deformed limbs.
- bribing politicians or political parties in order to secure lucrative contracts

4.4 EXAMPLES OF WHITE-COLLAR CRIME

4.4.1 Employee theft

Stealing job-related items from one's workplace is a costly crime. Many employees steal minor items such as pens and paper clips, yet when these items are multiplied by the number of workers the cost becomes substantial. Research indicates that perceived unfairness in the workplace (e.g. being underpaid) is the main reason for employee theft (Beirne & Messerschmidt 2006:196).

In one of the most comprehensive studies of employee theft, Clark and Hollinger (in Coleman 2002:17) found that about one third of the more than 9 000 people they interviewed admitted to stealing from their employers. They found that the employees most likely to steal were young, male and unmarried, who were dissatisfied with their work situation and who felt they had the least chance of getting caught.

Employee theft may therefore be most accurately explained by factors relevant to the work setting such as job dissatisfaction and the workers' belief that they are being

exploited by their employers or supervisors. Economic problems play a relatively small role in the decision to pilfer (Siegel 2003:403).

4.4.2 Embezzlement

Embezzlement means taking something of value to which one has access based on a position of trust or authority or it is committed when the perpetrator unlawfully and intentionally appropriates money or any property that belongs to the company and which (property) is in his or her possession (Snyman 2008:499). An employee who has access to the firm's cheque book or the shop's cash register might take the opportunity to steal from the company or an accountant might manipulate the company's books.

Embezzlement, like employee theft, involves a violation of employer/employee trust. However, embezzlement differs from employee theft in that it involves taking money rather than job-related items for one's personal use (Beirne & Messerschmidt 2006:198).

Because embezzlers frequently have good jobs and high incomes, the reasons behind their crimes may not be immediately apparent. Research has shown that many embezzlers, both male and female, turn to crime because they are living beyond their financial means. In some cases the problem involves gambling, in others a family emergency, a heavy personal debt, or simply extravagant living.

A well-known study of embezzlers by Donald Cressey (in Siegel 2003:408) illustrates the important role need plays in white-collar crime. According to Cressey embezzlement is caused by a "nonshareable financial problem". This condition may be the result of offenders living beyond their means and they feel they cannot let anyone know about such financial problems without ruining their reputations.

An increasing number of women are being convicted of embezzlement. Coleman (2002:18) says that the rapid increase in embezzlement by female employees probably reflects two important changes:

- their growing numbers in bookkeeping and accounting jobs
- the increasing pressure on all women to provide financial support for their families

4.4.3 Insider trading

Insider trading occurs when one uses "inside information" (i.e. information unavailable to the public) to gain a personal advantage over others in buying and selling stock. Individuals obtain such inside information because of their occupational position. For example, if one company plans to take over another, a large number of people are usually involved in the decision-making (e.g. lawyers, corporate executives, and others). All these people know that if the takeover happens, the value of each company's stock will change. Prior to the takeover, some of these people therefore take advantage of their inside information and use it to buy or sell stock prior to public disclosure (Beirne & Messerschmidt 2006:201; Siegel 2003:400; 2008:283–284).

4.4.4 Corporate fraud

Siegel (2003:403) writes that fraud at management level is quite common, for example:

- converting company assets for personal benefit
- fraudulently receiving increases in compensation (e.g. raises or bonuses)
- fraudulently increasing personal holdings of company stock
- retaining one's present position in the company by manipulating accounts

Bottomley reports (in Sake24 on 2 February 2009) on the enormous escalation in corporate fraud in South Africa during 2008. Not only had the number of cases increased significantly, but also the amounts of money that were stolen. In one case an accountant stole R2,8 million from a company and in another incident R16 million disappeared from a company.

At this stage one may wonder about the differences and similarities between organised crime and white-collar crime since they appear to be very similar. Firstly, membership of both is based on expertise and both have similar structures such as being based on specialisation and the division of labour. Secondly, as stated above, there is no generally accepted definition of white-collar crime although the term is used worldwide, while organised crime is said to be an inimitable and dynamic phenomenon that pervades nearly all segments of society. The following section will attempt to illustrate the differences and similarities between organised crime and white-collar crime.

4.5 SIMILARITIES BETWEEN ORGANISED CRIME AND WHITE-COLLAR CRIME

According to Vito et al (2007:402), there are some marked similarities between organised crime and white-collar crime and the following elements are highlighted, namely, goal, product, monopoly, violence and harm, organisational structure and membership.

4.5.1 Goal

The goal of organised crime is money and power while that of white-collar crime is profit to amass economic and political power (Vito et al 2007:402).

What do you think about the argument that funders of political organisations should reveal the names of their funders and the counter-arguments. The counter-argument, may be, for example, that funders may stop funding political parties because they fund any party on condition of anonymity.

4.5.2 Product

On the one hand organised crime provides illegal goods and services (e.g. drugs, prostitution, gambling, and so on) and the perpetrators use their "muscle" to squeeze out their competitors. On the other hand, white-collar crime provides legal goods and services but will engage in illegal methods to make a profit (Vito et al 2007:402).

What is your opinion of the drug peddlers and gangsters in the urban areas and the replacement of price tags on expired food in supermarkets?

4.5.3 Monopoly

The aim of organised crime is to dominate an industry or product often in a limited geographic area. Members of the organised crime gang will attempt to enter and control legal markets in order to protect funds from illegal ventures. The aim of white-collar crime is to control an entire market to fix prices and ensure profit (Vito et al 2007:402).

What is your opinion of companies that produce bread, reducing the weight of bread but charging the same price or more?

What is your opinion of big construction companies which obtain tenders to do work for government, such as roadwork on the N1 in Gauteng, and the protection they get from government?

4.5.4 Violence and harm

Members of organised crime gangs use violence or the threat of violence against their victims.

The indirect use of violence or harm takes place when organised crime members supply illegal services, like the drug trade, because these drugs do great harm to the users of these drugs. White-collar criminals exercise indirect violence through the physical provision of unsafe products, the pollution of the environment and through the economic destruction of jobs and pensions and raising prices (Vito et al 2007:402).

Think of the harm done to consumers of *nyaope* and *hunga* in urban areas.

Think of the smell in our rivers as a result of the toxic waste dumped by companies. This toxic waste affects people who do not have access to clean water because the areas they live in have not been developed nor are they yet serviced by the municipality.

4.5.5 Organisational structure

Organised crime and white-collar crime share a common organisational structure. In both situations power resides in the position rather than the person who holds it. In both we find specialisation and division of labour. There are also rules and regulations that govern the organisation. The organisations of both organised crime and white-collar crime are designed to outlive their founders (Vito et al 2007:402).

Think about the structure of a legitimate business and of government structures. Do you see any similarity?

4.5.6 Membership

The people who participate in organised crime and white-collar crime are generally recruited on the basis of their expertise. In organised crime the expertise is on “expert power” and it is often exclusive. Furthermore, membership of organised crime gangs is based on race and ethnicity. In white-collar crime the expertise referred to is specialised knowledge, advanced degrees, background and ability (Vito et al 2007:402).

Think about the membership of the gangs in the Western Cape, such as the Mongrels, 28's and so on. Think also of mining company board membership by members of the ruling party (e.g. Aurora and Lonmin).

4.6 CAUSATIVE FACTORS IN WHITE-COLLAR CRIME

Although some white-collar crime is due to pure greed, a significant portion stems from the offender's sense of financial desperation (Reamer 2003:38). The white-collar offender is typically in a deep financial hole, usually because of bad investments or out-of-control spending. These individuals usually have access to large sums of money – sometimes through access to trust accounts, sometimes through lines of credit with financial institutions, and sometimes through bribery or fraudulent transactions (e.g. securities fraud, tax fraud, and bank or business embezzlement).

Various factors in South African society play a role in white-collar crime and the following are significant:

- *Undermining of social values.* In a society where crime is rampant and the distinction between right (law abiding) and wrong (law-breaking) is blurred due to cultural differences and political loyalties, social values are undermined.
- *The divorce of ownership and control.* In most commercial concerns there is no single person in total charge of all aspects of a company's affairs, and this makes it easier for employees to undertake illicit actions.
- *Economic pressure.* Wealth and possessions are desired because they are deemed to reflect power and status.
- *Deficiencies in the administration of the criminal justice system.* The system has lost its deterrent value and crime is regarded as rewarding.
- *Increasing sophistication of offenders.* Technological innovations such as computers, cheque books and automatic teller machines at commercial banking premises create new opportunities for fraud. As a result of developments in electronic communications, employees may surf the net, introduce viruses into computer systems, and outsiders may "hack" into a computer system and tamper with electronic records (Joyce 2006:71).

Bottomley (in Sake24, 2 February 2009) quotes Steven Powell, head of a legal company's forensic section, who ascribes white-collar crime in South Africa to economic pressure, opportunity and rationalisation. The incidence of fraud in companies' financial sections increases when employees transfer money electronically.

Coleman (2002:216) considered various causative factors and concluded that white-collar crime is caused by the coincidence of three necessary circumstantial factors:

- *Motivation.* There must be a reason why a person commits white-collar crime. The reasons are usually the desire for financial gain, the wish to be seen as a success by others, or the fear of losing what one already has. This motivation is particularly nurtured by the capitalist dispensation (which prevails in South Africa) under which a culture of competition has been created that encourages people to achieve success and financial gain at any cost.
- *Neutralisation.* Ethical constraints that inhibit criminal behaviour have to be neutralised. The individual makes use of a variety of rationalisations to justify his/her behaviour. These rationalisations are frequently learnt in the occupational setting. In large corporations the way in which the organisation's code of ethics is implemented serves as a guideline for the individual employee. For example, if

regulations are arbitrarily and routinely transgressed at directorate level without such behaviour being considered problematic, employees will conclude that the rules can be “bent” with relative impunity.

- *Opportunity.* People often have access to money, cheque books and personal information about clients – all of which can be exploited for personal gain. According to a newspaper report by Schoeman (in *Beeld*, 29 January 2009), identity fraud is increasing in South Africa. Offenders steal people’s personal particulars such as identity numbers, credit cards and driver’s licences and adopt the victim’s identity. New bank accounts are opened by means of a stolen identity, transactions are undertaken and the result is significant debt for the victim.

4.7 THEORETICAL EXPLANATIONS FOR WHITE-COLLAR CRIME

4.7.1 An ethical explanation for white-collar crime

There are various explanations for white-collar crime, for example the general theory of Hirschi and Gottfredson (Siegel 2003:411), who contend that white-collar crime can be explained in the same way as conventional crime because the motive of quick benefits with minimal effort is the same. Individuals tend to strive for short-term gratification without taking account of the possible long-term consequences of their actions. Such persons are characterised by impulsiveness, aggression and indifference to the opinions of others. This tendency to seek short-term gratification of desires does not necessarily lead to crime. Crime requires the opportunity as well as the possibility of evading immediate punishment. This explanation of white-collar crime is based on the assumption that human behaviour is motivated by self-interest in that pleasure is sought and pain is avoided.

Sutherland’s theory of differential association (in Joyce 2006:80) is a well-known explanation for white-collar crime. He believes that crime is learnt behaviour in a social setting, and views the workplace as the social setting in which new employees are educated into criminal activity by other employees. The offender is exposed to a preponderance of definitions in favour of breaking the law. In organisations obsessed with profit, rules are set aside and laws broken in order to achieve success. In such a climate of poor business ethics employees learn how to steal and defraud to guarantee success.

The way in which ethical principles are learnt and internalised (i.e. become part of a person’s own reference framework) may vary. Most companies have a code of ethics that is presented to workers in writing, but maintaining a positive ethical climate is made possible by holding individual workers responsible for their actions. This would mean that employees who commit fraud should be relieved of their posts and handed over to the law. The tendency, however, is to protect the public image of the company by dismissing the person or by insisting on partial or full restitution. In this process companies lose millions of rand per year that constitute severe financial setbacks for them. Companies are also unwilling to make their losses known because such statistics are an embarrassment to them and also undermine confidence within the company.

4.7.2 A psychological explanation for corporate crime

External causative factors

In terms of the approach set out in Walsh and Hemmens (2008:490–491) and Walsh and Ellis (2007:406), external factors that cause crime are related to internal or personality factors. The following three independent but often interacting external causative factors for corporate crime are identified:

- *Pressure.* The pressure of a highly competitive market sometimes tempts individuals to take shortcuts and break certain rules, regulations and legislation in order to be successful.
- *Opportunity.* Large, prosperous companies which reward innovative ideas and outstanding results, irrespective of how they are achieved, provide the opportunity to transgress the rules.
- *Predisposition.* A company with weak controls, where employees strongly associate themselves with the company and where poor business ethics favour the breaking or sidestepping of rules and laws, creates a predisposition to commit corporate crime.

Internal causative factors

The following characteristics of corporate offenders are identified as internal factors that cause corporate crime:

- *Individual characteristics.* A low IQ (i.e. intelligence quotient), poor self-control and conditioning are obviously not individual characteristics applicable to someone who has worked in a disciplined fashion for years to achieve his/her high-status position (e.g. at management level).
- *Moral argument.* Those people who operate at a high level of cognitive moral development are more independent and behave in a way that corresponds with their own convictions of what is right and what is wrong. People who function at a lower level of cognitive moral development tend to conform to group norms.

