

Termites at Work

*A Report on Transnational Organized Crime
and State Erosion in Kenya*



Comprehensive Research Findings

Peter Gastrow

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Executive Summary

The threat posed by organized crime is not confined to serious crimes such as racketeering, the global drug trade, or human trafficking. For many developing countries and fragile states, powerful transnational criminal networks constitute a direct threat to the state itself, not through open confrontation but by penetrating state institutions through bribery and corruption and by subverting or undermining them from within. Governments that lack the capacity to counter such penetration, or that acquiesce to it, face the threat of state institutions becoming dysfunctional and criminalized, and the very foundations of the state being undermined. This report examines whether Kenya faces such a threat.

Six categories of transnational organized crime are examined, pointing to significant increases in criminal activity with pervasive impacts on government institutions in Kenya. Rampant corruption in the police, judiciary, and other state institutions has facilitated criminal networks' penetration of political institutions.

The research findings do not justify Kenya being labeled as a criminalized state, but its foundations are under attack. Determined interventions are required to stem organized criminal networks from further undermining the state. The report concludes with recommendations for steps to be taken at the national, regional, and international levels:

National

- Establish an independent, specialized serious crimes unit. A carefully vetted unit with a mandate to investigate serious organized crime in Kenya and prepare cases for prosecution would increase the risk for criminal networks and roll back the long reign of impunity.
- Enhance research, analysis, and information dissemination on organized crime in Kenya and East Africa. Intelligence for

successful investigations and information to equip policymakers and the public are essential to understanding and countering organized crime effectively. A Kenyan university or research establishment should commit to sustained research and analysis on this topic, and governments with embassies in Kenya should explore ways to share their information on organized crime with the public.

- Carry out a major overhaul of company registration systems to enhance accuracy, transparency, and public access. The absence of a clear and well-functioning company registration system in Kenya has made major financial crimes difficult to unravel.

Regional

- Significantly enhance police cooperation in the East African Community (EAC). Increasing economic and trade integration among EAC member states will make it easier for criminal networks to cross borders unhindered, expand their activities, and consolidate their criminal markets. As a result, these states also need to place regional police cooperation on a faster and more effective track.

International

- Develop an East African Community Initiative that builds on the experience of the interagency West Africa Coast Initiative. United Nations agencies and other international actors should support national and regional authorities in eastern Africa in establishing Transnational Crime Units that build capacity and skills to fight transnational organized crime.

Preface

In 2004 the United Nations Office on Drugs and Crime (UNODC) sounded the alarm about South American cocaine traffickers who were using West Africa as a transit zone to Europe with volumes of cocaine far in excess of expectations.¹ Until then, combined annual cocaine seizures on the African continent rarely amounted to a ton. The international community and West African governments had been caught napping. Trafficking routes had already been established, the criminal networks involved were firmly entrenched, government officials had been corrupted, and a trafficking momentum existed, which West African governments could no longer check or reverse on their own. International attention and resources soon poured into the region. The picture that emerged was worse than initially thought. The executive director of the UNODC confirmed that “alarm bells are ringing about the volume of cocaine transiting the region (roughly 50 tons a year), and its impact on the security of fragile states.”² Since 2005, the United Nations and other international agencies, along with the Economic Community of West African States (ECOWAS), the European Commission, and more than fifteen donor countries, have become involved in supporting the efforts of West African states to counter the evolving security threats. More recently, in December 2010, the UNODC unveiled the \$190.9 million Regional Programme for West Africa 2010-2014. The program sets out far-reaching initiatives to counter drug trafficking and achieve stability and development in the region.

But while international attention and resources were focused on West Africa, another vulnerable region on the continent—namely, East Africa—appeared to remain in a slumber as far as the realities of transnational organized crime were concerned. Governments in the region continued with a business-as-usual approach and international agencies had little reliable information that could serve as a barometer of what was going on. In Kenya, the economic hub of East Africa, but also the hub of the region’s transnational organized crime activities,

information on drug trafficking and organized crime was occasionally revealed in the media, but this was sporadic and incomplete. Governments as well as the public in the region were aware that drug trafficking and other forms of transnational organized crime were expanding, but the nature and extent of it had not been determined. Perceptions were shaped by occasional seizures and arrests that were reported in the media.

The 2009 UNODC Regional Programme for Eastern Africa identified inadequate levels of awareness and institutional capacity as one of the key challenges in countering illicit trafficking, organized crime, and terrorism.³ At a November 2009 regional ministerial conference, where ministers from thirteen eastern African countries pledged their support for the program, the executive director of the UNODC warned that “in Eastern Africa, warning lights are flashing – we must respond immediately.”⁴ A few days later, during a briefing to the United Nations Security Council in New York, he revealed that “30 to 35 tons of Afghan heroin are being trafficked into East Africa each year,” and “the region is becoming a free economic zone for all sorts of trafficking: drugs, migrants, guns, hazardous wastes and natural resources.”⁵ The figures of thirty to thirty-five tons were astonishing. Was drug trafficking through the East African region actually far worse than anyone had anticipated? Was there another West Africa in the making along Africa’s east coast?

This report stems from concerns that the lack of reliable information on transnational organized crime in East Africa poses serious risks for the countries in the region. The report aims to identify some of the realities of organized crime in the region with the hope that government authorities and the international community do not repeat the West African experience of responding to transnational organized crime only after the threat had already become overwhelming.

Somewhat naively, I initially planned a one-year study into drug trafficking and transnational organized crime⁶ in East Africa, covering Kenya, Somalia, Tanzania, and possibly Uganda. The links between transnational organized crime networks and six categories of organized crime would be studied; namely, trafficking in drugs, trafficking in counterfeit and illicit commodities, trafficking in

wildlife products, trafficking in humans and smuggling of migrants, trafficking in small arms, and money laundering. Limited time and resources made it necessary to confine the project to these six crime categories. This study therefore attempts to assess how transnational organized crime groups are involved in these six crime categories. The report does not attempt to provide a detailed study of each of the six crime categories—it deals with those criminal activities but only in so far as transnational organized crime networks are involved in committing those crimes.

Also excluded from the study are criminal networks and their links to maritime piracy off the Somali coast, even though it is a matter of international concern with serious security implications. The links between piracy and Kenya are tenuous, and a separate study into piracy off the Horn of Africa in its full dimensions would be much more informative. Terrorism, which is not regarded as organized crime in the conventional sense as it is generally motivated by factors other than material gain, was also excluded from the study. Domestic organized crime groups that operate only within national borders were also not included as they are not transnational in their scope. This does not mean that these are not serious security threats in some East African countries; it was just not possible to include them all in this study.

Soon after commencing with the project in East Africa it became apparent that the limited time of one year and the limited resources available would not suffice to undertake a proper study in more than one of the countries originally envisaged. The focus of this study therefore shifted from the three countries that were initially to be covered to Kenya. Kenya is to East Africa what Nigeria is to West Africa and what South Africa is to southern Africa. It is the hub of the region. If it thrives, the entire region benefits. Conversely, if Kenya stumbles, it has serious consequences for a number of countries in the East African region.

At the best of times, and even in the most “tolerant” and open societies, research into organized crime is beset with obstacles, suspicion, and the reluctance of authorities to cooperate and make information available. From personal experience in most southern and eastern African countries, organized crime is too “sensitive” an

issue to allow so-called outsiders (i.e., non-police personnel) to delve into the topic in any depth. Top politicians and government officials are sometimes linked to organized crime, and authorities therefore resist attempts by outsiders to lift the veil through research for fear of having their roles or connections exposed and their own position endangered.

What a pleasant surprise, therefore, when working on this project in Kenya! A country that is beset by deep-rooted corruption, major financial and political scandals, and serious allegations of drug trafficking would normally act in the same short-sighted manner that others in similar circumstances do, namely to block, ignore, and prevent information from being made available. The Kenyan authorities that were approached for support and assistance responded positively. And not only did they respond positively, they actively assisted and went out of their way to ensure that the project work could be undertaken successfully. This is almost unprecedented. The only inference that can be drawn is that despite Kenya's huge problems with issues of corruption, crime, and governance, there is a critical mass of senior government officials in place that is determined to get to the root of these problems in order to solve them. They are not in denial, and they sincerely believe that the truth needs to be brought out if countermeasures taken by government are to be effective. These officials and the departments they work in have real potential to make Kenya succeed in its fight against corruption and organized crime, and they deserve domestic and international support.

This report is primarily aimed at policy and decision makers in Kenya. However, the transnational nature of the organized crime examined in this report inevitably impacts on the region as a whole, and some recommendations may therefore also be of relevance to the East African Community and to international organizations such as the United Nations. The role played by transnational criminal networks is examined in six chapters, each one focusing on a different trafficking activity. These chapters address trafficking in the following:

- Drugs
- Counterfeit goods and other illicit commodities
- Wildlife products

- Humans, including the smuggling of migrants
- Small arms
- Money laundering

Addressing these six categories of cross-border crime in separate chapters is not intended to suggest that they can be neatly compartmentalized or that criminal networks specialize in one type of trafficking activity only. The reality is that different criminal networks tend to use the same cross-border smuggling routes and that networks often display a degree of flexibility and ingenuity that enables them to traffic in a range of illicit commodities. For example, those involved in smuggling small arms may also be involved in smuggling drugs or counterfeit goods.

Research that relates to social, political, and economic issues ought to be undertaken by individuals who have an in-depth understanding of the society that is the subject of their research. This should include a thorough understanding of the politics, history, personalities, social networks, languages, and cultures of the country concerned. The assistance of three experienced Kenyan investigative journalists was invaluable in producing this report. They were Ken Opala, a freelance investigative journalist, Andrew Teyie, investigating editor of the *Star* newspaper, and Dominic Wabala, a former *Daily Nation* investigative writer—all from Nairobi. Their insights and research reports contributed significantly to this publication and I thank them for their assistance. They undertook extensive fieldwork and most of the interviews.

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Introduction

In Britain and beyond, Kenya was regarded as a model colony. It became a popular hunting ground for the rich and famous, at least until the mid-1950s when the Mau Mau-led rebellion against colonial rule increasingly affected security in farming areas. President Theodore Roosevelt, Ernest Hemingway, as well as many a member of the British aristocracy spent time in Kenya hunting, touring, and generally enjoying a life of leisure in the healthy climate and beautiful environment that Kenya offered.

Long before that, others had already discovered that Kenya offered an attractive environment to live in. African tribes of Nilotic origin had moved south into modern-day Kenya from Sudan and northern Africa, and Bantu peoples had migrated from central Africa during the first millennium CE. Arab and Egyptian maritime traders had established trading contacts along Africa's east coast in about the first century CE and over time, Muslim traders established commercial posts and towns from which the Swahili culture and language developed.

The first active step to secure British interests in the region had occurred with the arrival in 1888 of the Imperial British East Africa Company. Following the completion of a railway line from Mombasa into the interior, the fertile Rift Valley and surrounding highlands became an enclave of white settlers engaged in productive farming. Their numbers increased after World War I with the arrival of a significant wave of British and other European farmers. They were granted land concessions to establish farms, often at the expense of the indigenous population, which was evicted and rendered landless, frequently with no option but to become farm laborers. The post-war period also saw growing African political activity mainly among the Kikuyu and Luo in whose traditional areas white farmlands were expanding. During the 1950s the often-ferocious Mau Mau uprising directed against the colonial government and European settlers was met by a

ruthless and repressive response from the British.

After a period of internal self-government Kenya gained independence on December 12, 1963 and became a republic a year later. The British government bought out most of the white farm settlers, who then left Kenya. The new African elite, led by President Jomo Kenyatta, a former Mau Mau leader, soon adjusted its progressive pre-independence political course to a conservative tribal-oriented one, which ensured that most of the country's wealth and formerly white-owned farmlands were soon mainly in the hands of the Kikuyu. This sparked off long-term ethnic animosities that remain an important contributing factor to the fragile state of Kenyan society, as evidenced by the 2008 post-election violence.

Under Jomo Kenyatta, political opposition was increasingly suppressed, but it was only in June 1982, under his successor, President Daniel Arap Moi, that Kenya was officially declared a one-party state. Corruption and human rights abuses increased and political activity was suppressed. Internal dissent and international pressure led to constitutional amendments in December 1991 that again allowed for multi-party elections to take place. In the 2002 election, Mwai Kibaki was elected Kenya's third president. He was declared president for a second time after the December 2007 presidential election, but this time widespread violence and destruction followed the announcement of the election result. It had been a seriously flawed election, fraught with irregularities and a turnout well in excess of 100 percent in some constituencies. Supporters of opposition candidate Raila Odinga disputed the outcome and clashed with police and Kibaki supporters. Mayhem followed with about 1,300 Kenyans killed, more than 500,000 left homeless, and 117,216 private properties destroyed.¹ Amidst fears of a civil war and through the intervention of former UN Secretary-General Kofi Annan and the Panel of Eminent African Persons, a power-sharing agreement was negotiated which allowed Mwai Kibaki to remain president and Raila Odinga to become prime minister in a coalition government. The next parliamentary and presidential election is scheduled for 2012.

Not many people associate Kenya with organized crime. There are much more pleasant images emanating from that country that have had a significant impact on shaping public perceptions of it: snow-

capped Mount Kenya, herds of wildlife in the savannahs, and world class long-distance runners, as well as the sometimes romantic depictions of British colonial rule, and the mythology attached to the Mau Mau and the struggle for independence. In the past, these features tended to overshadow some of Kenya's serious internal problems. Kenya had been on the radar screen with mainly good-news connotations and, except for those with a keen interest in the country, bad news did not make much of a dent in these positive perceptions.

Electronic media have enabled dramatic real-time footage of violence and political conflict to be communicated into living rooms. During the past decade this has contributed much to making perceptions about Kenya towards more realistic. Millions watched in awe as the 2008 post-election violence spiraled into chaos. The scenes suddenly brought home to many that Kenya was far more fragile and conflict prone than many had imagined. There appeared to be a "nasty" side to Kenyans that few had reckoned with. Fears about a civil war were widespread. Tourists stayed away, investment decreased, and growth in the gross domestic product (GDP) dropped from 7 percent in 2007 to 1.6 percent in 2008.²

And then there is corruption. Reports of serious cases of corruption and cronyism in Kenya have appeared from time to time, but to the casual observer, corruption did not appear to be a feature that distinguished Kenya from others in the region. Corruption was widespread in many developing countries as well as some developed ones. However, as a result of a more realistic image of Kenya emerging, partly due to a vibrant Kenyan media, those with an interest in the country have developed a better understanding of the endemic and corrosive nature of the corruption that plagues the society. The 2009 book *Its Our Turn to Eat: The Story of a Kenyan Whistle-Blower*, by Michela Wrong, contributed to a greater insight into the murky environment in which many from Kenya's political and business elites operate.³ Kenya has a troubled side to it that has increasingly come to the fore in recent years. It relates to organized crime, ethnic violence, cronyism, impunity, and governance deficits, as well as corruption.

