

Taking stock of the last 20 years

Responses to organised crime in a democratic South Africa

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Following the end of apartheid, the South African state has faced a number of challenges. One of these has been the growing spectre of organised crime, which has weighed heavily on the public consciousness. The narrative has been one of organised crime, which is becoming increasingly sophisticated and dangerous, pitted against a weakening and ill-equipped state.

This article seeks to give insight into the legal and institutional measures taken by the South African state over the last 20 years. It focuses on direct state responses to organised crime, primarily changes to legislation and enforcement structures. It finds that although the state has been active in changing legislation to combat organised crime, it has often been its own worst enemy where enforcement is concerned, and has consequently lost some important tools in the fight against organised crime.

Like many other countries, South Africa has struggled with the growth of organised crime, and the mainstream narrative has often been one of corruptible, under-equipped, under-informed law enforcement, unable to deal with a rising tide of dangerous, sophisticated, organised criminals.¹ In the mainstream media, South Africa has been described as a 'haven for organised crime' with veteran investigative journalist Sam Sole describing Czech fugitive Radovan Krejcir's choice of South Africa as a refuge 'symptomatic of the country's deepening moral malaise',² arguing that 'unless we start to exercise discipline as a society, there is a wave of people like him coming, attracted by our

sophisticated banking and legal system – and our diminishing capacity to enforce its rules.'

Criminologists and crime researchers have differed in their assessments of the problem. Early post-apartheid literature appears to accept that South Africa suffered from increases in transnational organised crime and the growing sophistication of local organised crime groups.³ However, whether the state has been overwhelmed by organised crime since 1994, is disputed. South Africa is far from being a criminalised state⁴ and it will be argued that over the last 20 years the state has taken strong legislative, regulatory and enforcement measures to combat organised crime, with mixed levels of success.⁵ This article assesses the state's response to organised crime, and is limited to important *direct* state responses.

The research for this article consisted of an analysis and review of secondary sources, including

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governmental and municipal reports, as well as key informant interviews conducted by the Institute for Security Studies as part of ongoing research on organised crime.

Understanding and defining organised crime

The conceptualisation and definition of organised crime is contentious. Researchers, policy makers, law enforcement bodies and the judiciary have all used a variety of terms to describe a myriad of criminal activities and criminal groups that could be considered 'organised' crime.⁶ In part, this is based on historical and contextual understandings of organised crime, related to crime control efforts in the United States and primarily rooted in conceptions of the American 'mafia'.⁷ Organised crime has come to refer to both continued criminal activity and various types of criminal groups. Andre Standing argued over ten years ago that, 'on a technical level there is no definitive reason why organised crime is not a catch-all term that could be applied to all businesses that break the law or government departments that commit ongoing crimes',⁸ and that 'the distinction between organised crime and other types of crime was incoherent and was based on popular stereotypes rather than persuasive arguments as to why conventional organised crime is qualitatively different from white-collar crime, government crimes and terrorist activities'.⁹

Within South Africa, there are a variety of definitions of organised crime. The Prevention of Organised Crime Act of 1998 (POCA) is noticeably devoid of a clear definition. POCA does, however, list criminal activities that would be covered by the law, as well as offering fairly broad traits of membership to a criminal group. Importantly, there must be a group committing the crimes, and there are stipulations over the types of the crimes to be considered organised crime. The South African Police Service (SAPS) has relied on a variety of terms and definitions and often uses the South African Police Service Act 67 of 1995 as reference.¹⁰ The Act defines organised crime as 'a person, group of persons or syndicate acting in an organised fashion or in a manner which could result in substantial financial gain for the person, group or persons or syndicate involved'¹¹ and 'the

circumstances amounting to criminal conduct or an endeavour thereto which requires national prevention or investigation or crime which requires specialised skills in the prevention and investigation thereof'.¹²

For purposes of this study organised crime has been taken to refer to a broad range of serious economic and organised crimes that could be punishable under POCA, including criminal activities that would traditionally be seen as 'white collar crime' as well as crimes perpetrated by large 'street gangs'.¹³ I will use the term organised crime to describe the *activities* of organised criminals rather than referring to groups or networks.¹⁴

Using the abovementioned conceptualisation of organised crime allows for a greater understanding of contemporary organised crime, and can incorporate new crimes such as cyber crime,¹⁵ which do not fit the typical form of organised crime.

Historical background

Organised crime has existed in South Africa in various forms since the colonial period. The structural factors influencing the rise of organised crime can be traced back to this period and include the British system of indirect rule and cross-border trade.¹⁶ More formalised organised crime groups were also recorded in the late 1800s, for example the 'Irish raiders' in early mining towns¹⁷ and Umkosi Wezintaba, which established the ideological roots of some of the country's prison gangs.¹⁸

More recently, organised youth and defence gangs emerged in the 1950s, although at that time 'opportunities remained relatively limited and the criminal markets small'.¹⁹ The roots of organised crime as we see it today can be traced back to the apartheid system that criminalised and marginalised the majority of the population. For example, shebeens, which were the progenitors of more sophisticated crimes and criminal empires, had their roots in the apartheid policy of alcohol control.²⁰ With the majority of state funds being used for the developmental needs of a white minority, suburbs with black populations had limited funding for infrastructure and for policing. People often turned away from the state to informal sources of security, including criminal gangs.²¹

