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Checklist of strategic elements in developing national strategies for the prevention, investigation, prosecution and punishment of identity-related crime

1. This checklist summarizes the stakeholders, as well as the substantive elements and the process, that each State may wish to employ in developing national strategies for the prevention, investigation, prosecution and punishment of identity-related crime. The checklist was prepared by the Rapporteur of the core group of experts on identity-related crime and was considered by the core group at its sixth meeting, held in Vienna from 16 to 18 January 2013.¹

2. National strategies to prevent and combat various forms of crime can play a valuable role in directing attention and resources and ensuring that they are used in ways which are efficiently coordinated with efforts against crime in general, with other public interest objectives and with the activities and interests of the private sector. They can also play a valuable role at the international level, clarifying the policies, laws and strategies of each country and forming the basis of discussions or negotiations on coordination and cooperation among States.

3. This is particularly important with identity-related crime because of the wide range of security, economic and personal functions and interests it affects and the fact that most of the problem now occurs online and in digital systems. Additionally, most victims of identity-related crime are not aware of their victimization until long after the crime has occurred. The details of such strategies will vary from one State to another, but the following is a checklist of the stakeholders and substantive and procedural elements that each State may wish to consider in developing such a

¹ See E/CN.15/2013/25.
strategy. Further information and examples may also be obtained from the United Nations Office on Drugs and Crime and from the States which have already developed and implanted such strategies.

A. Possible stakeholders or participants in a national strategy

1. Public sector
   - State agencies and bodies responsible for general identity infrastructure, documents or systems
   - State agencies responsible for policy and legislation (identity-related crime)
   - State agencies responsible for the investigation and prosecution of crime in general and any specific identity-related offences
   - State agencies responsible for crime-prevention and victim assistance
   - State agencies responsible for other related issues or areas of regulation (e.g. banking, privacy, consular support)

2. Private sector
   - Representatives from the financial sector
   - Representatives from the retail sector
   - Representatives from the information sector
   - Representatives from other sectors that rely on State-issued documents

3. Civil Society
   - Representatives from the academia
   - Non-governmental organizations

4. Regional and international organizations
   - Regional organizations working on identity-related crime issues (e.g. Council of Europe, OSCE, etc.)
   - Other international organizations working on identity-related crime issues or related areas (e.g. ICAO, UNCITRAL, UNODC, etc.)

B. Substantive elements of a national strategy
   - Threat assessment — understand the nature and scope of the problem/situation. Determining the nature, scale and scope of the problem/situation and ensuring that information is kept up to date for all stakeholders to draft, implement and evaluate the strategy poses a critical and

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2 Identity infrastructure includes the registrations, documents, processes and expertise needed for the establishing, registering, management and verification of identities of citizens by the Government.
difficult challenge. It is important to encompass as many different sources of information as possible, including from the private sector and from other Member States.

- **The gathering, dissemination and analysis of relevant information about the problem/situation.** It is also important that information, once obtained, is analysed and disseminated to stakeholders working on the topic. This would mean stakeholders working on the development of a national policy development, but also those working on specific criminal cases and specific prevention measures including within the private sector. The analysis could include patterns on the modus operandi of the crimes, the victim, and other interests are affected. It could also include an assessment of the rates and changes in offending over time and cooperation with other countries to identify international and global patterns and trends.

- **Priority setting and coordination between the public and private sector.** National strategies can be a useful tool for setting priorities, both in the sense of developing the information needed to organize priorities and sequences with respect to different actions to prevent and combat the problem of identity-related crime itself, and more generally to situate the overall anti-crime effort and various specific elements within the more general context of priorities. This effort is particularly useful when it includes a close coordination between the public and private sector.

- **Legislative elements — criminalization, law-enforcement, international cooperation, as well as non-criminal/administrative measures.** Only few States have legislative elements that specifically address identity-related crime or adapt other conventional offences and investigative powers for this purpose. In general, most States seem to have adopted a “common approaches to criminalization” to the extent feasible, to simplify future requirements for various forms of international cooperation. One element of a national strategy could be the review of legislation to identify gaps and consider whether changes could be made to improve prevention, deterrence, investigative effectiveness, victim assistance or international cooperation. This could be done for example with the help of comparative studies by competent national authorities assisted where necessary by the academia. Such studies may involve common law, civil law and other legal systems. It is also important to analyse the existing legislative framework while drafting a national strategy as it sets out both the legal powers to deal with identity-related (and other) crime and the appropriate safeguards and constraints on how those powers can be used.