And yet, despite its flaws, Kenya remains a country with great potential for development and with people who are creative and not easily deflected from their optimistic, forward-looking way of life.⁴

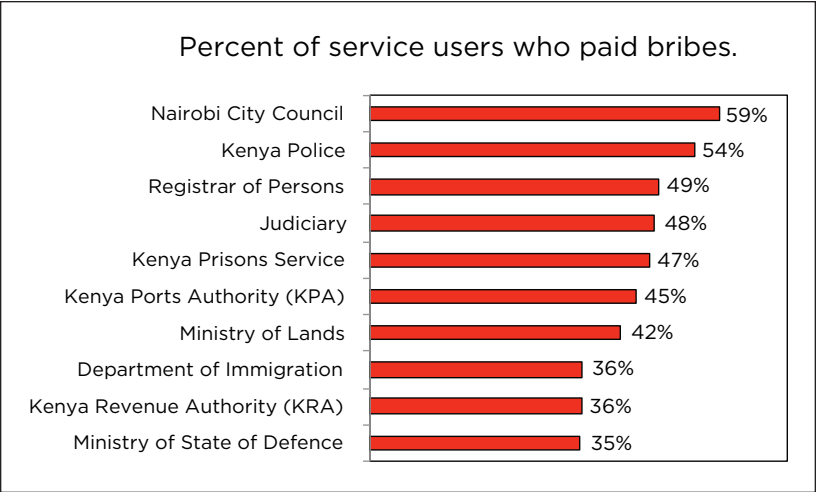
In 2009 Kenya's estimated GDP per capita was \$1,600⁵ and the GDP growth rate rose to 2.6 percent from 1.6 percent in 2008.⁶ In 2010 GDP growth was 4.1 percent and the IMF predicts that will rise to 5.8 percent in 2011 and 6.3 percent in 2012.⁷ If 2011 sees a growth rate of 5.8 percent, this would place Kenya at number 39 in world rankings for GDP growth—a significant achievement.⁸

These growth rates are even more remarkable considering the serious levels of corruption in the country. Kenya features depressingly far down the list of countries in Transparency International's 2010 corruption perception index. Out of a score of 10 (highly clean) to 0 (highly corrupt), Kenya is ranked 154th out of 178 countries, with a score of 2.1.⁹ Even if the premise for the index and the methodology adopted to compile it remain contested, Kenya occupies "rogue territory" as far as corruption perceptions are concerned. International responses to these high levels of corruption have often been sharp with potentially far-reaching consequences. For example, in March 2010 the European Union, through its twenty heads of mission based in Nairobi, issued a statement strongly criticizing government inaction in the face of major corruption scandals in the coalition government. The union threatened to withhold financial aid to Kenya unless the government showed that it was serious about fighting corruption.¹⁰

Within Kenya perceptions have not changed much over the past three years. Close to 90 percent of respondents in the survey for the 2010 Transparency International East African Bribery Index (EABI) rated the country as being between corrupt and extremely corrupt, while only 8.5 percent regarded Kenya as slightly corrupt.¹¹ In the same survey, based on a sample population of 3,022 people randomly picked across all eight Kenyan provinces, the prevalence of corruption was tested. The following chart reflects the proportion of respondents who paid bribes to an institution compared to the total number of respondents who sought services from the institution. Only the ten worst faring institutions are listed here.¹²

For transnational organized crime groups, this is good news! Key to successfully engaging in their criminal activities is the ability to bribe corrupt officials in strategic government departments. That would include at least five of the institutions in which the use of bribes

Table 1: Prevalence of corruption in Kenyan institutions



is high, as listed above: police officers (to look the other way), members of the judiciary (to have a file disappear or for a “correct” ruling), the prison service (for someone’s “escape”), the Kenya Ports Authority (to smuggle drugs and contraband through a port), and the Department of Immigration (to ensure easy passage and “appropriate” documents for passing trafficked persons and smuggled goods through borders and airports). The combination of an expanding economy (and criminal market) and a low-risk environment in which it is relatively easy to bribe government officials makes criminal entrepreneurs rub their hands.

Kenya’s strategic geographic location and its extensive borders add to its attraction for international criminal groups. They need to be able to cross and smuggle goods undetected through national borders, airports, and ports. Kenya’s long porous borders and unprotected shorelines facilitate that. It has a population of more than 39 million people¹³ living in a country that is twice the size of the US state of Arizona and nineteen times the size of Belgium.¹⁴

This report shows how the extended nature of these borders in inhospitable and very difficult-to-control areas benefits cross-border crime operations. The border with Somalia stretches for 682 kilome-

ters through harsh, semi-arid terrain, with people of Somali origin living on both sides of the border. The 861-kilometer border with Ethiopia cuts through a sparsely populated dry area where, for centuries, pastoralists from tribes that live on both sides have freely herded their cattle across what is now an international border. From a security perspective, such extended borders are difficult to control, even for the most developed and well-resourced countries. The Kenyan coastline is 536 kilometers long, with numerous exotic beach resorts that are popular with foreign tourists and ideal for traffickers to land their illicit commodities in small boats. In spite of this, there is no coast guard to protect the coastline. An incident, described in more detail later in this report, illustrates the point. In March 2011 a ship loaded with more than three tons of heroin was anchored close to shore in Kenya's territorial waters for more than ten days. During that period local and international traffickers made use of speedboats to reach the ship to purchase the heroin before police intercepted a consignment worth more than \$1.67 million.¹⁵

Figure 1. Kenya and its neighbors



Map design by Chris Perry, IPI

Chapter One

Drug Trafficking

A grim picture of a region's losing fight against drug trafficking was painted in a 2010 report by the heads of anti-narcotic law-enforcement agencies of the East African Community countries.¹ The report found that regional authorities had fallen behind in modernizing anti-drug laws, intelligence, and enforcement, and that an integrated, regional criminal economy was starting to emerge with a well-organized value chain of producers, traffickers, middlemen, and street-level retailers. All five countries of the East African Community (Burundi, Kenya, Rwanda, Tanzania, and Uganda) were found to suffer from insufficient enforcement of the law and from law-enforcement agencies with deficient capacity. Former drug-transit countries were graduating into consumer countries. Figures of seized drugs indicate that huge quantities were being produced, trafficked, and abused without detection by law-enforcement agencies. This led to associated crimes such as theft, violence, murder, corruption, and money laundering in the five member countries. The report envisaged that with the advent of the East African Common Market in July 2010, allowing for the free movement of goods and people (which has since happened), drug trafficking would become one of the leading transnational organized crimes in the region.

Due to time and capacity constraints, this report will not focus on the full range of narcotics that are trafficked in and through Kenya. Only the more profitable and harmful "hard drugs," namely heroin and cocaine, are dealt with in some detail. These are the drugs that transnational organized crime groups focus on because of their global demand and high profit margins. Before considering the heroin and cocaine trade, brief mention will be made of trafficking in *bhang* (cannabis sativa), *miraa* (khat), and mandrax (methaqualone).

The *Bhang* (*Cannabis sativa*) Trade

Kenya is a producer, consumer, and importer of *bhang* (*cannabis sativa*), as well as a trafficker of the substance beyond its borders. Large-scale cultivation takes place in Kenya in the Lake Victoria basin, in the central highlands around Mount Kenya, and on the coast. Significant supplies are also trafficked into Kenya from Tanzania and Uganda. The most recent seizure figures supplied to the UNODC by Kenyan authorities suggest that in 2007 a total of about forty-four metric tons of cannabis herb were seized.² Kenyan police estimate that in 2008 the actual output of *bhang* was about eighty metric tons.³ The largest East African seizure figures for 2007 were reported from Tanzania—almost sixty metric tons.

The *Miraa* (*Khat*) Trade

Khat, or *miraa* as it is called in Kenya, is a flowering plant native to East Africa and the Arabian Peninsula. It is an amphetamine-like stimulant that increases energy and creates a sense of euphoria for its users. Natives of the Arabian Peninsula have used the drug for centuries, well before other stimulants, such as coffee, or remedies to alleviate stress were widely used.

The plant is consumed orally in herbal teas, chewed, sprinkled on food, or even smoked. To experience its full effects, it has to be ingested within forty-eight hours of its harvest, before its chemical composition begins to break down.⁴ *Miraa* is not illegal in Kenya but in East Africa it is illegal in Eritrea, Rwanda, and Tanzania, and Uganda is in the process of criminalizing its sale. It is also illegal to possess and use *miraa* in demand countries such as Canada, the USA, and some countries in Europe. Kenya, together with Ethiopia and Yemen, are the largest *miraa* producers in the world. Farmers turned to the crop when the International Coffee Agreement of 1983 failed to halt plummeting prices.⁵ Since then, large volumes have been produced, mainly around the town of Meru in Kenya's Eastern Province, to supply local Kenyan demand as well as the major market, which is in Somalia, from where it is distributed globally by Somali networks. Twenty tons of *miraa* are ferried into Somalia from Kenya each day.⁶ Kenya stands to profit by \$250 million from the drug annually, representing one of its strongest exports.⁷

Because it is important for the plant to reach consumers within forty-eight hours, the transport operations take shape with “clockwork precision.”⁸ Cargo planes destined for the Somali cities of Mogadishu, Galkayo, and Kismaayo depart from Kenya each day.⁹ Arriving just seconds after the planes touch down are convoys of specially fitted SUVs, “with a promptness you can set your watch by.”¹⁰ Each vehicle is equipped with armed guards to watch over the entire process. In just a few short hours individual deliveries begin to arrive, which are further coordinated through the country’s recently developed cell-phone network.¹¹ African diasporas in the United Kingdom and the Netherlands, the only Western countries in which it is legal to import *miraa*, help to ensure the efficiency of deliveries abroad. Operating on an orderly schedule, deliveries to Europe have been witnessed leaving Nairobi on Mondays, Tuesdays, Thursdays, and Saturdays.¹² In many cases traders have been known to rely on British Airways to safely move their cargo, presumably because possession and use of *miraa* is not illegal in the UK.¹³ Once it is disbursed among European clients, it is smuggled to North America. Signs of the *miraa* trade’s expanding reach are evident in Toronto, Canada. Of the \$240 million worth of illicit drugs seized in Canada in 2009, Toronto border guards reported that the most prevalent was *miraa*.¹⁴ In 2006, Canadian authorities seized about fourteen tons of *miraa*, valued at \$7 million.¹⁵

As it is not illegal in Kenya to grow, possess, or use *miraa*, it is understandable that *miraa* farmers and traders are exploring the opening of new markets, for example, in China. They view the Chinese market of Shanghai as having a trading potential of more than ten tons of *miraa* per day.¹⁶

Mandrax (Methaqualone): A Transit Drug

Although the consumption rate of mandrax (methaqualone)¹⁷ does not seem to be high in Kenya, the country has become a major transit point for its importation from India and onward transport to South Africa. It is flown from India to Nairobi, where criminal networks dispatch it by road via Tanzania and Zambia to its destination in South Africa.¹⁸ It is common for the trafficking of mandrax to go hand in hand with the exchange of stolen motor vehicles from South Africa. Kenyan traffickers also source mandrax by sea from India. This is often

sent to the Kalindi and Dar es Salaam ports in Tanzania and from there by road to South Africa. The 2007 seizure figures for Kenya show that twenty kilograms of mandrax were seized during that year. The potential of it becoming a more popular drug in Kenya, as happened in South Africa, is real.

Both the *bhang* and *miraa* trade in Kenya are therefore substantial, the latter legal, the former not, while mandrax is still mainly a transit drug. The *bhang* trade involves thousands of producers, including peasant growers, and provides a valuable apprenticeship for prospective drug traffickers who have ambitions of moving higher up the ladder in trafficking illicit drugs. During their “apprenticeship” they will have found out that law enforcement is weak and easily corruptible and that should they be arrested, the judiciary can also be bought. They will have found out that people in influential positions in politics, government service, and business are involved and that they therefore find themselves in good company. In short, they will appreciate from the start that the risk is low and the rewards are high. The illicit growing and peddling of *bhang* therefore provides a good platform from which to enter the more sophisticated, illicit heroin or cocaine trades.

Heroin Trafficking

More than 90 percent of the world’s heroin is manufactured from opium produced in Afghanistan.¹⁹ In 2006 Afghanistan is estimated to have produced around 7,200 tons of opium out of a total worldwide production of 7,900 tons. The main route through which it is trafficked to Africa, the so-called southern route, follows a range of smuggling routes across land into Pakistan, though significant volumes are also smuggled into India and Iran. From Pakistan, heroin is transported by air to various African destinations, but also by sea from Karachi to the United Arab Emirates (mostly Dubai) for onward shipping to East and southern Africa.²⁰ Smaller quantities of heroin reach Africa from Myanmar and Thailand. Qatar has also been identified as a transit point for heroin trafficked from Pakistan and Iran to Kenya.²¹ An example of such trafficking via Qatar would be the arrest of a woman travelling on a Pakistani passport at the Jomo Kenyatta International Airport in Nairobi in January 2010 with eleven kilograms of heroin in the false bottom and linings of her suitcase. She

had traveled aboard a Qatari Airlines flight from Islamabad via Doha to Nairobi. A few days earlier, a business woman was arrested at the same airport in connection with heroin that had arrived on a Qatari Airlines flight from Tehran.²²

Africa has become both a market for heroin and a transit point for onward shipment to a wide range of international destinations. African traffickers (mainly West African) have created two networks: a supply network from Pakistan to Africa and a redistribution network from Africa to Europe, North America, and elsewhere.²³ Most of the heroin trafficked into Kenya is reshipped directly to Europe or through West African countries.²⁴ The UNODC estimates that Pakistan is Africa's main supplier of heroin with approximately twenty metric tons a year coming from that country alone. In addition, Pakistani traffickers, working with African criminal networks, ship an estimated additional two to three metric tons to Europe using Africa as a transshipment base.²⁵ The UNODC does not include East African countries as the main transit points for heroin bound for Europe. The main African transit countries appear to be Nigeria, South Africa, and Ghana.²⁶

In its *World Drug Report 2010*, the UNODC estimates that approximately thirty-five metric tons of heroin flow into Africa annually and that only about 1 percent of this is intercepted.²⁷ Taking into account that the figure of thirty-five metric tons is an estimate for the whole of Africa, it is not clear what weight to attach to the statement made by the former UNODC executive director to the United Nations Security Council in December 2009 that "30 to 35 tons of Afghan heroin are being trafficked into East Africa each year."²⁸ He gave no indication what that figure was based on, something that should, perhaps, be done more often lest statistics such as these lose weight and meaning among decision makers and the wider public.

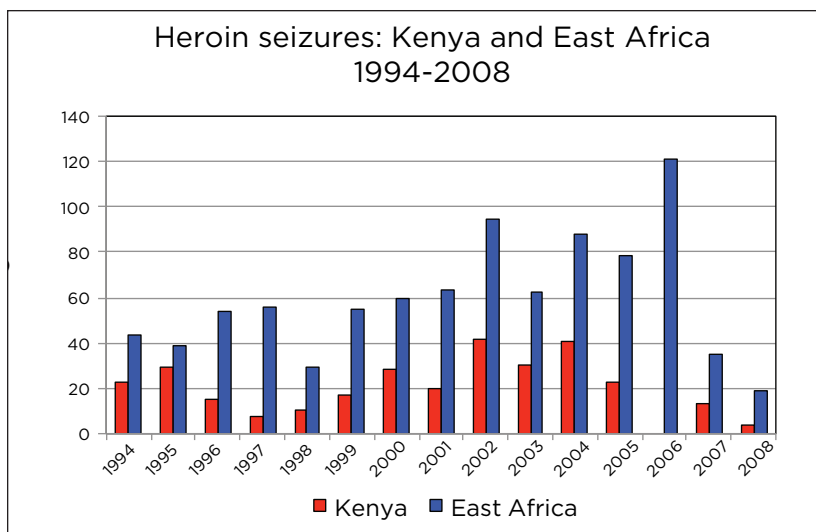
Global interception rates average approximately 20 percent.²⁹ But any attempt to establish how much heroin flows into Kenya or the subregion of East Africa remains elusive. No one knows. Not even the traffickers would know because the different networks compete with each other and use different routes. While many countries provide the UNODC with annual seizure figures for heroin, these statistics cannot be used to estimate the actual flows of heroin in those countries. What

can be agreed is that seizures represent only the tip of the iceberg; it's just that no one really knows how large the iceberg is. Increased seizures could therefore be an indication of more effective law enforcement, and not necessarily an increase in the flow of drugs. Equally, low seizure figures could be an indication of poor policing and not of a low prevalence of a particular drug. Kenyan and East African heroin seizures over a period of fifteen years from 1994 to 2008 reflect relatively low volumes seized.³⁰

The most recent heroin seizure statistics for the East Africa region are provided in the *World Drug Report 2010*, and they relate to seizures in 2008. Total heroin seized in East Africa during that year was 19.2 kilograms and for Kenya it was 3.7 kilograms.³¹ These figures are negligible and even lower than 2008 seizures in North Africa, Central and Western Africa, and Southern Africa. The UNODC does not suggest that they in any way relate to the actual heroin flows into East Africa or into Kenya, nor should policy and decision makers do so. They bear no relation to the realities in Kenya and East Africa—even less so when taking into account that the 2008 heroin seizures for Kenya and East Africa were the lowest in the fifteen years since 1994.³² More plausible, even though there is no confirmation for it, may be what the UNODC executive director dramatically reported in 2009, namely that between thirty and thirty-five tons of heroin are being trafficked into East Africa each year.³³

The realities on the ground in Kenya suggest worsening addiction rates, a growth and spread in the use of heroin, and the trafficking of significant volumes from Kenya to other parts of the world. Heroin has been an easily available street drug in Mombasa and in towns and villages along the Kenyan coast since the mid-1980s.³⁴ Its increasing availability during the 1980s has been linked to the Kenyan tourist boom, when investors from Italy set up businesses with local partners in popular tourist resorts such as Malindi and Watamu. Kenyans who were in the forefront of the tourist industry and who therefore came into direct contact with European tourists, who requested heroin, were also the first ones to succumb to it.³⁵ 1985 was also the year that the first large seizure of heroin was made at Nairobi's Jomo Kenyatta International Airport.³⁶ This suggests not only that a market for heroin was created within Kenya in the 1980s, but also that Kenya was already

Figure 2. Heroin seizures (kg) for Kenya and East Africa, 1994-2008.³⁷



being used a transit point for the onward shipment of heroin during this time.