The apartheid government promoted organised crime in townships by supporting gangsters to limit the activities of the anti-apartheid movement and to promote drug use.²² Outside the townships the apartheid state was involved in a variety of organised criminal activities including, but not limited to, corruption,²³ money laundering, smuggling and wildlife crime.²⁴ Similarly, apartheid resistance also turned to organised crime and informal channels, both to fund their activities and to overcome procurement problems. The liberation movement was able to develop and exploit routes for procuring weapons and to gain much-needed funds through smuggling activities.²⁵ After the transition to democracy many of these apartheid-era social and business links remained, and security personnel on both sides of the conflict were known to have made inroads in the private security business and in organised crime, using the same routes and markets that they had used in the past.²⁶

The market also had an important effect on organised crime. It is argued that growing demand for narcotics across the globe, at the same time as many African states were gaining independence in the 1960s and 1970s, dramatically changed the modus operandi of criminal groups.²⁷ During these years, smuggling and illicit trade routes were established across Southern African borders but also as far afield as India.²⁸ The late 1980s and 1990s saw an increase in foreign criminal groups within the country.²⁹ These transnational groups included Asian syndicates that were prominent in wildlife-related crimes,³⁰ West

African criminals, who left their home countries due to political instability,³¹ and other groups, including Middle Eastern, Eastern European, Italian and Indian/Pakistani criminals.³² Local crime groups also became increasingly sophisticated and were able to network across the globe. In the Western Cape in particular, functioning cartels were formed.³³

Towards the end of apartheid there was an identifiable surge in crime within the country, both organised and inter-personal. By the early 2000s crime reached unprecedented highs, though it has decreased significantly over the last 15 years. Figure 1 illustrates the trends in serious crime since 1994.³⁴

Organised crime in contemporary South Africa

It is difficult to accurately determine the levels of organised crime anywhere, and South Africa is no exception.³⁵ Statistics and research on organised crime offer contradictory accounts. For example, while vehicle theft, which often has an organised crime component,³⁶ dropped from 88 144 incidences in 2004 to 58 312 in 2013,³⁷ incidences of rhino poaching jumped from 22 to 1 004 in the same period.³⁸ Similarly, while there was an increase in drug arrests,³⁹ social research on drug use and gang influence seems to suggest that there has not been a significant change in drug use.⁴⁰ The increase in drug arrests could indicate better enforcement rather than an increase in drug trafficking. Or this could be due to factors such as a loosening of power monopolies and

Figure 1: Serious crimes 1994/5 – 2012/13



a decentralisation of the drug supply as new drugs such as tik have become popular, and that there are more street-level dealers⁴¹ who are easier to arrest.

In much the same way that it is difficult to determine whether there has been an increase in the drug trade, it is also difficult to determine whether there has been an increase in transnational organised crime. RT Naylor argues that,

while it is doubtless true that there is more economic crime across borders today, there is also much more legal business, and no proof that the proportion of illegality is increasing faster. Indeed, to the extent that exchanges are becoming liberalised, flows more transparent, taxes cut and regulations relaxed, illicit traffic across borders is more likely to be shrinking relative to total economic transactions.⁴²

While one cannot argue that *transnational* organised crime in South Africa has not increased over the last 20 years, considering the growth in the South Africa economy and the increase in international trade, the common narrative over foreign threats seems unnecessarily sensationalist.⁴³

Economically and socially, those involved with crime have continued to experience support through criminal philanthropy and a community reliance on the 'criminal economy', as described by Standing and Irish-Qobosheane.⁴⁴ In many areas relationships between the police and the community are fraught, while organised criminals fulfil a governance role.⁴⁵

The economic power that comes through organised crime is not limited to urban areas. In many rural areas, the trade in cannabis effectively supports thousands of people in the production and supply chain.⁴⁶

Of particular concern within the country have been the apparent links between organised crime, political figures and law enforcement. A prominent example of this was the case of former police commissioner Jackie Selebi who was sentenced to 15 years in prison for his corrupt relationship with convicted drug trafficker Glenn Agliotti. Similarly, Radovan Krejcir, the notorious Czech fugitive, was known to have a relationship with Joey Mabasa while he was head of Gauteng Crime Intelligence. Furthermore,

entire police departments are alleged to be corrupt, providing a variety of services to criminals, such as 'losing' dockets, and selling firearms and drugs.⁴⁷

State response since the end of apartheid

The South African state has taken a number of steps to limit organised crime since the end of apartheid. These can broadly be broken down into changes in specialised policing and in new approaches to combating organised crime, primarily by 'following the money' and 'taking the profit out of crime'.⁴⁸

Enforcement: the SAPS and specialised units

The SAPS is the largest of the law enforcement bodies in South Africa. Its budget increased from R6 billion in 1994 to R63 billion in 2013, while the correctional services budget increased from R1 billion in 1994 to R17 billion in 2013.⁴⁹ 'Victims of crime' surveys and police statistics show a decrease in crime over the past 20 years, yet the state readily admits a number of failings. Both the 15 and 20 year reviews of state performance have highlighted organised crime, ineffective operation and integration, and corruption as serious persistent issues.⁵⁰

Although the state was arguably in a weakened position after the end of apartheid as a result of the loosening of border controls and the transition from a police force to a police service,⁵¹ the legislature and law enforcement began taking steps against sophisticated organised crime soon after it was identified as a problem.⁵² In 1991 the Crime Combating and Investigation division (CCI) of the SAPS was established to combat organised crime. By 1992 various organised crime groups had been identified and the police began building cases against them using new investigative techniques highly reliant on crime intelligence.⁵³