Therefore, the lower the level of moral development the greater the tendency to become involved in corporate misdemeanours if the external factors of pressure, opportunity and predisposition present themselves.

- *Machiavellism.* This term refers to the manipulation of others for personal gain (Walsh & Hemmens 2008:491). A characteristic of Machiavellian behaviour is exploiting and misleading colleagues and bullying subordinates. In the business world, individuals with this trait will use any means – even committing crimes such as theft and fraud – to achieve their goals.

An explanation based on causative factors

Walsh and Hemmens (2008:490–491) and Walsh and Ellis (2007:406) offer the following psychological explanation for corporate crime on the basis of the above causative factors. The misdemeanours of corporate criminals can be explained in terms of the following three variables:

- a locus of control
- moral argument (internal causative factors)
- Machiavellianism (internal causative factors)

People have either an internal or an external locus of control. People with an internal locus of control tend to believe they can affect outcomes and they are relatively resistant to the influence of others. In contrast, people with an external locus of control emphasise the power of environmental factors and believe that they as individuals

cannot influence the situation but that external circumstances can. People guilty of corporate crimes tend to have an external locus of control. This supports Sutherland's argument that such offenders are more susceptible to definitions in favour of unlawful behaviour such as fraud, particularly if the top structure of the company is in favour of such definitions. Hence, the behaviour of corporate offenders may be ascribed to the following characteristics:

- an external locus of control
- a low level of cognitive moral development
- Machiavellianism (manipulation)

4.8 THE EXTENT AND CONSEQUENCES OF WHITE-COLLAR CRIME (IMPACT)

4.8.1 Consequences of white-collar crime

It is difficult to estimate the extent of white-collar crime and its influence on its victims because all too often those who suffer the consequences of white-collar crime are ignored by victimologists (Siegel 2003:398). The following are examples of the cost of white-collar offences:

- loss due to employee theft from businesses
- violations of safety standards
- pollution of the environment
- industrial accidents due to negligence

4.8.2 Victims of white-collar crime

According to Siegel, the victims of white-collar crime include the general public, the organisation that employs the offender, or a competing organisation. Vito et al (2007:413) extend the list of the victims of white-collar crime to include the individual, business, financial institutions, government, religious organisations and society. Despite the serious consequences of white-collar crime, offenders are often considered not dangerous because they are usually respectable, older citizens who have families to support. However, highly publicised cases have educated the general public about the damage caused by white-collar offenders, and subsequent prison sentences for fraudsters have highlighted the problem.

4.8.3 Extent of white-collar crime

TABLE: WHITE-COLLAR CRIME REPORTED TO NBRS, 1997–1999

Victim	Property crime	Fraud	Bribery	Counterfeiting	Embezzlement	Total
Individual	2 621 843	47 826	143	45 270	3 006	2 718 088
Business	934 469	47 909	16	55 676	17 627	1 055 695

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Financial Institution	11 378	2 989	0	5 310	182	19 859
Government	73 623	3 844	36	2 949	260	80 712
Religious organisation	10 794	70	0	104	35	11 003
Society and other	417 217	1 357	3	1 236	246	420 059
Totals	4 069 324	103 993	198	110 545	21 356	4305416

Source: Vito et al (2007:413)

Vito et al (2007:413) explain the extent of white-collar crime as follows:

- individuals are most likely to be the victims of property and bribery offences
- businesses are most likely to be victimised in crimes of fraud, counterfeiting and embezzlement

The prevention and control of white-collar crime are addressed in terms of both a proactive and reactive approach.

4.9 PREVENTION AND CONTROL OF WHITE-COLLAR CRIME

4.9.1 Proactive approach

Companies suffer extensive losses every year because of white-collar crime. The principle of a proactive approach to controlling such crime has been accepted without reservation and its successful application depends on how consistently a company applies this proactive approach.

A proactive approach to white-collar crime in a company would basically entail the following:

- a continuing process during which areas of deficient control are identified and addressed
- instilling ethical values and adopting a code of conduct, with top management setting the example of respect for law
- making use of professional support (e.g. forensic auditing) and identifying areas that entail risk
- restructuring a company's security and raising security consciousness among staff
- providing a "hot line" to enable employees to report crimes anonymously

Bottomley (in Sake24 2 February 2009) quotes Bernard Hotz, director of a legal firm in South Africa, who said that it should be standard practice in every company to peruse new employees' qualifications, crime history, driver's licence and life style. Gambling and substance abuse in particular contribute to corporate fraud.

4.9.2 Reactive approach

The commercial branch of the South African Police Service (SAPS), with its head office in Pretoria, has seventeen commercial branches and one serious economic offences unit. Members of this branch are responsible for combating, investigating, gathering and disseminating information on commerce-related crimes, including theft (e.g. theft of trust monies), fraud (e.g. fraud arising from transactions on the stock exchange), other fraud-related crimes (e.g. duplicate or altered cheques), and “kite-flying”. (Kite-flying refers to unlawfully generating funds in bank accounts by depositing stolen or worthless bills of exchange.)

4.10 SUMMARY AND CONCLUSION

Although definitions of white-collar crime vary in terms of content, the concept by and large includes business-related crimes such as employee theft and fraud. White-collar crime often requires the deception of a gullible victim, and access and opportunity are attained by way of the individual’s position at work, his/her authority or personal influence with a view to misusing legitimate procedures for the personal benefit of the perpetrator. By dividing white-collar crime into two broad categories (occupational crime and corporate crime), criminologists today emphasise that white-collar crime is not defined in terms of the social status of the offender (as Sutherland did), but according to the nature of the offence.

Although a distinction is made between occupational crime and corporate crime, most white-collar offenders are motivated by the intention to promote their personal interests. The motive is therefore primarily self-gain.

The causative factors listed for white-collar crime are mainly external. Coleman’s (2002:216) approach is directly concerned with internal factors, namely, the offender’s motivation for crime and his/her neutralisation of guilt feelings. On the other hand, the prerequisite of an opportunity for crime exemplifies the influence of external factors.

Like conventional crimes, white-collar crime is not fully explained by any one theory. The ethical approach focuses on individual responsibility for the decision to commit crime. When ethical principles have been internalised, criminal activity is prevented because pleasure no longer plays a role in committing a crime and because crime has acquired a negative value (e.g. dismissal from employment and prosecution).

In terms of intervention, it is the responsibility of the organisation to create a climate that discourages white-collar crime such as fraud. The wide-ranging nature of the type of investigation undertaken by the SAPS commercial branch reflects the extent and seriousness of this crime category.

4.11 SELF-ASSESSMENT QUESTIONS

QUESTION 11 *One of the inherent requirements for the commission of white-collar crime is ...*

- (1) impulsivity.
- (2) rationality.
- (3) premeditation.
- (4) self-control.

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QUESTION 12 *Which one of the following crimes falls into the category of crime Sutherland had in mind when he defined white-collar crime?*

- 12.1 organisational crime
- 12.2 occupational crime
- 12.3 corporate crime
- 12.4 occupational fraud

QUESTION 13 *Embezzlement is an example of which one of the following crimes?*

- 13.1 occupational fraud
- 13.2 white-collar crime
- 13.3 occupational theft
- 13.4 an environmental offence

QUESTION 14 *Employee theft is primarily explained in terms of which one of the following factors?*

- 14.1 being underpaid
- 14.2 extravagant living
- 14.3 family problems
- 14.4 job dissatisfaction

QUESTION 15 *When a factory dumps hazardous waste in a river, it is an example of which one of the following categories of crime?*

- 15.1 corporate crime
- 15.2 occupational crime
- 15.3 labour offence
- 15.4 environmental crime

QUESTION 16 *Which one of the following factors contributes significantly to fraud in the workplace?*

- 16.1 self-interest
- 16.2 poor internal control
- 16.3 lack of stimulation
- 16.4 job dissatisfaction

QUESTION 17 *Stealing the personal particulars of a person to open new bank accounts is an example of which one of the following crimes?*

- 17.1 insurance fraud
- 17.2 banking fraud
- 17.3 white-collar crime
- 17.4 identity fraud

QUESTION 18 *According to Hirschi and Gottfredson, white-collar crime is promoted by which one of the following factors?*

- 18.1 poor business ethics
- 18.2 learnt behaviour
- 18.3 self-interest
- 18.4 moral decline

QUESTION 19 *In essence Machiavellianism refers to which one of the following factors?*

- 19.1 justification
- 19.2 neutralisation
- 19.3 rationalisation
- 19.4 manipulation

QUESTION 20 *A key internal causative factor in a psychological explanation of corporate crime is ...*

- 20.1 moral development.
- 20.2 predisposition.
- 20.3 opportunity.
- 20.4 pressure.

4.12 ANSWERS TO SELF-ASSESSMENT QUESTIONS

- (1) (3)
- (2) (3)
- (3) (2)
- (4) (1)
- (5) (1)
- (6) (2)
- (7) (3)
- (8) (3)
- (9) (4)
- (10) (1)

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THEME 5

PUBLIC ORDER AND VICTIMLESS CRIMES

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STUDY UNIT 5

Public order and victimless crime

LEARNING OUTCOMES

When you have completed this module, you should

- have sufficient knowledge, insight and understanding of the study material to answer a range of multiple-choice questions based on the contents of the study guide (for self-assessment, assignment and examination purposes)
- develop critical understanding of the African continent with its histories and challenges
- be able to apply the discipline-specific knowledge competently, ethically and creatively to solve real-life problems
- have developed the skills needed to analyse and evaluate the credibility and usefulness of information and data from multiple sources

5.1 INTRODUCTION

How do you feel when seeing someone displaying drunken behaviour in a public place? Do you think it is an offence to do so? What about people who relieve themselves on the roadside? Are they breaking any law? Public order crimes are a varied assortment of offences, and are known variously as vice offences, consensual offences, victimless crimes, and even nuisance offences. Some of these public order crimes are considered very serious (e.g. selling drugs) and some are dismissed with a shrug of the shoulders or a look of disgust (e.g. drunken and disorderly behaviour, public indecency etc).

It cannot be denied that all public-order offences cause some social harm, but whether or not the harm done by these offences is great enough to warrant siphoning off criminal justice resources that could have been applied to more serious crimes is a matter of debate. I will address just some of these public order offences (e.g. prostitution, pornography and drug use), as these are among the most serious offences that require action by the criminal justice system.

Like Siegel (2004:431), we do not imply that public order offences do not cause real, objective harm – some may even cause serious harm. We also reject the notion that offences categorised as public order offences are victimless, since there are always secondary victims (e.g. family members and friends) who may be harmed by the actions of the offender.

The essence of public order crimes is that moral laws, codes and standards are not uniform and differ from country to country. Opinions consequently differ as to which forms of behaviour should be classified as public order crimes. Public order crimes vary from time to time, place to place and from one individual to the next.

5.2 DEFINITION OF KEY CONCEPTS

5.2.1 Public order crime

From a criminological perspective, Siegel (2004:431) defines a public order crime as “crime which involves acts that interfere with the operations of society and the ability of people to function efficiently”; in other words behaviour that has been labelled criminal because it is contrary to shared norms, social values and customs.

Public order crimes should be distinguished from political crime. In the former, although the identity of the victim may be indirect and sometimes diffuse, it is cumulatively the community that suffers, whereas in a political crime, the state perceives itself to be the victim and criminalises behaviour it considers threatening.

Public order crime includes consensual crime, victimless vice and victimless crime. It asserts the need to use the law to maintain order, both in the legal and the moral sense. Public order crime is now the preferred term as against the use of the word “victimless”, based on the idea that secondary victims (family, friends, acquaintances, and society at large) can generally be identified (http://en.wikipedia.org/wiki/Public_order_crime – Wikipedia 2008:1).

5.2.2 Consensual crime

A consensual crime is a public order crime that involves more than one participant, all of whom give their consent as willing participants in an activity that is illegal.

Consensual crimes are sometimes described as crimes in which the victim is the state, the juridical system or society at large and therefore these crimes affect the general (sometimes ideological or cultural) interests of the system, for example sexual morality.

When defining the term “consensual crime”, one issue is the question of whether all the participants are capable of giving genuine consent. This may not be the case if one or more of the participants are

- animals
- children (normally measured as being under the legal age of consent)
- the severely disabled
- the severely mentally ill
- those not fully informed about the issues involved
- those suffering from mood swings
- those acting under duress
- the addicted
- the intoxicated
- the unconscious

5.2.3 The term “victimless crime”

Schur (1965:169) defines victimless crime as the willing exchange, among adults, of strongly demanded but legally proscribed goods or services. Accordingly, adults engage voluntarily in procuring goods and services that are socially unacceptable and illegal. Conklin (2001:84) interprets victimless crime as an offence that is consensual and lacks a complaining participant, emphasising the mutual agreement

and the absence of a complainant. Stitt (1988:87) emphasises the absence of harm in defining victimless crime as an illegal act in which no one is harmed or, if harm occurs, it is negated by the informed consent of the participant(s) .

In summary, victimless crime may be defined as offences committed by adults with the voluntary and mutual consent of all involved, and without any of the parties lodging a complaint with the police.