Today, a growing number of Kenyans, particularly young people, have become addicted to heroin. It has become the second-most-abused drug in the country after *bhang*.³⁸ In Nairobi's slums, but also in the city center and middle class suburbs, young peddlers at the bottom of the ladder in the drug networks have found a ready market for their heroin sachets. According to Kenyan government statistics there are more than 200,000 heroin addicts in the country—only South Africa has more heroin addicts than Kenya.³⁹ Thousands of them, driven by desperation, particularly in Mombasa, are resorting to the extreme practice of injecting themselves with other addicts' blood to get high. For them it is less expensive if one person injects himself with heroin while the others harvest his blood and inject themselves.⁴⁰ Observers on the ground confirm that the drug problem is getting worse. A counseling psychologist commented:

We are slowly but surely becoming a destination. We used to be a “transit market.” They would drop a few kilos on their way to the West. Now they are dropping a little more as the demand is

increasing.⁴¹

The more lucrative trade for organized crime groups is the transshipment of large quantities of heroin from Iran, Myanmar, Pakistan, and Thailand via Kenya to numerous destinations around the world. This is how they reach the global heroin markets, which are worth an estimated \$55 billion per annum. Traffickers pocket most of that.⁴² It is commonly understood among international observers of the drug trade, such as the UNODC and the US Bureau for International Narcotics and Law Enforcement Affairs, that Kenya has become a significant transit route for heroin shipped from Southwest Asia to Europe and other markets. The International Narcotics Control Board has identified Kenya and Ethiopia as the main transit countries in East Africa that are used by heroin traffickers.⁴³ While West African criminal networks already play a prominent role in trafficking heroin from Pakistan, Kenyan nationals have become increasingly involved in doing the same. Commercial and family ties between Kenya and Southwest Asia have facilitated such illicit trade. Numerous Kenyan heroin mules have been arrested and hundreds are serving prison sentences in different parts of the world. A few examples illustrate the reach of international drug networks, their links to Kenya, and the Kenyans that they employ.

- **Iran:** In January 2010, a consignment of heroin worth approximately \$1 million was seized at Nairobi's Jomo Kenyatta International Airport after arriving from Tehran. The person who came to collect the parcel at the airport had a passport that showed she had recently travelled to a host of European countries.⁴⁴
- **China:** Five Kenyans were sentenced to death in China for trafficking both heroin and cocaine, and six others were sentenced to life imprisonment. Another twenty, mainly young women, are serving a cumulative jail term of 150 years for drug offences.⁴⁵
- **Mauritius:** A Mauritian court jailed a Kenyan woman for twenty years for trafficking in one kilogram of heroin in 2002.⁴⁶
- **India:** A Kenyan Airways employee died in a Mumbai jail in India while serving a ten-year sentence for trafficking in heroin.⁴⁷

- **USA:** Two Kenyan businesswomen were charged and convicted of smuggling heroin into the United States.⁴⁸
- **United Kingdom:** A British citizen was convicted for being part of an international heroin smuggling ring that smuggled heroin from Nairobi to Wales. He had travelled to Nairobi four times to assist drug mules with preparations for transporting the heroin from Nairobi to Heathrow Airport.⁴⁹
- **Seychelles:** A passenger who had arrived in the Seychelles on Kenya Airways was arrested after he was found with 1.5 kilograms of heroin.⁵⁰

A recent case involved one of the largest drug interceptions in Kenya's history. It is a case that highlights many of the typical characteristics of transnational organized crime in Kenya and deserves a more extensive description. On March 25, 2011, the police announced that they had intercepted 196 kilograms of heroin worth Ksh 392 million (\$4.6 million) at Mombasa and arrested three Kenyans, two Iranians, and one Pakistani.⁵¹ The drugs had been illegally brought ashore along Kenya's coast and were intercepted when being transported in Mombasa. According to the police, a ship en route from Pakistan, loaded with more than three tons of heroin, had anchored in Kenyan waters for more than ten days. During that period, local and international drug traffickers had used speedboats to purchase drugs from the ship before the police interception occurred.⁵² According to unnamed police officers, a suspected Nigerian international drug baron based in Nairobi, Somalis linked to piracy, and a Mombasa-based businessman were among the drug purchasers.⁵³

Three days after announcing that 196 kilograms of heroin valued at Ksh 392 million (\$4.6 million) had been intercepted, the police changed these figures to 102 kilograms of heroin worth Ksh 200 million (\$2.33 million). This did more than raise eyebrows. According to a press officer from the British Embassy, police corruption and fraud were suspected of having caused the discrepancy. The police denied this and blamed the discrepancy (94 kilograms) on the wrapping materials used to carry the drugs.⁵⁴

Very soon additional claims were made, and figures reported by newspapers varied: A local paper reported that a Nairobi politician

with powerful connections in government was behind the entire Ksh 204 million (\$2.4 million) of heroin that had been seized. As reported in *The Standard*, “the politician was said to be under the protection of a well-connected activist and businesswoman.” Police appeared to have given up on arresting the politician, claiming that he owned the speedboats used to transfer the drugs from the high seas to his house.⁵⁵

Almost a week after the seizure and arrest of the five suspects, the police had not yet questioned the politician. His mobile phone had reportedly been in constant contact with one of the arrested suspects. The same politician was also linked to the house where the 102 kilograms of heroin had been netted in Mombasa. Police claimed that the politician enjoyed the protection of an official in the Ministry of Internal Security, who had blocked the police from interrogating him. According to a detective, “he [the politician] has been mentioned, but police fear calling him for interrogation. This haul does not belong to the six people who were caught with it.”⁵⁶

A police statement further claimed that drug barons were intimidating and attempting to bribe police officers investigating the heroin case. According to the police, the beneficiaries of the drug haul were using every means to discredit the police so that they could continue drug trafficking.⁵⁷ The national police spokesman issued a statement claiming, “some of them [those behind the haul] are boasting in public places saying that police are useless and have tried to compromise, demoralise, and intimidate officers pursuing the case.”⁵⁸

Some of the typical characteristics of Kenyan transnational organized crime that emerge from this heroin interception case appear to be the following:

- Criminal networks are multinational and operate internationally.
- They are powerful enough to intimidate and threaten police investigators.
- Top politicians are involved.
- Senior government officials work with criminal networks and shield them.
- Police are not up to the task of investigating top drug traffickers.

- Police corruption and fraud are continuously linked to investigations of transnational organized crime.

Public Responses to the Heroin Trade

Within Kenya the public response to the spread of heroin addiction has become more shrill and determined, particularly in coastal communities where the impact has been most severe. Protests, particularly from Muslim communities, have demanded stronger government action, more severe penalties, and action against corrupt police and government officials who have links with drug traffickers and shield them from prosecution. The police chief in the coastal city of Mombasa, who had, on a number of occasions, refused to meet with a Muslim women's organization to discuss their grievances about the lack of government action on drug abuse, soon changed his stance when hundreds of the women threatened to take to the streets and strip naked.⁵⁹ Women's organizations in Kenya had taken this extreme step before when, in 1992, they gathered in a park in Nairobi and stripped to protest the government's decision to imprison their sons for fighting to introduce multiparty politics. At the time this had a major impact on public opinion and increased pressure on government. The threat by women in Mombasa was therefore a real one, and a meeting with the police and government officials was arranged, with government promising stern action—a promise made on many previous occasions.

Public reaction against the surge in heroin abuse and heroin trafficking has been more vociferous than against cocaine trafficking because cocaine is more expensive, less addictive, and much less 'visible' and widely consumed in Kenya than is the case with heroin.

Cocaine Trafficking

The UNODC has traced the origins of the cocaine trade in East Africa back to networks from West Africa, which have been active in smuggling cocaine from Latin America to North America and Europe for many years. These networks' global trafficking routes change and are augmented continuously to keep law-enforcement agencies guessing and to remain a step ahead of them. They are out to keep the risk of international trafficking as low as possible. For heroin traffickers who source their product in Pakistan and Iran and target

North America and Europe, the location of East Africa makes it an ideal transit area. From there they can arrange for the heroin to be reshipped by sea or air to new destination countries with different couriers and through a multitude of transport routes. But it is not obvious why international cocaine traffickers, who source their cocaine from faraway Colombia, Peru, and other Latin American countries, have increasingly used East Africa as a transit area over the past twenty years.

The decline of the American cocaine market and the growth of demand in Europe are contributing factors. While the USA remains the single largest national cocaine market in the world, it has been in decline over the past thirty years, whereas the number of cocaine users in Europe has doubled over the past ten years. This means that the longer supply lines from Latin America to Europe have gained in importance compared to the ones that serve the USA, and that low-risk alternatives to the conventional sea and air routes from Latin America to Europe have had to be explored. This is one of the reasons why West Africa has become such a prominent drug-trafficking transit area. Between 2004 and 2007 the routes taken for cocaine to arrive in Europe changed and West Africa increasingly became a transit region en route to Europe.⁶⁰

In addition, during this same period, international law-enforcement collaboration had become more effective along the conventional air and sea routes to Europe. Overall interceptions increased, and seizures in 2008 were almost twice as high as in 1998. The risk for criminal networks was increasing.

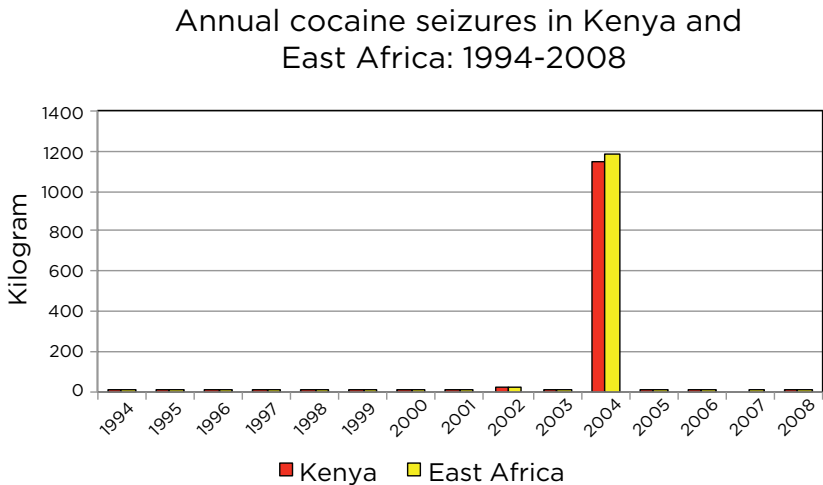
These are probably two of the reasons why West African drug traffickers began to explore East Africa as a transit region. What they would have found in Kenya is what any international organized-crime group would find attractive: a weak criminal justice system in which the public had little trust, an under-resourced and easily corrupted police force and judiciary, and a political elite in which some could be easily “bought” and politicians and senior government officials who protected each other enjoyed impunity from prosecution. In addition, Kenya had well-frequented international air- and seaports and well-functioning communication, transport, and banking infrastructures. Combined, these factors make Kenya an exceptionally attractive base

for international drug syndicates to operate from. That is presumably why West African international drug networks decided to make Kenya a base—the risk was low. The UNODC found that

West African networks, with their experience in cannabis and heroin smuggling, are actively networking in Latin America, and are responsible for the emergence of cocaine trafficking and abuse in eastern Africa.... Unfortunately, the situation has been worsening in the last 10-15 years.⁶¹

The exact volumes of cocaine that are being trafficked are not known. Again, seizure figures are not an indication of the actual cocaine flows. In East Africa, seizures are so negligible that they are meaningless and can be ignored for the purpose of assessing or estimating cocaine flows. The following chart reflects the almost farcical pattern of seizures in Kenya and East Africa. The sudden spike in 2004 accounts for two large, related seizures made in the coastal town of Malindi (837.5 kilograms) and in Nairobi (304 kilograms).

Figure 3. Annual cocaine seizures in Kenya and East Africa, 1994-2008.⁶²



The fact that for some years the seizure figures are not visible on the above chart is indicative of how small these seizures were. The table below presents the actual figures as reported to the UNODC.

Table 2. Annual cocaine seizures (kg) in Kenya and East Africa, 1994-2008.

Year	Kenya	East Africa
1994	0.065	0.065
1995	0.422	0.420
1996	3.440	11.260
1997	0.410	0.610
1998	1.240	1.240
1999	0.110	1.683
2000	4.017	8.030
2001	0.207	7.596
2002	18.584	25.045
2003	3.930	5.657
2004	1,142.795	1,177.424
2005	10.467	12.238
2006	10.768	17.048
2007	No Report	9.600
2008	2.000	5.496
Total (kg)	1,198.464	1,283.412

The East African region has reported the lowest annual seizure figures in Africa over the past fifteen years. West and Central Africa (dealt with as one region by the UNODC) recorded the highest seizures of UNODC’s four African regions between 1994 and 2008 with 11,883 kilograms. North Africa followed with 7,535 kilograms, Southern Africa with 6,099 kilograms, and lastly East Africa with a total of 1,283 kilograms. The UNODC noted that seizures of drugs in East Africa were

comparatively few and do not reflect the extent of trafficking, availability and growing abuse in the region... The low seizure figures are more an indication that few resources are allocated to drug control and that international border controls are weak

than a sign that no drugs are being trafficked through the region.⁶³

Drug Lords and Criminal Networks Involved

There is much speculation within Kenya about the identity of the drug lords, syndicate leaders, or crime bosses⁶⁴ who run the cocaine trafficking into and through Kenya. The inability of the Kenyan police and the criminal justice system to successfully investigate and prosecute the leaders of some of these drug syndicates partly explains the lack of information in this regard. Local media reports frequently suggest that politicians, senior government officials, and some top businessmen are deeply involved. The available evidence certainly justifies such inferences. But it also appears that the key functions of sourcing the drugs in Latin America and smuggling them through a multitude of countries to the eventual markets are undertaken largely by West African drug networks, with relatively few Kenyans involved at that level of international cocaine procurement and trafficking.

The fact that West African networks are more successful than their Kenyan counterparts in operating below the radar does not mean that the former are not highly active in East Africa. Most of the East African criminal networks just do not have the same access to international drug networks and contacts as West African networks have. What is therefore likely is that West African networks in Kenya are responsible for most of the sourcing of cocaine. While some Kenyan networks also source the drugs, Kenyans play a crucial role in arranging for clearance through ports, transport, and storage, and identifying couriers for onward shipment. West African networks have made significant inroads into the Kenyan criminal world by recruiting a multitude of actors into their ranks for these ends, albeit not always into the top leadership. The roles of these Kenyans vary from street-level distribution of the drugs, transporting the cocaine from Latin America to Kenya and from Kenya to other destinations as couriers or mules, and acting as political protectors who provide access to the elites. This enables drug traffickers, whether Kenyan or otherwise, to also benefit from the impunity that most politicians and senior government officials enjoy.