After 1994 the SAPS comprised around 500 specialised units, including units such as the South African Narcotics and Alcohol Board (SANAB) and vehicle crime units. In 2001 the SAPS announced that the specialised units would be dissolved and amalgamated into the broader police service and that this was in accordance with government's strategy

to have an 'integrated and coordinated approach to fighting crime, including organised crime'.⁵⁴ The SAPS restructuring sought to limit and streamline the number of units, and units were disbanded or amalgamated into other larger units.⁵⁵

Those arguing in favour of the disbandment of specialised units held that the new structure would be more efficient and that local police stations needed to be empowered by locating expert skills at local level. The transfer of skilled officers was intended to allow for a more equitable allocation of skills to areas that were under-resourced as a legacy of apartheid. It was also argued that 'a key motivation underlying the restructuring is that it provided an opportunity for removing detectives who were under-performing, from the specialised units'.⁵⁶ Another motivation was that there was confusion over the use and responsibilities associated with the large number of units, and often units would avoid taking on investigations for fear of overlap in responsibilities and accountability.⁵⁷

However, as has been reported during testimony at the Khayelitsha Commission of Inquiry,⁵⁸ the shifting of personnel did not have the desired effect. High-income areas maintained higher numbers of police, while poorer areas often remained understaffed and under-equipped to deal with high levels of violent crime. Poorly performing staff were 'dumped' in poorer areas while better performing staff were 'poached'. Moreover, similar to Khayelitsha, many areas often have infrastructural, social and economic challenges that make policing more difficult than it would be in suburban areas.⁵⁹ This has contributed to a breakdown in police-community relations.

An illustration of the advantages and disadvantages of specialised units can be drawn from SANAB, which was a controversial unit until its closure in 2004.⁶⁰ On the one hand it has been argued that 'SANAB ...[was] regarded by foreign governments as the most effective drug policing institution in the region'.⁶¹ SANAB officers had close links with the Drug Enforcement Agency (DEA) and other foreign bodies that provided them with training and skills,⁶² and the closure of SANAB was seen as a major setback.⁶³ Its disbandment resulted in a loss of networks, data collection techniques, contacts,

crime threat analysis and street-level intelligence. Street-level intelligence subsequently was often inept, and an interviewee for this article cited the key loss of intelligence on West African criminal networks as an example.⁶⁴ On the other hand, it has been argued that, 'under apartheid, SANAB was already considered to be completely corrupt'⁶⁵ and that the high levels of corruption in SANAB were linked to the 'Boere mafia' and relationships between ethnicity and crime.⁶⁶ Furthermore, there were suggestions that units such as SANAB were not as efficient as they should have been. However, while the reasons for the amalgamation might have been valid, skills were lost. For example, the incorporation of SANAB into the organised crime division in 2004 meant that many of those redeployed were not using their skills at a local level.⁶⁷

In the meantime, new institutions were established outside the SAPS to deal with corruption and organised crime. This included the Specialised Commercial Crimes Unit (SCCU), located within the SAPS but with a high level of interaction with other institutions, such as the specialised courts, established in 1999 with a team of dedicated prosecutors.⁶⁸ To put the importance of such a unit into context, only 15 commercial crimes were prosecuted in Johannesburg in 1997, but by 2007 there were over 700 such prosecutions in Pretoria and Johannesburg.⁶⁹ Other units, such as the Special Investigating Unit (SIU), were also developed through the Special Investigating Units and Special Tribunals Act 74 of 1996, to investigate public administration corruption.

One of the most visible specialised units established after 1994 was the Directorate of Special Operations (DSO), commonly known as the Scorpions. The Scorpions came into operation in January 2001 to investigate and prosecute serious organised crime and corruption in cooperation with other units. Under the National Prosecuting Authority (NPA), the DSO employees selected the cases they investigated. Despite complaints over the manner in which the DSO operated, they were seen to be effective, with a high conviction rate.⁷⁰ The successes of the Scorpions included limiting the terror activities of People Against Gangsterism and Drugs (PAGAD), taking down high-level platinum smugglers, high-

profile drug dealers and Chinese abalone smugglers. The DSO was a significant player in chasing down sophisticated commercial crimes, including investigating Brett Kebble and Johannesburg Consolidated Investment (JCI). The DSO also went after political cases, and was drawn into the allegations of corruption around the arms deal, leading to the arrest and conviction of Shabir Shaik.⁷¹

Yet the DSO also came under criticism for its tactics, cherry picking cases and perceived political agenda. Despite the recommendations of the Khampepe Commission (2006)⁷² to retain the Scorpions, the DSO was disbanded in 2008 and incorporated into the SAPS. It was replaced by the Directorate for Priority Crimes Investigation (DPCI), known by the moniker 'the Hawks'.⁷³

While the removal of specialised units can arguably be justified in context, the loss of skills impacted on efforts to combat serious organised crime.⁷⁴ Furthermore, the failure of the executive to appoint police commissioners (who arguably should be career policemen) worthy of the position has impacted on leadership within the police. The last two commissioners were dismissed on corruption charges, and the leadership of the current police commissioner has come under criticism, not least for the Marikana massacre. Divisions within the police have become politicised, and this has taken its toll on the reputation of the SAPS.⁷⁵ Crime Intelligence, an important unit in relation to the investigation of organised crime, has been used on multiple occasions to further political ends, resulting in a virtual collapse of the division.⁷⁶

Changes in enforcement may have had some success in increasing police capacity. However, the demise of specialist bodies such as the Scorpions has had serious ramifications for the police's ability to complete sophisticated organised crime investigations and to root out corruption in enforcement bodies, which is imperative in limiting organised crime. Despite the limitations described here, legislative reforms provide a strong basis for the state to combat organised crime, as described in the next section of the article.