5.2.4 Features of public order/victimless crime

The following features are evident in the definitions of victimless crimes:

- The absence of a complainant/victim. Victimless crimes are mainly characterised by the absence of a complainant who reports the case to the police (Conklin 2001:84). The victim participated in the illegal activity and neither of the parties considers themselves to be victims of a crime, hence the term victimless crime.
- The absence of obvious harm to others. The crime is without a victim in the sense that no one else is harmed by the action. This is offered as the reason why the crime is not reported to the police. None of the parties involved in the crime feels that it is causing obvious harm to others. Instead they argue that any harm or loss that may accompany the action is restricted to the participants in the crime and that it does not affect the public at large.
- Voluntary participation. The emphasis is on individual freedom of choice. The participants exercise a choice, reach mutual agreement and are willing (sometimes even enthusiastic) to be involved in the illegal event. There is no question of coercion. Involvement in the crime is described as pleasurable (Schmallegger 1995:127).
- Problems with law enforcement. It is difficult to enforce the law by arresting and prosecuting suspects as these crimes have low visibility and are not always detected, and no complainant reports the crime. It is left to the state to object to victimless crimes and to prosecute and convict offenders in terms of criminal legislation. The law is enforced because the goods and services obtained in committing the crime are socially unacceptable and illegal (Reid 2003:16).
- Crimes amended by legislation. Legislation may be formulated as and when the values, religious beliefs, perceptions and attitudes of the community or ruling party change. An example of this would be abortion, which was legalised in South Africa in 1997. What do you think about this? Do you support or oppose abortion?

5.2.5 The term “drug use”

Drug use may be defined as the use of a legal or illegal chemical or cultivated substance that brings about mental, physical or emotional changes in the user (Siegel 2004:432, 435).

In your opinion, why do people use drugs? Why is using drugs a crime?

5.2.6 The term “prostitution”

Vito, Maahs and Holmes (2007:362) define prostitution as the practice of engaging in sexual activities for hire, while Siegel (2008) describes it as the granting of non-marital sexual access for remuneration. Which of the two definitions, do you think, captures the essence of prostitution? However, defining the concepts of prostitution

and prostitute is not an easy task, especially in an African context. Researchers who have studied irregular sexual unions in non-Western cultures (including African societies) experienced difficulties in identifying or limiting the boundaries of prostitution (SALC 2009:1). The conventional understanding of prostitution usually encompasses the exchange of sexual acts for money or goods. However, Shramstad (in SALC 2009:1) notes that in an American context, exchanging sexual services for money is only one of many actions that may be labelled as prostitution .

Dirasse (in SALC 2009:1; <http://www.saflii.org/za/other/zalc/ip/19/19>), in her evaluation of different definitions of prostitution, proposes that all mating patterns be viewed on a continuum that ranges from more permanent and legally sanctioned unions to casual sexual encounters with varying degrees of remuneration for sexual activity. She notes that different societies place the boundaries of legitimacy and decency at different points on this continuum. For example, in Ethiopia many different mating patterns are found, ranging from more permanent and legally sanctioned unions to casual sexual encounters. She makes the point that prostitution as found in Ethiopia differs considerably from actions known by the same name in Europe or the United States, in the sense that Ethiopian prostitution is characterised by relatively low stigma and the absence of syndicate control. Moreover, there is usually a mutual emotional attachment between the prostitute and her regular customers, and these customers get additional limited domestic privileges such as meals (SALC 2009:2).

The difficulties of narrowing down the concept of prostitution are further compounded by the fact that persons who exchange sexual acts for rewards other than money (e.g. clothes, food or lodging) may not identify themselves as prostitutes, because the transaction does not entail the actual receipt of money. Leggett (1998:22) notes that less traditional forms of prostitution are practised in rural and township areas in South Africa.

It is therefore useful to bear in mind that current legal definitions of prostitution may be at variance with more culture-specific understandings of this notion in the African context.

An early legal definition is found in *R v Kam Cham* where prostitutes were defined as persons who engage indiscriminately in sexual relations for pecuniary reward. Milton and Cowling (in SALC 2009:2) accordingly propose the following definition of a prostitute for legal purposes:

A person will be regarded as a prostitute if she engages in

- (i) sexual relations
- (ii) indiscriminately
- (iii) for pecuniary gain

Do you agree with this definition?

This definition is unsatisfactory for two reasons. Firstly, the word “indiscriminately” has a connotation of random, undistinguishing conduct that may be at odds with how prostitutes select and negotiate with their customers. Secondly, it assumes that the prostitute will be a woman (she). Although the majority of the world’s prostitutes are women, men and transgendered persons are becoming increasingly visible in prostitution.

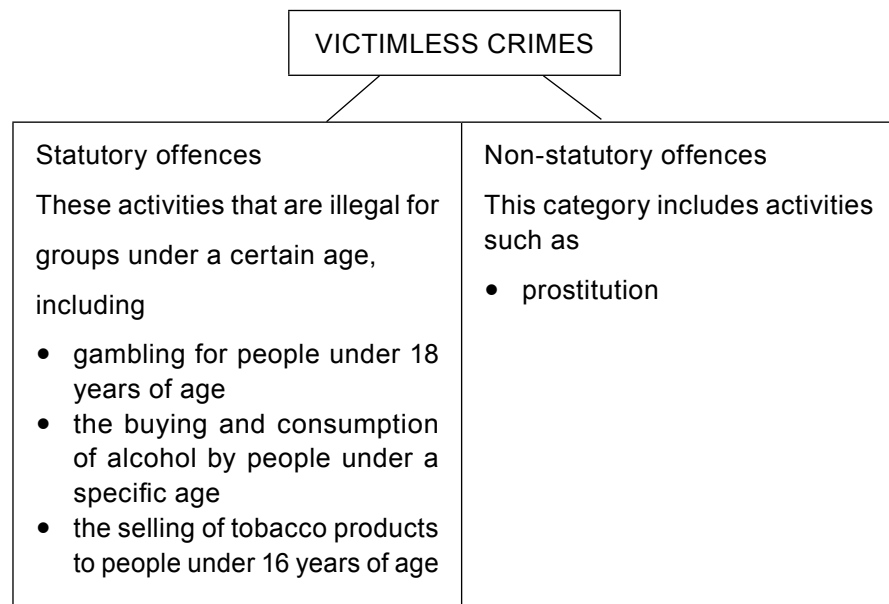
A further factor to be taken into consideration when developing a definition of adult prostitution, is the fact that sexual services are occasionally rendered for rewards other than financial (monetary), for example food, clothes and accommodation. Certain authors contend that the definition of prostitution should be limited to those persons who provide sexual services for financial reward, firstly because the inclusion of all rewards would cast the ambit of prostitution too broadly, and secondly because many of the persons providing sexual services in return for, for example food or accommodation do not readily identify themselves as prostitutes (SALC 2009:2; <http://www.saflii.org/za/other/zalc/i>).

ACTIVITY 1.15

Study the definition of prostitution carefully. Try to formulate your own operational definition. Try also to identify potential shortcomings when defining the concept of prostitution.

5.3 PROBLEMS SURROUNDING THE CLASSIFICATION OF PUBLIC ORDER/VICTIMLESS CRIME

Ellis and Walsh (2000:9-13) classify victimless crime as follows:



Based on this classification, specific aspects play a role in classifying victimless crime. These aspects are discussed below and include age, moral considerations, conceptualising crime, and the role of political power and authority.

5.3.1 Age as a determining factor

The above categorisation reflects age as a determining factor. Various activities are considered illegal because children are not yet above a certain age and the state still has guardianship. The South African Constitution (section 28(3) 1996) defines a child as a person under the age of 18 years. Hence, any person under the age of 18 is regarded as a child whether or not this person has attained the status of an older person by contracting a marriage. Such a person is legally still a child in terms of

accountability and the right to protection. The reason why age is used as a determinant in legislation is to protect the child. So, for example, under the law, any person under the age of 16 or 18 years (depending on the different laws) may not participate in gambling, prostitution, pornography or sexual acts. Such involvement is against the law. People who are over the age of 18 years have a free choice as to whether they want to become involved in activities such as gambling, prostitution, abortion or pornography.

5.3.2 Moral considerations

As mentioned in the introduction, victimless crimes are also referred to as crimes against the moral order. The question may be asked whether the aim of legislation is merely to regulate criminal behaviour, or whether legislation should also focus on controlling or regulating moral behaviour. Some people firmly support regulation of moral behaviour by means of legislation. Others are of the opinion that legislation is exceeding its boundaries and over-criminalising behaviour when it attempts to guide and restrict moral behaviour.

Consequently, victimless crimes vary from time to time, from person to person, and from country to country. Behaviour that may be considered criminal in one country will not necessarily be illegal in another country. An example is abortion legalisation in South Africa. Before 1997 abortion was an illegal act that resulted in prosecution – it became legal after 1997. Nevertheless, differences of opinion still exist among individuals in South Africa, as in other countries, as to the legalisation of abortion. The moral debate, characterised by differences, conflict and ambivalence, continues. Most Americans, for example, are in principle opposed to abortion (which was legalised in 1973 in the USA) but accept it in practice (Smelser 1988:116). In Rumania abortion was declared illegal in 1967 (Conklin 1987:532). The same arguments may be raised against classifying illegal gambling as a (victimless) crime. A number of American cities and states, including Atlantic City, New Jersey and Las Vegas, Nevada, have legalised certain forms of gambling, such as on-track betting, off-track betting and lotteries (Conklin 2001:89; Schmalleger 1995:205). In South Africa, legislation has been introduced to make provision for the National Lottery (2000) and the casinos.

5.3.3 Conceptualisation of crime as victimless

Williams (2001:21) maintains that authors who write about victimless crimes all differ when it comes to activities that belong in this category.

Conklin (2001:84–86) discusses the following offences under the heading of victimless crimes: drug-related offences, gambling, prostitution and pornography. Adler, Mueller and Laufer (1995:188), as well as Schmalleger (1995:15), list possession of marijuana, prostitution, gambling and refusing to serve in the military as examples of victimless crimes that had been illegal and were legalised. In South Africa, the End Conscription Campaign ended in 1988 when the state decided to ban it in a climate of white discontent around the material and personal costs of conscription, instability and conscript deaths in Angola (Phillips 2002:7).

Siegel (2004:431) refers to the term “crimes against the public order”, which includes homosexuality, prostitution, pornography and drug and alcohol use. Williams (2001:21) states that the following are generally categorised as victimless crimes by

various authors: drunkenness and alcohol-related crimes, the purchase and use of illegal substances (drugs), vagrancy and begging, gambling, prostitution or solicitation, homosexuality, which is still illegal for the male sex under the age of legal consent, and various sexual offences by adults after consensus has been reached. Other authors include abortion, bigamy, private fights, and extortion, exposure between adults and obscenity, as well as adult pornography. It is clear that there is no consensus on classifying crimes as victimless.

5.3.4 Differences of opinion with regard to the classification of victimless crimes

Because of these differences of opinion in terms of classifying certain crimes as victimless, classification differs from country to country and state to state. The arguments listed below serve to confirm the problematic nature of categorising victimless crimes:

- Why is bigamy illegal, whereas adultery and two people of the opposite sex living together as if they were married is considered legal?
- Why is the use and purchase of certain substances considered to be damaging to the user and illegal (e.g. cannabis/dagga or heroin), while the use and purchase of tobacco products is not considered illegal? Smoking legislation in South Africa stipulates where people may not smoke (e.g. public places, buildings), the age of the purchaser of tobacco products, and the use of tobacco products is legal.
- Why is solicitation in public, the establishment of a brothel, curb-crawling and living off the income of immoral activities illegal, whereas prostitution itself, although unlawful, is not criminal? (We refer here to the closure of The Ranch, a brothel in Johannesburg, during 2003/04.) Do you understand the terms “unlawful” and “criminal” in this context?

ACTIVITY 1.16

Do you understand the line of thinking in the above arguments? If you do, give your own examples similar to the above arguments relating to prostitution.

5.3.5 Government policy

A democracy is characterised by respect for every person’s right to free choice. According to the Constitution of the Republic of South Africa, after amendment by the Constitution Seventh Amendment Act 2012, section 167(3) the Constitutional Court (CC) in South Africa is based on a constitution which guarantees people’s basic rights and freedom. The Constitutional Court is the highest court of the Republic and may decide on constitutional matters. According to section 167(5) of the Constitution, the Court makes the final decision on whether an Act of Parliament, a provincial Act or conduct of the President is constitutional. Section 55(1)(a) of the Constitution stipulates that the National Assembly, may pass, amend, or reject any legislation before it or legislation that is in conflict with the Constitution. Legislation may be amended when different political parties come into power. As a result, some of the abovementioned crimes may be decriminalised or legalised (see 5.5.2 below). With a new political dispensation since 1994, some of the crimes (in Conklin 2001:84) initially classified as victimless crimes, including gambling, homosexuality and abortion, are no longer against the law in South Africa (Juta’s pocket statutes 2013:186–187).

Public order crimes/victimless crimes have certain features and their legal standing is subject to change. By implication, such crimes exist because laws and the moral considerations of people have not kept pace with a changing society.

5.4 PUBLIC ORDER CRIMES – MORAL AND OTHER CONSIDERATIONS

Public order crimes/victimless crimes include 1) the sex-based offences of prostitution, paraphilia (i.e. sexual practices such as deviant under-age sex and pornography), and 2) offences involving substance abuse which may or may not involve some element of public disorder or danger to the public (e.g. driving while intoxicated). The significance of these two areas of crime is that all societies moralise over sex, and most prohibited substances act as disinhibitors and either encourage antisocial behaviour or reduce the sense of guilt.