Some Kenyan drug lords have established their own international

trafficking contacts and routes, but the fact that more is heard and read about them does not mean that they rival the activities of the West African networks operating from Kenya. Not much is heard or read about the West African networks because they are often more skilled in their trade and therefore make fewer mistakes that would attract the attention of authorities or the media.

Giving credence to the suggestion that West African drug networks continue to play a prominent role in Kenya are intelligence reports that have focused on some of the leading drug cartels operating in that country. Sources have identified at least ten major drug cartels or criminal networks in Kenya that are responsible for the bulk of cocaine and heroin trafficked into and through the country.⁶⁵ These are loose networks that each carry on their trade without interfering with other networks in the drug business. They collaborate from time to time when, for example, it comes to sourcing the cocaine from suppliers in Latin America, or when they need to identify advantageous trafficking routes. They might also compete for markets and for access to political power, to the police, and to government officials.

According to intelligence sources, most of the bosses of the international drug networks in Kenya are West African nationals, mainly Nigerian. They operate from Nairobi, Mombasa, and towns such as Malindi. The leader of a drug trafficking network tends to be a powerful and experienced entrepreneur with a strong personality and an extensive network of international contacts ready and able to assist with trafficking tasks. These transnational criminal groups tend not to have a fixed hierarchical organizational structure, as tasks and responsibilities are allocated to different members of the network depending on the type of activity that is being undertaken at any given time. Key to the success of the drug networks is the trust between those members who are relied upon to successfully undertake high-risk trafficking operations. The head of the network will also allocate tasks depending on which members of his network he trusts for that particular task.

The sizes of these groups vary, but in Kenya those who collaborate closely and who form the core of the networks normally number between ten and twenty persons.⁶⁶ There will often be additional

members or associates linked to the network, but they would not necessarily form part of the boss's inner circle. The associates undertake functions already mentioned, such as transport, storage, and protection, including political protection. Those providing political protection are politicians and persons close to power, who are recruited to be so-called agents of influence or access and not necessarily to be part of the inner workings of the group. The Kenyan agents of influence or access tend to be influential Kenyans in politics, government departments, police services, judicial institutions, and business, who are bribed and corrupted with large sums of money to remain close to the drug network concerned and to provide political protection and information from government departments that could be useful or that could warn of impending risks. They are among the termites that are eating away at the foundations of Kenya. They are the ones that are key contributors to the rot that has developed in some areas of Kenya's governance institutions, including the criminal justice system. They are also the ones who accept money from drug bosses to finance election campaigns in order to provide access to Parliament and government. These Kenyans in top positions are seldom involved with specialized drug-trafficking work such as the overseas procurement of drugs. To the drug kingpins they serve a different purpose, a very destructive one for Kenya. Their task is to contribute to keeping the risk for drug traffickers in Kenya low, and they can do this most effectively by influencing events and by providing information from within the government departments or political institutions in which they work. This is how networks penetrate state institutions. Drug lords buy their way into influential positions without themselves necessarily occupying such positions. They have proxies in place.

Not much information is available on the top international drug networks that import and redistribute drugs into and from Kenya. Brief profiles of five of them provide some information, albeit very sketchy.⁶⁷

Drug network 1

The leader of this network is a Nigerian national who carries a Ghanaian passport. He has links with Nigerian drug networks in Latin America. His associates in Latin America arrange for the transport of cocaine by air and sea to West Africa, where the cocaine is transported

to Kenya for further trans-shipment to the United States and Europe. However, he has more recently taken his own initiative by sending mules from Nairobi to Peru, Bolivia, and Brazil to source cocaine, which is then smuggled into Kenya via South Africa and Tanzania. In doing so, he has been known to assist couriers smuggling the cocaine into Kenya by providing them with fake diplomatic bags and documents.

Drug network 2

This criminal group specializes in smuggling cocaine and heroin into Kenya from Tanzania, through the Namanga border. Its boss is a Nigerian national. Most of the drugs are then trafficked further from Kenya to the United States and Europe on flights from Nairobi via Istanbul to the United Kingdom. At least five of his couriers have been arrested in countries such as Tanzania, the Seychelles, Turkey, and Kenya.

Drug network 3

This network focuses on sending drugs to Turkey and China. The leader is a Nigerian national with a Ghanaian passport.

Drug network 4

Not many details are available, but a Guinean national, who sometimes travels on a stolen Burundian passport, heads this group. Couriers for this network have been arrested in places such as China, Pakistan, and Hong Kong.

Drug network 5

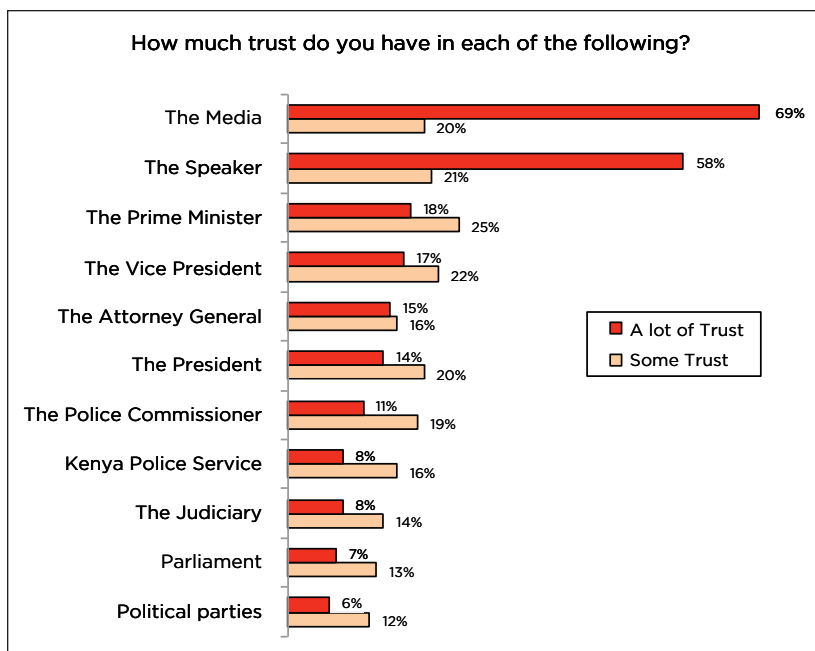
The leader of this network is in possession of passports from the Ivory Coast, Guinea, Liberia, and Sierra Leone. He is a Nigerian national who specializes in human as well as drug trafficking, tax evasion, and money laundering. The drug he focuses on is heroin, which is smuggled from Pakistan through Uganda to Kenya and then on to Europe. He has recently also become involved in smuggling ephedrine to South Africa for use in the manufacture of the synthetic drug Methamphetamine. Couriers for his network have been arrested as far away as Hong Kong.

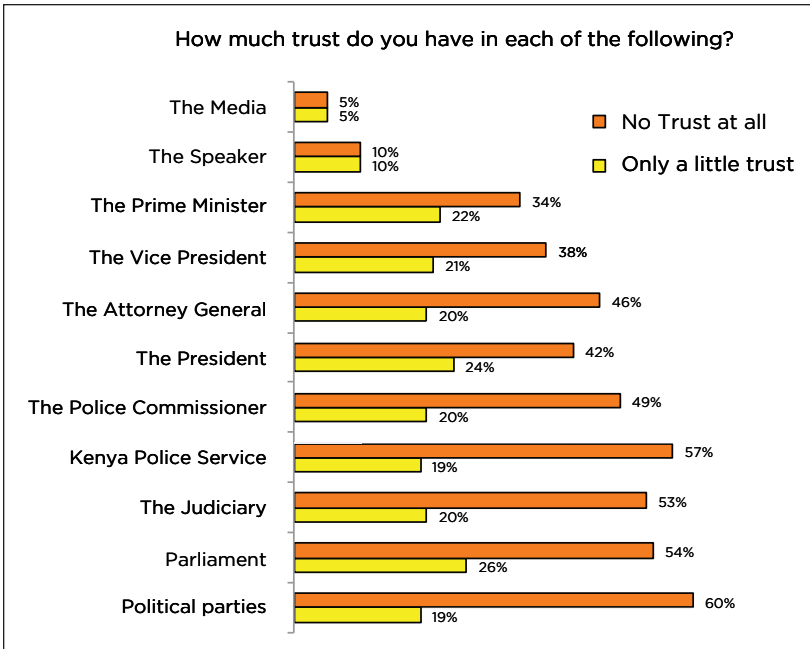
Impact of Drug Trafficking

Statistics on drug trafficking and information about the makeup of the drug networks do not even begin to reflect how their activities impact on the social and political life of Kenya. Statistics do not explain how drug trafficking manifests itself in the ordinary lives of citizens. The impact has been severe.

Ongoing allegations that politicians, police officers, and other government officials in positions of trust are involved in drug trafficking, without any of them being successfully investigated or prosecuted, have contributed significantly to the alarmingly low levels of public trust in politicians and government institutions, which are illustrated in the survey results below. Although the exact statistics reflected in this chart ought to be treated with caution, they serve as useful indicators. The survey was undertaken by Synovate Research in Kenya and was based on a sample of 2,005 Kenyans aged 18 years and above. It was undertaken in July 2009 by way of computer-assisted telephone interviews and

Figure 4. Survey on trust in Kenyan people and institutions





published in *The Standard* on Sunday of July 19, 2009.⁶⁸

These are indeed results that should be of serious concern. They do not appear to have dampened the resolve of the political elite to continue operating with impunity in a corruption-ridden environment. Media reports of wide-scale involvement by politicians in drug trafficking are frequent and, for a long time, did not appear to evoke much interest or response. It was as though sleaze and corruption had become part of an accepted “Kenyan way of life.” For example, a 2009 front-page headline in a Kenyan weekly paper proclaiming “15 MPs Linked to Drug Cartel” did not cause the slightest ripple.⁶⁹ At this time, the degree of intertwinement between politics and criminality appeared to be getting worse and letters in the media warned that Kenya was becoming a criminalized state. The one cause for hope that matters will improve is the adoption of a new constitution in 2010—a constitution that in many ways provides for more transparent appointment and governance processes. Even though it will take years for the new constitution to make its imprint on governance felt, it has provided many in civil society with renewed energy to hold government to account.

Illustrative Case 1

Drug trafficking: the penetration of politics and administration?

At the end of 2010, a combination of factors gave reason for hope that the government would take real steps against top suspected drug lords. On December 22, 2010, the minister for internal security caused a sensation by naming three members of Parliament, one assistant minister, and a prominent businessman as suspects under investigation for drug trafficking offences. These were unprecedented steps. For some there was new hope that government was at last starting to clamp down on drug trafficking while others were more cynical, predicting that the outcome would be no different from other high-profile investigations into corruption, namely, “no action taken.”

The surprising announcement by the minister was not the culmination of a government-initiated investigation—it was a consequence of domestic and international pressure on the government to reveal the content of a dossier that had been handed to the Kenya Anti-Corruption Commission by the US Embassy in Nairobi in November 2010. The dossier apparently contained details about major drug-trafficking syndicates in Kenya and implicated top politicians, businessmen, and other prominent Kenyans. The minister made his announcement a month after the dossier had been handed over, following a public outcry and demands to release the names of the suspects.

He informed Parliament that a police task force had been set up to investigate Members of Parliament Gideon Mbuvi, William Kabogo, and Hassan Joho in connection with alleged involvement in illicit drug trade. The three expressed their indignation and claimed innocence. In addition, the minister announced that Harun Mwau, an assistant minister for transport, and a well-known Mombasa tycoon, Ali Punjani, were also being investigated for drug trafficking. One of the suspects named by the minister, William Kabogo, proceeded to table documents in Parliament claiming they contained names of two additional members of Parliament, Eugene Mawalma and Simon Mbugua, as well as a wife to a “very senior person in the country.”⁷⁰ Kabogo insisted that these latter three names were also in the dossier received from the US

Embassy.

Two days later, on December 24, 2010, the *Daily Nation*, a prominent daily in Nairobi, published what it described as “explosive claims” contained in an “intelligence report” marked “secret” to which it had obtained access.⁷¹ The allegations contained in the *Daily Nation* were remarkably similar to many of those reported in another report also marked “secret”, which has been in the public domain and available on the internet.⁷² The report published on the internet appears to originate from the US Embassy in Nairobi, but no confirmation to this effect has yet been obtained.

Three “dossiers” on drug trafficking were therefore in circulation and under discussion in Kenya, but no one has been able to clarify whether these three documents are, in fact, identical and whether they constitute the dossier handed by the US Embassy to the Kenya Anti-Corruption Commission. The three dossiers were the following:

- The one that the US Embassy delivered to the Kenya Anti-Corruption Commission in November 2010, and which the minister of internal security had before him in Parliament when he named the suspects under investigation on December 21, 2010.
- The “intelligence report” marked “secret,” which the *Daily Nation* referred to in its article on December 24, 2010.
- The “drug dossier,” which is in the public domain and available on the internet.

It is instructive to refer in some detail to the allegations from the “intelligence report” as published in the *Daily Nation* on December 24, 2004. These allegations are far-reaching and provide the reader with a glimpse of what might well be the realities. Interestingly, many of the allegations reported by the *Daily Nation* also appear in the “drug dossier” report published on the internet.

- Sixteen well known Kenyans, among them national politicians, business magnates, senior police officers, a popular rapper, and a beauty queen, are deeply involved in the drug trade.
- Some of the people who run the drug trade in Kenya are serving or former members of Parliament.

- Politicians are named as key traffickers. To protect their illegal business, they have lured some senior police officers, officers from the anti-narcotics police unit and the National Security Intelligence Service (NSIS), and elements in the judiciary with bribes.
- It is estimated that during 2009, members of Parliament suspected of being drug lords "facilitated the importation of at least one shipment per week" through the port of Mombasa.
- The influence of drug barons is illustrated by an example, in which a member of Parliament allegedly influenced a senior police officer to have coastal drug dealers enlisted as police reservists. Three of the alleged associates of the member of Parliament were in prison, apparently having been unsuccessful in bribing a magistrate with one million Kenyan Shillings (\$12,267)⁷³ after they were arrested by a separate team of police officers.
- The hub of the drug trade is the port of Mombasa, where hard drugs—cocaine and heroin—are handled for the domestic and international markets.
- Prominent Kenyans have links with gunrunning, money laundering, and human trafficking.
- A senior government official is the "overlord" in the hierarchy of drug cartels and is referred to as "The Boss." He and his associates are described as "dangerous," and have been accused of contract killings targeting anybody investigating their businesses. "The Boss" is the head of an "unknown organization" that controls almost the entire narcotics trade in Kenya.
- A separate report tabled in Parliament linked the 2004 murder of Kenya Ports Authority Criminal Investigation Department chief Hassan Abdillahi to the drug trade at the coast. The secret reports formed part of the investigations ordered by the Kenya Police commissioner that the minister for internal security referred to when he spoke in Parliament on December 21, 2010.
- Most of the drug kingpins use family members as their main associates, because the illicit trade requires a lot of trust and loyalty. At times, they use their girlfriends and mistresses.
- Military vehicles have been used to ferry drugs in Nairobi.

