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**National Development Plan
Chapter 12 – BUILDING SAFER COMMUNITIES**

Understanding property crime as a market can provide a useful first step to devising strategic approaches to its control ... heavier application of a narrow range of already failed measures is not the way forward.

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Catching criminals is difficult and dangerous; destroying their market is easy and safe.

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1 PRELIMINARY

1.1 This crime policy document addresses crime in four broad categories:¹

1.1.1 Property crime.

1.1.2 Violent crime.

1.1.3 Victimless crime.

1.1.4 Corruption.

Note: This is not conventional crime categorisation for reasons given in footnote 1.

1.2 This study focuses primarily on the “Market Reduction Approach” (MRA) which seeks to reduce property crime indirectly by de-incentivising it, that is by shifting attention from crimes and criminals to stolen goods markets (property crime), excess regulation (victimless crime) and discretionary power (corruption).

1.3 This study addresses crime within an established criminology paradigm: there will be less crime if crime doesn’t pay. This approach accepts that property crime is best curtailed by regarding it simply as a business opportunity. It is assumed that criminal entrepreneurs, like legitimate entrepreneurs, do not enter unprofitable markets. Accordingly, the extent to which stolen goods markets are destroyed or subverted, predicts the extent to which there will be a reduction in property crime.

1.4 This study mentions, but does not include in-depth examination of, the “Rule of Law” approach to corruption market reduction, and development of an informant market in which there is police and private “shopping for criminals” (see 9 and 10 below).

1.5 What these and related approaches have in common is the insight offered by economics that the best way to discourage an activity is to lower the rate of return by increasing costs and reducing benefits. Stated differently, increasing disincentives by changing the balance between the “supply” of crime opportunities and the “demand” for stolen goods.

1.6 Duplication of what has been covered sufficiently elsewhere is avoided here. This policy analysis does not, for instance, discuss conventional proposals for implementing existing strategies more efficiently, or, by way of better training, more and better paid police, community participation and the like. This does not trivialise the merit of such proposals. With or without a crime crisis, there is a compelling case for properly remunerating and training everyone involved in crime reduction, and ensuring that they have needed resources including suitably located, equipped, staffed and motivated police stations, appropriate and sufficient vehicles, safety clothing, weapons, budgets and technology for intelligence purposes, and that there are incentives for effective community participation. Instead of outlining ways to improve existing approaches, this analysis explores additional and

¹ This is not a conventional categorisation of crime. Normally, for instance, robbery is regarded as “violent” rather than “property” crime. Robbery is regarded as property crime in this policy proposal because the principal issue being addressed is crime reduction **where the essential purpose of crime is the misappropriation of property for resale**. Normally misappropriation of money is regarded as property crime. This policy proposal does not do so because misappropriated money is not generally sold in markets where “criminal property” is traded. Corruption and fraud are not normally regarded as property crimes although their essential purpose is the misappropriation of property. In this policy proposal, corruption and fraud are regarded as property crimes where tradable property, as opposed to money, is misappropriated. Conventional categorisation is followed in this policy proposal where it is contextually appropriate, in which case it is obvious from the context.

alternative approaches that are likely to reduce crime substantially by subverting the market for crime.

2 OVERVIEW

2.1 Property crime reduction strategies

2.1.1 There are various approaches to reducing property crime. The two most common approaches are:

2.1.1.1 the conventional policing policy of catching and prosecuting criminals, and

2.1.1.2 the view that crime is a sociological aberration best addressed by redressing society's sociological maladies.

2.1.2 This paper advances a third, relatively new approach, which assumes that the most effective way to reduce property crime is to **curtail stolen goods markets**.

2.1.3 Destroying stolen goods markets would not, of course, discourage property crimes where the motive for misappropriation is not resale, such as shop-lifting or theft of cash for personal use. Although theft for personal use is common, it is generally not regarded as being as serious as commercially motivated property crime for various reasons:

2.1.3.1 It is generally unreported and regarded as "petty theft".

2.1.3.2 It occurs on a relatively small scale.

2.1.3.3 Generally, it is regarded as best dealt with by victims who fall into three broad categories:

2.1.3.3.1 Employers – theft and fraud by employees.

2.1.3.3.2 Retailers – theft by consumers and staff.

2.1.3.3.3 Farmers – stock and crop theft.

2.1.4 Commercially motivated property crime constitutes two thirds to three quarters of all reported crime, which is the principal category of crime under consideration in this study, which juxtaposes conventional policing policies with market reduction alternatives.

2.2 Conventional policing – the "trench warfare" approach

2.2.1 The conventional, "direct" approach is to "combat" or "fight" crime. This tends to connote having effective, usually costly, security in place (alarms, guards, neighbourhood watch associations, locks, gates, walls, etc) on one hand and aggressive policing on the other (police patrols, flying squads, detectives, stiff sentences, etc).

2.2.2 It presupposes a fixed propensity or "demand" for crime, and that the best way to combat it is to catch and jail criminals, and protect victims.

2.2.3 This can be called the "trench warfare" or "let-the-punishment-fit-the-crime" approach. It is essentially informed by the idea that efficient security, policing and criminal justice are the best or only means of "fighting" crime.

2.2.4 Crucial though it might be for conventional methods to be in place and to function effectively and affordably, exclusive attention paid to it diverts policy-makers from addressing crime in ways that are fundamentally different and potentially much more cost-effective.

2.2.5 Research evidence suggests that much of what is done conventionally is ineffective or of only marginal value. When trying to implement the established anti-crime strategies better, great care should be taken to avoid being ineffective more efficiently.

2.2.6 There are many studies that debunk popular rhetoric about the "getting tough" approach to crime-reduction, one of the most celebrated being the Kansas City study which found that whether patrol cars were eliminated, kept at the same level, or doubled, made no difference to crime rates or public fear of crime.

2.2.7 A series of studies during the 1970s and 1980s suggested many crimes, especially property crimes, were unlikely to be solved by police investigations and that changes in resources