This classification of crime contains many instances of criminality where the only injured party appears to be the accused, who has made the personal choice to engage in some form of self-destructive behaviour (e.g. private recreational drug use). The ongoing political debate about criminalisation versus decriminalisation focuses on whether it is appropriate to use punishment to enforce the different public policies that regulate the above behaviour. After all, it is said, society can deal with unpopular behaviour without invoking criminal or other legal processes.

In deciding whether harm to innocent individuals should be prohibited, the moral and political beliefs of those in power interact with and inform the decisions to create or repeat crime without apparent victims. These decisions change over time as moral standards change. For example, Margaret Sanger who founded the first birth-control clinic in New York City was accused of distributing obscene material and violating public morals; today information about birth control is no longer considered obscene.

In the context of a discussion (Feinberg 1984:70) on whether government should regulate public morals in the interests of the public good, Meier and Geis (1997:110) identify social problems that might be deemed appropriate for legal intervention and the extent to which criminal law should enforce moral positions that might lack societal consensus.

Respect for the law in general can only be maintained if such law is worthy of respect. Ericsson (1980:338–339) argues in this regard: “If two adults voluntarily consent to an economic arrangement concerning sexual activity and this activity takes place in private, it seems plainly absurd to maintain that there is something intrinsically wrong with it.”

This reflects a more fundamental problem of legal consistency. People have the right to engage in some self-destructive activities. For all its carcinogenic qualities, tobacco is not a prohibited substance. Similarly, the excessive consumption of alcohol can have severe physical consequences, but it is not a crime to consume it. This same applies to gambling. The state and its institutions often rely on lotteries, raffles and other legal forms of gambling for operating funds, whether directly or indirectly through the taxation of profits from casinos and other licensed outlets. Qualitatively, there is nothing to distinguish the forms of gambling deemed illegal. A side effect of turning too many people into criminals is that the concept of crime becomes blurred and genuine criminality becomes less unacceptable.

A further perceptual problem emerges when laws remain in force but are obviously not enforced because the police reflect the consensus view that the particular activity should not be a crime. However, if the prohibited activities are consensual and committed in private, this offers incentives to the organisers (i.e. the running of a brothel) to offer bribes in exchange for diverting enforcement resources or overlooking discovery. The result is that political and police corruption is encouraged. In this way any deterrent message the state might have wanted to send is distorted or lost.

More generally, political parties find it easier to talk dismissively about crimes if they have been classified as victimless because their abolition or amendment looks to have fewer economic and political costs. In other words, using the word “victimless” implies that no injuries are caused by these crimes (Robertson 1989:125) and, if that is true, then there is no need to create or retain the criminal aspect of such offences. This situation may reflect a limited form of reality in that these so-called victimless crimes produce no immediate victims who might report the crime to the police. Moreover, those who engage in this behaviour consider the law inappropriate and not their own behaviour. This situation has two consequences:

- Because these victimless crimes often take place in private, comprehensive law enforcement (often including entrapment and the use of agents provocateurs (French for ‘an inciting agent’)) would consume an enormous amount of resources. It is therefore convenient for law enforcement agencies to classify a crime as victimless because it serves as justification for devoting fewer resources to victimless crimes than to crimes that have real victims to protect.
- These so-called victimless crimes usually involve something desirable where large profits can be made (e.g. drugs or sex) (Wikipedia 2008:2).

5.5 DECRIMINALISATION OF PUBLIC ORDER CRIMES

Maguire and Radosh (1999:146–147) accept that the public order crimes that cause the most controversy are directly related to current perceptions of morality. For example, abortion gives rise to complex emotions and issues that defy simplistic resolution. To assert that the shades of behaviour represented by these crimes should be retained or decriminalised ignores a range of arguments that can be mustered on both sides. However, the most fundamental question remains whether the government has the right to enforce laws that prohibit private behaviour.

5.5.1 Arguments in favour of decriminalisation

Those who favour decriminalisation or legislation contend that government should be concerned with matters that affect the common good and not seek to regulate morality at an individual level. However, it is also true that a great majority of society ignore many of these laws (e.g. taking drugs). Citizens of countries founded on democratic principles should encourage their governments to repeal the laws. Failure to do so simply undermines respect for all laws infringing on personal freedom (i.e. that do not harm others).

Indeed, considering the range of prohibited activities, the practical policing of all these crimes would require a police state that intrudes into every aspect of people’s lives, no matter how private. It is unlikely that such power would be accepted, despite history showing that such high-profile enforcement is effective. For example, prohibition did not prevent the consumption of alcohol, and the present war on

drugs is expensive and ineffective. Those who favour decriminalisation also point to experience in countries that permit activities such as recreational drug use or prostitution where there is clear evidence of less substance abuse and disruptive behaviour (Wikipedia 2008:3; http://en.wikipedia.org/wiki/Public_order_crime).

The presence of public order crimes encourages a climate of general disrespect for law. Many individuals choose to violate public order laws because they are easily violable and there is no victim to complain. This disrespect for the law includes disrespect for laws involving crimes with victims.

To criminalise behaviour that harms no other person or society violates individual freedom and the natural rights of the individual. The right of individuals to do what they want as long as no person is harmed nor society as a whole is a generally accepted principle in a free and democratic society. Criminalising acts that others feel are immoral, that have not clearly been proven harmful, would violate this accepted principle. There are exceptions, however. In most civilised nations the mere possession of child pornography, or engaging in animal cruelty, is criminal. However, there still is no victim (except the animal's rights, which are not recognised in law). The reason for criminalising possession of child pornography is that those persons who derive pleasure from it often have depraved desires, which they often act out. It can thus be inferred that people who abuse animals rarely stop there – and that people who possess child pornography will seek more than mere images.

The cost of enforcing public order crimes is high and inevitably results in coercion, force, brutality, usurping the democratic process, developing a carceral [tending to incarcerate] state and, finally, tyranny. Because public order crime does not have a victim, someone other than a victim has to report public order crimes, and someone other than the sovereign people has to be delegated to enforce them (Wikipedia 2008:3). This results in the development of coercion, a class of law enforcers within society, but separate from society because they have to enforce laws on people instead of people enforcing their own law. This inevitably causes violations of individual freedom, as this class of law enforcer seeks more and more power and turns to more and more coercive means.

Public order crimes often represent behaviour by discernible classes of individuals within society (e.g. racial minorities, youth, and poor people). These classes are consequently criminalised and stigmatised, so that resentment builds up against the law, against the government, and against society.

Public enforcement of morality inevitably leads to individuals developing no moral compass of their own, providing external restraint substituting for internal restraint, and the eventual result is greater immorality, deviance and societal decadence.

5.5.2 Arguments against decriminalisation

Those who oppose decriminalisation believe that the collective morality of individuals affects the good of society, and that without enforcement society will be damaged and eventually become decadent. They believe that law shapes morality and builds a national character. If laws are not enforced, that is not the fault of the law. If people knew that they were likely to be arrested, they would modify their behaviour. The fact that current laws criminalising theft do not deter thieves is not an argument for decriminalising theft (although theft is not in any way a victimless crime). Instead, it is an argument in favour of devoting more resources to enforcement so that there

is greater certainty of arrest and punishment. As far as public order crimes are concerned, it is simply a lack of priority in current enforcement strategies that encourages such widespread public disobedience which, in all likelihood, would increase if the behaviour were to be decriminalised.

5.5.3 Specific examples

Meier and Geis in Wikipedia (2008:4) present the view that prostitution, drugs and homosexuality are crimes without victims, and that the participants are victims without crimes. The term “public order crime” derives from research that tested the hypothesis underlying the term “victimless crime”. These so-called victimless crimes or crimes without victims were tested to determine whether a case could be argued that such behaviour produced harmful consequences for innocent people. This view recognised substantial disagreement, both about the degree of culpability inherent in the behaviour and the proper role for law. The effectiveness and scope of law consequently proved to be limited in both the creating and solving of problems. The following are examples of research findings that were used to construct arguments about the fact that there are victims. It is accepted that other arguments exist that many consider equally convincing (Wikipedia 2008:4–5; http://en.wikipedia.org/wiki/Public_order_crime).

5.6 MANIFESTATION OF A SPECIFIC PUBLIC ORDER CRIME

5.6.1 Drug abuse as a public order/victimless crime

The use of drugs for religious and recreational purposes is historically verified in a wide range of cultures. Mesopotamian writings indicate that opium was used 4 000 years ago – it was known as the plant of joy (Siegel 2004:446). The ancient Greeks knew and understood the problem of drug use. Today drug use is an international problem which destroys the lives of millions of people. It is a well-organised business with international connections.

5.6.2 Drug use in South Africa

South African legislation divides habit-forming drugs (a technical term used for a variety of drugs, medicines and substances that are not necessarily medicine) into three groups (Snyman 1992:428):

- prohibited addictive substances such as marijuana, prepared opium and heroin
- dangerous addictive substances such as morphine and opium
- potentially addictive substances

Drug use may be defined as the use of any legal or illegal chemical or cultivated substance that brings about mental, physical or emotional changes in the user (Siegel 2004:432, 435).

The National Drug Master Plan for South Africa (Saffy 2003:93) distinguishes between three groups of dependency-forming substances, based on preferred use:

- alcohol and tobacco, followed by cannabis (dagga) and Mandrax
- crack, cocaine and cocaine powder, heroin, LSD and Ecstasy
- opium, Rohypnol, Ketamine and Wellconal

However, Bartol and Bartol (2008:531) categorise four major drug types:

- hallucinogens and psychedelics
- stimulants
- opiate narcotics
- sedative hypnotics or depressants

5.6.3 The incidence of drug usage in South Africa

Various ethnic groups in South Africa are guilty of using drugs. At the beginning of the nineties, white youth introduced the international rave culture to the country with a concomitant increase in the so-called club drugs, Ecstasy and LSD. After 1994, the country experienced a previously unknown inflow of chemicals because of its international isolation (e.g. cocaine and heroin in particular). However, crack has become more popular than heroin, and both are being abused by an increasing number of people. (Crack is a highly addictive form of cocaine mixed with other substances and is sold in small pellet-like pieces (Chambers dictionary 1995).)

Shocking figures were obtained from Ms Magda Forbes, director of St Magdalena's Health Care, who tested schoolchildren for drugs. About 60% of the children who were tested were positively linked to the use of drugs (of which marijuana (dagga) was the most common form) (Raubenheimer 2007:2).

Other shocking figures are that only 2% of heroin users can be rehabilitated. The life expectancy of a person who becomes addicted to heroin is 18 months, while rehabilitation for a drug addict costs about R50 000 for six months. Heroin addiction costs an addict between R20 000 and R30 000 a month (Raubenheimer 2007:2).

South Africa's role in drug trafficking was illustrated by two incidences in January and February 2009 in which South African Airways (SAA) personnel were involved. In the first case an SAA crew member and a security guard were arrested when 50 kg of dagga and 4 kg of cocaine were discovered in the crew members' luggage. In the second case, 5 kg of cocaine with a street value of R3,58 million was discovered and 15 crew members were arrested.

The vapour of marijuana (dagga) on the streets of London and Dublin is known for its South African flavour. The passports of the world's heroin smugglers boast the stamps of two countries, namely, South Africa and Nigeria. According to the International Narcotics Control Board (INCB), South Africa has become a major member of international drug-smuggling networks (Pelser 2008:2). Cross-border smuggling has been discovered between Mozambique, Lesotho and even Zambia (Louw-Carstens 2008:7).

Compare the incidence of drug use in South Africa with that in some European countries. Discuss the differences and similarities in the drugs that are used.

Please take note that "Analysis of the national crime statistics: addendum to the annual report 2012/13" will be referred to as "Analysis of the national crime statistics 2012/13" throughout the discussions in this study unit.

TABLE 1:
Drugs and drug-related crimes, 1994/1995–2012/13 (Lebone 2013:796)

Province	1994/95		2012/13		Change%	
	Actual numbers	Rate per 100 000 population	Actual numbers	Rate per 100 000 population	Actual numbers	Rate per 100 000 population
Eastern Cape	5 197	87	12 877	196	148%	126%
Free State	4 506	177	6 168	224	37%	26%
Gauteng	7 595	108	38 159	306	402%	184%
KwaZulu-Natal	8 540	106	42 167	408	394%	285%
Limpopo	1 461	32	7 530	138	415%	335%
Mpumalanga	2 200	83	5 844	143	166%	73%
North Wes	2 607	81	9 157	258	251%	220%
Northern Cape	1 570	191	2 861	248	82%	30%
Western Cape	12 252	321	82 062	1 390	570%	334%
South Africa	45 928	118	206 825	396	350%	234%

Analysis

In the words of the National Commissioner for the South African Police Service: “If we are to break the back of crime we need to adopt a different approach. As we analyse the main drivers of crime it is evident that there are many underlying contributory factors. These include alcoholism, drugs, unemployment and the generally violent nature of our society”, to show how serious and complex is the nature of drug-related crime (SAPS Annual Report 2012/13:17).

According to Lebone (2013:796), from 1994/95 to 2012/13 drug and drug-related crime has increased by 350% over the whole of South Africa. Provincially, the figures are staggering with the Western Cape leading the group with an increase of 570%. This is followed by Limpopo with a 415% increase and Gauteng with 402%. KwaZulu-Natal follows Gauteng with an increase of 394%.