- Containers belonging to drug traffickers were neither inspected nor was duty charged on them. An example is provided where a diligent customs officer seized a container suspected of containing drugs at a container freight station in 2008. A drug kingpin allegedly paid a bribe of one million Kenyan Shillings (\$15,450) to have the officer transferred. Fingers are pointed at the Kenya Revenue Authority.
- The report is current and detailed. For example, reference is made to the importation of drugs from Pakistan during September 2010, which were off-loaded at Shimoni from a vessel whose name is provided. The registration number of the vehicle into which the drugs were transferred and the name of the member of Parliament alleged to be its owner are given. It details drug-dealing activities for the last six years, naming Pakistan, India, and Afghanistan as source countries for the drugs, with Western Europe being the main destination.
- A suspected drug figure, who had featured prominently in the news in the recent past, had a house near the Eastleigh Air Force base, where drugs were allegedly processed and packaged. "Heroin was brought into the base by body-cavity couriers and was cut with unidentified chemicals, packaged using special machinery and shipped out of the base in military vehicles to other distribution sites," according to the report referred to in the *Daily Nation*.
- Military officers are suspected to have offered protection to the traffickers.
- A flight attendant from a local airline was also named as having met the traffickers at a pub in the city. In another case, a police officer of superintendent rank allegedly provided storage services for a drug cartel while he peddled drugs for the local market.
- A popular city restaurant, a star-rated hotel in the city center, and an airstrip at the coast are identified as bases controlled by traffickers.
- Referring to wealthy drug barons, the *Daily Nation* wrote: "They use their wealth and political leverage to facilitate the movement of narcotics. A number of officers assigned to the antinarcotics unit and members of the judiciary received regular payments from major narcotics traffickers."

- In another case, police confiscated a suspicious container carrying drugs hidden in a false bottom, but the investigation was stopped after the suspect, a member of Parliament, paid a bribe. The report provides registration numbers and names of vessels used for shipment, container numbers, and details, including registration numbers, of vehicles used to transport the drugs.

On December 24, the day on which the *Daily Nation* published the allegations based on an “intelligence report,” John Harun Mwau, the assistant minister for transport, resigned from his government position. Being arguably the most high-profile person of those named by the minister for internal security, it is appropriate to provide a brief insight into his career and past activities.

John Harun Mwau is regarded as one of the wealthiest men in Kenya. He is apparently in his late fifties or early sixties and came from a humble background. In his twenties he joined the police, exhibited shooting skills, and became a sniper. This enabled him to represent Kenya in several international shooting competitions abroad and gave him the opportunity to make several business contacts. Some maintain that “he also got an opportunity to make acquaintances with underworld figures.”⁷⁴ After his spell in the police, he kept a low profile for a number of years before emerging again as a major importer of electronics from the Middle East and Europe. In 1992 he unsuccessfully stood as a presidential candidate. In 2002 he was soundly beaten in his bid to be elected to Parliament even though he allegedly spent millions of Kenyan Shillings per day on his campaign over a period of about a month. This was apparently the first time in Kenya’s election history that a candidate used a satellite phone to communicate with a helicopter hovering above at rallies and meetings. He has been publicly linked to gunrunning for years, and his political enemies have often said that he deals in drugs, without providing any proof.⁷⁵ In a later newspaper interview, Mwau stated: “I am aware of people saying that my riches came from selling drugs. Others attribute my success to corruption. But one thing that I like telling Kenyans is that Mwau’s name is pure clean.”⁷⁶

A former head of Kenya’s anti-corruption body, he was appointed as an assistant minister for transport in April 2008 for the Orange Democratic Movement (ODM) coalition party, which had put his name forward. There are allegations that Mwau contributed significant amounts of money to the 2007 presidential campaign of the ODM leader

and current prime minister.⁷⁷ Prior to that, he and two other suspects under investigation⁷⁸ allegedly provided large sums of money to the election coffers of the PNU, headed by the current president. As assistant minister for transport, Mwau was apparently responsible for the Kenya Ports Authority (KPA), which controls all ports of entry and inland container terminals in Kenya. This may well have enabled Mwau to control shipments entering Kenya. Mwau had also been contracted by the government over many years to operate an inland container depot at Athi River in the outskirts of Nairobi, known as the Pepe Container Freight Station.⁷⁹ This depot was in the news in 2004 when a large consignment of cocaine was cleared from the depot. The manager of the depot was charged for drug trafficking but was acquitted for lack of evidence.

The police investigation into the allegations against the suspects named by the minister lasted a mere six weeks. At the end of January 2011, a 300-page preliminary report by the special police investigation team reported that they had been unable to find sufficient evidence to prosecute the three members of Parliament, Mr. John Harun Mwau, and businessman Ali Punjani. The team reported, among other things, that witnesses were unwilling to give evidence against drug barons for fear of being killed.

The US ambassador in Kenya downplayed the findings of the report, stating that investigations were ongoing and that “the US received a request for assistance and that was met with a positive reaction.”⁸⁰

The three members of Parliament and the assistant minister for transport were not the only politicians who were being fingered by the police about drug trafficking at the end of 2010. On December 23, 2010, the minister for internal security announced that another member of Parliament, Gideon “Sonko” Mbuvi, was being investigated by police for possible links to drug trafficking.⁸¹ He spent some days in a police cell on charges of fraud, but was released on bail.

In June 2011, the police, by way of an affidavit signed by a senior officer, cleared Mwau of any links to drug trafficking or other criminal activities. According to the senior deputy commissioner of police, “no evidence had been made available to the police on the MP’s involvement in crime or smuggling activities.”⁸²

Following a number of arrests of couriers smuggling cocaine from Kenya at British airports, the British minister of state responsible for counterterrorism and narcotics described Kenya as a major transit point for drugs destined for Europe and America. This followed the arrest of a Kenya Air steward at Heathrow airport with 7.5 kilograms of cocaine only a few days after a Greek diplomat posted to Kenya had been arrested and charged with trafficking cocaine.⁸³ Many other incidents of drug couriers coming to or flowing from Kenya and being arrested in different parts of the world could be listed here. At least 200 Kenyans are serving jail sentences around the world as a result of drug trafficking. Many instances of police complicity with drug traffickers could also be cited. Hardly any successful prosecutions of significant traffickers have been reported. In the most notorious case, when a record 1.1 tons of cocaine were seized in 2004, police are said to have removed crucial evidence from a prosecution file leading to the acquittal of the suspects. Prior to that, Kenyan authorities, who had been tipped off on the exact locations of several tons of cocaine, hesitated to take action for nearly a week, allowing some of the drugs to be removed and suspects to escape. The frustrated magistrate, who had to preside over one of the two related cases, dismissed the charges for lack of evidence. She accused legal and law-enforcement authorities of conducting shoddy investigations. According to US cables from its Embassy in Nairobi published by WikiLeaks, these shoddy investigations were deliberate, to get the main suspect off the hook. Those prosecuted were mere scapegoats as the “big boys,” including a then-powerful minister in the Kibaki administration, enjoyed immunity.⁸⁴ A compromised, corruption-riddled criminal justice system in action.

In comparison with the inability or unwillingness to prosecute those involved in large-scale international drug trafficking, the relatively small-time traffickers in *bhang* are dealt with differently. The very harsh sentences sometimes imposed on them leaves the impression that the lack of success in bringing to book the powerful operators is sometimes compensated for by using a sledgehammer against smaller ones. For example, in September 2009 two men received life sentences for trafficking 319 kilograms of *bhang* worth 300,000 Kenya Shillings (\$3,778) in their car from Kisumu to Nairobi.⁸⁵

The Somali Factor

There is one significant factor, which exacerbates Kenya's vulnerability for cross-border drug trafficking and over which it has very little control: neighboring Somalia is experiencing ongoing instability and conflict with no effective government in charge. Kenya shares a 682-kilometer border with Somalia, which runs through an inhospitable and sparsely populated semi-arid part of East Africa. It would be unreasonable to expect Kenya to secure this border effectively against cross-border crime. It does not have the resources, and even with substantially more resources, it would be virtually impossible. What complicates effective border control and security is that Somalis with ethnic and clan links live on both sides of the artificial border drawn by colonial powers.

Kenya hosts one of the largest Somali communities outside Somalia and strong networks bind Kenyans of Somali origin and Somalis living in Somalia. Drug and commodity smugglers, as well as members of al-Shabaab, a militant Somali insurgent group with links to al-Qaida, travel with relative freedom from inside Somalia to Nairobi and back. The United Nations Monitoring Group on Somalia found that al-Shabaab members had a support network available in Kenya consisting of, among others, "wealthy-clerics-cum-businessmen."⁸⁶ The family of a chief financier of al-Shabaab lives in the Kenyan provincial capital of Garissa, and he regularly shuttles between Garissa and his Somali abodes.⁸⁷ If such abodes and networks are in place to support al-Shabaab, there can be little doubt that far more extensive support networks exist for criminal networks in Kenya to facilitate their cross-border crimes, including trafficking in drugs and humans.

Recent reports indicate that in strife-torn Somalia, militia groups have started to profit from drug trafficking. Al-Shabaab has reportedly become involved in the *miraa* trade and is increasingly benefiting from it.⁸⁸

The main port in southern Somalia is in Kismaayo, a town that is under the full control of al-Shabaab. It is a major logistical hub. Al-Shabaab receives its supplies through Kismaayo port and uses it as a source of revenue.⁸⁹ It is therefore not surprising that Kismaayo is also

used to import drugs that are smuggled into Kenya. Cocaine from South America and heroin from Asia's Golden Crescent and Golden Triangle are smuggled through Kismaayo and Bosaso ports, and transported as a sugar or rice aboard trucks through Liboi, Wajirbor, Biamadho, Elwak, Mandera, Habaswein, and Modogashe into Kenya.⁹⁰ Professional lawyers, accountants and managers are employed to invest drug moneys in Kenya. Drug trafficking networks from Kenya pay millions of Kenyan Shillings in protection fees to militias in Somalia, to allow for the unhindered passage of drugs through the Somali areas that they control. Organized crime networks in East Africa are therefore increasingly interacting with networks that form part of Somali militias and that have links to terrorism.

Somali-linked drug traffickers also import second-hand vehicles from the United Arab Emirates with drugs stuffed into the bodywork. These vehicles are shipped into Kenya through the port of Mombasa before the drugs are removed and repackaged for onward shipping to Europe. These drug syndicates employ professional managers, accountants, and lawyers to assist with their smuggling activities. Cross-border smuggling activities go far beyond narcotics and include a wide range of illicit commodities, as described in the following chapter.

Chapter Two

Illicit Trade in Counterfeit Goods and Other Commodities

Experts attempting to understand the global expansion of the trade in counterfeit products claim that Kenya was one of the first countries to be affected. A bogus insecticide sold to farmers in central Kenya virtually destroyed the country's coffee industry in 1979.¹ Since then, the country has been awash with inferior replicas of popular brands, seriously undermining the domestic economy. In his book *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy*, Moises Naim defines illicit trade as “a trade that infringes the rules—the laws, regulations, licenses, taxation system, embargoes and all the procedures that countries use to organize trade, protect their citizens, raise the standard of living and enforce codes of ethics.”²

Counterfeiting inevitably involves an infringement of intellectual property and trademark rights. And illicit trading practices break the rules of legitimate trade and commerce, deny consumers quality products, rob the government of funds for essential public services, and undermine good governance by feeding a culture of illegality that supports organized crime and even terrorism.³

Counterfeit goods available in Kenya are either manufactured in its backstreet factories or simply imported from Asia and the Middle East and smuggled into the country. Imports are often earmarked as transit goods on their way to destinations in Uganda, Democratic Republic of Congo, Rwanda, Burundi, or Tanzania but are then diverted to destinations within Kenya. Locally produced, inferior counterfeit goods are exported but then smuggled back without declaring them in order to avoid paying duties.

Public discussion about the massive illicit economy is muted because of the power and the patronage wielded by the networks involved in this business in East Africa, some of whom are highly placed in government. President Kibaki has encouraged a more open debate on the problem: "Illicit trade is a big problem in all the five member states of [the] East African Community, therefore we cannot pretend that we are not aware of this problem, it is now upon us to find a solution to it."⁴

Kenya is the biggest market for counterfeit goods and contraband in East Africa, largely because it has the biggest economy in which goods move fast. China and India are the key sources of counterfeit goods destined for the East African region. According to a senior Kenya Bureau of Standards (KEBS) official, "production costs in China are low and when the subsequent goods get into the country, no taxes are paid on them because of diversion."⁵

Corruption, weak administrative as well as legal regimes, and disparate tax systems (excise and import duties) in the East African Community have contributed significantly to the flow of contraband in the past. The recent introduction of a fully-fledged East African Customs Union will reduce some opportunities for cross-border smuggling, but probably open others. On January 10, 2010 the East African Community (EAC) started implementing the customs union in which goods originating from within the union attract no import tariff between EAC states (Burundi, Kenya, Rwanda, Tanzania, and Uganda).⁶ This opens up a single market with a \$75.4 billion gross domestic product and a population of 133.5 million people. Tanzanian traders, who in the past smuggled sugar into Kenya, where it fetched higher prices, will now be able to do so legally, provided the sugar originated from within Tanzania. This is not likely to be the case with illicit networks that smuggle cigarettes into Uganda, where taxes and duties are higher than in Kenya. According to the Kenya National Chamber of Commerce and Industry, these networks of smugglers target fast-moving and highly-profitable goods that include sugar, vehicles, electronics, pharmaceuticals, cigarettes, batteries, ball pointed pens, and cosmetics. When the import documents get to the border, they get stamped to indicate goods have crossed the border, but in fact the goods are diverted back into the country.⁷

The exact impact of smuggling and illegal trading in counterfeits on the Kenyan economy is difficult to quantify, as a number of widely varying estimates have been made about the size of the illicit economy and of the losses that the private sector and governments suffer as a result. Despite the wide variations, the figures point to a serious and damaging impact on Kenya's private sector and on government revenue. A few indicators illustrate the extent of the problem.

- Counterfeit trading in the East African Community now has an estimated annual market share of Ksh 180 billion (\$2.21 billion).⁸
- In Kenya the counterfeit industry is worth Ksh 70 billion (\$913.8 million), rivaling key foreign exchange earners tourism and tea and coffee.⁹
- The Kenya Institute for Public Policy Research and Analysis (KIPPRA) estimates that Kenya loses about Ksh 40 billion (\$490.7 million) in revenue every year as a result of counterfeiting.¹⁰ Figures originating from the Kenya Revenue Authority (KRA) are not as high, but they remain significant. According to the KRA, counterfeiting costs the government of Kenya Ksh 6 billion (\$84 million) in lost revenue annually (2007).¹¹
- The Kenya Association of Manufacturers, whose members are the ones directly affected by illicit trade in counterfeit goods, has estimated that manufacturers incur an annual net loss of Ksh 30 billion (\$368 million).¹²
- Eighty percent of all malaria drugs in the Kenyan market are counterfeits and therefore harmful to users.¹³
- Between 5 percent and 12 percent of Kenya's and Uganda's trade is illicit.¹⁴
- An estimated 10,000 bags of sugar are smuggled into Kenya from Somalia every day, enriching Somali warlords and probably benefiting the militia group al-Shabaab.¹⁵
- Twenty-five percent of cigarettes smoked in the East African region are illicit, meaning that governments lose \$100 million in taxes.¹⁶
- In 2010, the Kenya Revenue Authority seized two 40-foot

containers holding cigarettes with a tax liability of over Ksh 50 million (\$615,400).¹⁷

- The Kenya Association of the Pharmaceutical Industry estimates that counterfeit drugs account for Ksh 8 billion (\$130 million) in sales annually.¹⁸
- Software piracy cost Kenya \$31 million in 2008.¹⁹

Routes

The long porous borders that Kenya has with Somalia, Uganda, and Tanzania (across Lake Victoria) provide low-risk opportunities for counterfeit smugglers and those engaged in illicit trade. Smuggling takes place by sea, across Lake Victoria, and through inland exit points (both official and unofficial). The most frequented smuggling points in Kenya are the coastal settlements of Vanga, Lunga Lungu, Ghala Island, Kinondo, Gazi, Bodo, Majoreni, Mokowe, Lamu, Takaungu, Kipini, Kiunga, Kiwayu, and Mombasa Old Port. But the modern Port of Mombasa remains the preferred route for smugglers.²⁰

Illustrative Case 2

Ocean freight container traffic

Ocean freight containers move approximately 90 percent of today's non-bulk cargo worldwide. The vast majority of them are never subjected to scrutiny even though it is common knowledge that some containers are used to smuggle contraband. The numbers are simply too large. For both the licit and illicit economy the effective management of container transport is essential for their profitability. For the licit economy, investment in modern container facilities, a user-friendly regulatory framework, and close cooperation between the private sector and the state is essential. The criminal networks that feed the illicit economy benefit from such investments, but they go one step further. They need to bribe and corrupt their way into the management and operations of container facilities and clearing points to ensure that customs officials do not interfere with those containers transporting contraband. Even better for organized crime would be the ability to officially manage aspects of the container transport business through front companies.²¹

Mombasa is the busiest seaport between Djibouti and Durban and second only to Durban in terms of the volume that it handles along Africa's east coast. Its strategic position makes it key to both licit and illicit trade within eastern and central Africa, and even with Sudan and Ethiopia. It handles approximately 620,000 containers in a year, an average of 1,700 a day. A recent World Bank report indicated that the port has experienced a growth of over 10 percent per year for containerized cargo volumes since 2005.²²

The port is also a hive of activity for smugglers and organized crime networks.

