

Organised Crime and How to combat it

The preamble to the South African Constitution 1996 clearly states that the SA Constitution was adopted as a supreme law of the Republic so as to:

“Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;
Improve the quality of life of all citizens and free the potential of each person ; and
Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

The observant amongst us would have noted that in this short quotation, democracy has been referred to three (3) times, as follows

1. “establish a society based on **democratic** values”.
2. “ a **democratic** and open society”.
3. “build a united and **democratic** South Africa”.

In terms of our preamble South Africa commits to taking its rightful place as a sovereign state in the ***family of nations***.

This means that South Africa shall no longer be isolated as it was under apartheid but will be a global player attracting all the consequences of globalization, transnational organized crime being one of them. I am convinced that it this interconnectedness that inspired Dr. Mark Shaw, the Director of Global Initiative Against Transnational Organized Crime(GI-TOC) to write in the foreword to the Strategic Organized Crime Risk Assessment, South Africa 2022 “ Organized crime is an existential threat to South Africa’s democratic institutions, economy and people”. In tackling and disrupting organized crime effectively ,the policy makers must have a strategic understanding of the nature and risk of organized crime including the complexity and evolving character of the entire criminal ecosystem”.

Our Constitution seeks to cure the past defects of the South African society which in the main was undemocratic and segregationist based on racial discrimination as a result of the Group Areas Act and Separate Amenities Act that marginalized the black and largely poor communities. There was no effective policing in these areas and they became breeding grounds for gangs, drugs and extortion. The only visible law enforcement activities manifested themselves in political oppression and suppression of political dissent. The apartheid system was in itself a corrupt system that lacked transparency and accountability. Our Preamble and the substantive provisions of the 1996 Constitution seek to remedy this defect and has enabled us as a nation to sign and ratify a number of UN Conventions like the United Nations Convention Against Corruption (UNCAC),the United Nations Convention Against Transnational Organized Crime(UNCTOC), Rome Statute establishing the International Criminal Court(ICC) etc. These UN Conventions became the sources and foundations of the Prevention and Combating of Corrupt Activities Act (PRECCA) and Prevention of Organized Crimes Act (POCA), the Financial Intelligence Centre Act (FICA) as a weapon against money laundering and financing of terrorist activities. Whilst the 1994 democratic elections ushered the dawn

of freedom and democracy it also created new criminal opportunities on a global scale and allowed SA to be integrated in the global illicit economy. The adoption of the National Crime Prevention Strategy (NCPS) by the Cabinet in 1996 must be seen within the context of addressing the apartheid spatial design. The four pillars of the NCPS were a) The criminal justice process (re-engineering) b) Reducing crime through environmental design c) Public values and education and d) Trans-national organized crime. This meant that SA had to adopt new methods of fighting crime and organized crime because the state could no longer use the same old methods of fighting crime as before hence the establishment of the Directorate of Special Operations (DSO) popularly known as the Scorpions with its innovative troika methodology of Intelligence driven and Prosecution led Investigation which proved to have been very effective. Organized crime has both local and international contexts.

Crime in general and organized crime in particular offends the spirit and letter of section 198 of our Constitution that clearly states that **National security must reflect the resolve of South Africans, as individuals and as a nation to live as equals, to live in peace and harmony, to be free from fear and want and to seek a better life.** This section places the responsibility and authority for national security at the doorstep of both Parliament and the National Executive, therefore failure to ensure national security is a violation of not only this section but also of the human rights in the Bill of Rights. The objects of the police services as stated in section 205(3) of our Constitution are to **prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law.**

Whilst there are different definitions of organized crime, it is generally accepted that Organized Crime is planned and coordinated criminal behavior and conduct by people working together on a continuing basis. Policy makers and law enforcement agencies need to be strategically and tactically clear on domestic organized crime syndicates, transnational organized crime syndicates and international crimes and have a lucid understanding how at times all these three (3) can merge into one eg corruption ,cybercrimes, terrorism , terrorism financing, human trafficking and money laundering. It is for this reason that the Global Initiative Against Transnational Organized Crime is calling for a closer collaboration and working together of these two United Nation Conventions the United Nations Convention Against Corruption(UNCAC) and the United Nations Convention Against Transnational Organized Crime (UNTOC). Keeping a rigid wall between the two conventions is actually counter productive.