TABLE 2
Drug and drug-related crimes South Africa (National)
 (Analysis of the national crime statistics: addendum to the annual report 2012/13:46)

Crimes detected as a result of police action

Category	Incidence of crime per 100 000 of the population							Raw figures/frequencies				Percentage Increase/Decrease 2011/2012 and 2012/2013
	2008/09	2009/10	2010/11	2011/12	2012/13	2008/09 and 2012/13	Percentage increase/decrease 2011/12 and 2012/13	2008/09	2009/10	2010/11	2008/2009 and 2012/13	
Drug-related crime	240.7	273.4	301.4	348.5	395.6	64.4%	13.5%					
Drug-related crime	115.4	127.6	133.4	137.3	135.9	17.8%	-1.0%					
Driving under the influence of alcohol or drugs												

According to the “Analysis of national crime statistics (2012/13:46)” figures relating to drug-related crime detected as a result of police action, there was an 64,4% increase in detection from 2008/09 to 2012/13.

5.6.4 Role-players in drug use

Different role-players are involved in the use of drugs. In this section we look at the suppliers, the dealers and the users themselves. When the different types of drug user identified by Siegel (2001:456–458) are studied, it appears that the suppliers or dealers themselves may also be users. This circle of involvement probably contributes to the fact that drug use is known as a victimless crime. This is true if it is measured against the requirements for a victimless crime. Those directly involved in drug use are discussed below on the basis of Siegel's classification (2004:452–454).

- *Adolescents who deal in small amounts of drugs.* This group becomes involved in dealing with small quantities of drugs to gain access to the drugs for themselves. Dealing takes place in the following ways: arrangements are made with prospective buyers telephonically, at school or in public places like shopping malls, and the actual handing over of the drugs takes place in more private places such as in houses or in cars. These adolescents do not regard themselves as victims. They are not involved with the legal system since it is only in isolated cases that their activities lead to sanctions.
- *Adolescents who sell drugs on a regular basis.* A smaller group of adolescents who mostly use drugs such as heroin and cocaine are actively involved in drug distribution. Although they use these drugs themselves every day, they cannot yet be regarded as strung-out junkies since they still participate in normal adolescent activities such as socialising and going to school. Adults give these regular dealers drugs to sell without asking for up-front payment. These young people then distribute the drugs to friends and acquaintances. Most of their profits have to be paid back to the suppliers who give them a commission or drugs for their own use. Those who receive drugs as remuneration regard their activities as a way of getting high for free. Purchases mainly take place in public at well-known drug hangouts such as parks, under bridges, and at entertainment and shopping malls. These transactions do not take place regularly in order to decrease the chances of detection and arrest.
- *Teenage drug dealers who also commit other crimes.* The teenagers in this group generally belong to gangs. They use and distribute various habit-forming substances and frequently commit property and violent crimes. The adolescents in this group come from both sexes and all race groups. Older dealers hire youths to act as street-level drug runners. Every member of the group receives a small quantity of drugs (e.g. three bags of heroin) to sell on the street. The supplier gets 50–70% of the drugs' street value. The gang members also act as lookouts, recruiters and guards. They may be addicted to drugs such as heroin, but the big suppliers tend to use drug-free youths to peddle drugs on the street. Between drug sales, the young dealers commit robberies, burglaries and other thefts.
- *Adolescents who periodically become involved in the legal system.* These youths are serious drug users and unsuccessful in their attempts to sell drugs and commit crimes. They do not know how to get involved in gangs, and so commit opportunistic crimes without calculating their chances of being arrested. The fact that they are serious drug abusers increases the risk of detection and decreases their value to those operating drug distribution networks. The way in which they ensure income is by getting buyers in touch with sellers, touting for dealers, or keeping a lookout during drug transactions. They cannot be trusted to handle the drugs or money. They associate with other criminals and this damages their reputation even further. Although they become drug users at an early age, the legal system does not pay much attention to them until they already have a long record of arrests. By this time they are adults. Sometimes they give up drugs spontaneously

but generally they become so involved in the drug culture that very little can be done to help them or curb their illegal activities.

- *Youth drug users who continue with crime into adulthood.* Although two-thirds of youth drug users continue to use drugs in adulthood, half of them stop committing other types of crime. Those who continue taking drugs and committing other crimes share the following characteristics:
 - they come from poor families
 - other family members are also involved in crime
 - they performed poorly at school
 - they used drugs and were involved in crime from an early age
 - they used different types of drugs and frequently committed crimes, and they had few opportunities in late adolescence to become involved in legal and meaningful adult activities. Persons in this group have a low nonverbal intelligence and poor physical coordination. However, there is little scientific proof to explain why some youths stop committing crimes and others do not.
- *Seemingly respectable adults who operate as high-level suppliers.* People in this group appear respectable but are in fact involved in large-scale drug dealing to support their expensive lifestyles. They are seldom from the professional classes and they are not interested in working their way up the ladder of success. They become involved in drugs in different ways – some begin dealing drugs on campus and tend to be involved in other illegal activities as well. The profile of an adult who becomes involved in drug dealing in his or her twenties, is usually someone who is unsuccessful in his or her career or profession, who keeps irregular hours of work, and who finds drug use acceptable. Some use their business ability and drug profits to gain access to legal business opportunities or to become further involved in illegal activities, and others drop their illegal activities after having been the victim of a violent encounter with a competitor or a dissatisfied customer. A small number end up in prison.
- *Drug smugglers.* These are the people who smuggle drugs into the country (illegal trading). The profile of a smuggler is that of a middle-aged older man with good organisational abilities and with the right connections. He invests his capital in the operation and is prepared to take considerable business risks. Drug smugglers operate either in organised, competing groups or as individual entrepreneurs. There is a constant flow of smugglers as some of them become the targets of police action, new drug sources become available and older smugglers become dealers and vice versa.
- *Adult criminal drug users who are repeatedly arrested.* As has already been explained, some drug users become involved in drugs and crime at an early age. Arrest, imprisonment, drug abuse and criminal activities become a way of life. They have few skills, did poorly at school and have a list of previous convictions. The threat of arrest and punishment has virtually no effect on them. Some of their family members are also involved in drugs and crime (e.g. robbery, housebreaking, theft and drug dealing). They move in and out of the criminal justice system because as soon as they are released, they pick up their old ways. A successful drug transaction only leads to heavier drug taking which further destabilises their lives, their relationships, their families and their job prospects. Once they have no money there is the possibility that they may become street junkies that commit small-time crime to feed their drug habit. The life of a junkie is sordid once they can no longer afford a constant stream of good-quality heroin and do not know where to turn. A junkie will do anything to get money, and eventually becomes ill, unwashed (does not care about hygiene) and become neglected. Because junkies are

- unreliable and tend to become police informants, they are exploited by everyone in the drug world, having to pay the highest prices for the lowest-quality heroin.
- *Adult criminal drug users who are seldom arrested.* These people are known in the crime world for their calculated violence. They plan and coordinate their crimes well. They generally commit crimes in a group. They choose drugs with a calming effect (e.g. cocaine or dagga) rather than dependency-forming substances like heroin or opiates. Some operate for as long as fifteen years without being arrested. Their independence allows them to maintain a normal lifestyle in tandem with their criminal activities although they may go back to drug taking and drug dealing to make money, and they contact suppliers while still holding regular jobs.
 - *Adult drug users who commit less serious criminal offences.* Most adult drug users commit a limited number of criminal offences and avoid violent crimes. These occasional users are in the beginning stages of dependency and use only small quantities of narcotics. They are usually high-school graduates and are in careers that pay well enough to pay for their drug habit. They may commit isolated crimes or issue cheques that bounce. Their involvement in drugs comprises supporting other drug addicts, packing drugs for dealers, operating shooting galleries, renting out needles, and selling small quantities of drugs. They do not easily become hardened criminals or drug dealers. The extent of the criminal offences they commit corresponds with the amount of money they need to pay for their own drugs. Dagga (also known as pot) users show considerably less involvement in theft than those who use heroin daily – although the latter quickly becomes a very expensive habit.
 - *Female drug users.* Women who are involved in drugs fall into a separate category of drug users. Women are less likely than men to use dependence-forming drugs. However, they are involved in drugs to the same extent as men. Women who use drugs are seldom aggressive and are sometimes involved in prostitution and low-level drug dealing. They may be mothers. They run the risk of contracting AIDS as they share needles. In this way they may pass on the virus to their unborn children. Treatment programmes focus more on male drug users. Some of the children of female drug users are malnourished, neglected and exposed to the criminal underworld. Some are sold to pornographers and thus become involved in the sex-for-money industry. Others grow up to become criminals themselves. The causes of drug use in women are complex. It has been found that such women often grew up in an environment characterised by violence, being economically marginalised or with parents who used drugs. These women were introduced to drugs by intimate friends and family members.

5.6.5 The debate on whether drug use is victimless

Although it can be argued that drug users are the victims of their addiction, using drugs amounts to a victimless crime because neither the user nor the dealer is inclined to report the incident to the police (i.e. there is mutual consensus and voluntary participation). The transaction may be compared to a particular product (e.g. tomatoes) for which there is a demand and which is traded at the lowest price. The presence of harm or otherwise is debatable.

Nevertheless, drug abuse has detrimental consequences such as physical deterioration as a result of overdosing.

Research has shown that the drug Ecstasy, which is generally known as a soft drug and which is mostly used in rave clubs, is not quite as innocent as was thought. Hefernan (2001:7) compared the memories of 40 Ecstasy users with the memories of

39 non-users of Ecstasy. It was found that Ecstasy affects the part of the memory that is responsible for planning and remembering daily activities. It also gives rise to symptoms similar to those suffered by victims of Alzheimer's disease and amnesia. The end result is that Ecstasy affects a person's capacity to remember messages, to pay accounts, to keep appointments, or even to remember what one has said. Furthermore, these users have low levels of serotonin, a chemical in the brain, which is associated with depression and poor long-term memory.

Some sociologists are of the opinion that overdosing is a result of legislation against drugs, rather than the pharmacological effects of the drug. They argue that if the substance was legally and freely available, users would stick to a safe dosage and would not expose themselves to overdosing. According to Fellingham, Dhai, Guidozzi and Gardner (2012:4), the proponents of decriminalisation of drugs argue that sections 10 to 12(1) of the Bill of Rights grant all citizens the right to have their dignity respected, the right to life and the right to freedom and security. Therefore, they argue that a purely legal approach to the drug problem does not have the potential of success. They further state that according to the United Nations Office on Drugs and Crime (UNODC) country profile from 2002, the South African Police Service was to focus on large-scale drug busts and ignore minor offences involving small amounts of cannabis. This implies that South Africa had applied a de facto decriminalisation of cannabis in the past (Fellingham et al 2012:4, 7).

It is further argued that in order to direct repressive measures at drug trafficking, it is necessary for the effort to be global, given the porous borders of many countries and ease of international transport. South Africa is a signatory of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 which dictates its involvement with the international community in terms of curbing drug trafficking. Furthermore, decriminalisation has the potential to lessen the marginalisation of drug users and therefore brings about a cohesive effort in dealing with the drug problem which impacts on all members of society. Finally, criminalising an individual who is dependent on a substance is unlikely to change their drug-use habit (Fellingham et al 2012:7–8).

The high cost of drugs compels users to become involved in other types of crime (e.g. property crimes), to get money for financing their drug habit. Drug abuse therefore has a secondary effect by victimising others when property crimes such as burglary are committed. Moreover, the high price of drugs entices people who would not otherwise become involved to become dealers purely for financial gain. The drug trade is a dangerous industry in which a number of people lose their lives (Conklin 2001:85).

Implications (cost): The money paid for drugs is not taxed. The state therefore suffers losses in respect of the expense of law enforcement, losses as a result of secondary crimes being committed, and murders that take place during drug deals. Although these costs are part of conventional crime, they may also be seen as by-products of drug offences (Wikipedia 2008:5).

The following losses contribute to the calculation of costs: money spent on enforcing the law, absence of drug users from their places of employment, artificial inflation of real estate values due to infusions of money from the drug trade, medical costs for treating drug addicts, people with AIDS and infants who are born with drug addiction (Conklin 2001:85).

Drug users are not capable of performing regular, productive work; they steal from others to finance their addiction. Moreover, AIDS is spread through the use of unhygienic needles and medical costs inevitably follow. If drugs were freely available, users would not need to steal to get money to pay for their habit, and organised crime networks would not be able to dominate the drug trade. The availability of sterilised needles may also help to contain the spread of AIDS (Brown et al 2001:532).

5.7 PROSTITUTION

Around the world today, there is a human rights crisis due to the sexual abuse of millions of women, children and thousands of men in prostitution and other forms of sexual exploitation. There are regions of the world where prostitution has gone from being almost non-existent to a hundred million dollar money-making industry. There is also an inextricable link between prostitution and sex trafficking. Sex trafficking is the process that delivers victims into prostitution. It includes the recruitment, harbouring, movement, and methods by which victims are compelled to stay in prostitution – whether by violence, coercion, threat, debt or cultural manipulation (Hughes 2004:1).

Prostitution is based on a balance between the supply of available victims and the demand for victims to provide the sex acts. Victims are recruited from marginalised, poor and vulnerable populations. Prostitutes are mostly women and girls who are poor, uneducated and naïve and therefore easy to control, or they may be educated, middle-class girls, who have been sexually abused until their bodily integrity and identities are destroyed and they no longer know how to resist abuse and exploitation.