- devoted to investigations had little effect². If citizens did not volunteer information about suspects to first-responding officers, follow-up investigations were unlikely to succeed.
- 2.2.8 Random patrols were found to encounter a crime only every eight years.³
- 2.2.9 In society's desperation to reduce crime, supposedly creative innovations are introduced without evidence that they will be cost-effective. The British government is introducing identity cards for all citizens as part of its anti-crime policy. It has been pointed out that the £3-billion direct government expense could "put 30,000 more police on the roads" or provide for 10,000 more police and 20,000 more Community Support Officers.
- 2.2.10 The "official" costs of such measures are usually massively under-estimated because indirect and private costs are ignored. As in South Africa where identity cards have been the norm for many years, the time and money lost by employers giving staff time off during working hours, losing business in the process, the implications for civilians visiting and waiting interminably at distant government offices, impacts on other government departments and the like, cost the nation a great deal more than the government's nominal expenditure of taxpayers' money in return for little or no quantifiable benefit.
- 2.3 **Market reduction – the "aerial bombardment" approach**
- 2.3.1 A supplementary, "indirect" approach can be thought of as "aerial bombardment", according to which crime in general is targeted rather than individual crimes and criminals. This approach applies basic principles and insights of economics to crime. Economic theory predicts that there will be less crime if the "rate of return" is reduced. It can be reduced at the trench warfare end by increasing the cost of crime (security, policing, etc), which is usually difficult and dangerous. Or it can be reduced with aerial bombardment by ignoring crime and criminals, and destroying the markets into which they sell (where property is misappropriated for purposes other than own-use).
- 2.3.2 This is known as the "Market Reduction Approach" (MRA), which addresses property crime precisely as one would address a desire for less of any other activity.
- 2.3.3 Whether there *should* be more or less of an activity, whether it be sport, traffic or corruption, is not *per se* relevant when asking which policies would result in which outcomes. According to this approach, what the best anti-crime policy might be is a practical rather than a moral or ethical question.
- 2.3.4 If you want *more* corruption, the simple and obvious way to get it is to adopt more laws and policies that give officials discretionary power. Examples of discretionary powers that promote real or suspected corruption are the substitution of objective criteria with administrative discretion regarding who gets a taxi license, a property rezoned, a government contract, a subsidy or some other form of protection or privilege.
- 2.3.5 If you want more sport, you can create incentives such as having more and better sports facilities, generous subsidies, free training and high-pay professionalism. If you want less sport you can impose heavy taxes on sport, subject sportspeople to restrictions such as exclusion of sports injuries from medical schemes and government health care, ban spectators and so on.
- 2.3.6 You can have less traffic by lowering speed limits to 20km/h, closing roads, increasing fuel prices tenfold, having more road blocks and doubling vehicle taxes. Or you could have more traffic by improving roads, reducing vehicle and fuel taxes, and deregulating public transport and fuel markets.

² Greenwood et al. 1975; Greenwood, Petersilia, and Chaiken 1977; Skogan and Antunes 1979; Eck 1983.

³ <http://www.cambridge.org/uk/catalogue/catalogue.asp?isbn=052183628X&ss=exc>.

2.3.7 The same is true of crime. There will be less if being a criminal is more risky, difficult and costly, on one hand, and less rewarding on the other – in other words, if it is tackled from both ends.

2.4 **Policing challenges in free societies**

2.4.1 Make it more difficult for police to catch and prosecute criminals and there will be more crime. This does not mean it should be easy to act against suspected criminals. However desirable they might be, human rights, due process, natural justice, civil liberties and the rule of law impose substantial costs and constraints on the efficacy of the criminal justice system, on one hand, and benefit criminals, on the other.

2.4.2 That things are made easier and safer for criminals in free societies is a price decent people are willing to pay because freedom and human rights are values and ends in themselves. There are no “free lunches” and one of the costs of freedom is more crime than there would be were police free to act with impunity. The challenge in free societies is to find ways of curtailing crime that are simultaneously cost-effective and consistent with their values.

2.4.3 That this trade-off is good for criminals explains why there is an inclination to avoid the constitution and erode the rule of law with such measures as arbitrary seizure of suspected “criminal property” under the Prevention of Organised Crime Act (POCA) without the traditional precondition of proper prosecution and conviction. The temptation is so overwhelming that POCA has seldom, if ever, been used, as intended, to combat serious organised crimes of the kind that cannot effectively be dealt with under normal criminal law. Instead, billions of Rands of assets have been seized from those who have not even been prosecuted.

2.4.4 What is desperately needed is a reduction in crime by legitimate and cost-effective means.

3 **SUMMARY OF ALTERNATIVES SUGGESTED IN THIS STUDY**

This is a summary of strategies elaborated below:

3.1 **Victimisation crime (property crime)**

Most crime is “property crime”, that is to say, the primary objective is for criminals to benefit from the misappropriation of someone else’s property. Obvious examples are burglary, theft, mugging, car jacking and fraud. To put it simply, the property in property crime “justifies” the crime by virtue of the prospect of selling the property (except in rare cases where the criminals want the property for themselves, commonly called “petty crime”). In order to sell stolen property, it has to be marketed. The marketing has to be sufficiently overt to be accessible to consumers. This means that it is, at least, as easy for the police as for the buyers of stolen goods to identify dealers in stolen goods. If stolen goods offered for sale are routinely identified and seized by the police, the market will be destroyed and property crime will be discontinued without the need to catch criminals or protect property.

3.2 **Victimisation crime (violent crime)**

Firstly, violence accompanying property crime (mugging, robbery, car jacking, cash-in-transit heists, etc) will be reduced automatically if property crime is reduced. Secondly, a substantial reduction in property crime will release criminal justice resources so that crime of a non-property, purely violent nature, especially women and child abuse, can be combated much more effectively. The release of substantial resources currently tied up needlessly in combating crime that can be eliminated by destroying the market for crime has by far the greatest potential for combating violent crime.

3.3 **Victimless crime (statutory crime)**
“Victimless” crime is *statutory* crime (as opposed to *common law* crime) in which there is no victim whose rights have been violated. Such “technical” crimes are actions that would be lawful under common law but have been criminalised by legislation. The more the state has to deal with technical (statutory) crime, the fewer resources it has to deal with real (common law) crime. Apart from this practical reason for a critical review of the number of victimless activities declared to be crimes, there is a compelling philosophical case for doing so in a liberal democratic society, which places a high value on individual liberty.

3.4 **Corruption**
Technically speaking there are various types of corruption. In common usage the word has become synonymous with corruption of government officials because this is by far the most common form of corruption. The main reason for it being the most common form is the extent to which officialdom wields discretionary power with insufficient or ineffective checks and balances. Corruption within the private sector, such as a “kick-back” to a corporate buyer, is uncommon because businesses that do not find ways of keeping such corruption to minimal levels will be uncompetitive. There is no such innate discipline in the public sector, which means that (a) there is less incentive to implement effective checks and balances and (b) there is no spontaneous penalty imposed by more efficient competitors. Corruption occurs overwhelmingly, though not exclusively, for one simple reason, namely discretionary power. Wherever government has the discretion to grant or withhold contracts, protection, subsidies and other privileges, there is real or suspected corruption. Corruption is a manifestation of policies presenting officials and those who bribe them with irresistible incentives. Corruption where there is no discretionary power, such as bribing a court official to unlawfully dispose of a file, is a matter of governance. Both kinds of corruption can be addressed by having police enter the “market” for corruption as “consumers”. The challenge is to do so in ways that do not constitute entrapment (see below). The word “corruption” has become synonymous with a government official being the common denominator because corruption within the private sector, though it exists, is rare by virtue of checks and balances necessitated by competition.

4 **BACKGROUND INFORMATION**

4.1 **Scope of this discussion document**

4.1.1 This document does not purport to be a comprehensive analysis of South African crime or anti-crime policy, and the following information is confined to that which background information indicates the extent to which:

- 4.1.1.1 a successful market reduction policy would redress South Africa’s crime crisis,
- 4.1.1.2 market reduction has been tried and why it appears to have failed,
- 4.1.1.3 market reduction does not feature in current anti-crime policies and strategies,
- 4.1.1.4 laws which inhibit the potential for market reduction should be reviewed.

4.2 **Importance of property crime**

4.2.1 Property crime is the most common crime, accounting for three quarters of reported victimised crimes in most countries. It may also be the most under-reported crime by virtue of the extent to which many property crimes are unreported, including fraud, theft by domestic workers and employees, and shop-lifting. If all forms of property crime are included, it may account for over 80% of victimised crime.