Legislative changes

In 1999, economics professor RT Naylor wrote,

[O]ver the last 15 years there has been a quiet revolution in the theory and practice of law enforcement. Instead of simply closing rackets that generate illegal income, the central objective has become to attack the flow of criminal profits after they have been earned.⁷⁷

South Africa eagerly embraced the approach of attacking criminal profits, or the proceeds of crime. In 1992 the Drugs and Drug Trafficking Act was promulgated. De Koker argues that this law supplemented common law, and broadened the criminalisation of money laundering to include those who did not report suspicious transactions related to drug trafficking.⁷⁸ The Proceeds of Crime Act 76 of 1996 broadened the scope of the statutory laundering provisions to all types of offences, and followed international conventions that sought to combat organised crime by following financial flows.

In 1998, the Prevention of Organised Crime Act (POCA) was passed. Strongly influenced by the Racketeer Influenced and Corrupt Organizations Act (RICO), in the United States, POCA was a dedicated piece of legislation to limit organised crime and was touted as integral to fighting both organised and commercial crime.⁷⁹ It is possible to use POCA across a broad range of criminal activities, and according to Mujuzi POCA is aimed 'at dealing with a wide range of criminal activities, some of which are quite commercial in nature'. He further states that the Constitutional Court held that 'the wording of POCA as a whole makes it clear that its ambit is not in fact limited to so-called "organised crime offences"' and that 'the primary object of POCA is to remove the incentive for criminal activity'.⁸⁰

Using 'follow the money' and/or 'proceeds of crime' approaches and financial penalties to prosecute criminals is a common law enforcement tactic,⁸¹ and POCA follows this tradition to 'take the profit out of crime'. It is argued that these approaches, along with more global cooperation, have made it increasingly difficult to move money across borders and to launder illicit financial flows.⁸² POCA has been successfully used in a number of commercial crimes

as well as in more traditional gang activities. Its strong forfeiture laws have enabled the state to confiscate anything from cars and houses to multimillion rand businesses.

Following proceeds of crime as an investigative strategy has become popular with crime investigators, partly because it changes the standard of proof required.⁸³ Moreover, asset forfeiture also provides finances to continue to investigate cases, as a portion of the confiscated assets is used to fund the investigation.⁸⁴ In order to strengthen the ability of the state to follow illicit money flows, the Asset Forfeiture Unit (AFU) was established in May 1999 in the Office of the National Director of Public Prosecutions.

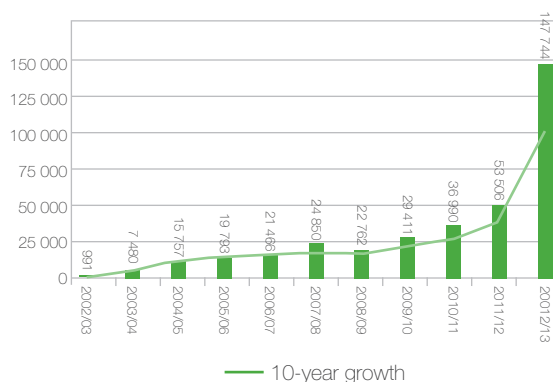
In line with POCA, a number of laws and by-laws were passed to set stronger regulations against money laundering and the proceeds of crime. These included the Financial Intelligence Centre Act 38 of 2001 and the Financial Intelligence Centre Amendment Act 11 of 2008 (FICA). The origins of FICA can be traced back to 1996, when the South African Law Commission published a Money Laundering Control Bill as part of a report entitled *Money laundering and related matters*.⁸⁵ An analysis of money laundering laws by Goredema reveals that, after the flurry of activity in the early 2000s as the South African state set up legislation, regulations and sector-specific guidelines, by 2004 criminalising money laundering was substantially complete and institutions, primarily in the banking sector, had to comply with a number of prescriptions.⁸⁶

South Africa has also ratified international conventions and joined the Financial Action Task Force (FATF), and has strong local laws that govern banks and financial institutions. The South African Revenue Service (SARS) is a well-run institution and its regulatory and enforcement arm is highly regarded.⁸⁷ South Africa also has a strict exchange control system that determines compliance with exchange control regulations; De Koker argues that '[t]his system has certainly made South Africa a less attractive destination for foreign criminals'.⁸⁸ Furthermore, post-9/11 concerns over terrorism have increased the strength of governments to follow money, and in South Africa this is legislated through

the Protection of Constitutional Democracy against Terrorist and Related Activities Act of 2004.

While globalisation is touted as a cause of organised crime and transnational organised crime, one of South Africa's success stories over the last 20 years lies in the use of 'follow the money' approaches, global cooperation and the harsh line taken on forfeiture laws. If one analyses the implementation of money laundering laws and the work of the Financial Intelligence Centre (FIC), it is possible to see the quantitative effectiveness of measures taken by the South African government. According to the FIC annual report, '[i]nvestment in the FIC's work also yields tangible gains for public finances'. During 2012/13, the FIC had available funds of R245,3 million, but recovered R1,171 billion for the fiscus as a result of its efforts. This represents a value adding growth on investment of 377% for the South African taxpayer.⁸⁹ The steady increase in the FIC's ability to detect illicit financial flows is illustrated by Figure 2.