Prostitution begins with the demand for women and girls to be used in prostitution; it begins when men go in search of sex that can be purchased. In countries where prostitution is illegal, it begins with pimps placing orders with their criminal networks for women and children. In countries where prostitution is legal, it begins when brothels place job advertisements with government employment agencies. In places where buying sex acts is popular and profitable, pimps cannot recruit enough local women to fill the brothels so they have to bring in women and girls from other places. That opens the door for sex trafficking.

5.7.1 Nature of prostitution: prostitution-as-work versus prostitution-as-exploitation

5.7.1.1 *Prostitution-as-work*

Proponents of the prostitution-as-work perspective hold that women have a right to choose to engage in prostitution, as in any other form of work, and they should therefore have the same rights as other workers. This movement aims to construct (voluntary) prostitution as a legitimate occupation, and argues that where some adult prostitutes make a relatively free decision to go into prostitution, they should be at liberty to do so (SALC 2009:3; Vito et al 2007:366; <http://www.saflii.org/za/other/zalc/ip/>).

A fundamental premise underlying this view is that not all prostitution is forced or coerced. It is recognised, however, that there is a difference between those who choose prostitution as an expression of sexual liberation, those who choose it due

to economic pressures, and those exposed to overt pressure or coercion from third parties in the form of deception, violence and/or debt bondage. Although proponents of this view of prostitution agree that exploitation of prostitutes may occur in some instances, they contend that, as a general principle, women freely choose prostitution as a form of work.

One feminist group with this perspective, namely contractarian feminism, sees prostitution as a contracting-out of sexual services for a particular period in exchange for money; the sale of sexual services being no different to that of workers who supply other services or labour in the marketplace.

The contractarian concludes that we will begin to recognise that a person's right to sell his or her sexual services is neither more nor less of a right than that involved in selling his or her labour-power in any of its multifaceted forms (Hughes 2004:2; Vito et al 2007:366).

The liberal feminist position resembles that of the contractarians. The core liberal argument focuses on individual rights (e.g. the rights to privacy, autonomy and sexual self-expression) and the value of equality before the law. The organisation, COYOTE, an example of a liberal feminist group, from its inception challenged the image of prostitutes as fallen women, social deviants and victims. They choose to depict prostitution as legitimate work, stating that prostitution is first and foremost a work issue, and therefore the master concept of work should replace the master concept of crime as a fundamental stance of society with respect to prostitution. Moreover, it is service work that should be respected and protected like work in other legitimate service occupations. The organisation also holds that most women who work as prostitutes choose to do so, even in a society where prostitution is illegal (SALC 2009:3; <http://www.saflii.org/za/other/zals/ip/>).

Supporters of the view that most adult prostitutes choose to enter prostitution recognise that this may be a choice exercised within a limited range of options. Bindman (SALC Issue paper chapter 4 (Wikipedia 2008:3)) provides an explanation for this choice within limits.

The street worker who accepts a customer she would prefer to reject, for fear of being unable to meet daily expenses, or the worker in rented premises who must earn a minimum amount to pay the proprietor for the day's rent, is facing not slavery but simple economic and social injustice, of the kind which constrains workers in every field to accept inequitable or dangerous conditions. The solution to this injustice lies beyond the scope of law alone, in the field of economic and social rights.

Building on the claim that the vast majority of prostitutes voluntarily choose prostitution and that it is a legitimate form of work, proponents of the prostitution-as-work perspective demand that the rights of prostitutes be respected in the same way as other workers' rights are respected. They attribute much of the police harassment and general violence prostitutes experience to society's refusal to recognise the rights of prostitutes and they cite both gender and ethnic discrimination in police enforcement of laws against prostitution.

From the point of view of some groups, then, it is the laws against prostitution that constitute the violation of human rights rather than prostitution itself.

The proponents of the view that prostitution is work argue that the ending of exploitative practices in the prostitution industry is currently held back by the dis-

inction between prostitutes and other workers who perform female, dangerous and low-status labour (e.g. domestic work or work in factories or agricultural land). Bindman (in SALC Wikipedia 2008:4), for example, points to international conventions that aim to protect all workers from exploitation. However, she cautions that before the protection of these instruments can be invoked, prostitution first has to be recognised as work.

The distinction between the prostitute and everyone else helps to perpetuate her exclusion from the ordinary rights which society offers to others (rights to freedom from violence at work, to a fair share of what she earns, or to leave her employer). An employment of labour perspective, designating prostitution as sex work, can bring this work into the mainstream debate on human, women's and workers' rights. It also recognises that the sex industry is not always where the worst conditions are to be found (SALC 2009:4).

Supporters of the prostitution-as-work perspective therefore demand the decriminalisation of prostitution, and argue that if the laws criminalising prostitution were removed, prostitution would be more likely considered a legitimate form of work. This would in turn reduce the risk of police harassment and brutality, and would place prostitutes within the ambit of protective labour mechanisms.

The lack of international and local protection renders sex workers vulnerable to exploitation in the workplace, and to harassment or violence at the hands of employers, law enforcement officials, customers and the public. The need for worker protection, including occupational safety provisions, is of particular relevance in the current context of HIV and AIDS.

Although it is acknowledged that prostitution may lead to exploitation, commentators point out that this possibility of exploitation also applies to other forms of labour (e.g. low-paid manual labour in the agriculture industry) and is therefore not unique to prostitution.

In addition to seeing prostitution as economic empowerment, certain prostitutes' rights activists have expressed the view that prostitution is a sexually progressive practice for women, providing some women with a context for exercising power in sexual transactions. Alexander (in SALC Wikipedia 2009:4) reports that many women in prostitution assert that the first time they felt powerful was the first time they turned a trick.

5.7.1.2 *Prostitution-as-exploitation*

On the other end of the spectrum is the view that prostitution is inherently exploitative, and that domination and violence are essential features of prostitution. This view is, inter alia, held by the organisation WHISPER (Women Hurt in Systems of Prostitution Engaged in Revolt). Like the proponents of prostitution-as-work, WHISPER works for the decriminalisation of prostitution. However, this is where agreement between the two perspectives ends.

Supporters of WHISPER and others who categorise themselves as radical feminists renounce a number of the principles of the prostitution-as-work movement. They challenge the latter perspective's notion that prostitution is a victimless crime, relying on studies and interviews with current and former prostitutes, documenting the fear and violence they experienced while in prostitution. According to this perspective,

the sexual acts in prostitution constitute violence, even when the prostitute consents to such acts (Vito et al 2007:365). Carter and Giobbe (in Wikipedia 2009:4) add:

Then there are the ancillary harms: the rapes, the robberies and the inevitable beatings punctuated by shouts of bitch and whore and slut, gratuitously meted out by pimps, by johns and by the police. These are the commonplace insults to injury that are directed at prostitutes simply because they are prostitutes.

Vito et al (2007:365–366) support the view that prostitution is exploitation on the following grounds:

- Prostitution involves male domination and exploitation of women regardless of historical time period, societal context or legal status.
- Violence is omnipresent in prostitution.
- Female prostitutes are victims because they do not actively make choices to enter or remain in prostitution.
- Legalisation or decriminalisation of prostitution will only make the situation worse because it would grant the blessing of the state to a despicable institution, increase the supply and demand for services and thus amplify the victimisation of female prostitutes.

Proponents of the prostitution-as-exploitation view also argue that the physical and sexual abuse inherent in prostitution brings about many health complications and lasting damage, ranging from physical injuries (e.g. gunshot wounds, knife wounds and broken bones) to depression and post-traumatic stress disorder.

They reject the claim that prostitution is a valid employment opportunity for women, and instead note that it is one of the most graphic examples of men's domination of women (Wikipedia 2009:5)

Prostitution is not like anything else. Rather, everything else is like prostitution because it is the model for women's condition, for gender stratification and its logical extension sex discrimination. Prostitution is founded on enforced sexual abuse under a system of male supremacy that in itself is built along a continuum of coercion – fear, force, racism and poverty (SALC 2009:5).

Opponents of prostitution refute the notion of women freely choosing to become prostitutes, claiming that most women are coerced or physically forced into a life of prostitution and cannot escape. This coercion could be direct coercion, or could be a result of the economic marginalisation of women through educational deprivation and job discrimination which ultimately renders them vulnerable to recruitment into prostitution. This is expressed as follows by MacKinnon:

What is woman's best economic option? Aside from modelling (with which it has much in common) hooking is the only job for which women as a group are paid more than men (SALC 2009:5; <http://www.saflii.org/za/other/zalc/ip/>).

According to this analysis, the economic marginalisation that forces women into prostitution therefore constitutes a more subtle form of coercion, which ultimately implies that even when women appear to freely choose prostitution as the only or the most lucrative form of employment available to them, this choice is not really made voluntarily (SALC 2009:5; <http://www.saflii.org/za/other/zalc/ip/>).

5.7.2 Prostitution in South Africa

Prostitution in South Africa has been illegal since the 1950s. However, prostitution has exploded since the end of apartheid, spreading AIDS as many prostitutes do not use protection. It is very difficult to assess the real number of prostitutes operating in South Africa. A previous attempt to have prostitution legalised was unsuccessful when the Constitutional Court ruled that prostitution and running brothels were still illegal (*S v Jordan and Others*) (Sex Workers Education and Advocacy Task Force and Others as amici Curiae).

5.7.3 Types of prostitution

The commercial sex industry includes street prostitution, massage brothels, escort agencies, outcall services, strip clubs, lap dancing, phone sex, adult and child pornography, video and internet pornography, and prostitution tourism. Most women who are in prostitution for longer than a few months drift among these various permutations of the commercial sex industry (Farley 2008:1).

5.7.4 Types of prostitutes

Siegel (2004:438–439; 2007:433) and Hagan (2013:407–408) classify prostitutes into eight main categories: streetwalkers, bar girls, brothel prostitutes, call girls, escort services, circuit travellers, Skeezers and girls who work in massage parlours/photo studios. A new type of prostitute has been added with the introduction of the internet and they are referred to as cyber prostitutes.

5.7.4.1 *Streetwalkers*

Prostitutes who work the streets in plain sight of police, citizens and prospective customers are referred to as hustlers, hookers or streetwalkers. Streetwalkers are considered the least attractive, lowest paid, most vulnerable men and women in the profession. They are most likely to be impoverished members of ethnic or racial minorities. Many are young runaways who gravitate to major cities to find a new, exciting life and escape from sexual and physical abuse at home. Street workers tend to be younger than other prostitutes; they start working at a younger age and have less education. Some use the money from sex work to pay for drugs and they use drugs at work. These prostitutes are more likely than others to be the targets of forms of violence (Vito et al 2007:364; Siegel 2007:433; Hagan 2013:408).

Streetwalkers wear bright clothing, make-up and jewellery to attract customers, and they take their customers to hotels. Because streetwalkers must openly display their occupation, they are likely to become involved with the police. If they survive and gain experience, street workers learn to adopt sex practices that promote their chances of survival (e.g. refusing to trade sex for drugs and/or refusing to service customers they consider too dangerous or distasteful). The most dangerous type of prostitution is streetwalking.

ACTIVITY 1.17

Study this type of prostitution (streetwalkers) thoroughly and find out why it is the most dangerous type of prostitution.

5.7.4.2 *Bar girls*

B-girls, as they are called, spend their time in bars, drinking and waiting to be picked up by customers. Although alcoholism may be a problem, B-girls usually work out an arrangement with the bartender to serve them diluted drinks or water coloured with dye or tea, for which the customer is charged an exorbitant price. In some bars, the B-girl is given a credit for each drink she gets the customer to buy. It is common to find B-girls in towns with military bases and large transient populations (Siegel 2007:434; Hagan 2013:407).

5.7.4.3 *Brothel prostitutes*

Also called bordellos, cathouses, sporting houses, and houses of ill repute, brothels flourished in the nineteenth and early twentieth centuries. They were large establishments that housed several prostitutes and were usually run by madams. A madam is a woman who employs prostitutes, supervises their behaviour, and receives a fee for her services; her cut is usually 40 to 60% of the prostitute's earnings. The madam's role may include recruiting women into prostitution and socialising them into the trade (Siegel 2007:434; Hagan 2013:407).

5.7.4.4 *Call girls*

Call girls are the aristocrats of prostitution. Some charge their customers thousands of rand per night (in the USA more than \$100 000 per year). Some gain clients through employment by escort agencies, and others develop independent customer lists. Many call girls come from middle-class backgrounds and service upper-class customers. Attempting to dispel the notion that their service is simply sex for money, they concentrate on making their customers feel important and attractive. Working exclusively by means of telephone dates, call girls get their customers by word of mouth or by making arrangements with bellhops, taxi drivers, and so on. They either entertain customers in their own apartments or visit customers' hotels and apartments. Upon retiring, a call girl can sell her date book, which contains customer names and sexual preferences, for thousands of dollars. Despite the lucrative nature of their business, call girls suffer considerable risk because they are alone and unprotected with strangers. They often request business cards from customers to make sure they are dealing with upstanding citizens (Vito et al 2007:364; Siegel 2007:434; Hagan 2013:408).

ACTIVITY 1.18

Buy a newspaper (like the Beeld or the Citizen) and look in the classifieds for call girls advertising different services.