Mombasa port is like a tunnel. All illicit business happens here and it is controlled by traders supported by customs personnel and powerful people in government. Whoever controls the port controls the illicit business in Kenya.²³

The 2006–2007 report of Kenya's controller and auditor general noted that the Kenya Revenue Authority could have lost more than Ksh 2 billion (\$26 million) in revenue as a result of tax evasions at the port.²⁴ Examination of records maintained by seven customs bonded warehouses in Mombasa disclosed missing goods worth Ksh 679 million (\$8.83 million). The report also adds that the Kenya Revenue Authority lost more than Ksh 56 million (\$726,000) to suspected diversions of transit vehicles and other goods into the domestic market.

To ease the congestion in Mombasa port the government established an inland container depot in Nairobi as well as a number of container freight stations in the Mombasa area. According to police reports, Mombasa port and some privately-owned container freight stations have facilitated drug trafficking.²⁵

The main inland container depot is the Pepe Container Freight Station near Nairobi. According to the police, Mr. John Harun Mwau, the former assistant minister for transport who resigned after it was announced that he was being investigated for drug trafficking, is the chairman of the Pepe container depot.²⁶ Following his appointment as assistant minister in 2008, he appears to have been responsible for Kenya's container transport arrangements.

On June 27, 2010, a National Security Intelligence Service officer, Ali About, was shot dead by suspected hit men linked to drug barons as he returned to his home in Mombasa.²⁷ He had apparently obtained

information about the activities of Mombasa-based drug barons. It is therefore understandable that there are widespread fears among the general population along the Kenya coast about the power and ruthlessness of drug barons.

According to the *Daily Nation* of December 24, 2010, the “intelligence report” on which the newspaper article was based alleged that container freight stations were registered and established by drug barons to facilitate the trade. Quoting from the “intelligence report,” the newspaper reported: “Police operations were often compromised as investigators received little support from their superiors when attempting to conduct searches of premises or individuals connected to leading traffickers.”²⁸ Furthermore, senior officers intervened on behalf of suspects to secure the release of associates arrested, and also disclosed the identity of undercover officers to traffickers. In 2009, a Kenya Revenue Authority official based in Mombasa was arrested for fraud. He owned a home in Mombasa for which he had apparently paid Ksh 30 million (\$382,000) in cash. The magistrate who initially presided over the case was soon transferred without being told what the reason for the transfer was, and a new magistrate was appointed to continue with the case. The KRA official was allowed to continue in his job.

The Kenya Anti-Corruption Commission (KACC) has been investigating a crime syndicate that is involved in tax evasion at Mombasa port. According to KACC, syndicate members include clearing agents, importers, and customs officials. Taxes are lost through import values being understated, documents being falsified, and the Kenya Revenue Authority online computer system being tampered with. A KACC spokesperson confirmed: “KRA customs officials, who are supposed to ensure that the correct tax is paid, are instead helping importers avoid paying duty.”²⁹

Transnational criminal networks with connections in many parts of the world have exploited the weaknesses and inability of government to control activities in the container harbors, and have been collaborating with corrupt officials to facilitate smuggling and trafficking through Mombasa. An assessment by Transparency International concluded:

We found out that corruption at the port is seamless across departments and organizations. Thus, it is best to deal with it holistically. All players at the port of Mombasa must be directly involved in the fight against the vice.³⁰

One of the members of Parliament investigated for drug trafficking, Mr. Hassan Joho, represents a coastal constituency in Parliament. He has wide business interests and his business associates and partners include persons with contacts at the highest political levels. An example is Mary Wambui, a well-known businesswoman and a former political activist and campaigner for President Kibaki. It is well known that, among others, she has been involved in import-export business activities as well as procurement deals relating to the military, but it is not clear what business interests she shares with Hassan Joho. There has been no suggestion that she is involved in drug trafficking, to which Mr. Joho has been linked. Mary Wambui has occasionally been observed at the Mombasa container freight station where she has referred to herself as “Wambui Wamnene” (“Wambui of the Big Man”). The media and people in Nyeri, the town where she has a home, have frequently referred to her as President Kibaki’s second wife, something he has emphatically denied. She is also alleged to have very close links with top police officers and it is public knowledge that she associated with two well-known criminals who were deported from Kenya, the so-called Artur brothers, who were allegedly from Armenia. Mary Wambui’s daughter is purportedly engaged to one of the brothers.³¹

An intricate network of contacts therefore exists, made up of influential figures in politics, the business sector, government administration, and those linked to organized crime.

Some of Kenya’s airports, for example, the Eldoret International Airport, are also notorious for the smuggling and trafficking of illicit goods. This airport, which has been temporarily closed by Kenyan authorities on two occasions when smuggling activities became too brazen, has been a well-known entry point for counterfeit medicines, watches, and textile products flown in from the Middle East and involving criminal networks with links to many countries outside Kenya. For example, Kenyans of Somali origin and Somalis living in Kenya reportedly play prominent roles in these criminal networks.

According to the Pharmacy and Poisons Board of Kenya, Eldoret airport “is being used as an entry point for counterfeit pharmaceuticals.”³² From Eldoret the contraband is transported to where the main criminal markets operate in Kenya.

The epicentre of the operation in which importers bring in items ranging from top-of-the-line household goods to vehicle spare parts – all tax free – is Eastleigh, the bustling business centre just east of Nairobi's central business district that has become notorious for illicit trade and huge cash transfers. Goods ordered online from Dubai, China, Turkey, India and Singapore are flown into the underutilised Eldoret International Airport and ferried to Nairobi by road. Some of these duty free goods enter Kenya through Wajir airport, which the government recently upgraded to international status, our investigations show. Eldoret airport, for long considered a hotbed of corruption, was temporarily closed by the Narc government when it came to power in 2003. It was quietly reopened and, since then, it has been business as usual.³³

Networks

Smuggling and trafficking in counterfeit goods is undertaken by networks of small-scale traders as well as by established criminal networks powerful enough to compromise senior figures in government, the police, the judiciary, and customs and administrative officials. The larger and more powerful networks tend to establish and then control their own turf area. They include the following:

Northern Kenya/Somali Network

This network operates both in northern Kenya and in Somalia and is allegedly controlled by Sheikh Hassan Abdullah Hersi al-Turki, a leader and financial manager of al-Shabaab, the Somali militia group that seeks to topple the Somali provisional government.³⁴ al-Turki was listed by the United Nations as being associated with al-Qaida, Osama bin Laden, or the Taliban and for participating in, among others, the financing of activities in support of al-Qaida.³⁵ Al-Turki appears to have a Kenyan identity card and members of his family apparently reside in Garissa, the provincial capital of the North Eastern Province of Kenya.³⁶ This should not surprise anyone as the United Nations Monitoring Group on Somalia found that “members of Shabaab and Hizbul Islam travel with relative freedom to and from Nairobi, where they raise funds, engage in recruitment, and obtain treatment for wounded fighters.”³⁷

The network he is linked to runs the counterfeiting business in northern Kenya and parts of Somalia. It includes some of al-Shabaab's top officials and several Somali powerbrokers, who pay protection fees to authorities.

They also smuggle thousands of tons of sugar and electronic goods through the Somali port of Kismaayo into Kenya through the Kenyan towns of Wajir, Mandera, El Wak, Daadab, Modogashe, and Habaswein, as well as through other trading centers across the North Eastern Province. The sugar is sourced in Pakistan, Brazil, and Dubai. From the Kismaayo port it is transported to the Somali frontier areas of Geriley, Doble, Diff, and Dadaja Bula for further transport into Kenya with big trucks and with Somali four-wheel-drive vehicles. Most of the illicit goods move at night, to evade KEBS inspection points, which operate between 8 am and 5 pm.

The network communicates by satellite phones and VHF radios. Some of the sugar smuggled into Kenya finds its way into Tanzania, Uganda, and the Democratic Republic of Congo. It is often barely concealed. In Leheni, a few kilometers from Wajir and along the way to Garissa, it is sold in the open.

In a bid to avoid detection of funds that flow through the banking system, this cross-border network avoids banks and relies on the age-old, informal *hawala* money transfer system. There are premises in the Kenyan town of Wajir, for example, which are disguised as a cybercafé and through which *hawala* transactions take place.

The network of personal and clan contacts that this smuggling group utilizes is powerful and influential enough to isolate those who might be seen to interfere with the illicit activities of the criminal group. For example, a well-known politician in Wajir town has faced ongoing harassment from senior police officers after he gave an interview to the media about the illicit business of the network. "I have been told to shut up or they will get me. I have not had peace since," he said, referring to the publication of a newspaper article in which he complained about pervasive smuggling.³⁸ Senior police officers also played a questionable role in an incident that occurred in August 2011 near the northern Kenyan town of Isiolo. Five junior Criminal Investigation Department (CID) officers impounded a truck with

more than four hundred bags of contraband sugar at a roadblock when some of their senior officers arrived and ordered them to release the truck. The junior officers had been tipped off that the truck was carrying contraband goods from Somalia, including ammunition wrapped in a sack. They were ordered off the truck by their seniors and pulled aside for “questioning.”³⁹

Mombasa Smuggling Network

In Mombasa, a cabal of well-connected businesspeople and top politicians has affected very strong influence on business at the port. This is a close-knit network, unlike the many loose networks that operate in Nairobi. A wealthy Mombasa businessman, who has allegedly provided ample funds to election campaigns for politicians, is said to control the smuggling operations at the Mombasa container depot. The network is connected to prominent manufacturers as well as to powerful members of two clans in Wajir, Mandera, and Garissa districts.⁴⁰

Nairobi Networks

In Nairobi, a number of criminal networks involving Kenyans who collude with Pakistanis, Indians, Koreans, Chinese, and Ugandans are linked to smuggling in counterfeits and to illegal trading. These networks are fluid and flexible, depending on the convenience and the nature of the deal.

Networks Linked to the Administration

Among the smuggling networks operating both in Mombasa and Nairobi are those with strong links to senior government officials in a number of government departments. They control networks drawing on police, customs and immigration officials, and clearing and forwarding agents, among others. Some of the criminal networks that smuggle with counterfeit and illicit goods use the Pepe Container Service Station near Nairobi to clear their goods. Some of these goods are allegedly channeled to two large and well-known countrywide supermarket chains.⁴¹ According to a senior KEBS official “there’s a lot of malpractice here.”⁴²

A further recent development has been a move by smuggling networks to operate foreign exchange (forex) bureaus.⁴³ The chief

executive officer of a well-known Kenyan manufacturing company, Haco Industries, commented: “Don’t underestimate the counterfeit networks. Now they have gone to forex bureaus. Most of them are now big owners of forex bureaus. We know who they are and where they are.”⁴⁴ Haco Industries loses Ksh 100 million (\$1.23 million) every year as a result of counterfeit goods on the market while dry cell manufacturer Eveready, which lost 70 percent of its business to fake products, had no option but to close down some of its production lines and lay off workers during 2009. Other hard-hit companies include Sara Lee, Union Locks, Singer, and winemaker UDV.⁴⁵

Factors That Exacerbate Smuggling of Illicit Commodities

Key factors that facilitate illicit trade in Kenya and the East Africa region are the high levels of corruption, political patronage, and impunity that exist. However, there are some additional factors that play a role.

First, the authorities lack the capacity to distinguish between genuine articles and fake or counterfeit goods. According to the Kenya Police, “it requires special expertise which is not readily available to differentiate between counterfeits and genuine drugs. But we are developing strategies to fight the menace.... There is too much cover up meaning there is a ready market.”⁴⁶

Second, national anti-counterfeit laws vary and are sometimes in conflict with each other. While the East African Community countries have developed anti-counterfeiting legislation, those laws that relate to specific sectors, such as patents and trademarks, are often widely dissimilar. Initiatives are underway to synchronize these pieces of legislation before drafting a regional anti-counterfeit law. “We have put the cart before the horse. Let’s harmonize intellectual laws across the region before we rush to talk about the East Africa anti-counterfeiting law.”⁴⁷

Third, the wide differentials in the excise tax rates across the region have increased tax evasion and avoidance in countries like Uganda where excise tax rates are high on cigarettes. A comparison of the excise tax with the retail selling price (tax incidence measured by the ratio of excise tax to the retail price) equally indicates the excise

burden in Uganda is greater than that in other EAC countries. The price gap between Kenya and Uganda acts as an incentive for smuggling.⁴⁸

The Kenyan government is trying to counter illicit trade and counterfeiting with more effective legislation. The new Anti-Counterfeiting Act contains strong sanctions against transgressors and may discourage engagement in these illegal practices. Section 35 of the act provides for a sentence of imprisonment of five years for a first offender.⁴⁹ The new legislation empowers inspectors to search persons and inspect premises suspected of storing counterfeit goods. However, the reality is that if government inspectors collude with the criminal networks, the new legislation comes to naught. Kenya's national police commissioner correctly commented: "We are getting a lot of complaints about inspectors. People are being arrested but nobody is brought to police or court."⁵⁰

After the new Anti-Counterfeiting Agency was inaugurated in March 2010, it secured one conviction by October 2010. This related to an accused who was convicted of trading in counterfeit hair additions worth Ksh 6,700 (\$79.42) and was fined Ksh 70,000 (\$830).⁵¹ Private sector interests appear to be ambivalent about the legislation. According to a Kenyan company that has lost in excess of Ksh 300 million (\$3.56 million) per year to smugglers and counterfeiters, "the legislation is there, [and it is] punitive enough. The problem is enforcement."⁵² Manufacturers and legal experts want provisions in the law that provide for the seizure of criminals' assets so that they find it difficult to get back into business. They point to South African law, which provides for the forfeiture of assets that were acquired through counterfeiting.

Chapter Three

Trafficking in Wildlife Products

The tourism industry is the leading foreign exchange earner for Kenya. In 2007, the year before the post-election violence erupted, tourist earnings were Ksh 65.2 billion (\$932 million) but this dropped to Ksh 52.7 billion (\$818 million) in the following year.¹ Among the numerous attractions are Kenya's nineteen national parks and beautiful beaches stretching for hundreds of kilometers on the sub-tropical east coast.

Increasingly, international traffickers in wildlife products also find Kenya attractive. It remains relatively easy for them to source their wildlife products from Kenya to meet international demand. The most important products they obtain from Kenya include ivory, rhino horn, and small creatures such as snakes, lizards, tortoises, exotic birds, and more recently, lion cubs.