Figure 2: Suspicious transaction reports, 2002/3–2012/13⁹⁰



The FIC has also been able to work in tandem with other bodies to provide financial intelligence, and has been integral to a number of convictions and arrests. In general, South Africa's anti-money laundering (AML) framework compares favourably with models in place in the European Union and United Kingdom. Furthermore, both the SAPS and prosecuting bodies are increasingly adept at using legislation such as POCA to combat crime.

Despite this, analysts such as Naylor remain critical of these approaches, citing ineffectiveness and a

concern over civil liberties. In many proceeds of crime cases the onus is on the state to prove a balance of probability rather than beyond reasonable doubt. This in turn has made it easier for law enforcement officials to pursue cases where there is little evidence. Furthermore, in South Africa 'follow the money' approaches have been unable to pick up on bartering of goods through informal channels such as drugs for abalone or cattle for cannabis, which has long been a mainstay of the industry. It was argued by Gastrow that the cannabis trade underpinned the drug trade, as cannabis was used as a bartering system. This could explain how foreign drugs were purchased in South Africa at such a low price, despite the exchange rate.⁹¹

Conclusion

The response by the South African government to organised crime has been mixed. After 1994 the state was faced with an increase in organised crime that mirrored the experience of many post-transition societies.⁹² At the same time, the new government needed to manage the integration of the security forces and deal with a variety of other dysfunctions caused by the legacy of apartheid. This task was made more difficult by globalisation, liberalisation and the weakening of border controls. Since then the state has implemented strong measures against organised crime, including following many of the Financial Action Task Force (FATF) recommendations⁹³ with regard to money laundering.

However, a number of serious challenges remain. Research suggests that communities are increasingly turning to informal sources of authority, including organised criminals, suggesting a breakdown in relations between the police and community.⁹⁴ Failure to stem this tide is likely to result in the growth of organised crime in these communities and the development of youth gangs into more organised structures. Similarly, corruption in the police force remains high and the state has been unable to find an effective means to limit it. Police have been accused, and convicted, of a variety of organised crime activities.⁹⁵ Without police corruption, organised crime is unlikely to succeed and it is argued that 'the SAPS actively undermined its corruption control mechanisms'⁹⁶ through, inter alia, disbanding the

Scorpions and the former anti-corruption agency of the SAPS.⁹⁷

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



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Notes

- 1 This can be noted from the response by the media to the case of Radovan Krejcir. A few examples are: Alex Eliseev, Radovan Krejcir is just a symptom, *Daily Maverick*, 18 April 2012, <http://www.dailymaverick.co.za/opinionista/2012-04-18-radovan-krejcir-is-just-a-symptom/#.UoUXp5SzvR0> (accessed 14 April 2013); Stephanie Findlay, Case of Czech gangster reveals South Africa's dark criminal underworld, *Time Magazine*, 27 December 2013, <http://world.time.com/2013/12/27/case-of-czech-gangster-reveals-south-africas-dark-criminal-underworld/> (accessed 1 April 2014); Sam Sole, Krejcir, Gavric – how McMafia came to South Africa, *Mail & Guardian*, 6 January 2012, <http://mg.co.za/article/2012-01-06-krejcir-gavric-how-mcmafia-came-to-south-africa> (accessed 23 January 2013); Khadija Patel, South Africa's criminal underworld: is the media reporting the real story?, *Daily Maverick*, 14 November 2013, <http://www.dailymaverick.co.za/article/2013-11-15-south-africas-criminal-underworld-is-the-media-reporting-the-real-story> (accessed 14 November 2013).
- 2 Sam Sole, The meaning of Radovan Krejcir, *Mail & Guardian*, 4 January 2011, <http://mg.co.za/article/2011-04-01-the-meaning-of-radovan-krejcir> (accessed 14 March 2014).
- 3 See Irvin Kinnes, From urban street gangs to criminal empires: the changing face of gangs in the Western Cape, Monograph 48, Institute for Security Studies (ISS), June 2000; Peter Gastrow, *Organised crime in South Africa – an assessment of its nature and origins*, Monograph 28, ISS, 1998; Mark Shaw, Organised crime in post-apartheid South Africa, Paper 28, ISS, 1998, http://www.issafrica.org/uploads/Paper_28.pdf (accessed 20 June 2014).
- 4 Using the definition of a criminalised state by Phil Williams, who argues that 'the state itself becomes a continuing criminal enterprise', it is evident that South Africa has not reached this level of criminality. See Phil Williams, *Transnational Criminal Networks*, RAND Corporation, 83, http://www.rand.org/content/dam/rand/pubs/monograph_reports/MR1382/MR1382.ch3.pdf (accessed 3 June 2014).

