

5. South Africa

5.1 FROM APARTHEID TO 2020: THE EVOLUTION OF ORGANIZED CRIMINAL NETWORKS IN SOUTH AFRICA

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Q: What is South Africa's place within the transnational net of organized crime?

It is very difficult to determine which criminal groups are active in South Africa at any given point or time. What we have been experiencing here, at least for the last 20 years, is that there are criminal networks, rather than criminal groups. When I say criminal networks, I mean loose working arrangements involving a number of criminals, who tend to shift from criminal activity to criminal activity and comprise nationals from various countries, without maintaining a degree of permanence. It is also very difficult to isolate foreign criminal groups from local criminal groups, because whatever markets we are describing, invariably the networks that are active in each of those markets bring together foreign criminals and local criminals. It is more accurate to talk about predominant criminal markets.

A general distinction can be drawn between predatory criminal activities and market-based criminal activities. The first comprises activities that involve deprivation of property from victims; the latter are those crimes where we cannot easily identify real victims, because participants are willing buyers and willing sellers of commodities, such as drugs or marine resources or counterfeit commodities.

Regarding predatory offenses, armed robbery is among the most visible, with the most significant type being the robbery of cash-transporting vehicles. In most cases this is not an opportunistic crime, but rather planned and organized by networks that are linked and plan in advance what to do with the proceeds. Through corruption, the criminals are able to get detailed information so that they can be accurate in selecting targets and arming themselves. In some instances, criminals are able to predict how much money they can expect from a "job." The supply side of corruption in this case would be the security sector, the private guards.

In the area of theft and trafficking of motor vehicles, South Africa is predominantly a supplier and not a destination, even though there are a few vehicles brought into the country – mostly luxury models stolen from the United Kingdom.

Organized criminal activities concerning the theft of vehicles in South Africa have linkages beyond the borders of this country. The same can be said about rhino poaching, since there is no market for it in South Africa. In this regard, there appears to be insufficient cooperation with “demand side” countries, where illegal commodities coming from South Africa are destined. For instance, collaboration with Vietnam, China, and Cambodia is not up to scratch. A higher level of cooperation in tracking routes and culprits through transit and destination countries is clearly required.

It is very difficult to determine how widespread human trafficking is in South Africa, partly because of delays in criminalizing it. South Africa does not have a law against human trafficking, therefore there are no official records and documentation of the phenomenon. The predominant origin of victims appears to be the Horn of Africa, but there are also people trafficked from Mozambique, Zimbabwe, Angola, as well as southeast Asian countries. It is known that young women are still being brought into South Africa involuntarily from some parts of Eastern Europe to serve in the entertainment and sex industries. Our research found some Zimbabweans in virtual labor bondage on farms adjacent to the border with Botswana. The phenomenon is tackled legally through the offense of illegal immigration; if victims are not prosecuted, they become witnesses in trials against organizers of illegal immigration.

Q: Can you offer a brief historical analysis of organized crime in South Africa?

Organized crime has been known to South Africa since at least 1985. Drugs originating in India, especially Mandrax and heroin, were coming through Zambia and Zimbabwe into South Africa. Within the country, a market was gradually established on the Cape Flats, a vast network of residential suburbs in eastern Cape Town. The evolution of the drug markets there demonstrates the insidious relationships that were established by the apartheid state and organized criminals, as part of a political project – in terms of which the state sought to disrupt political activism, and delay the liberation process. Some of those relationships have survived the formal demise of apartheid and are apparent in continuing police corruption. There are still instances of organized criminals obtaining firearms from the police. Corruption acts are perpetrated especially in drug-related crimes. The relationship between organized crime and the public sector is, however, not one-sided.

Transitions are period when the capacity of the state to understand and react against organized crime is weak. Transitions facilitate an escalation of organized crime because of the uncertainty they create and because some people lose their jobs during the transition and become desperate enough to be recruited by organized crime groups. Parts of the private security industry in South Africa have benefited from the transition, but parts have been infiltrated by organized crime.

Q: How is the level of awareness among people?

The public in South Africa is aware of certain forms of organized crime, but I doubt that it is aware of all forms of organized crime happening. Market-based organized criminality is perhaps less well known. The media also promotes the view that predatory forms of criminality are predominant.

The media should draw attention to emerging forms of criminality, such as cybercrime, which needs to be understood within the broader community in view of the phenomenal escalation in the use of the Internet and smartphones. The risks have grown immensely.

Market-based crimes have a great impact on South Africa because of the high levels of poverty in the country. People are vulnerable to the marketing of counterfeit pharmaceutical drugs and other commodities. Levels of poverty have worsened rather than improved in the last five years. Indications are that by 2020, we will have a larger urban population than we have now, which probably means that levels of poverty will be worse. It will comprise more people living without a reliable source of income. In that scenario, market-based forms of crime can only increase. Drug trafficking can be expected to escalate, as the demand for drugs grows with the young population that is not in school, nor gainfully employed. Greater demand stimulates higher levels of supply. Therefore, increasing levels of employment is a priority to contain organized crime in this part of the world.

Q: Which measures have been adopted in South Africa to counteract organized crime and money laundering?

South Africa, to its credit, was one of the pioneers in terms of enacting legislation against organized crime. As far back as 1998, South Africa adopted the Prevention of Organised Crime Act (POCA), which made it a criminal offense to belong to a crime syndicate, and made it easier to follow the profits of organized crime and to seize and confiscate them. It made money laundering a broad offense, involving all proceeds of crime and not just the proceeds of drug trafficking; it created a dedicated asset recovery unit and an account into which proceeds of organized crime could be deposited for possible use to fund law enforcement. Along with POCA, South Africa saw the creation of a unit combining prosecution and investigations in the form of the Directorate of Special Operations, whose members came to be known as “the Scorpions.” This unit has been dismantled, but while operational it achieved quite a lot of success in targeting organized crime and corruption. It was dismantled following accusations of lack of accountability. The fact that the agency shared investigative authority and power with the police proved problematic. It was argued that such a unit should have been housed within the police force. Thus, it has been replaced by the Directorate of Priority Crimes investigation, whose members are often referred to as “the Hawks.” Using proceeds of crime for law enforcement purposes raised philosophical issues and triggered a political battle. Fortunately, South Africa took the view that it was legitimate to utilize proceeds from crime to fight crime.

Money laundering first become a crime under the POCA in 2000. Subsequently, in 2003, the Financial Intelligent Centre Act came into effect, creating a repository of data on suspicious financial transactions. Since 2003, South Africa has accumulated experience in terms of acting against money laundering. Money laundering is a daily occurrence, which is to be expected in a country where drug trafficking continues to be a significant and profitable industry. In addition, a whole range of predatory criminal activities persist. Money laundering regulation has been tightened as far as financial institutions are concerned. South Africa has more than 40 banks and the financial center is relatively strict in terms of monitoring and ensuring compliance.

What remains a point of weakness is the extent to which the non-financial institutions – such as car dealers, luxury commodities dealers, and estate agents – are regulated. With certain forms of criminality, the trend is that proceeds will not be taken to the bank as a first step of inserting the money into the economy. Proceeds will rather be used to acquire an asset that generates clean money, which is subsequently banked. This makes it quite difficult, if not impossible, for the bank – in the absence of additional information – to determine the connection between the money and a crime.

Part of the solution probably lies in reducing the dominance of cash transactions. In addition, the hand of the financial sector can be strengthened through incentives for people holding assets to use the banking system rather than resorting to other methods. The continuing dominance of cash as a preferred way of doing business will always be a point of weakness in reducing money laundering.

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