4.2.2 US data is readily accessible and comparatively accurate.

4.2.2.1 There were nearly 10,000,000 property crimes in the USA during 2006.

- 4.2.2.2 The two-year and 10-year trends showed that the number of property crimes in 2006 decreased 1,9% when compared with the 2005 estimate and declined 13,6% when compared with the 1997 estimate.
- 4.2.2.3 In 2006, the rate of property crime offences was estimated at 3,334.5 property crimes per 100,000 inhabitants.
- 4.2.2.4 Two-year and 10-year trends indicated that the rate of property crimes in 2006 decreased 2,8% when compared with the 2005 data and declined 22,7% when compared with the 1997 data.
- 4.2.2.5 Two-thirds of all property crimes were larceny-thefts.
- 4.2.2.6 Property crimes accounted for an estimated \$17,6 billion in losses.
- 4.2.3 Crime rates have been falling in most countries, especially in advanced democracies.
- 4.2.4 In sharp contrast, crime rates have been rising in South Africa. During 2007 *Die Burger* reported alarming increases, some so implausibly high that improved recording systems may be part of the explanation.
- 4.2.4.1 Residential robberies increased 25,4% in a single year from 10,173 to 12,761 incidents and has increased again every year since becoming a separately recorded crime category in 2002/3.
- 4.2.4.2 Car jackings increased 6% from 12,434 (2004/5) to 13,599 incidents (2006/7).
- 4.2.4.3 Business robberies increased 52,2% from 3,320 (2004/5) to 6,689 (2006/7).
- 4.2.4.4 Bank robberies increased by 118,6% from 59 (2004/5) to 129 (2006/7). Bank robberies started increasing in 2004/5 after decreasing 89% to 59 from 561 in 1996/7.
- 4.2.4.5 Cash-in-transit heists increased by 21,9% from 383 (2004/5) to 467 (2006/7), up from 192 in 2003/4.
- 4.2.4.6 About 60% of reported crimes in South Africa are property crimes.
- 4.2.4.7 In 2006/7 reported residential burglaries were 559 per 100,000; robbery was 255 per 100,000; vehicle theft was 85,964 annually; car jackings were 12,800 annually.
- 4.2.4.8 Car thefts peaked at 107,500 in 1998 and fell 22% to 84,000 in 2004/5. Car jacking fell 21% after peaking at 16,000.
- 4.2.4.9 A third of South African crimes are non-property violent crimes, which is abnormally high by world standards – 26% were murders, rapes and assaults.
- 4.3 **Current South African “10-point strategy”**
- 4.3.1 In his 2007 State of the Nation address, then-President Mbeki outlined the government’s ten key points of their anti-crime policy:
- 4.3.1.1 continue to improve the remuneration and working conditions of the police;
- 4.3.1.2 bring to full capacity hi-tech forensic laboratories;
- 4.3.1.3 bring the operations of home affairs (immigration) to full capacity;
- 4.3.1.4 implement the recommendations of the Khampepe Commission (abolish the Scorpions);
- 4.3.1.5 start the process of further modernising the systems of the tax authorities;
- 4.3.1.6 intensify intelligence work on organised crime;
- 4.3.1.7 improve management of the courts and the prosecution service;
- 4.3.1.8 finalise transformation of the judiciary;
- 4.3.1.9 build more corrections facilities; further capacitate intelligence, and
- 4.3.1.10 improve analysis of crime trends.
- 4.3.2 Apart from improved intelligence, none of these have the potential for significant crime reduction.
- 4.3.3 Former President Mbeki recognised the general superiority of private security. Instead of suggesting privatisation, outsourcing and/or a more business-friendly market, he echoed the widely held anti-business view that the state should, as in health care, intensify regulation of the sector and commandeer it to supplement government policing, although the statement is

ambiguous and could be interpreted to mean that police will act more co-operatively. “The security industry,” he said, “cannot be handled simply as a private affair of the private sector. Quite clearly the regulatory system that we have in place is inadequate ... police will now work together with the private security industry to create an environment in which the security expectations of the public, in which huge resources are expended, are actually met.”

4.4 **UK crime reduction initiatives**

- 4.4.1 Britain is one of the few countries to experiment with and adopt indirect crime reduction strategies, which were formalised under the *Crime & Disorders Act* in 1998. The Kirkholt Project, which concentrated on improved surveillance and security in a selected neighbourhood, resulted in 75% fewer burglaries and £3,84 less property and cash stolen for every pound invested in police time, detection, sentencing, probation and detention costs.
- 4.4.2 “Crime reduction” is the British name for its new policies of finding ways to cut crime by reducing opportunities associated with crime.
- 4.4.3 The policy of “denying benefits” entails a crackdown on stolen goods transactions and markets. The idea behind “market reduction” is to deny thieves conduits for trading in stolen goods.
- 4.4.4 A Policing and Reducing Crime Unit (PRCU) was established in the Research, Development and Statistics Directorate (RDS) of the Home Office. The Unit is responsible for “research on policing and crime reduction” with a view to supporting the Home Office with evidence-based policy and practice. The *Crime Reduction Research Series* presents findings on crime reduction, particularly local crime. The series is funded *inter alia* under the Crime Reduction Programme.
- 4.4.5 The Market Reduction Approach (MRA) is described as “an inter-agency approach that is designed to reduce theft”.
- 4.4.6 The Home Office report, *Handling stolen goods and theft: A market reduction approach* (Sutton 1998), influenced police operations against stolen goods markets. It identified five main markets for stolen goods, described their characteristics and recommended “various MRA tactics to tackle them to reduce theft”.
- 4.4.7 An earlier study outlined the relationship between theft and stolen goods markets, and between fences (retail outlets for stolen goods), thieves and the buying public. It found that “in many cases, it is thieves that create markets by continually offering stolen goods to shopkeepers and other members of the public”. Common knowledge amongst thieves about how to sell stolen goods locally “almost certainly plays an important role in motivating thieves in the first place”.
- 4.4.8 A rigorous MRA model was presented for the first time in the Sutton report. It includes a “systematic and routine problem-solving framework for action against the roots of theft”.

4.5 **Anti-crime theories**

- 4.5.1 According to GS Bajpai, the theoretical framework (within which the MRA fits) is as follows⁴:
 - 4.5.1.1 **Routine Activity Theory**
Convergence of three variables – prospective offender, suitable target, and absence of effective guardian against crime – results in crime occurrences.
 - 4.5.1.2 **Rational Choice Theory**
Assuming criminals intend benefiting themselves, this theory seeks to understand how criminals make crime choices within specific settings that offer opportunities (see Situational Crime Prevention next).

⁴ GS Bajpai, *Crime Reduction through Situational Crime Prevention – The British Experiences*, Visiting Commonwealth Fellow, Department of Criminology, University of Leicester, UK.