- 5 R T Naylor, *Follow-the-money methods in crime control policy: a study prepared for the Nathanson Centre for the Study of Organized Crime and Corruption*, Toronto: York University, December 1999, <https://www.ncjrs.gov/nathanson/washout.html> (accessed 10 January 2014).
- 6 Internationally, the most common global definition of organised crime is that used in the United Nations Convention against Transnational Organized Crime, which describes organised crime groups as '[a] structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention'. See UN International Convention Against Transnational Organized Crime, Palermo, 2000.
- 7 For more information of the definitional disputes of organised crime, see Andre Standing, *Rival views of organised crime*, Monograph 77, ISS, 2003.
- 8 *Ibid.*, 64.
- 9 *Ibid.*
- 10 South African Police Service Act 1995, amended in 1997, 2008 and 2012.
- 11 In an interview with a high-level police officer, he stated that the SAPS worked using the definitions of organised crime and gangs in the law. He stated that, while being well aware of the definitional disputes among academics and in the judiciary, the SAPS used the law.
- 12 South African Police Service Amendment Act 2012.
- 13 The use of the description 'gang' has also increased confusion in organised crime debates, according to Standing, *Rival views of organised crime*. More noticeably, gangs have become entrenched in the Western Cape. The SAPS estimates that there are three serious prison gangs and 12 serious street gangs in the Western Cape, where gang-related violence is the most serious and 'organised'. These gangs differ substantially from many other small gangs, although they often interact with them. See South African Police Service, *Western Cape annual report 2012–2013* (2013), 10.
- 14 Hagan differentiates between people using the term to describe activities and groups. While Hagan chose to capitalise the group, I will use a collective noun at the end, i.e. 'Organised crime networks'. See F Hagan, 'Organized crime' and 'organized crime': indeterminate problems of definition, *Trends in Organized Crime* 9(4) (2006).
- 15 Fawzia Cassim, Addressing the challenges posed by cybercrime: a South African perspective, *Journal of International Commercial Law and Technology* 5(3) (2010), <http://www.jiclt.com/index.php/jiclt/article/view/108/106> (accessed 10 February 2014).
- 16 See W van Schendel and I Abraham (eds), *Illicit flows and criminal things*, Indianapolis: Indiana University Press, 2005. See J Picarelli (ed), Selected papers and contributions from the international conference on International Organized Crime: The African Experience, Courmayeur Mont Blanc, Italy, 10–12 December 2010, <http://www.cnpds.it/documenti/fb95a6fd7f209916197336323df897de.pdf> (accessed 3 June 2014); Jean-Francois Bayart, Stephen Ellis and Beatrice Hibou, *The criminalization of the state in Africa*, Oxford: James Currey, 1999.
- 17 C van Onselen, *Masked raiders*, Cape Town: Zebra Press, 2010.
- 18 C van Onselen, *A small matter of a horse?*, <http://libcom.org/history/small-matter-horse-life-nongoloza-mathebula-1867-1948> (accessed 3 June 2014).
- 19 Peter Gastrow (ed), *Penetrating state and business: organised crime in Southern Africa*, Monograph 86, ISS, 2003, <http://issafrica.org/pubs/Monographs/No86/Chap1.pdf> (accessed 1 April 2014).
- 20 Andre Standing, *Organised crime: a study from the Cape Flats*, Pretoria: ISS, 2006.
- 21 Derica Lambrechts, *The impact of organised crime on social control by the state: a study of Manenberg in Cape Town, South Africa*, PhD thesis, Stellenbosch University, Stellenbosch, 2012.
- 22 This was admitted by the SAPS in the recent Khayelitsha Commission of Inquiry opening statements, <http://www.khayelitshacommission.org.za/2014-01-29-12-13-54/23-january-2014-opening-statements/179-south-african-police-service-opening-statement.html> (accessed 14 March 2014).
- 23 An example of this corruption was the granting of residency to mafia banker Vito Palazzolo, in which investigations proved high levels of corruption, including by a cabinet minister. For more information, see Hennie van Vuuren, *Apartheid grand corruption report*, Pretoria: ISS, 2006, <http://www.issafrica.org/publications/other-publications/apartheid-grand-corruption-report-hennie-van-vuuren> (accessed 12 February 2014).
- 24 Stephen Ellis, Of elephants and men, *Journal of Southern African Studies* 20(1) (March 1994).
- 25 *Ibid.*
- 26 See Tony Roshan Samara, *Cape Town after apartheid: crime and governance in the divided city*, University of Minnesota Press, 2011, http://www.amazon.com/Cape-Town-after-Apartheid-Governance-ebook/dp/B005HW70RM/ref=tmm_kin_swatch_0?_encoding=UTF8&sr=&qid=. Samara relates a story of how SAPS members Jeremy Veary and Andre Lincoln, who were both former ANC operatives, were suspended in 2002 for what they believed was their investigations into corruption in the force and the force's links to gangs, organised crime and corruption. Some of the evidence submitted by Lincoln and Veary was gathered from interviews with former apartheid police operative Eugene de Kock.
- 27 Jenni Irish-Qhobosheane, *Gentlemen or villains, thugs or heroes? The social economy of organised crime in South Africa*, Johannesburg: South African Institute of International Affairs (SAIIA), 2006.
- 28 Irvin Kinnes, *From urban street gangs to criminal empires: the changing face of gangs in the Western Cape*, Monograph 48, ISS, June 2000.
- 29 Gastrow, *Penetrating state and business*.
- 30 Peter Gastrow, Triad societies and Chinese organised crime in South Africa, Paper 48, ISS, 2001.
- 31 Mark Shaw, West African criminal networks in South and Southern Africa, *African Affairs* 101 (2002).
- 32 Irish-Qhobosheane, *Gentlemen or villains*.
- 33 Kinnes, *From urban street gangs to criminal empires*, 2000.
- 34 South Africa, The Presidency, *Twenty-year review 2014*, <http://www.thepresidency-dpme.gov.za/news/Pages/20-Year-Review.aspx> (accessed 3 February 2014).