5.7.4.5 *Escort services/call houses*

Some escort services are fronts for prostitution rings. Both male and female sex workers may be sent out after a client reacts to an ad in the yellow pages and newspapers. A relatively new phenomenon, call houses, combines elements of the brothel and call girls: a madam receives a call from a prospective client, and if she finds the client acceptable, she arranges a meeting between the caller and a prostitute in her

service. The madam maintains a list of prostitutes who are on call rather than living together in a house (Siegel 2007:434).

The call house insulates the madam from arrest because she never meets the client or receives direct payment.

ACTIVITY 1.19

Escort services exist in big cities like Pretoria, Polokwane, Cape Town and Durban. Investigate this phenomenon and give some suitable examples of existing services.

5.7.4.6 *Circuit travellers*

Prostitutes known as circuit travellers move around in groups of two or three to lumber, labour and agricultural camps. They ask the foremen for permission to ply their trade, service the whole crew in an evening, and then move on. Some circuit travellers seek clients at truck stops and rest areas (Siegel 2007:434).

5.7.4.7 *Skeezers*

Surveys conducted in New York and Chicago have found that a significant number of female prostitutes have substance-abuse problems. More than half claimed that prostitution is how they support their drug habit. On the streets, women who exchange drugs for sex are called skeezers. Not all drug-addicted prostitutes barter sex for drugs, but those who do report more frequent drug abuse and sexual activity than other prostitutes (Siegel 2007:434).

5.7.4.8 *Cyber prostitute*

According to Siegel (2007:435) cyber prostitutes set up personal websites or put listings on web boards such Adult Friendfinder that carry personal advertisements. When contacted they ask to exchange e-mails, chat online or make voice calls with perspective clients. Sometimes they exchange pictures. This allows them to select who they want to be with and avoid clients who may be threatening or dangerous.

5.7.4.9 *Massage parlours/photo studios*

Some working girls are based in massage parlours and/or photo studios. Although it is unusual for a masseuse to offer all the services of prostitution, oral sex and manual stimulation are common. Most localities have attempted to limit commercial sex in massage parlours by passing ordinances specifying that the masseuse has to keep certain parts of her body covered and limiting the areas of the body that can be massaged. Some photo studios allow customers to put body paint on models before the photo sessions start (Siegel 2007:434)

5.7.4.10 *Determinants of prostitution*

Another issue that has been the subject of considerable debate is the question why men and women enter into prostitution. Although it may be tempting to try to identify the causes of prostitution, it is important to take note of the complexity of

prostitution and of the dynamics underlying the decision to work as a prostitute. As Posel (in SALC 2009:10) explains, the supply of prostitution cannot be explained in a deterministic fashion. The decision to prostitute should be understood in terms of economic criteria, socio-psychological factors and the demand for commoditised sex (<http://www/saflii.org/za/other/zalc/ip/>).

- Economic determinants

Economic factors represent a significant driving force behind prostitution, with prostitution serving both as a means of economic survival for women with few skills, and as a more lucrative form of employment than that available to them in the formal labour market. The prostitution market should therefore be examined against a broad background of the economic status of women.

- What is key for all streetwalkers (and for most female prostitutes generally) is that there is no other job at which they can make anywhere near a comparable wage (SALC Wikipedia 2009:10).

Pauw and Brener (in Wikipedia 2009:10) point out that South African women are usually poorer than men, often unemployed or only able to enter informal trade. Escalating unemployment as well as poor levels of education and skills limits women's employment opportunities and wages. This situation gives rise to an environment where a desire for upward mobility and access to resources may lead to the exchange of sex for economic survival.

The reasons given by prostitutes themselves bear out this analysis. South African prostitutes have explained their entry into prostitution as follows (Wikipedia 2009:10):

- None of us are doing this for pleasure. We are doing this for survival.
- I was two months behind in my rent, there was no food in the house and the kids' school fees were behind, when a friend suggested prostitution to me. It took me three weeks to think about it. I had to do it and that was that. I was determined.
- Nomandla, 27, who acted as the spokesperson, has matric and is the mother of two young children. She said she was separated from her husband and after losing her job making tea at a factory, she decided to make a living as a prostitute.

Once it is recognised that prostitution has a strong economic foundation, an examination of the relationship between growth in the prostitution sector and general economic development logically follows. Lim (in Wikipedia 2009:10) notes that certain macroeconomic development policies may influence the proliferation of the prostitution sector due to their impact on the availability of viable or remunerative employment alternatives for the poorly educated or persons with limited skills, ever-growing income inequalities, their cumulative socioeconomic consequences, and the strategies poor families adopt for survival in the absence of social safety nets (SALC 2009:10; <http://www/saflii.org/za/other/zalc/ip/>).

Anon 2008:1) has found that female students from several tertiary institutions in South Africa are increasingly resorting to prostitution to pay for food, clothing and other expenses.

Farly (2008:2) has found that traditional wives without job skills who had escaped from or were abandoned by abusive husbands went into prostitution to support themselves and their children.

According to Bartol and Bartol (2008:482), the basic motive for becoming a prostitute is money. These authors emphasise the fact that a distinction should be made between financial necessity and financial comfort. A previous investigation by James (1976 in Bartol & Bartol 2004:482) found that only 8,4% of her sample started prostitution out of economic necessity, and that 56,5% became prostitutes because of a desire for money and material goods. They saw prostitution as a lucrative business that offered material rewards they might otherwise not have attained. Social rewards like parties, dancing and expensive dining were also a factor.

The South African Police Service does not have statistics for public order crimes such as prostitution. However, mention is made that in the 2012/13 financial year 28 persons were involved with owning a brothel and soliciting for prostitution, smuggling of persons, extortion and kidnapping (SAPS Annual Report 2012/13:132).

ACTIVITY 1.20

Which other aspects could also be classified as economic determinants?

- Sociopsychological determinants

Not all persons who are poor or who seek to increase their income decide to work in prostitution. In addition to the pivotal role economic determinants play, this decision is also contingent on the individual characteristics and personalities of the persons concerned. Early scholars devoted much time and effort to developing physical and psychological profiles of prostitutes.

Parent-Duchatelet (in SALC 2009:10), in his anthropological study of Parisian prostitutes, presented a statistical description of their physical types, the quality of their voices, the colour of their hair and eyes, their physical abnormalities, their sexual profiles in relation to child-bearing and disease, their family background and education. He developed a stereotype of the prostitute as plump, filthy and speaking in a harsh voice. He also composed a personality sketch of the prostitute, which (inter alia) noted that prostitutes were women with lightness and mobility of the spirit, women who have difficulty in following a chain of reasoning as the smallest thing distracts and carries them away (SALC 2009:10).

<http://www/saflii.org/za/other/zalc/ip/>

As bizarre as Parent-Duchatelet's findings may appear to the modern reader, Bell (in SALC 2009:11) observed that this study was the prototype for most nineteenth-century research on prostitution in Europe, and served as a model for the British investigation into prostitution from the 1840s to the 1880s.

It is therefore not surprising that Dirasse (SALC 2009:11) cautions against an uncritical reliance on social science literature for an analysis of the determinants of prostitution. She argues that most psychological and psychoanalytic works emphasise perceived instabilities in the woman's personality, leading to a view of the prostitute as a deviant and neurotic personality. She criticises these analyses for their excessive focus on the prostitute rather than on the social context in which choices are exercised (SALC 2009:10; <http://www/saflii.org/za/other/zalc/ip/>).

The same caution should be applied in noting the common denominators that have been identified in women and men who work as prostitutes. These common denominators include a sense of worthlessness, a lack of self-esteem and a high incidence of childhood incest, sexual abuse or neglect.

However, when looking at these denominators, the lines between cause and effect become easily blurred. Authors have pointed out that the prostitutes lack of self-esteem may be as much a result of working in prostitution (with its concomitant social ostracism and constant threat of criminal prosecution) as a cause of prostitution.

5.8 PREVENTING AND CONTROLLING PROSTITUTION

5.8.1 Legalisation in different countries

Over the past decade, the most popular proposed solution to sex trafficking and out of control prostitution is the legalisation of prostitution. Prostitution has been legalised with the expectation that it would bring positive outcomes in Australia, the Netherlands, Germany, and recently in New Zealand. Although legalisation has realised big legal profits for a few, the other benefits never materialised. Organised crime groups continue to traffic in women and children and run illegal prostitution operations alongside legal businesses. In Victoria, Australia, the legalisation of brothels was supposed to eliminate street prostitution. It did not; in fact, there are many more women on the street than before legalisation. During 2008 there were calls to legalise street prostitution in order to control it .

Legalisation does not reduce prostitution or trafficking; in fact, both activities increase because men can legally buy sex acts and pimps and brothel keepers can legally sell and profit from them. Cities develop reputations as sex tourist destinations. Since legalisation in the Netherlands, there has been an increase in the use of children in prostitution.

German lawmakers thought they were going to get millions of euros in tax revenue when they legalised prostitution and brothels. But, in keeping with the criminal nature of prostitution, the newly redefined business owners and freelance staff in brothels do not pay their taxes. Germany is suffering a budget deficit, and the federal audit office estimated that the government has lost over two billion euros a year in unpaid tax revenue from the sex industry. Lawmakers recently started to look for ways to increase the collection of taxes from prostitutes. This put the government into the traditional role of a pimp (i.e. coercing prostitutes to give them more money).

5.8.2 The decriminalisation debate on prostitution

According to Siegel (2007:436), feminists have conflicting views of prostitution and can be divided into two groups, namely, the equality view and the free choice view. Supporters of the equality view consider a prostitute a victim of male dominance because it is based on male power predicated on female subjugation. Therefore, prostitution is a clear example of gender exploitation. Based on this premise, they (supporters of the equality view) conclude that women must become emancipated from male oppression and reach equality. Supporters of the free choice view, on the other hand, argue that the fight for equality depends on controlling all attempts by men or women to impose their will on women. According to this view, if women freely choose prostitution, then women express their equality and therefore prostitution is not a symptom of subjugation. However, advocates of both views argue that the penalties for prostitution should be reduced (decriminalised). Neither side advocates for total legalisation. In Sweden, feminists succeeded in getting legislation

passed that severely restricts prostitution and criminalises any effort to buy sexual activities. In Holland, although brothels were legalised in 2001, they have to be run under a strict set of guidelines. The English is also considering licensing brothels and creating managed areas or “tolerance zones” in order to combat street prostitution. Should Africa legalise prostitution?

Debates regarding the right of prostitution started in the nineteenth century and are still continuing. Farley (1996:6) believes that the decriminalisation of prostitution would make this occupation invisible. Decriminalisation implies that prostitution has a social stigma and that prostitutes can still be arrested. In this context it means that existing laws on prostitution have to be amended in such a way that no crime records will become available. However, that does not mean that no control or regulations will be applied (Hesselink-Louw 2001:171). Schurink (1996:3) maintains that decriminalising prostitution in South Africa would ensure sound health care and education for its practitioners and Neethling (in Hesselink-Louw 2001:172) believes that prostitution should be legalised. South Africa should be realistic about policing and controlling prostitution, because, as Neethling says, South African legislation has failed to control this phenomenon successfully. However, even if prostitution is decriminalised, policing will still be needed because allied crimes such as rape and child prostitution continue to exist.

5.8.2.1 *Advantages of the decriminalisation of prostitution*

McCaghy and Cernkovich (in Hesselink-Louw 2001:173) are of the opinion that prostitution for adults is a choice. Du Plessis (in Hesselink-Louw 2001:173) says that the decriminalisation of prostitution could mean that its practitioners would have access to medical care and police protection.

ACTIVITY 1.21

Get hold of the South African Law Reports and study the case of *S v Jordan* and two others (unreported ruling, Case number A227/99) and look at what judges Spoelstra and Webster decided on selling the body for sex.

The oppressive situation of sexual workers in South Africa could be improved since they could bargain for better work conditions, the elimination of intimidation and pimp control. They can also bargain for a trade union, medical and pension funds as well as day and night-care services for them and their children (Hesselink-Louw 2001:175).

According to Schurink (1996:19), society could also benefit from the decriminalisation of prostitution because those involved could contribute to tax revenue. The police services might also improve because police officials could give more attention to serious crimes like murder and rape. In addition, the workload of the Department of Correctional Service and the courts would decline because prostitutes would no longer be prosecuted. Other advantages include the registration of prostitutes (licences to work as prostitutes) as well as a collective right to bargain for fees. Decriminalising prostitution could require more medical tests and sexual education for prostitutes (Schurink 1996:19).

Neethling (in Hesselink-Louw 2001:175) is of the opinion that decriminalising prostitution would facilitate policing because prostitution could be practised in a more organised environment and according to a set of rules. Practitioners of prostitution

could then openly advertise their services at market-related prices. Allied crimes like robbery and assault of customers would decrease because customers could notify the authorities of crimes without their being convicted.

Pretorius (1992:5) confirms that the decriminalisation of prostitution holds certain advantages for the community as sexual diseases could be controlled better and children could be protected more efficiently against sex trafficking.

5.8.2.2 *Disadvantages of decriminalisation of prostitution*

Decriminalising prostitution does not necessarily change the social norms of a community (Davis 1993:200). This means that even if prostitution is legalised, the practitioners of prostitution could still be seen as outcasts from the community. Davis (1993:295) further indicates that in spite of decriminalisation of prostitution the control of pimps would not be eliminated. The control of pimps is illustrated by the following quote: “because no one protects the women from their protectors” (Davis 1993:295).