- 4.5.1.3 **Situational Crime Prevention**
Given a criminal's motives, this theory assumes that changed conditions at times and places where crimes would otherwise be likely as a matter of "rational choice", would influence the criminal's propensity to commit prospective crimes.
- 4.5.1.4 **Opportunity Theory**
Opportunity theory holds that opportunity is the principal cause of crime regardless of criminal inclinations, that "easy or tempting opportunities entice people into criminal action".
- 4.5.1.5 **Displacement Theory**
The evidence suggests that displacement – a prospective criminal committing crime B if prevented from committing crime A – happens "much less frequently or fully than previously thought". When crime has been curtailed in some areas of South Africa, usually higher-income areas, it has mistakenly been thought of as "redistributed" to lower-income areas. The fallacy in this notion is the assumption that there is a fixed amount of crime, and if there is less at one place there must be more elsewhere. The evidence suggests that reducing crime anywhere entails a net reduction in the crime rate with only minimal if any displacement. It may be true that reducing crime in one place reduces it elsewhere because the criminal market in general is reduced. This can easily be understood by way of a *reductio ad absurdum*. If crime is stopped everywhere except in a single shopping centre, the chances are all criminals will have vacated the enterprise of crime and found legitimate sources of income elsewhere, leaving no one to commit crime in the diminished market for criminals.
- 4.5.2 The MRA can be regarded as a derivative of the "rational choice" paradigm. It holds that the "rational motive" for commercially motivated property crime is diminished or removed to the extent that the stolen goods market is diminished or removed, regardless of how conducive a potential crime "situation" might be.
- 4.5.3 Situational crime prevention (SCP) has become "one of the most effective methodologies in the UK" according to Bajpai. The SCP approach, like the MRA, is indirect in that it focuses on settings and contexts rather than actual crimes and criminals. SCP makes committing crimes difficult; MRA makes benefiting from crime difficult. SCP usually entails "target hardening" by increasing security and surveillance.
- 4.5.4 Paradoxically, what has become accepted as the most effective anti-crime strategy is not a function of criminal justice agencies but potential victims themselves. Policing may be a surprisingly small factor in the "war on crime". Its contribution could be enhanced substantially if it shifts attention from direct methods, which have proven to be ineffective, to more effective indirect methods.
- 4.5.5 There are two sides to SCP: ease of access to misappropriated goods and profitable opportunities of disposal. The second is the aspect that can and should be the responsibility of the police. Beyond education and awareness, there is not much the police can do about the former. Potential victims more appropriately and efficiently deal with it.
- 4.5.6 The SCP is about the practical ways to reduce crime. Businesses, neighbourhood associations, public institutions and the like are responsible for such precautions as security and insurance. CCTV, alarms, electronic cards, computer identification, secured parking facilities and rapidly developing technology are effective situational deterrents with "a history of efficient performance in all parts of the world" despite the fact that SCP "did not evoke any policy attention till recently". The SCP concept was developed and introduced by Clarke and others to the UK in 1997.⁵

⁵ Newman's "defensible space" theories and Jeffrey's work on "crime prevention through environmental design" emerged earlier in the USA but were not developed into coherent crime prevention methodologies until recently.

4.5.7 **Crime categories**

- Murder.
- Attempted murder.
- Rape.
- Indecent assault.
- Assault with the intent to inflict grievous bodily harm.
- Common assault.
- Common robbery.
- Robbery with aggravating circumstances.
- Carjacking (subcategory of aggravated robbery).
- Truck hijacking (subcategory of aggravated robbery).
- Robbery at residential premises (subcategory of aggravated robbery).
- Robbery at non-residential premises (subcategory of aggravated robbery).
- Robbery of cash in transit (subcategory of aggravated robbery).
- Bank robbery (subcategory of aggravated robbery).
- Arson.
- Malicious damage to property.
- Burglary at residential premises.
- Burglary at non residential premises.
- Theft of motor vehicle and motorcycle.
- Theft out of or from motor vehicle.
- Stock-theft.
- Illegal possession of firearms and ammunition.
- Drug-related crime.
- Driving under the influence of alcohol or drugs.
- All theft not mentioned elsewhere.
- Neglect and ill-treatment of children.
- Commercial crime in the RSA.
- Shoplifting in the RSA.
- Culpable homicide.
- Kidnapping in the RSA per province.
- Abduction in the RSA per province.
- Public violence.
- *Crimen injuria* per province in the RSA.

5 **PROPERTY CRIME**

- 5.1 When people speak about the crime crisis in South Africa they generally have property crime in mind, especially that accompanied by violence and threats of violence. Measures such as the seizure of so-called “criminal assets” by the Asset Forfeiture Unit (AFU) in terms of the Prevention of Organised Crime Act (POCA) tends to be welcomed in the belief that extreme discretionary and arbitrary powers are legitimate in South Africa’s distressing circumstances. Yet such measures seldom, if ever, target violent crime. Instead they divert crime-fighting resources away from fighting “serious” crime, thereby exacerbating rather than ameliorating the problem. There is a wide-spread misconception that the AFU addresses the national crime crisis. Despite seizing billions of Rands of assets, the AFU has seldom if ever used its powers to combat violent crime.

- 5.2 Catching criminals committing property crime, especially when accompanied by violence or threats of violence, is difficult and dangerous. It is difficult for the obvious reason that property crime is, by its nature, committed at places and times when criminals are least likely to be caught. It is dangerous for the obvious reason that perpetrators of property crime expect and are prepared for resistance. In other words, the least effective way to combat property crime is to try to catch criminals *in flagrante delicto*.
- 5.3 The purpose of most property crime is to sell criminal property. This incentive explains why it is the most common crime and why it is the easiest crime to undermine by the simple expedient of lowering the rate of return.
- 5.4 Not all property crime is motivated by the desire for resale. Property crime for direct personal enrichment, such as shoplifting, theft by office staff of stationery or equipment for personal needs, and theft of household goods by domestic workers, is not the kind of crime about which there is national anguishing. It is also the kind of crime against which victims can act most directly, easily and satisfactorily.
- 5.5 Despite the obvious potential for using and the successful application of insights gained from an understanding of crime economics, it has been the subject of surprisingly scant attention in mainstream crime literature.
- 5.6 To the limited extent this analysis addresses the issue of petty crime, it calls for critical reconsideration of the extent to which the risk of dismissal of dishonest staff has been compromised by labour law. Employers should be free summarily to suspend suspects pending investigation, and then to dismiss employees on the basis of guilt according to the civil law standard of balance of probabilities.
- 5.7 Most importantly, such non-commercial “petty” crime is not that to which people refer when they anguish about South Africa’s crime wave, and is contained and combated primarily by victims directly rather than the criminal justice system. The overwhelming problem in South Africa is “commercial” property crime and by far the best way to combat it is to destroy the market for misappropriated goods, which is much safer and easier. It is easy because sellers of stolen goods want, like all retailers, to maximise revenue.

6 MARKET REDUCTION APPROACH (MRA) APPROACH

6.1 Economics of crime

- 6.1.1 According to the MRA, the stolen goods market is, like other economic markets, driven primarily by supply and demand. Accordingly, property crime can be understood as a function of two factors, the ease of theft, on one hand, and the ease of profitable disposal, on the other.
- 6.1.2 The objective of the MRA is to shrink stolen goods markets by reducing the demand for stolen goods. Without an active market, disposal is difficult, risky and unrewarding. With no active and relatively open market, stolen goods can be disposed of on substantially discounted terms, at much lower prices, and with much greater difficulty to and through personal contacts and networks, but this is so difficult and unrewarding as to reduce the propensity to property crime substantially and to eliminate it completely in certain respects. As the Australian Institute of Criminology (AIC) puts it, such factors have been found to have “significant implications for an offender’s willingness to engage in property crime”⁶.