A surge in demand for ivory in Asia has fuelled the illicit trade in elephant tusks and created a lucrative black market. During the eight years from 2002 to 2010, the price of ivory increased about eighteen-fold from about \$100 per kilogram to \$1,800 per kilogram.² Experts have warned that if the trade is not stopped, elephants could move towards extinction. Some African countries already face the reality of elephants disappearing from their territories. Sierra Leone lost its last elephant in December 2009, and in Senegal there are fewer than ten left.³

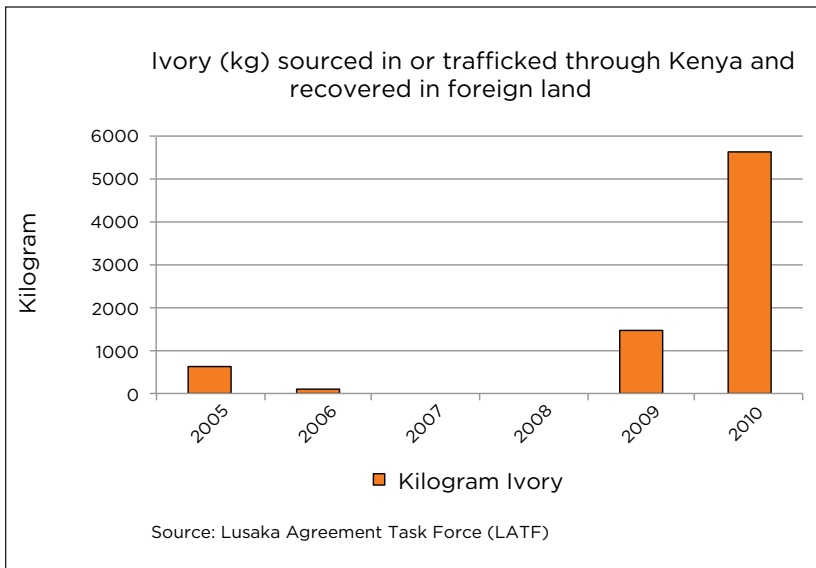
In Kenya, determined efforts have been undertaken by the Kenya Wildlife Service (KWS) to protect wildlife and to counter poaching in national parks. These initiatives appear to have produced positive results, at least in the Tsavo National Park. The preliminary result of an aerial census of the elephant population, undertaken in early 2011,

shows that the elephant population in the park has increased by 2 percent since the previous census in 2007.⁴ The census took place against the background of a dramatic decrease in the elephant population over the past few decades. In the 1960s the park had a population of about 50,000 elephants, a population that has now dwindled to about 11,000.⁵ The more recent increase of 2 percent is indeed good news, but the elephant population in Kenya at large remains under siege. Elephants killed through poaching between 2006 and 2009 increased sevenfold in Kenya, with a total of 271 killed in 2009. The regional director of Traffic East and Southern Africa commented as follows:

What we found is that the illicit trade in ivory continues to increase and that it is increasing at a much more rapid rate than previously was the case.⁶

What Kenya Wildlife Service is not able to rein in are the international criminal networks that continue to target Kenya's wildlife products. That is beyond their scope. The international dimension of the trade can be illustrated by a few recent examples of arrests and seizures.

Figure 5. Ivory seizures abroad, 2005-2010



- July 2009: Kenyan authorities seized 300 kilograms of illegal ivory and black rhinoceros horn—some of it still bloody—on a cargo plane headed to Thailand and Laos. The plane had flown in from Mozambique.⁷
- February 2010: About two tons of ivory (239 tusks) on an Emirates Airline flight from Nairobi was intercepted in Bangkok.
- May 2010: A Korean national who runs casinos in Nairobi was arrested with forty-seven elephant tusks, which he claimed were sourced in Kenya.
- July 2010: Thai customs officials intercepted a large ivory shipment from Kenya. It contained 117 tusks and other ivory pieces worth about \$1.2 million. This was the third large seizure in five months in which a total of 652 tusks were seized, for which at least 326 elephants must have been killed.⁸
- August 2010: Smugglers tried to get about two tons of ivory and five rhino horns to Malaysia through Nairobi's international airport.
- December 2010: A Singaporean was arrested after attempting to smuggle raw elephant ivory out of Kenya.⁹
- January 2011: A Chinese national attempted to smuggle about sixty-five kilograms of ivory through Nairobi's international airport to China. He had flown in from the Democratic Republic of the Congo.¹⁰
- April 2011: Thailand's largest ever seizure of ivory occurred when two tons of elephant tusks (247 tusks) were confiscated while they were being smuggled through a Bangkok port from Kenya. The seizure, worth Ksh 274 million (\$3.3 million), may be equated to at least 123 elephants killed. However, it was not clear whether the elephants were all poached in Kenya alone.¹¹

A relatively new factor in ivory smuggling is the widespread involvement of East Asian nationals within Kenya, particularly Chinese. Their extensive presence across the African continent has brought them into closer contact with local populations and improved their knowledge of the terrain. Japan traditionally dominated the

global demand for illicit ivory, but in the late 1990s China surpassed Japan and is now the world's largest market for trafficked ivory.¹² Today Chinese nationals are behind all of the recent smuggling rings identified in South Africa, Zimbabwe, Zambia, Malawi, Tanzania, and Kenya and have also been shown to be important players in Sudan.¹³ The majority of ivory smugglers arrested at Nairobi's Jomo Kenyatta International Airport are now Chinese nationals.¹⁴

Traffic, the international agency that monitors the illicit trade in ivory, points to China as the main destination for trafficked ivory. Its 2009 report states:

Chinese nationals have been arrested within or coming from Africa in at least 134 ivory seizure cases, totalling over 60 tonnes of ivory; and another 487 cases representing almost 25 tonnes of ivory originating from Africa was seized en route to China. ... As ever, more than any other country, China seemingly holds the key for reversing the upward trend in illicit trade in ivory.¹⁵

In a statement from their Nairobi Embassy, Chinese authorities defended their track record and refuted the association of Chinese nationals with the illegal ivory trade in Kenya.¹⁶

While ivory is probably the most high-profile wildlife product that is smuggled by international criminal groups, other wildlife products are equally in demand. Rhino horn and leopard and lion skins, claws, and teeth are frequently among the items traded internationally by these networks. Crime syndicates made up of Kenyans and foreigners have established commercial reptile parks disguised as conservation or tourist attraction centers. A KWS official commented: "But we don't see any tourists visiting the places. I think they are just used for the purposes smuggling as well as trafficking."¹⁷ In most of these cases, the networks involved collude with customs officials and clearing agents.

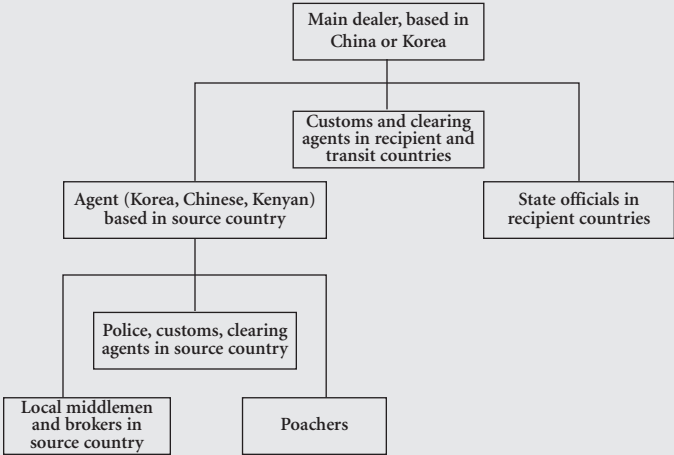
Illustrative Case 3

The organized crime networks involved

According to the Kenya Wildlife Society (KWS) the illicit trade “involves networks of organized dealers, financiers, suppliers, brokers and merchants.”¹⁸ As regards ivory smuggling from or through Kenya, there appear to be two types of networks involved: First, those led by an international dealer who lives in China, Korea, or Bangkok and who has agents and contacts in place in Kenya as well as in transit countries. Second, the Kenyan or East African poaching and smuggling network that mainly operates within the East African Community area and not far beyond that. These networks do not have uniform structures, but a typical international network trafficking in wildlife products from Kenya could have a chain of authority and responsibility as set out in diagram 1 below.

The first diagram below shows the network links to the international dealer who is based abroad and who is the head of the network. The second diagram depicts a typical structure of the local or regional network. The heads of these networks are seldom exposed to risk. Their identity is known only to key network members. They pursue business such as casinos, bars, hotels, and foreign exchange bureaus as a front to conceal their identity and the true nature of their business.

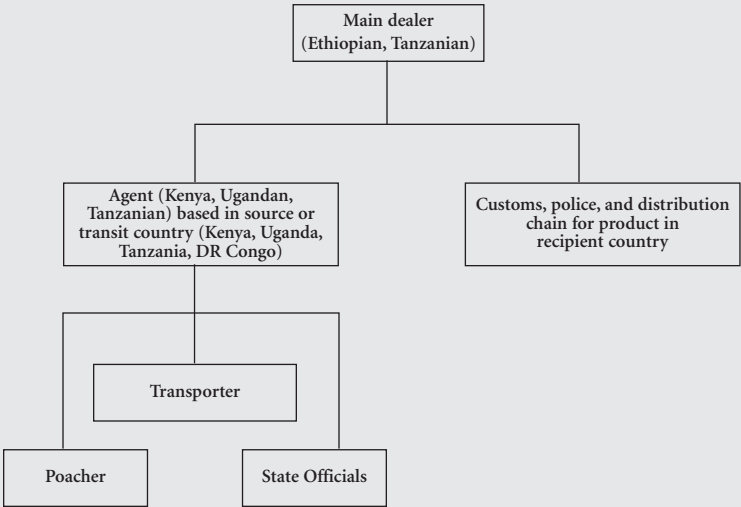
Diagram 1. Structure of an international network



As reflected in the above diagram, international traffickers have a network of local and foreign agents who clear the path for the flow of ivory and other illicit wildlife products to the destination country.¹⁹ The contraband is shipped through official airports and seaports.

The “agent” based in the source country plays an important role. This is the person who bribes police, tax and port officials, airport personnel, and administrators—even the judiciary. A number of government officials who are on the payroll of these trafficking networks receive a retainer to facilitate the movement of the contraband within a country, for example, Kenya, or in the East Africa region. The agents ensure that prominent lawyers are on standby to defend their mules or that the judiciary is well taken care of to ensure that it hands down lenient sentences to those members of the network who are apprehended. The nature of their work ensures that the agent is hardly ever arrested or convicted.

Diagram 2. The structure of a local or regional network



The poaching and smuggling networks, often comprising Korean or Chinese nationals, employ Kenyan, Ugandan, Tanzanian, Somali,²⁰ and Congolese to undertake the poaching and transport operations. Until recently cross-border poachers had to cross the border on foot, but this has changed and four-wheel-drive vehicles are now used to ferry poachers into a protected park where they are picked up later after collecting enough bounty.²¹

Substantial volumes of ivory are trafficked between Kenya, Uganda, Tanzania, Democratic Republic of Congo, and Somalia. This goes on unabated because of the nature of the distribution channel and the people involved. First, the consignment crosses porous borders through unofficial routes, called panya (rat) routes. This happens in areas where the illicit networks have ties with frontier communities—or are members of frontier clans. Clan ties in northern Kenya have for a long time frustrated efforts by law enforcement to deal with crime in these regions.

The agents in the diagram above can be clan power brokers, shrewd business people, foreigners who have established front companies or conservation farms (jointly with locals), security chiefs, or wildlife officials, to mention just a few. Two classes of agents stand out: clan elders and foreigners with companies in Kenya.

Clan rule and clan justice has often frustrated governments responsible for addressing crime in vast northern Kenya. The criminal justice system of Kenya, which is largely influenced by the inherited British system, is at odds with the clan system of justice that Somali clans have relied on for centuries. Clan elders often request government authorities to leave disputes or criminal acts for the clans to sort out, using the traditional methods they have perfected over many years. For instance, clan elders often negotiate in disputes between Kenya and Somalia. A Somali member of a smuggling network who is arrested in Kenya is likely to face a traditional court set up by Somali clans in the villages around the provincial capital of Garissa rather than be brought before a conventional court of the Kenyan criminal justice system. (When Somalia's al-Shabaab units stormed a police station in Kenya's northeast and helped Fazul Mohamed, a terror suspect on the FBI list, to escape, elders from communities across the border met in an attempt to settle the case by agreeing to return a state Landrover vehicle the militia had used for the escape.)

As regards networks led by foreigners, Kenyan authorities are concerned that some of the many “conservation groups” or “conservation farms” that have been established in Kenya may be mere fronts. Arrests that have occurred give credence to this concern. For example, a German national arrested at the Jomo Kenyatta International Airport for attempting to smuggle out snakes and other smaller animals was a director at an “Ostrich and Reptile Farm” near Mombasa.

New Technologies

Criminal networks trafficking in wildlife products have been quick to utilize modern information technology to market their illicit products. The internet has become a huge invisible marketplace for buyers and sellers. It enables criminals to strike deals and to transfer payments without physical contact with dealers. In addition, it is a less risky way of selling illicit products as it is remote and shields the buyer from arrest and prosecution. According to a 2007 Kenyan government report on African ivory trade, thirty tons of ivory products carved into chopsticks and toothpicks have been sold via websites in China. Chinese citizens simply placed internet orders for items, which were then sent to them.²²

Wildlife species such as reptiles, birds, and tortoises are also marketed and sold via the internet. Below is a typical posting.²³

Dear Kamikaze Reptile Japan,

Would you be interested in importing live reptiles from Uganda. We are licenced to export wildlife species. In case you are in need, we can send you our full stock list. Let us know ASAP.

Thank you,

Mark Lule

Dear Mark

I am highly interested in your reptiles from Uganda and Kenya.

Please send me a pricelist and your terms.

My email is E-mail:peter_newen@yahoo.com

Peter

Exotic species such as lion cubs have now become items that are sold as pets in Europe by criminal networks operating along the Kenya-Somalia border and in the Somali port city of Kismaayo. According to the Kenya Wildlife Society, employees of international NGOs working in war-torn Somalia provide the finances and collaborate with wildlife smugglers who sell the cubs in Europe.²⁴ Kenyan game warden David Mutwiwa was taken aback by this new form of wildlife trafficking:

We had never imagined that lions would be smuggled out of Kenya to be kept as pets.²⁵

The risk for criminal networks that smuggle wildlife products in Kenya remains relatively low. Despite the occasional show of force by government, such as the burning of 335 confiscated tusks and thousands of ivory trinkets worth \$16 million in July 2011²⁶ and pronouncements that tough action will be taken against smugglers, the country's courts tend to hand down light sentences to smugglers and very few seizures and arrests are followed by prosecutions and convictions. Outdated legislation provides for fines that have not been reviewed for decades. For example, in December 2010, a magistrate who convicted a person for being in possession of fifteen elephant tusks when searched at the Jomo Kenyatta International Airport had no option but to impose the maximum fine of Ksh 50,000 (\$590) or eight months in prison for ivory that was worth more than Ksh 1 million (\$11,801). In his judgment the magistrate appealed to Parliament to increase the penalties.²⁷ The consequences of trafficking in wildlife products go well beyond the destruction of species, or endangering tourism and economic development. The proceeds of illicit ivory sales are used to buy weapons and fuel war in the

Democratic Republic of Congo and northern Uganda and contribute to clan violence and cattle rustling in northeastern Kenya. For example, a number of poachers killed in Kenya were traced to a Somali warlord who runs a private army in Somalia,²⁸ and Interpol has pointed to possible links between wildlife trade and terrorist activities or insurgencies.²⁹

Chapter Four

Human Trafficking and the Smuggling of Migrants

This report addresses both human trafficking and the smuggling of migrants. It is important to distinguish between the two forms of criminal conduct because the difference is fundamental and different legal regimes exist to counter them. The UNODC defines the two terms as follows:

- **Human trafficking** is the acquisition of people by improper means such as force, fraud, or deception, with the aim of exploiting them.
- **Smuggling migrants** involves the procurement for financial or other material benefit of illegal entry of a person into a state of which that person is not a national or resident.²

In Kenya and neighboring countries the same networks tend to be involved in both trafficking women and children and smuggling migrants.