- **Investigative and law enforcement capacity.** The capacity to detect, investigate and prosecute identity-related offences is at the centre of any national strategy. In this context, some elements that States may wish to consider for a national strategy could include the following:
  
  - Establish specialized investigative units to deal quickly and effectively with identity crime cases when reported;
  
  - Develop techniques and capacity to disrupt or terminate swiftly ongoing identity crime and related criminal schemes, both to prevent further crime
and victimization, and to minimize the proceeds they generate, usually for organized criminal groups;

- Establish frameworks to coordinate between, for example, such specialized investigative units and investigative specialists in fraud and money-laundering or other areas;

- Train investigators, technical specialists, and other appropriate officials in the means of detecting and identifying identity-related crime offences, the means of collecting, preserving and presenting evidence, and the processes for cooperation with other States and with the private sector;

- Develop adequate forensic expertise and capacity, both to analyse evidence in specific cases and to support the development of criminal intelligence and training materials;

- Enhance information-sharing capacity to support intelligence-based investigations (where appropriate).

Elements to support rapid intervention to disrupt and halt ongoing identity-related crime schemes. Modern identity-related crimes usually involve ongoing schemes which target large numbers of potential victims over an extended period of time, and where possible, early and rapid intervention to stop or disrupt schemes and/or to warn potential victims can reduce victimization, law enforcement costs and the illicit proceeds taken by offenders. Such policies for rapid intervention may involve coordinated actions on the part of various public and private sector actors, and because they are most effective if taken rapidly, different legal safeguards may be needed.

4. Disruption elements that could be considered as potential elements of a national strategy include the following:

- Frameworks for confidence-building and collaboration between law enforcement, other government entities and the private sector;

- The development of disruption techniques. Generally these entail halting communications directed at victims at the source, blocking them “en route”, or using alternative communications to target the same recipients with warnings. In some cases, investigative processes can also disrupt ongoing operations and halt the targeting of further victims;

- Adjustment of legal powers to facilitate disruption, bearing in mind the need to balance the use of intrusive State powers against the need for effective human rights safeguards. For example, with appropriate safeguards it may be possible to create legal powers to take over or block access to facilities such as Internet addresses, domains, or websites that are being used for crime either without a criminal prosecution or before one can be successfully concluded;

- Fast and coordinated reaction capacity. The sooner effective disruption actions can be taken, the better, from a standpoint of preventing continuing crime and reducing victimization and economic losses;
Processes for using disruption elements that ensure, insofar as possible, that rapid disruption does not hinder the viability of other crime prevention and criminal justice elements. Decisions must often be made between the need to halt an ongoing criminal operation as quickly as possible and the need to gather clear evidence. Accordingly, Member States developing strategies could consider including both a procedural framework for making such decisions and providing decision makers with the necessary information, and a policy framework for guidance.

*Crime prevention components.* The high costs of identity-related crimes both to victims and criminal justice systems makes it important that States consider prevention as a major strategic element. A vast range of specific measures is possible, depending on each State’s laws and identity infrastructure and the specific scenarios in which preventive measures are applied. The major areas include the following:

- **Social prevention,** in which educational programmes and awareness-raising are conducted to encourage general populations to be alert for various forms of identity-related crime, to take measures to protect themselves and prevent crime, and to report it both to law enforcement and relevant private sector companies when it occurs;

- **Situational prevention,** in which specific information is directed at specific groups, either because they face specific risks of victimization (such as the holders of credit cards or users of online social networks), or because they are employed in specific places where they are in a position to identify and stop identity-related crime;

- **Technical prevention,** in which technical security measures are developed and used to protect the integrity of identity documents, identity information and identity infrastructures or information systems from criminal activities such as unauthorized access, the copying of identity information or the creation or issuance of false or fraudulent identity documents.

*Victim assistance.* Victim-centred policies are widely recognized as elements of most national anti-crime strategies, but the nature of identity-related crime poses some challenges in developing and including appropriate victim-support elements. Victims include those harmed by misuse of their own identities and those harmed by offences committed with those identities (such as economic frauds), and in some cases victims affected in a more indirect way (for example, the interests harmed may be intangible or difficult to identify or quantify, such as damage to reputation or creditworthiness). Member States could consider the following elements and issues relating to victims when developing national strategies:

- **Development of a typology or classification of types of victims, types of crime committed, and the range of interests harmed;**

- **Assessment of the general needs of victims of identity-related crime, and of the specific needs of victims of specific types of crime;**

- **Consideration of the respective capacities, roles, responsibilities of law enforcement agencies, other State agencies (e.g., agencies which issue or**
rely on identification), private sector entities, and of victims themselves, in meeting the identified needs;

- Consideration of the question of international cooperation in cases where a victim’s identity is misused in more than one State or information arising from such misuses has been transferred from one State to another and may need to be corrected;

- Consideration of measures to protect victim-support mechanisms from being used by offenders to create false identities or identity information;

- In Member States which have more generalized support programmes or mechanisms for victims of crime, the coordination of specialized and general victim-support efforts, including consideration of which of the needs of identity-related crime victims fall within the normal range of assistance and which do not require additional or separate responses.