⁶ AICrime Reduction Matters No. 32, *The market reduction approach to reducing property crime*, 7 April 2005.

- 6.1.3 The Australian Institute of Criminology (AIC) suggests a four-pronged strategy:
- 6.1.3.1 **Identify hot products:** Identifying which products are “hot”, those which are most attractive to thieves:
- 6.1.3.1.1 enables the public to make choices about which products to purchase, and
- 6.1.3.1.2 the police to knowing which markets would deal in such products and who is most likely to be active in particular markets.
- 6.1.3.2 **Target hardening:** As explained above, “target hardening” entails making it harder to commit property crimes. It involves such tactics as “the unique marking of property by owners or manufacturers, designing products which have security features, using alarms, locks and other security devices which prevent items from being re-used”.
- 6.1.3.3 **Addressing handlers:** Stolen property is usually sold to intermediaries, who launder goods back into consumer markets as “second-hand” or “used” or “pre-owned” goods. Intermediaries include commercial and residential “fences”, hawkers, flea markets and the internet. Improving and enforcing laws regarding trade in stolen goods, informing intermediaries of the consequences of receiving stolen goods, and confiscating stolen goods from them, contribute to reducing demand for crime. There is an obvious inclination, as there is in the Australian Institute of Criminology (AIC) study, to regulate and license dealers in used goods, but doing so is of negligible value and may be counter-productive.⁷ The police need to do what buyers of stolen goods do: enter the market for stolen goods, find its outlets and confiscate goods known or suspected to be stolen. Counter-intuitively, they should *not* close down dealers in stolen goods, because then they will have destroyed crucial information. All they need do is make dealing in stolen goods so unprofitable that dealers turn thieves away.
- 6.1.3.4 **Public education:** Market reduction can also be achieved by public awareness that the market is being monitored and stolen goods they purchase will be confiscated without reimbursement. Many consumers will be discouraged if they are aware of their contribution to perpetuating crime, often accompanied by violent and fatal assaults, and increasing the cost of insurance. Buyers should be aware of the fact that innocent people may have been killed for whatever it is they buy. It should be easy and safe for members of the public to provide tip-offs to police regarding suspected stolen goods outlets. Rewards can be paid for evidence leading to prosecution. (As an aside, rewards should not require conviction, because acquittal could be due to police and prosecutor incompetence. Sufficient evidence for the state to proceed against suspects should earn rewards – see “shopping for criminals” below.)
- 6.2 **Market reduction policy for South Africa**
- 6.2.1 **South African origins of the Market Reduction Approach – the failed KZN experiment**
- 6.2.1.1 Apparently the first time the market reduction approach was developed into a formal policing theory and implemented was in South Africa. Lamentably, it failed. It is crucial to establish why it failed, what should have been done instead, and what should be done now to ensure success.
- 6.2.1.2 When former President Mandela appointed business leader, Meyer Kahn, former CEO of SA Breweries, to assist with improving policing in 1995, Mr Kahn approached the Free Market Foundation *inter alia* for ideas. As far as we can establish, this was the first time the MRA was suggested in a formal or coherent form, and the first time it was tried as a police strategy.
- 6.2.1.3 Mr Kahn arranged for a pilot project in Kwazulu-Natal (KZN). Unfortunately the concept does not appear to have been properly communicated to or understood by those responsible for implementation. We have been unable to secure full details, but understand that the police

⁷ One of the flaws in the concentration on dealers in used goods is that many stolen goods are new, from shoplifting, delivery vehicle heists and residential theft.

opened pawnshops where they trapped people offering them stolen goods. This had two fatal consequences:

- 6.2.1.3.1 Firstly, police pawnshops had a predictably short shelf-life for the obvious reason that they soon became known to suppliers as outlets to which stolen goods should not be sold. They also became known or suspected of being police fronts.
- 6.2.1.3.2 Secondly, what the police were doing was unconstitutional entrapment.
- 6.2.1.4 What was not appreciated is that it is not as dealers that police should enter the market, but as consumers, although there is scope within the law for entering the market as dealers (see below).

6.2.2 **Creation of specialised Market Reduction Units (MRUs)**

- 6.2.2.1 Market Reduction Units (MRUs) should be established in all police regions and there should be at least one Market Reduction Officer in every police station.
- 6.2.2.2 All concerned should be properly trained to understand:
 - 6.2.2.2.1 Relevant laws – when goods suspected to be stolen may and may not be confiscated.
 - 6.2.2.2.2 Relevant economics – the economics of crime and of supply and demand.
 - 6.2.2.2.3 How and where stolen goods markets function – what is known and becomes known about markets for criminal assets.
- 6.2.2.3 Necessary resources should be provided and developed:
 - 6.2.2.3.1 By its nature the MRA needs modest amounts of money, most of which will be recovered, with which police can operate in stolen goods markets whether as consumers or as dealers.
 - 6.2.2.3.2 Suitable technologies should be provided and there should be research and development of new technologies, which could become South African export products along with consulting services in due course. There is a wide range of new technology, such as a range of low-cost hi-tech tagging options; surveillance cameras for suspected outlets; remote recording devices; and so forth.
 - 6.2.2.3.3 Market reduction police will not need much else. They should, after all, appear to be ordinary consumers. Where they operate as dealers, perhaps pawnshops (subject to proper concern for legality), they will need resources to establish themselves and to purchase stolen and legitimate goods.
 - 6.2.2.3.4 Since the essence of market reduction is information about the market for stolen goods, police should have resources with which to entice and reward informers. Putative consumers should be reimbursed for stolen goods they purchase if they communicate their suspicions to the police or co-operate in their market reduction endeavours. It should be remembered that it is in the “rational self-interest” of certain consumers for stolen goods markets to operate freely, and police will need resources with which to convert perverse to positive incentives.
- 6.2.2.4 MRUs will not need conventional police training. One of the greatest benefits of market reduction is that most of what needs to be done is relatively easy, transparent and safe. When criminals are to be exposed and confronted, regular police will be called in.
- 6.2.2.5 There are, when suspected criminal assets are being confiscated, obvious risks and opportunities for abuse and corruption. Carefully constructed checks and balances will be needed, perhaps requiring some law reform, to ensure:
 - 6.2.2.5.1 that needed tasks can be carried out effectively, expeditiously and affordably, and
 - 6.2.2.5.2 that dealers in used goods are not deprived of their possessions unlawfully or inappropriately.