- 35 Petrus C van Duyne, Matjaz Jager, Klaus von Lampe et al. (eds), *Threats and phantoms of organised crime, corruption and terrorism: critical European perspectives*, Nijmegen: Wolf Legal Publishers, 2004, <http://www.organized-crime.de/kvlMeasuringOC-CCC4.pdf> (accessed 3 June 2014).
- 36 G Lebeaya, *Organised crime in the Southern African Development Community with specific reference to motor vehicle theft*, MA thesis, UNISA, 2009.
- 37 Crime Stats, database, <http://www.crimestatssa.com/>.
- 38 Ibid.
- 39 Ibid.
- 40 South African Community Epidemiology Network on Drug Use (SACENDU), *Monitoring alcohol and drug abuse treatment admissions in South Africa, Phase 34, January to June 2013*, February 2014, <http://www.sahealthinfo.co.za/admodule/sacendu/Sacenduphase34.pdf> (accessed 10 June 2014).
- 41 Standing, *Organised crime*.
- 42 R T Naylor, Marlboro men, *London Review of Books* 29(6) (22 March 2007), <http://www.lrb.co.uk/v29/n06/rt-naylor/marlboro-men> (accessed 23 January 2014).
- 43 For background information on organised crime in the Southern African region see Annette Hubschle, *Organised crime in Southern Africa: first annual review*, ISS, 2010, <http://www.issafrica.org/uploads/OrgCrimeReviewDec2010.pdf> (accessed 2 April 2014).
- 44 See Standing, *Organised crime*; Irish-Qhobosheane, *Gentlemen or villains*.
- 45 Derica Lambrechts, The impact of organised crime on state social control: organised criminal groups and local governance on the Cape Flats, Cape Town South Africa, *Journal of Southern African Studies* 38(4) (2012).
- 46 Craig Paterson, *Prohibition & resistance: a socio-political exploration of the changing dynamics of the Southern African cannabis trade, c. 1850 – the present*, MA thesis, Rhodes University, Grahamstown, 2009.
- 47 Liza Grobler, *A criminological examination of police criminality*, PhD thesis, UNISA, 2009.
- 48 Naylor, *Follow-the-money methods in crime control policy*.
- 49 The Presidency, *Twenty-year review 2014*.
- 50 Ibid.
- 51 Among the problems was an exodus of senior SAPS personnel and an increase in poorly trained new recruits. William R Pruitt, The progress of democratic policing in post-apartheid South Africa, *African Journal of Criminology and Justice Studies* 4(1) (2010), 116. Also see Shaw, *Organised crime in post-apartheid South Africa*.
- 52 Peter Gastrow, *Organised crime in South Africa – an assessment of its nature and origins*, Monograph 28, ISS, 1998.
- 53 Ibid.
- 54 Moses Montesh, *A critical analysis of the crime investigative system within the South African criminal justice system: a comparative study*, PhD thesis, UNISA, 2007, 70.
- 55 Johan Burger quotes former commissioner Jackie Selebi in 2006 as saying that ‘the restructuring of the police will lead to a redeployment [that] would see a substantial increase in staff at police stations’. The idea was that specialised units that were based at the SAPS area offices, serving around 20 police stations each, would have their staff and resources ‘decentralised’ to station level – thereby bolstering local policing resources. See Johan Burger, The South African Police Service must renew its focus on specialised units, *ISS Today*, 31 March 2014, <http://www.issafrica.org/iss-today/the-south-african-police-service-must-renew-its-focus-on-specialised-units> (accessed 2 June 2014).
- 56 Jean Redpath, *Leaner and meaner? Restructuring the Detective Service*, Monograph 73, ISS, 2002.
- 57 Ibid.
- 58 Khayelitsha Commission of Inquiry, <http://www.khayelitshacommission.org.za/>.
- 59 For more information see the testimony of, among others, Colonel Marais at the Khayelitsha Commission of Inquiry on 19 February 2014, <http://www.khayelitshacommission.org.za/2013-11-10-19-36-33/hearing-transcriptions/phase-one-hearings.html> (accessed 10 June 2014).
- 60 For example, the majority opposition party in South Africa, the Democratic Alliance, has repeatedly called for the reinstatement of SANAB on the basis that drug crime has increased. However, the increases in arrests could also be attributed to better policing.
- 61 Shaw, *Organised crime in post-apartheid South Africa*.
- 62 South African National Drug Master Plan, February 1999, <http://www.dsd.gov.za/cda/dmdocuments/nationaldrugmasterplan.PDF> (accessed 10 June 2014).
- 63 Interview with senior investigator formerly with the SAPS, 2013.
- 64 Interview with an independent consultant formerly with the SAPS and SADF. Also see Burger, The South African Police Service must renew its focus on specialised units.
- 65 L Laniel, *Drugs in southern Africa: business as usual*, UNESCO, 2001, <http://laniel.free.fr/INDEXES/PapersIndex/issj169ENG.pdf> (accessed 3 June 2014).
- 66 Ibid. ‘Boere mafia’ in this sense means those who had political and economic power. Towards the late 1980s, tightly organised and ethnically based organised crime emerged in the form of the Boere mafia (literally ‘farmers mafia’). Involved in a range of criminal activities, these groups were soon infiltrated and broken by the police. Significantly, however, the Boere mafia appeared to recruit former members of the security forces and had right-wing political connections. See Shaw, *Organised crime in post-apartheid South Africa*.
- 67 Redpath, *Leaner and meaner*.
- 68 Antony Altbeker, Justice through specialisation? *The case of the specialised commercial crimes court*, Monograph 76, ISS, 2003, <http://www.issafrica.org/uploads/Mono76.pdf> (accessed 1 April 2014).
- 69 Willie Hofmeyer, The role of specialist units in the NPA, presentation at NPA Stakeholder Conference, 2007, www.npa.gov.za/UploadedFiles/Willie%20H%20final.pp (accessed 10 March 2014).
- 70 Joey Berning and Moses Montesh, Countering corruption in South Africa: the rise and fall of the Scorpions and the Hawks, *South African Crime Quarterly* 39 (2012), 3–9.
- 71 Ibid.