Deana (in Hesselink-Louw 2001:176) writes that male customers particularly use prostitutes for the excitement they get. This author warns that decriminalising sex work could contribute to customers turning to child sex workers for the excitement they are looking for. Readily available sex will not appeal to an unknown number of men for whom the illicit adds excitement and so constitutes a required element (Deana in Hesselink-Louw 2001:176). Decriminalising prostitution further implies that the risks (of rape and misuse of drugs) would diminish (Hesselink-Louw 2001:176). In other words, the emotional and physical dangers prostitutes experience would be removed by decriminalisation.

However, decriminalising prostitution would attract more practitioners and lead to an increase in its practice. Prostitution goes hand in hand with the spreading of sexual diseases and this represents a risk to the community. It could also promote the view that the sexual misuse of women is acceptable and increase sexism against women (Hesselink-Louw 2001:177).

Neethling (Hesselink-Louw 2001:177) postulates that if the authorities decriminalise prostitution they would be subject to criticism from religious groups because prostitution contravenes their moral values. Policing of prostitution would still be needed and require manpower and time. Neethling (Hesselink-Louw 2001:177) is of the opinion that the negative perceptions of prostitution (criminal phenomenon) will nevertheless still remain.

ACTIVITY 1.22

Study the advantages and disadvantages of decriminalising prostitution and give your own view in this regard.

5.9 CONSEQUENCES OF PROSTITUTION

5.9.1 The criminogenic nature of prostitution

Prostitution has historically been seen as undesirable because of its close connection to other crimes. Organised crime, robbery, assault, and drug trafficking are often cited as crimes associated with prostitution. Jenness (in SALC 2009:8) notes the classic argument that these crimes proliferate in an environment fostered by prostitution. Neighbourhood decay is also perceived to be closely associated with prostitution. If prostitution is decriminalised, it is argued, the tide of crime that seems to accompany prostitution would also be stemmed (SALC 2009:8).

This motivation for the prohibition of prostitution has been criticised for its circular reasoning in that it attributes the results of decriminalising prostitution to prostitution itself. This criticism therefore holds that problems of ancillary crime arise from conditions created by the criminalised status of prostitution (which would not be the case if prostitution were to be removed from a criminalised framework) (SALC 2009:8; <http://www.saflii.org/za/other/zalc/ip/>).

Levick (in SALC 2009:11) argues that in situations with a substantial demand for criminalised activities and a concomitant potential for economic profitability (as in prostitution), criminalisation serves to drive the industry underground and encourages organised crime involvement.

Posel (1993:20) problem was the spelling of the author. It is now correct as Posel and not Posal) is of the opinion that the proscription of prohibition of prostitution in South Africa has had the effect of increasing the criminal element in prostitution and producing secondary crimes that have become associated with prostitution. She notes that because prostitution is illegal, prostitutes seek assistance from pimps and others who can make their job easier, thus increasing the leverage that outsiders have to exploit prostitutes. In many cities, the prostitution industry is now highly organised and tightly controlled by pimps, gangs and/or drug dealers (SALC 2009:8; <http://www.saflii.org/za/other/zalc/ip/>).

Davis (1993:206; SALC 2009:8) reports that studies have found no direct link between prostitution and crime, drugs and urban decay. A 1977 study found that the connection between urban decay, crime and prostitution came about because prostitution was only allowed in areas the city had already written off. Davis says that when small brothels were integrated into healthy neighbourhoods in the Netherlands, no such decline occurred (<http://www.saflii.org/za/other/zalc/ip/>).

5.9.2 The moral threat to marriage and family

Levick (in SALC 2009:8) notes that in the Western world, the dominant pattern of behaviour taught and reinforced is Christianity. Flowing from this religious ideology is the claim that prostitution is hostile to the notion of family, the union of one man with one woman in the holy estate of matrimony. Prostitution therefore threatens the powerful vision of a family unit as the foundation of society, and presents us with the spectre of a woman who defiantly refuses to comply with expectations of fidelity and chastity.

As the idea of (non-commercial) sexual relations outside marriage has become more accepted, the moral condemnation of prostitution has shifted to emphasise

the impersonal and unemotional aspects of performing sexual acts for reward. The contemporary argument, derived from Kantian ethics, holds that commercial sex is wrong because it involves alienation of the body to the will of another, and thus undermines the ultimate roots of the integrity of the moral personality. Levick (in SALC 2009:9; <http://www.saflii.org/za/other/zalc/ip/>) remarks that Kant's perspective of the unity of sex and romantic love is based on expectations of a woman's sexuality but ignores the male client's equal participation in the transaction and his concomitant moral responsibility.

The male demand for prostitution has traditionally been explained by the statement that men possess more intense and insistent sexual urges, and therefore desire a variety of sexual partners. These urgent and inevitable sexual needs entitle men to transgress the norm of unity of sex and romantic love. Thus, the role of men in the prostitution transaction is explained by the fundamental, natural biological differences between men and women (SALC). Levick (in SALC 2009:8) explains how these stereotypical biological explanations raise social expectations of sexual behaviour:

In the social setting of prostitution, the expectations of the behaviour of men and women constitute a double standard of sexual morality. And these double standards are translated into legislation which invariably penalises sex workers, who are mostly women, and ignores the customers, who are mostly men (SALC 2009:8 – <http://www.saflii.org/za/other/zalc/ip/>).

She argues that South African legislation on prostitution exists squarely within the realm of the moralist standpoint. The current prohibition of prostitution is not attributable to concerns that prostitution may permit and perpetuate the sexual objectification or subjugation of women. This legislation arose from the white, male Christian Nationalist government which chose to construct the statute in a way that reinforced the stereotypes that sustain the commercial sex industry (SALC 2009:8).

5.9.3 Concerns relating to public nuisance

The public nuisance resulting from prostitution (i.e. street prostitution) is frequently cited as one of the reasons why prostitution should be criminalised. These nuisance factors *inter alia* include excessive noise, traffic congestion, condoms left on pavements or in gardens and other forms of littering and trespassing.

Police often cite complaints from residents as the main motivating factor for invoking municipal by-laws against street prostitutes. Davis (1993:208) explains that police containment is defined by public demand, and notes that the police would allow prostitution to exist in one area in order to keep it out of another. She describes how, during the 1970s, public pressure caused the closure of two notorious sex clubs in Vancouver, Canada. The prostitutes who formerly worked in these clubs were therefore displaced onto the streets (SALC 2009:8; <http://www.saflii.org/za/other/zalc/ip/>).

Areas where prostitution was unofficially tolerated were unable to accommodate the new influx of prostitutes, with the result that the new street prostitutes spilled over into more upscale residential areas. Residents and local businesses in these areas were unhappy about this development, and lobbied the police for action. They saw the sudden appearance of prostitutes in their area as evidence that legislation was not tough enough or broad enough to enable the police to do their job (not taking into account that it was tougher enforcement that had upset the status quo and caused the redistribution of prostitution into their area in the first place).

Davis (1993:208) notes that the police and municipal authorities, reacting to pressure from citizen groups, typically resort to exerting pressure on higher levels of government to enact laws that give the police wider latitude in enforcement. The main aim is removal, so that respectable citizens are not offended by the sight of prostitution and so that police and public officials are not offended by the sight of prostitution and so that police and public officials may appear to have moved quickly to satisfy their constituency.

Milton (in SALC 2009:22) remarks that while there is no question that in some of its manifestations prostitution could produce conditions that are a nuisance to the public, these conditions are relatively easily controlled without demanding that the actual practice of prostitution be prohibited by criminal sanction.

ACTIVITY 1.23

Consider the immorality of prostitution and the harm it causes to society.

5.10 THE LINK BETWEEN PROSTITUTION AND OTHER TYPES OF CRIME

5.10.1 The link between prostitution and drugs

The nebulous line between cause and effect becomes even more indistinct when one attempts to examine the nexus between prostitution and substance dependence. Research indicates a high incidence of substance dependence among persons working in prostitution. Pauw and Brener (in SALC Wikipedia 2009:10) believe that it is crucial to understand the role drugs play in prostitution. It has, for example, been suggested that drugs relieve stress and help prostitutes to cope with their work.

According to Leggett (1998:20), the link between prostitution and drugs in South Africa more closely resembles the situation in America than in Britain, both in terms of the drug of choice and the question of causation. One British study reported that about half the prostitutes who had been interviewed began working in prostitution in order to pay for drugs. Leggett's research (1998:20) indicates that this is not the case in South Africa, but points out that there is currently insufficient information on the direction of causation (i.e. whether drugs are leading women and men into prostitution, or whether prostitution causes persons to use drugs) (SALC 2009:8; <http://www.saflii.org/za/other/zalc/ip/>).

5.10.2 Prostitution and trafficking

Since the 1980s there has been a new wave of feminist-backed campaigns against trafficking in women, child prostitution and sex tourism. However, there is a fundamental division among these activists. This division hinges on the question whether a person can voluntarily choose prostitution as a form of work, or whether, as proposed by the so-called neo-abolitionists, there is always an element of coercion – even where the prostitute appears to choose this option.

The strongest proponents of the neo-abolitionist perspective are the Coalition Against Trafficking in Women (CATW) founded by Kathleen Barry. CATW defines prostitution as a form of sexual exploitation similar to rape, genital mutilation, in-

cest and battering. The organisation sees sexual exploitation as a practice by which women are sexually subjugated through abuse of women's sexuality and/or violation of their physical integrity as a means of achieving power and domination including gratification, financial gain, advancement.

An important recent development around trafficking is a new Protocol to supplement the UN Convention Against Transnational Organised Crime (SALC 2009:8).

5.11 CONCLUSION

It is clear from the above discussion that public order crimes are a varied assortment of offences, some of which have been called vice offences, consensual offences, victimless crimes or even public nuisance offences. Public order crimes/victimless crimes include the sexually based offences of prostitution, paraphilia, under-age sex, pornography, and offences involving substance abuse that may or may not constitute an element of public disorder or danger to the public. Drug abuse and prostitution were discussed in detail. Arguments in favour and against public order crimes were discussed. The manifestation of specific public order crimes like drug abuse and prostitution were discussed with special reference to their incidence, determinants of and arguments for decriminalisation.

5.12 SELF-EVALUATION QUESTIONS

QUESTION 1 *What of the following related to public order crimes differs from country to country?*

- (1) moral laws, codes and standards
- (2) different laws, codes and norms
- (3) different opinions, standards and regulations
- (4) moral laws, codes, different sanctions

QUESTION 2 *Why is the use of the term "public order crimes" preferred to the term "victimless crime"?*

- (1) There are direct victims.
- (2) There are secondary victims.
- (3) There are no victims.
- (4) There are multiple victims.

QUESTION 3 *What is the life expectation of a person who is addicted to heroin?*

- (1) 6 months
- (2) 12 months
- (3) 18 months
- (4) 24 months

QUESTION 4 *Sociologists are of the opinion that overdosing is a result of ... rather than the outcome of the pharmacological effects of the drugs.*

- (1) the irregular use of drugs
- (2) the regular use of drugs

- (3) experimenting with drugs
- (4) legislation against drugs

QUESTION 5 *Victimless crimes may be defined as offences committed by adults with the voluntary andconsent of all involved and without any of the parties lodging a complaint with the police.*

- (1) personal
- (2) mutual
- (3) judicial
- (4) government

QUESTION 6 *Prostitution is based on a balance between the supply of available ... and the demand for ... to provide the sex act.*

- (1) women, women
- (2) victims, victims
- (3) girls, girls
- (4) prostitutes, prostitutes

QUESTION 7 *Which type of prostitutes is most likely to be impoverished representatives of ethnic or racial minorities?*

- (1) brothel prostitutes
- (2) skeezers
- (3) bar girls
- (4) street workers

QUESTION 8 *Which characteristics of a prostitute may be as much due to working in prostitution as the cause of choosing prostitution?*

- (1) lack of education
- (2) lack of self-esteem
- (3) lack of personality
- (4) lack of respect

QUESTION 9 *Which of the following determinants plays a major role in practising prostitution?*

- (1) socio-psychological determinant
- (2) economic determinant
- (3) cultural determinant
- (4) social determinant

QUESTION 10 *Who maintains that the decriminalisation of prostitution will provide for sound health care, regulation and education for the practitioners of prostitution?*

- (1) Neethling
- (2) Hesselink-Louw
- (3) Schurink
- (4) Farley

5.13 ANSWERS TO SELF-EVALUATION QUESTIONS

- (1) Option (1). See section 5.1 paragraph 3. Option (1) par 5.1 p. 119
- (2) Option (2). See section 5.2.1 paragraph 2. And Option (2) par 5.1 p. 118-119

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- (3) Option (3). See section 5.6.3 paragraph 2.
- (4) Option (4). See section 5.6.5 paragraph 4.
- (5) Option (2). See section 5.2.3 paragraph 1.
- (6) Option (2). See section 5.7 paragraph 2.
- (7) Option (4). See section 5.7.4.1 paragraph 3.
- (8) Option (2). See section 5.8.1.2 paragraph 6.
- (9) Option (2). See section 5.8.1.1 paragraph 1
- (10) Option (3). See section 5.9.2 paragraph 3.

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