- 6.2.3 **Entering stolen goods markets as consumers**
- 6.2.3.1 MRUs should be split along distinctive lines. Their most important function will be entering and learning about the market as would-be consumers. Since entering the market as dealers is more jurisprudentially problematic and more costly, that side of market reduction can be implemented by way of a later distinctive process.
- 6.2.3.2 Market reduction officers will need to be “networkers” who learn about stolen goods markets without being recognised. They will have to come across as people who can be trusted in the underworld. They will be covert agents and spies. To that end they will need training that differs from the training of people who will be dealers. The latter will need a degree of business training, for instance.
- 6.2.3.3 Through primary research into the feasibility of this aspect of market reduction strategy by entering the market as a consumer, it soon became apparent that it was quick and easy to buy goods known to be stolen. Within no more than 48 hours, a complete novice was able to purchase everything that trades in such markets, from guns to groceries.⁸
- 6.2.4 **Entering stolen goods markets as dealers**
- 6.2.4.1 What will contribute maximally to curtailing stolen goods markets will be awareness amongst criminals that disposing of stolen goods has become more difficult than acquiring the goods in the first place.
- 6.2.4.2 What is needed is clarity on the difference between entrapment of people induced to commit crime and exposure of crimes they would have committed anyway.
- 6.2.4.3 One of the most difficult aspects of the idea is to accept that the job of the police in market reduction is not to catch people, but merely to seize stolen goods, preferably returning them to owners.
- 6.2.4.4 The Prevention of Organised Crime Act (POCA) permits, or, as interpreted by the Asset Forfeiture Unit (AFU), to permit seizure on flimsy grounds where goods are suspected to be “criminal property”. The Act was justifiably described as “draconian” by Justice Moseneke of the Constitutional Court. It is not suggested that such powers should be used. Alternative and effective ways should be found to seize stolen goods for market reduction purposes.
- 6.2.4.5 It is no coincidence that despite the AFU seizing billions of Rands of assets, often assets of people acquitted or never prosecuted for supposed offences, POCA has apparently never been used to act either against genuine organised crime of the kinds specified in the Act or against dealers in stolen goods.
- 6.2.4.6 One of the most common outlets for stolen goods is street vendors. MRUs should enter the market as street vendors. The criminals tend to be obvious simply because they are the ones who supply disproportionate quantities and disparate types of goods. Street vendors can be harnessed as informers, and creative techniques developed for addressing this aspect of the market.
- 6.2.4.7 Not all aspects can be addressed in detail here. There are markets for stolen vehicles, vehicle parts, cell phones, appliances, computers, fire arms, rhino horn and ivory, apparel, furniture, and so on. Each has its own dynamics and each will have to be penetrated and neutralised in its own way. MRUs can have individuals specialising in each of the distinctive markets.
- 6.2.4.8 One of the biggest outlets for stolen goods in the USA is presumed to be the internet, especially www.ebay.com. MRUs will have to find ways of identifying stolen goods being traded through South African equivalents such as www.bidorbuy.co.za.

⁸ Research into the economics of crime was undertaken by Free Market Foundation Executive Director Leon Louw.

6.2.5 **Grounds for suspicion and seizure**

6.2.5.1 Having suggested that MRUs have powers to seize stolen goods, and having suggested that the powers under POCA could, but should not be used because they are too “draconian”, it is necessary to address the thorny issue of under what circumstances it would be legitimate for police to seize goods under suspicion.

6.2.5.2 This matter has not been addressed adequately in the established literature on market reduction. For the most part, the idea is for the police simply to make life difficult in the stolen goods market by undertaking on-going surveillance and prosecuting known offenders (people dealing knowingly in stolen goods). Whilst that is a good idea, it falls far short of what can be achieved by more creative means.

6.2.5.3 The following is suggested regarding the law:

6.2.5.3.1 Legal experts should be consulted to formulate guidelines for the police within existing law.

6.2.5.3.2 They should include POCA powers – so long as this law exists, it should be used to combat “real” victimised crime rather than the largely technical and victimless crimes for which it has been used hitherto.

6.2.5.3.3 They should decide whether new, dedicated laws are needed to facilitate MRUs, and if so, they should submit drafts to the appropriate minister/s.

6.2.5.4 The law and guidelines should be premised on the following criteria:

6.2.5.4.1 Market reduction officers should seize goods when they have, under oath, satisfied a judge or magistrate that their suspicion is justified. The procedure, with checks and balances, can be similar or identical to the procedure for obtaining search, arrest and seizure warrants under existing law.

6.2.5.4.2 The courts will apply the “reasonable person test”.

6.2.5.4.3 Sufficient grounds for suspicion should, for instance, be:

- Failure of dealers on reasonable request to provide plausible explanations for why suspect goods should not be held in temporary custody pending investigation.
- Failure to provide contact details of sources of supply.
- Failure to provide reasonable information regarding income and lifestyle.
- Unreasonable reluctance to allow examination of goods and premises, and recording of data.
- Association with known criminals.
- A criminal record for crimes involving dishonesty.

6.2.5.4.4 Obviously goods established to be stolen can be dealt with under existing laws and procedures.

6.2.5.4.5 Many stolen goods are new – from delivery heists, burglaries of shops and residences, shoplifting, etc. This fact is usually overlooked in market reduction strategising. It is not just pawnshops and street vendors who deal in stolen goods, but retailers of new goods. This market must also be reduced.

6.2.5.4.6 There should be two levels of seizure, the first being limited to a short period, which is long enough for the source of the goods to be investigated. They should be held under proper care and owners should be indemnified against loss or damage. The order of seizure should provide an early return date at which dealers can present their case for return in zero-cost summary hearings.

6.2.5.4.7 The second level of seizure would be a court order to the effect that there are reasonable grounds for suspicion. The order will specify the period of seizure.

6.2.5.4.8 Unlike POCA, there will be no question of seizure and forfeiture to the state. The profound difference will be that the sole purpose of the exercise is market reduction and return of stolen goods to owners.

6.2.5.4.9 When goods match database records (see below), there will be grounds for suspicion.

- 6.2.6 **Database of stolen goods and website**
- 6.2.6.1 Given the nature of modern TIC technology and the internet, all goods reported stolen, with detailed descriptions and photographs where available, should be in a single database readily accessible to all police and the general public.
- 6.2.6.2 Victims could, for instance, record specific identifying details, such as a scratch on a coin or jewellery. Obviously serial numbers will be recorded and serial numbers removed for products for sale can also be regarded as *per se* grounds for suspicion.
- 6.2.6.3 The database should be such that searches are easy, along the lines that fingerprints are used.
- 6.2.6.4 Modern cheap cell phones permit every market reduction officer to have a cell phone on which goods can be compared whilst in the field with goods recoded in the stolen goods database.
- 6.2.6.5 Market reduction officers should be free to contact victims with a view to identifying stolen goods.
- 6.2.6.6 Under such circumstances the general public will be much more inclined to report property crimes and submit details of stolen goods.
- 6.2.7 **Database of dealers**
- 6.2.7.1 Enabling laws or guidelines, and technology, should empower police to enter suspected dealers into a database and check their criminal records.
- 6.2.7.2 The database will also have surveillance and intelligence information.
- 6.2.8 **Database costs**
- 6.2.8.1 It is mentioned below that there are incentives for insurance companies to participate and provide funding.
- 6.2.8.2 However, the costs of what is proposed will be minimal. The technology is readily available and cheap.
- 6.2.8.3 A bigger problem will be getting the police trained to the point where they can use it.
- 6.2.8.4 The bigger cost will be budgets for police to pay informers and participate in the markets. Experience abroad suggests that the cost of market reduction will be lower than the cost of direct anti-crime activity, and it will, in any event, be much more effective – the rate of return on police spending and activity will improve.
- 6.2.9 **Insurance**
- 6.2.9.1 Insurance companies would have a great interest in the market reduction approach for obvious reasons. They may be willing to fund or run significant aspects of the strategy.
- 6.2.9.2 Improved market reduction and less property crime should lead to reduced premiums and a bigger, more affordable market for insurance, especially for small businesses and lower-income people.
- 6.2.10 **The fear factor**
- 6.2.10.1 Publicity of the market reduction policy and, in due course, success, will promote fear amongst dealers in stolen goods. The idea is that they will soon decide that they're better off refusing to deal with people who cannot satisfy them that used goods are legitimate.
- 6.2.10.2 Whilst there will be fear of prosecution, the idea is rather fear of losses. The concept is that the rate of return for thieves and people dealing in stolen goods should fall precipitously.
- 6.2.10.3 Dealers should never know whether they are selling to a member of the public or an undercover police officer. They should be perspicacious about from whom they buy, and be aware of their contact details.