- 72 Prince Mashele, The Khampepe Commission: the future of the Scorpions at stake, Paper 126, ISS, 2006, <http://www.issafrica.org/uploads/Paper126pdf.pdf> (accessed 12 January 2014).
- 73 Ibid.
- 74 Burger, The South African Police Service must renew its focus on specialised units.
- 75 De Wet Potgieter, SAPS Crime Intelligence: frozen in the political winter of Mangaung, *Daily Maverick*, 29 November 2012, <http://www.dailymaverick.co.za/article/2012-11-28-saps-crime-intelligence-frozen-in-the-political-winter-of-mangaung/> (accessed 10 June 2014).
- 76 Johan Burger, A dysfunctional SAPS intelligence division has severe implication for reducing crime, *ISS Today*, 8 October 2012, <http://www.issafrica.org/iss-today/a-dysfunctional-saps-intelligence-division-has-severe-implications-for-reducing-crime> (accessed 1 April 2014).
- 77 Naylor, *Follow-the-money methods in crime control policy*.
- 78 Louis de Koker, Chapter 4, in Charles Goredema (ed), *Profiling money laundering in Eastern and Southern Africa*, Monograph 90, ISS, 2003.
- 79 POCA has, however, come under extreme criticism: for example, former deputy commissioner of the SAPS and advocate Godfrey Lebeya, in his PhD thesis on organised crime definitions, states: 'The POCA is not a model of legislative coherence; it is a legislation that may be described as half-baked, which requires immediate return to the legislative oven.' See Godfrey Lebeya, *Defining organised crime: a comparative analysis*, PhD thesis, UNISA, 2012, 119.
- 80 J Mujuzi, *Ten years of the South African Prevention of Organised Crime Act (1999–2009), what case law tells us*, Occasional Paper, Open Society Foundation, 2010, http://osf.org.za/wp/wp-content/uploads/2012/09/CJI_Occasional_Paper_6_Prevention_of_Organised_Crime_Act1.pdf (accessed 20 June 2014).
- 81 Naylor, *Follow-the-money methods in crime control policy*.
- 82 R T Naylor, *Wages of crime: black markets, illegal finance and the underworld economy*, Iitaca: Cornell University Press, 2002. In 1996 South Africa passed the International Cooperation on Criminal Matters Act 1996 (Act 75 of 1996), which made it easier to cooperate with other states for information and extradition and to confiscate the proceeds of crime across borders.
- 83 Jean Redpath, Forfeiting rights? Assessing South Africa's asset forfeiture laws, *African Security Review* 9(5/6) (2000), <http://www.issafrica.org/pubs/ASR/9No5And6/Redpath.html> (accessed 10 June 2014).
- 84 Notably, the Department of Forestry and Fisheries has come under attack for being reliant on confiscated abalone. See, A scaly solution to a slimy problem, *Noseweek*, 1 January 2012.
- 85 South African Law Commission, *Money laundering and related matters, project 104*, August 1996, http://www.justice.gov.za/salrc/reports/r_prj104_1996aug.pdf (accessed 10 June 2014).
- 86 Charles Goredema (ed), *Confronting the proceeds of crime in Southern Africa: an introspection*, Monograph 132, ISS, 2007, 77.
- 87 Lindo Xulu, SARS a beacon of good governance, efficiency, *Timeslive*, 6 October 2013, <http://www.bdlive.co.za/economy/2013/10/06/sars-a-beacon-of-good-governance-efficiency> (accessed 10 January 2014).
- 88 It should be noted that this differs significantly from IL van Jaarsveld, who in her thesis argues: 'This study portrays a grim picture of money laundering control in South Africa. Not only has FICA failed to keep abreast with international AML trends, but key AML obligations, namely customer identification and suspicious transaction reporting, have been exposing banks to unnecessary civil liability.' Il van Jaarsveld, *Aspects of money laundering in South African law*, LD thesis, UNISA, 2011, 686.
- 89 Financial Intelligence Centre, *Annual report 2012/2013*, 17, <https://www.fic.gov.za/DownloadContent/NEWS/PRESSRELEASE/FIC%20Annual%20Report%202012-13.pdf> (accessed 2 April 2014).
- 90 Ibid., 9.
- 91 Peter Gastrow, *Mind blowing: the cannabis trade in Southern Africa*, unpublished paper, ISS, 2003, <http://www.issafrica.org/uploads/CANNABIS.PDF> (accessed 3 June 2014).
- 92 Standing, *Organised crime*.
- 93 Financial Intelligence Centre, *Annual report 2012/2013*.
- 94 Lambrechts, *The impact of organised crime*, 2012.
- 95 See Julian Rademeyer and Kate Wilkinson, South Africa's criminal cops: is the rot far worse than we have been told?, *AfricaCheck*, 27 August 2013, <http://africacheck.org/reports/south-africas-criminal-cops-is-the-rot-far-worse-than-we-have-been-told/> (accessed 10 June 2014).
- 96 Irvin Kinnes and Gareth Newham, Freeing the Hawks: why an anti-corruption agency should not be in the SAPS, *South African Crime Quarterly* 39 (March 2012), 36.
- 97 See Gareth Newham and Andrew Faull, *Protector or predator? Tackling police corruption in South Africa*, Monograph 182, ISS, 2011.