• **Training for investigators, law enforcement and other appropriate employees and officials and the private sector.** Building law enforcement and private sector capacity and expertise requires training directed at specific groups. Similarly, social prevention requires educational efforts directed at general populations. Bearing this in mind, Member States could consider the following issues or elements relating to education or training when developing national strategies:

  - Identify all the possible stakeholders who would benefit from such training, including in prevention, investigation and other areas. Develop training materials and programmes that meet the needs of each area, while ensuring consistency in the information provided to stakeholders;

  - Include relevant private sector entities in their training strategies, both as a source of information and expertise needed for training, and as a means of delivering or disseminating information to their employees, to their clients or customers, and to other target audiences to which they may have access (such as the mass media).

• **Cooperation between the public and private sectors in implementing the strategy.** The roles of the private sector vary to some degree, but in most States, it operates the information and communications systems and elements of the identity infrastructure used for commercial and other non-governmental purposes. Private and public interests do not completely coincide, but there is generally a shared interest in preventing and suppressing identity-related crime, and it is important that the two sectors cooperate effectively. Bearing these factors in mind, States could consider the following issues or elements relating to public-private sector cooperation in the development of national strategies:

  - Efforts to generally build trust and confidence on both sides in order to facilitate the sharing of information and other cooperation elements, and where feasible the establishment of mechanisms such as consultation frameworks to support this;

  - The development of standards, practices and safeguards for circumstances in which the private sector becomes involved in reporting possible
identity-related crime and in providing assistance if necessary during criminal investigations (bearing in mind the privacy, human rights and other protections in the Member State concerned);

- The development of standards and practices for the sharing of information or expertise, or other types of cooperation in various education and training scenarios;

- The development of consultation frameworks or similar mechanisms to promote dialogue about the need to incorporate into new technological systems, identity documents and other products, elements to prevent criminal access or misuse and to facilitate detection, investigation and the preservation of evidence.

C. Procedural steps in developing and maintaining a national strategy

• Commit the necessary resources for implementation: identifying and mobilizing the necessary financial, human and technical resources. The types of resources needed to deal effectively with identity-related crime can be broken down into three basic categories. To some extent these may come from both public and private sector sources (bearing in mind the need to ensure that any private participation or contributions do not compromise the independence of law enforcement, prosecutorial or judicial criminal justice functions). The main categories are:

  - Financial resources for personnel, equipment and similar purposes;

  - Human resources in the form of expertise; and

  - Technical resources such as computers, forensic facilities and other equipment.

5. Those developing national strategies might also consider the following justifications for the allocation of adequate resources:

  - Identity is fundamental to almost every public and private institution and activity, and in most States and activities identity infrastructures are interdependent because identification created for one purpose is used to establish or corroborate identity for other purposes. Identity-related crime is increasingly encountered in the form of persistent and complex schemes run by organized criminal groups to perpetrate frauds and launder proceeds. This makes it important that new schemes be detected, investigated and shut down as quickly as possible to reduce further crime and the associated costs.

6. Bearing this in mind, national strategies could consider the elements dealing with the following basic resource-related issues.

  - Ensuring that the basic resources allocated to crime-prevention, law enforcement and prosecution institutions are sufficient to permit adequate levels of response to the problem of identity-related crime;
o Ensuring that adequate resources are available for specialized training, equipment and other applications.

• **Initial consultations at all levels within the governmental sector, and with the private sector.** Resource strategies should consider the advantages and implications of cooperation with the private sector. Each State has its unique approach to governance and the coordination and management of crime and other issues, as well as a unique identity system or infrastructure to protect. In general, however, national strategies need to include all of the relevant stakeholders (above). In addition, there may be a need, where appropriate, for multiple States to coordinate their respective national strategies on identity-related crime, or specific measures for implementation of those strategies, where identity-related crime has transnational effects.

• **Ongoing mechanisms for vertical coordination (particularly in federal States):** Ongoing mechanisms for vertical coordination between local, regional and national governments, especially in Member States with federal constitutional systems, significantly enhance the quality and facilitate the implementation of such strategies.

• **Secure ongoing consultations among stakeholders.** The other major procedural elements include the incorporation of capacity for ongoing or frequent consultations, both to ensure that general strategies and the various institutional participants are kept up to date, and to ensure that specific investigative and other elements keep pace with the latest tactics of offenders in a rapidly and constantly-evolving area of criminality. A secure access to information between the stakeholders implementing the strategy is also necessary.

• **Review the success and sustainability of the implementation of the strategy:** A regular assessment of the implementation of the strategy and its results are key to evaluating its success and sustainability and addressing the flaws or shortcomings identified.