6.2.11 **Law review**

- 6.2.11.1 The need for law review has been mentioned. The principal need is to undertake market reduction without compromising such jurisprudential values as:
 - 6.2.11.1.1 Non-entrapment.
 - 6.2.11.1.2 Due process.
 - 6.2.11.1.3 Fair and reasonable administrative action.
 - 6.2.11.1.4 The right to practice a trade (subject to regulation but not prohibition).
 - 6.2.11.1.5 Property rights.
 - 6.2.11.1.6 Freedom of contract.
 - 6.2.11.1.7 Privacy.
- 6.2.11.2 Subject to expert assessment, there will probably be a need for dedicated market reduction legislation, perhaps a *Stolen Goods Market Reduction Policing Act*.
- 6.2.11.3 There are interesting and promising ideas in jurisprudence on such matters as convicting judges and magistrates adding provisions to orders regarding reduced rights to convicts. These innovative ideas should be explored to facilitate market reduction policing.

7 **VICTIMLESS CRIME**

7.1 **General**

- 7.1.1 Crimes fall into two broad categories for the purposes of this study:
 - 7.1.1.1 “victimisation”, “real” or “common” crimes where non-consenting victims or “complainants” lay criminal charges against suspects, and
 - 7.1.1.2 “victimless”, “statutory” or “technical” crimes where actions are criminalised by the state despite there being no complainant.
- 7.1.2 What people generally have in mind when they speak of “crime wave”, and what is usually quantified in crime statistics, are the former. Typically victimisation crimes are “common law” crimes, that is actions against non-consenting victims which actions are criminalised by tradition rather than statutes and regulations. Most victimisation crimes exist without being declared in an act or regulation to be unlawful, such as assault, theft, rape, kidnapping and murder.
- 7.1.3 Victimless crimes are actions criminalised by statutes and regulations in the absence of complainants from petty transgressions (parking too far from the curb) to extreme acts (sabotage).
- 7.1.4 Victimisation crimes, as explained above, have two sub-categories, namely property crimes and non-property crimes.
- 7.1.5 This study suggests indirect policing by way of the Market Reduction Approach (MRA) will reduce property crime (where property is misappropriated for commercial purposes) more affordably and substantially than direct policing, thereby releasing scarce police resources for ameliorating other crimes. That is true for victimless and victimisation crimes.
- 7.1.6 There is, however, a second and more substantial way of reducing victimless crime. Implementing it will release further police resources for combating non-commercial property victimisation crimes. The state should decriminalise victimless crimes. Many victimless crimes have been decriminalised successfully over the years, such as scrapping one-channel marketing by “control boards” of agricultural products and the policy of restrictive business licensing. A more recent example was the decriminalisation of selling vehicles without minimum prescribed deposits. That it is now lawful to do means that there is one less activity in need of scarce criminal justice resources.
- 7.1.7 The four main arguments for critical review of all victimless crimes are:
 - 7.1.7.1 the philosophical view that they may violate the right to liberty,

- 7.1.7.2 the jurisprudential view that they may be arbitrary expressions of transient political whim rather than manifestations of fundamental principles,
- 7.1.7.3 the economic view that they may not have benefits exceeding costs, and
- 7.1.7.4 the common sense view that they may be obsolete or silly.
- 7.1.8 An example of a victimless crime that could be subjected to such review is foreign exchange (“forex”) control. Many or most economists argue that it is counter-productive in that almost all policy objectives for which there are published indices have higher scores for countries without it, and that its disincentive effects may keep more money out than in.
- 7.1.9 There are many less contentious examples. With the assistance of the German government’s development aid agency, GTZ, the South African Law Commission (SALC) recently identified many “redundant” laws. Most people are, for example, unaware of the Marking of Prices on Goods law, which is seldom enforced, is the basis of real or suspected bribery and abuse, and is, in any event, widely disregarded without detectable negative implications for consumers.
- 7.1.10 When people speak of a country or sector of the economy being “over-regulated”, what they have in mind is that many or most victimless crimes should be scrapped.
- 7.1.11 That part of victimless crime which is usually the most easily addressed by discontinuing criminalisation is “red tape”. A commonly expressed view is that “there is too much red tape”. Properly conducted critical review of victimless crimes will establish the extent to which the number of activities defined as “crimes” should be decriminalised.
- 7.2 **Regulatory review**
- 7.2.1 A systematic victimless crime review can be undertaken by a number of techniques suggested in the literature such as cost-benefit analysis (CBA), Regulatory Impact Assessment (RIA), “sunset clauses”, case studies, pilot studies and *a priori* review.
- 7.2.2 A current South African example of regulatory review is the review company law.
- 7.2.3 **Regulatory Impact Assessment (RIA)**
- 7.2.3.1 There have been various initiatives in South Africa during recent years to introduce RIAs for proposed legislation including the Law Review Project (which introduced the concept to South Africa), CHAMSA, Small Business Project (SBP), the DTI, the Department of Finance, and the Presidency.
- 7.2.3.2 This is neither the time nor place to elaborate except to stress the potential for including crime reduction as a consideration and to encourage expeditious introduction of properly conducted RIAs as a means of identifying and eliminating victimless crimes where it cannot be shown that benefits exceed costs. Experience in other countries shows that thousands of victimless crimes fail properly conducted RIAs.
- 7.2.3.3 The criteria for “properly” conducted RIAs include:
- 7.2.3.3.1 **Independence.** RIAs must not be the responsibility of departments, agencies or interests that espouse the criminalisation of victimless crimes. Countries where RIAs have been a policy instrument for some years found that, to be credible, they must be the ultimate responsibility of a truly independent agency. In the UK they are screened by a dedicated unit in the Cabinet Office, in Australia they are undertaken by an autonomous government agency, and in the Netherlands they fall under the Quality of Law Academy in the Department of Justice. Some federations, such as the USA, have diverse state-level approaches, and Japan subjects every proposed law to RIA screening by every relevant government department.
- 7.2.3.3.2 **Comprehensiveness.** RIAs should not be concerned with only a few limited aspects of a law or policy, but cover all relevant aspects, such as whether:
- they conform with jurisprudential principles of good law,
 - they are constitutional,

- intended benefits and expected costs have been realistically and accurately estimated, including unintended, indirect and secondary benefits and costs, and aspects of administrative implementation, compliance, policing and court resources,
- provision has been made for efficacy monitoring and error-correction if expectations do not materialise,
- all affected government departments and agencies, especially the police, are aware of the implications for them and have the resources and inclination to undertake what is expected of them,
- international experience with comparable measures has been established and factored in.

7.2.3.3.3 **Retroactivity.** Typically, RIAs are conducted only for proposed measures, which is an excellent way for governments to satisfy themselves that they are “doing the right thing” and to justify not implementing ineffective or counter-productive measures for populist and emotional reasons. The greatest potential for the technique is, however, the critical review of extant measures.