The strategic organized crime risk assessment by GI-TOC shows that there is irrefutable evidence that shows that in South Africa there are 15 main illicit markets that are currently active. These are:

1. Illicit drugs;
2. Illegal firearms;
3. Human trafficking and smuggling;
4. Wildlife, fishing and environmental crimes;
5. Critical infrastructure;
6. Organized corruption;
7. Illegal mining;
8. Mass public transport;

9. Extortion;
10. Kidnapping for ransom or extortion;
11. Organized violence;
12. Cybercrime;
13. Economic and financial crimes;
14. Organized robbery and
15. Health sector crimes

These illicit markets are at different levels of development, some are stable at high level, others just stable whilst there are those that are increasing. GI-TOC has identified five (5) key characteristics of organized crime in SA namely:

1. Connected.
2. Diverse.
3. Embedded.
4. Entrepreneurial and
5. Violent.

It is worthy to note the four typologies of foreign actors currently operating in South Africa.

1. FUGITIVES these are individuals, networks or groups who have access to large scale financial resources who have moved overseas because they were forced to, due to law enforcement or rival criminal groups, eg Radovan Krejcir who fled the Czech Republic.
2. FAMILY these are representatives of a closed criminal group moving under instructions and with resources needed to expand criminal markets eg Nigeria's Black Axe operating like the Mafia.
3. FORTUNE SEEKERS individuals, networks or groups who move without initially having a clear criminal purpose .They are generally "pushed" by circumstances from places of poor economic opportunities to ones that offer better economic opportunities. They are highly entrepreneurial and may develop criminal market interests over time eg Guptas.
4. FRANCHISEES they move to exploit an identified criminal opportunity but do so with few resources. The criminal entrepreneurs move in order to position themselves to link to a wider criminal network and pay willingly or unwillingly for that privilege.eg Pakistani and Bangladesh kidnapping syndicates.

HOW DO WE COMBAT ORGANISED CRIME

1. Let us restore the **political will** displayed in the first three administrations led by Mandela and Mbeki. This period saw us adopting a number of international legal instruments and their subsequent domestication eg PRECCA, POCA and FICA etc. We need to establish a single and independent law enforcement agency with dedicated capacity that will focus on grand corruption and organized crime. This independence must enjoy the protection of the Constitution so as not to suffer the same fate of the disbanding of the DSO. This of course, means serious institutional reforms that will rationalize the current proliferation of law enforcement agencies.
2. Ensure specialized training and the acquisition of the critically needed skills like forensic, digital and cyber crime and security.

3. Professionalize and depoliticize law enforcement agencies. This will be consistent with section 199(7)(a) and (b) of the Constitution that clearly states that **neither the security services nor their members may in the performance of their functions prejudice a political party interest that is legitimate in terms of the Constitution or further in a partisan manner any interest of a political party. This also be in line with the basic values and principles public administration as stated in section 195 of the Constitution that speaks to a high standard of professional ethics. This includes employment and personnel practices based on ability, objectivity, fairness and the need to address the imbalances of the past to achieve broad representation.**
4. The heads of the law enforcement agencies must be appointed in a transparent and competitive way that will ensure that the best person is appointed and is a person of unquestionable integrity.
5. International co-operation in criminal matters is key ,particularly extradition and mutual legal assistance. There is need to deepen our knowledge and understanding of and create expertise on extradition laws and requirements of various and varied jurisdictions and to also reciprocate.

CONCLUSION

It is appropriate to conclude this input by once again quoting from Dr. Mark Shaw in his foreword to the STRATEGIC ORGANIZED CRIME RISK ASSESSMENT SOUTH AFRICA 2022 : South Africa's criminal ecosystem is complex and evolving. It impacts the lives of millions, together with the country's economic health and ultimately its political and democratic integrity too. The state's law enforcement responses to date have failed to check the expansion and evolution of organized crime. But it is not an insurmountable challenge: the problem can be tackled. With the right leadership, long-term strategic vision and resources and with a systemic institutional overhaul of its crime-fighting agencies, South Africa can and will defeat organized crime.