7.2.3.3.4 **Legacy of apartheid.** Most existing South African laws have been inherited from the apartheid era. This means that there are thousands of provisions in South African law that are clearly or possibly unconstitutional. By virtue of statutory drafting conventions carried over from the past and the continued use of apartheid-era statutory drafters and government law advisors many laws in post-apartheid South Africa are also of dubious constitutionality (REPETITION?). It is therefore suggested that a rigorous and purposeful assessment process should include constitutionality assessment by experts whose responsibility is none other than to understand constitutional provisions and values, and to see that they are properly embodied in all past and future laws.

7.2.4 **Cost-Benefit Analysis (CBA)**

7.2.4.1 Whilst there are significant differences between CBAs and RIAs, the differences are not immediately germane. Regardless of nomenclature the process of analysis and assessment of future and extant victimless crimes should include all elements of both processes.

7.2.4.2 Statutory screening (RIA, CBA, constitutionality) should not be conducted as it presently is as a discretionary function of the State Law Advisor’s (SLA) office. The SLA has no mandatory screening functions or powers, which means that it cannot veto unconstitutional measures. Constitutionality clearance should be mandatory, if not by the SLA (which is essentially the government’s law firm and therefore not independent) then by an autonomous agency with the necessary expertise.

7.2.5 **Other**

7.2.5.1 Sunset clauses, case studies, pilot studies and *a priori* review are additional options not elaborated here in the interests of time and space. The principles and concepts are adequately described above.

8 **VIOLENT CRIME**

8.1 Having addressed the majority of victimised crimes by way of property crime market reduction, a minority of violent crimes without a property crime component need to be addressed. These include such crimes as common assault and rape.

8.2 The principal contribution of market reduction approach to non-property crimes is two-fold. Firstly, people who commit violent crimes are often or usually also people who commit property crime. Having identified them through market reduction, increases the likelihood that non-property violent crime will be reduced as well. Secondly, police resources will be

released to deal more effectively with violent crime.

8.3 The database suggested above can be expanded easily to include violent crime and enhanced so that the people convicted of violent crime can be more easily identified and prosecuted in the future.

9 **CORRUPTION**

9.1 Governments should not be fighting corruption, they should be discontinuing it.

9.2 When governments decide to escalate discretionary power at the expense of the rule of law, they decide, in effect, to escalate corruption. It is close to impossible to off-set the corruption effects of discretionary power by “wars” on corruption, political promises to “fight” corruption, the creation of costly “anti-corruption units” or commitments to “good governance”.

9.3 Most corruption takes the form of paying politicians or officials to exercise discretionary power at the behest of beneficiaries. They are paid directly or indirectly.

9.4 Most discretionary power violates the rule of law. Strict adherence to the rule of law is all that’s needed to eliminate most corruption, and disrespect for the rule of law is a necessary and sufficient condition for most corruption.

9.5 What this means is that there is, as with the market reduction approach to crime reduction, not only no need to “fight corruption” or improve “governance” (however important that might be for other reasons), but that doing so will achieve little if any anti-corruption effect.

9.6 The annual *Corruption Index* published by Transparency International shows a high correlation between low levels of corruption and high rule of law scores. Stated differently, countries with less discretionary power and greater legal certainty and objectivity have less corruption.

9.7 If the pro-corruption incentive of administrative discretion is left in place or increased, as has been happening in much recent legislation, there will be more corruption. Conversely, the extent to which discretion is replaced with objective criteria and legal certainty, is the extent to which there is likely to be less corruption.

9.8 Obviously there can be corruption without legal discretion, such as a police officer taking a bribe to turn a blind eye to a clear violation of an objective law. That has to be combated by (a) critical review of the law and (b) administrative checks and balances.

9.9 The principal source of the “market” for corruption is administrative discretion; the right to grant and withhold favours. A systematic process of replacing discretion with objectivity is not just consistent with the rule of law and the constitution, but will stop the diversion of scarce policing resources away from combating the scourge of victimisation crime.

9.10 What is needed is a market reduction approach to corruption that is a discontinuation of pro-corruption opportunities and incentives.

10 SHOPPING FOR CRIMINALS

- 10.1 Protection of persons and their property is the most important function of government.
- 10.2 The annual policing budget is set to remain below 7% of total government spending until March 2010. Expenditure on policing has nevertheless increased significantly, from R2.93bn in 1990/91 to R36bn in 2007/8, a 1128% increase on the 1990/91 cost of policing. So inadequate funding does not appear to be the problem.
- 10.3 Government can go shopping for criminals by establishing a generous reward system for anyone who provides information that leads to the apprehension and conviction of wrongdoers. The price would have to be high enough to give ordinary people a real incentive to identify and report criminals, and rewards must be made known in advance. Informants are currently paid but the system is bureaucratic and the reward is determined after the event. A placard that advertises a reward of R1m for a gang of armed robbers, R200,000 for a single murderer, R150,000 for a hijacker, R125,000 for a dealer in stolen property, and R100,000 for a housebreaker would definitely attract attention. The number of hunters would increase exponentially and the hunted would have nowhere to hide. A large-scale reward scheme would require very careful handling and the separation of powers principle would need to be employed. A special unit in the Department of Justice could receive information, evaluate it, pass it on to the appropriate police unit, follow up on progress with investigations and prosecutions, ensure the safety of citizens who provide information, and pay them their rewards.
- 10.4 Changing the employment environment could drastically reduce the incentive to commit crime. Poverty and crime do not necessarily go hand in hand but if strict labour laws prevent honest people from doing honest work, their aversion to crime will weaken. We are repeatedly told that the labour laws are not the cause of SA's appallingly high unemployment rate yet there is absolute opposition to putting that claim to the test. We have proposed that anyone unemployed for six months or more should be exempted from the labour laws for a minimum of two years so that they can enter into any contract they choose with an employer. If the jobless were exempted, willing employers would be able to create jobs for the desperate unemployed without falling foul of the labour laws and without affecting the job security of those who are already employed. In response to our proposal, we are told that our sole purpose is to exploit the destitute. But are the real exploiters not those who prevent the unemployed from competing in the job market? In the absence of the existing disincentives, there would be real possibilities for a substantial shift, over time, from petty and major crime to honest employment.
- 10.5 Poverty reduction can be combined with crime reduction if the poor are encouraged to help the police catch criminals and receive rewards for their efforts. They would be especially helpful in identifying the people who support criminality by buying stolen goods. Destroying the market for stolen goods will, in turn, substantially reduce the incentive to steal.

- 11 **CONCLUSIONS**
- 11.1 Approaching crime as a moral transgression is intuitive but not necessarily effective.
- 11.2 Approaching crime as if it is a business enterprise may be a more effective way of crime reduction.
- 11.3 The anti-crime strategy outlined above is informed by the view that the best way to reduce the propensity of criminals to be criminals is to reduce their incentives.
- 11.4 Crimes that do not entail incentives that can be removed by market reduction, such as violent crime, can be reduced by releasing more resources through property crime market reduction and “shopping for criminals”.
- 11.5 Crimes of a purely statutory nature can be reduced by releasing resources now devoted to property crime and by a critical review of victimless crime.