Trafficking History

Human trafficking, a modern-day form of slavery, has a long history on the east coast of Africa. Records going back to the first century CE show that the East African coast was part of trade networks spanning the Indian Ocean and the Mediterranean Sea. At that time the maritime routes went as far south as modern-day Tanzania. Merchants from Arabia and India visited the East African coast to exchange “commodities” such as iron and fabrics for ivory and slaves.³ The practice of kidnapping or capturing people for forceful transportation abroad continued and became more organized in the sixteenth

century, when Portuguese and Asian sailors, with the help of the Sultan of Zanzibar, forcefully captured indigenous East Africans from the mainland and sold them off as slaves.⁴ Today, almost two thousand years after the first recorded cases of slave trade on the East African coast, slavery in the form of trafficking women and children is still widespread in Kenya and the region.

Interpol estimates that human trafficking and illicit migration is a \$28 billion global enterprise, steadily catching up with drug and arms trafficking.⁵ In East Africa, the majority of people trafficked are women and children. They are trafficked for prostitution, the sex industry, and forced labor.⁶ But even twenty years ago, the concept of “trafficking humans” was not a familiar one in East Africa and it was not necessarily regarded with the same alarm that many treat it with today. Few saw it as a wrongful or criminal act. At that time, individual traffickers relied on personal networks of relatives, friends, or rich neighbors to find persons to traffic and to identify a market for them. Parents would hand over their children to rich relatives or traffickers on a promise that the traffickers would help them get jobs or educate them, but in fact many ended up in forced labor without pay.⁷ Organized criminal groups were seldom involved in this. These were more individual cases of exploitation. However, the trafficking of children, particularly for prostitution, has been going on for many years.

Perceptions and norms relating to human trafficking have therefore been changing in Kenya. This had a lot to do with the 2003 introduction of free and compulsory primary education. The United Nations, Kenya’s international partners, and civil society organizations in Kenya also contributed by raising awareness and through education. Even though the public has become better informed about the trade, it remains a widespread practice. Globalization, growing populations with “youth bulges,” high levels of poverty and unemployment, political instability including conflicts and civil wars, and gender discrimination, particularly as regards access to employment and education, have contributed to a significant increase in both trafficking of humans and smuggling of migrants.

Kenya is a source, transit, and destination country for men, women, and children subjected to trafficking, particularly into

conditions of forced labor and forced prostitution.⁸ The criminal networks involved have been operating with impunity as a result of a lack of effective legislation in Kenya to address the problem, among other factors. Until recently, legislation did provide some protection to children, but did not criminalize human trafficking as required by the United Nations Protocol, which Kenya signed in 2005.⁹ In the absence of appropriate laws, traffickers were charged under the Immigration Act for illegally transporting aliens, and illegal migrants were charged for being in the country illegally and sent back to their home country. Human trafficking and migrant smuggling statistics did not feature in the annual crime reports of the Kenya Police because such crimes did not exist under Kenyan law.¹⁰

However, new and more effective legislation against trafficking was introduced in 2010. In July of that year the Kenyan Parliament passed the Counter Trafficking in Persons Act, which was signed by President Kibaki in October 2010. It is a far-reaching new law, which for the first time criminalizes trafficking in persons and which provides for a thirty-year jail sentence and a fine of up to \$370,000 for those convicted of trafficking. The new law, which was welcomed by the International Organization for Migration, is now in line with the international requirements spelled out in the United Nations Protocol.¹¹

It will now depend on whether the law is implemented with determination and whether a corruption-riddled police force can be relied on to investigate cases effectively for successful prosecution. Kenyan police acknowledge that human trafficking and smuggling networks thrive on corrupt police officers.¹² However, it is not only corrupt police officers that are involved in facilitating the trafficking; corrupt elements in government departments (such as immigration), United Nation agencies, airlines, and foreign embassies in Kenya (in particular the visa sections) are also involved.

The Smuggling of Migrants

The International Organization for Migration (IOM) estimates that up to 20,000 Somali and Ethiopian male migrants are smuggled from the Horn of Africa to South Africa every year.¹³ Conflict and poverty in neighboring Somalia, Ethiopia, and Southern Sudan (now the

Republic of South Sudan) result in thousands of migrants seeking a better future elsewhere in the world by making their way to Kenya as the first step in a long journey. Many take the first steps on their own or with the assistance of friends and relatives. They cross the long Kenyan border at points where they will not be detected. Once in Nairobi or one of the larger towns, they seek assistance from smugglers to move on, mostly to South Africa. However, those Somalis or Ethiopians who have access to money tend to rely on one illegal scheme or another to get them to their destination. This is costly and risky, but many thousands make it to a new life every year, and others are therefore prepared to take the risk. The so-called schemes are many, but only three will be briefly described.

United Nations Refugee Camp

Dadaab is a refugee camp run by the UN refugee agency UNHCR and situated in a bleak and barren landscape in northeastern Kenya, about 90 kilometers from the Somali border and 420 kilometers from Nairobi.¹⁴ Originally designed for 90,000 refugees from Somalia, Sudan, and Ethiopia, it now accommodates more than 350,000. Some of the migrants that are smuggled out of Kenya originate in the Dadaab refugee camp. Bona fide refugees in the camp, whose names appear on the list of those who might in due course be allowed to travel to a recipient country as refugees, sell their slots to brokers who in turn sell the position on the UNHCR application list to someone who wishes to migrate to South Africa, Europe, or the USA. However, a UN spokesperson on refugees in Nairobi has denied that this practice occurs.¹⁵

The sale of these “slots” (i.e., the place on the list) happens where people have similar names. For instance, Omar Hassan Omar (not his real name) may have been vetted by the refugee camp administration to be sent abroad as a refugee. He may be of the view that it would be more lucrative to remain in Kenya, and he may therefore be willing to enter into an agreement with Hassan Omar, who has a similar name to his, to exchange his slot for payment. The bona fide refugee, who surrenders his place, is paid approximately \$10,000. According to interviews with smuggled migrants, this costly approach for migrants—getting into another country through the UNHCR/IOM “vetting” system—is more reliable and less risky than paying

smugglers. Paying transnational criminal networks to move you to South Africa, Europe, or the USA, without having a UNHCR refugee stamp on your document, has a higher chance of failure.

Church Organizations

Church-run refugee settlement programs administered by the Church World Service are also prone to abuse and have been used by a smuggling syndicate to smuggle persons to the USA.¹⁶ While the church may have the noble objective of resettling refugees, a network of human traffickers and smugglers has embedded itself in the church programs. Individuals, who have been identified by the church resettlement program for possible relocation, also sell their slots to human traffickers or migrant smugglers, who then go about identifying someone who might be interested in filling that slot. This is done weeks ahead of the interview at the organization's Overseas Processing Entity (OPE) offices in Nairobi and Kampala. The traffickers or smugglers gather those who have bought slots and drill them on how to handle questions that might be asked during the screening process. They are given information, such as the family lineage of the applicant, to avoid providing wrong or conflicting information during the OPE interview.

Embassies

The report by the United Nations Monitoring Group on Somalia, released in March 2010, implicated Italian and Somali embassy officials in Nairobi in widespread visa and immigration fraud.¹⁷ The report found that "officials at the Somali Embassy in Nairobi, including Ambassador Mohamed Ali Nur "Ameriko", reportedly play a central role in this scheme," and that "the Italian embassy in Kenya has also been implicated in this practice. Many Somalis use Italy as a gateway to Europe, settling in the third countries."

The report continues:

Payment is put in an escrow account with a money transfer organization until the client arrives at his or her destination in Rome. The proceeds are roughly evenly shared between the broker and concerned embassy officials.

Envoys from Italy and Somalia have denied these claims. According to

the report:

Somali ministers, members of parliament, diplomats and freelance “brokers” have transformed access to foreign visas into a growth industry matched possibly only by piracy, selling visas for \$10,000 to \$15,000 each. Among those who can afford to pay such sums are individuals who profit from piracy, and leaders of armed groups.¹⁸

Trafficking of Women and Children

Traffickers and human smugglers prey on poverty and conflict¹⁹ to ship people to Nairobi, South Africa, Asia, and North America under the pretext of a better life. Nowhere is poverty and conflict more pronounced than in countries in the Horn of Africa. Poverty in Eritrea and Ethiopia, and the devastation in Somalia following years civil wars and strife, make it relatively easy for criminal networks to identify desperate individuals who wish to leave their countries for a new life elsewhere. It is also not difficult to persuade parents to release their children or young women against payment with promises of an education and a better life for them in Kenya and beyond. Their ignorance and desperation prevents them from anticipating that they are likely to be forced into commercial sex prostitution, involuntary domestic servitude, or forced labor. Trafficking goes beyond just women and children—babies are included too. A trafficker arrested in September 2010 was transporting ten children, five boys and five girls aged between ten months and ten years.²⁰ They appeared to be from neighboring Somalia and were on their way from Garissa to Mombasa.

Womankind Kenya, a nongovernmental organization based in Garissa in Kenya’s North Eastern Province, estimates that fifty female children are trafficked or smuggled to Nairobi from North Eastern Province and Somalia each week.²¹ Vehicles that transport *miraa* (khat) from Kenya to Somalia return loaded with young girls and women, who end up in brothels in Nairobi or who are shipped to Mombasa and destinations outside Kenya. According to Womankind Kenya’s director, Hubbie Hussein,

Nairobi is where the girls are brought. It is where the end market is. It’s where they are distributed. Whether they will be taken to

other countries or will remain in Kenya.²²

From Nairobi, many are sent to Mombasa from where underage children are trafficked for sex tourism. They are taken to massage parlors or beauty shops, where contacts from tour operators and hotels come to select the ones they wish to take as a sex worker in the tourism industry. Tour operators and hotel workers also operate as traffickers and brokers.²³ For a fee of \$600, young girls between the ages of ten and fifteen are sold into slavery and forced to engage in sexual activities against their will.²⁴ Hotel workers and tour operators are in contact with the owners of hair salons, massage parlors, and beauty shops in Mombasa. The trafficked children are then taken to secluded villas in Mombasa where sex tourism thrives, fuelling the pornography industry abroad.²⁵

Mombasa is a destination for people trafficked from as far afield as Uganda, Somalia, Tanzania, and Ethiopia.²⁶ The International Organization for Migration (IOM) has estimated that about 10,000 persons are trafficked into the Coast Province each year.²⁷ The IOM has also established that Rwandan, Tanzanian, and Ugandan trafficking victims, including children, are working in Nairobi as domestic laborers, in the commercial sex and hospitality sectors, and in the agricultural sector in various locations around the country.²⁸ Trafficked individuals were discovered working in the border town of Busia along the Kenya-Uganda border. The IOM assessment also found Tanzanian children working as cattle herders and in motorbike repair shops in Oloitoktok along the Kenya-Tanzania border.

The Criminal Networks Involved

In the Somali language, the person who heads and controls a network engaged in trafficking humans or smuggling migrants is known as a *mukhali*. Some also refer to them as agents. In Kenya, *mukhalis* tend to be wealthy businesspeople of standing who are highly respected in their communities. However, behind the veneer of respectability, they run international criminal networks that traffic human beings or smuggle them as illegal migrants to different parts of the world. They do this through networks of contacts and agents that they control and that are placed in different transit or recipient countries for trafficked persons or illegal migrants. *Mukhalis* control their network and they

are in charge.

As a cover, they run conventional and legitimate businesses such as kiosks, supermarkets, foreign exchange bureaus, or shops selling electronic goods. In Nairobi and in Garissa, the provincial capital of the North Eastern Province, *mukhalis* operate as travel agents for airlines. (They do the same in Tanzanian towns of Mwanza and Moshi.) They pay taxes for their legitimate businesses to ensure that they do not attract queries from government authorities. A code of silence exists among *mukhalis* and their many agents and contacts. Only other agents, brokers, corrupt senior police officers, and their lawyers know what they do behind their veneer of law-abiding, upright citizen.²⁹

There are at least five to ten *mukhalis* in northern Kenya and in the Eastleigh neighborhood of Nairobi. They each control a loosely structured network, which they run independently of each other.³⁰ However, they will cooperate when it is to their mutual benefit. The competition between them is similar to competition between conventional businesses. It is not based on turf battles for defined geographical areas because they all operate on the same turf. Business skills, contacts, access to power and influence, and entrepreneurship will determine success. Each *mukhali* is known to the other networks and to various contacts in transit countries and countries of destination.

Illustrative Case 4

Mukhalis and smuggled migrants

When Qadar, who now lives in South Africa, decided to leave the Kenyan capital Nairobi he had only one option: to pay human smugglers to smuggle him out. The journey began in Nairobi's Eastleigh neighborhood, sometimes referred to as "Little Somalia," where he went to look for a suitable *mukhali* to help him get to South Africa for a reasonable fee.³¹ By word of mouth he obtained the contact details of a number of *mukhalis* in Nairobi and then visited five or six of them in their places of business, among others, a bookstore and an electronic shop in Eastleigh. He picked the one who he thought would be the best to get him to South Africa. According to Qadar,

Human traffickers based in Nairobi operate in an environment where you will hardly believe. Most of the offices I visited were mainly shops, forex bureaus, and even office of travel agents. One of the human smugglers took me to his office where books and computer are sold. It's an ordinary shop where people get to buy books including even the Koran and other Islamic books. The idea is to be under the radar. The bookshop is just a smokescreen and cover for his main work of trafficking people in and out of Kenya.

Migrants smuggled to Europe or North America tend to use air travel to reach their destination. Those being transported to South Africa use sea and overland routes. It takes five to eight weeks to reach South Africa by sea or road.³² However, this period could be longer depending on the obstacles the trafficker or smugglers face along the way. The routes are not defined and can change depending on circumstances. For instance, a new police boss who cannot be bribed might cause traffickers or smugglers to alter their route.³³

Those who are taken to South Africa overland are sneaked through the Kenyan-Tanzanian border at Namanga. This happens early in the morning when their contacts have assured them of safe passage. From Tanzania, they are moved to Malawi and then South Africa. Those who do not use the road are moved to the Kenyan coast for sea travel. When Qadar inquired from the *mukhali* how he would get to South Africa, he was assured that they had contacts in Mozambique, Tanzania, and South Africa.³⁴

They told me that I should not worry since there are people in all the routes I will use to South Africa. With no formal agreement, I paid 2,500 US dollars I earned in Nairobi. I left Nairobi, with no papers, I joined a group of 106 Somalis, including five children aged thirteen years old, two women, and four old men, on February 10, 2010.

We were in a packed fishing boat on this journey to the rainbow nation from Kenya's small town, Lunga Lunga, which is south from the port city of Mombasa to the coast of Mozambique, which has a border with Zimbabwe. On arrival in Mozambique word spread around that the agents, who brought us here, were arrested by police. The news shocked us; we had to look for an alternative to get to South Africa. I paid an extra 500 dollars to agents in Mozambique to reach South Africa. The Mozambique *mukhalis* were contacted by the Nairobi *mukhalis*. The new agents helped us cross the border from Mozambique into Zimbabwe. From Zimbabwe, they facilitated our entry into South Africa. When I reached South Africa I was given an alien card. I now work as shop attendant.

Mukhalis in Nairobi are paid close to Ksh 2 million (\$24,500) to smuggle migrants from Somalia, Kenya, and Tanzania to South Africa, the USA, the United Kingdom, or any European country. It is from these funds that they invest in their legitimate businesses in Nairobi or elsewhere.

These people invest in Kenya because it's easy to access Europe, USA and Canada. The business of trafficking or smuggling human beings through Kenya is a proper business model like opening a supermarket. It's just a business, the way you own a supermarket or manufacturers' wholesale. That is why people like us are involved in this business.³⁵

In Kenya, as well as in each transit and destination country for smuggled migrants, the criminal networks have links with members of Parliament, senior police officers,³⁶ senior immigration officials at the provincial level, airline officers, United Nations officers doing resettlement in Dadaab refugee camp,³⁷ and their respective network agents based in European countries like Norway, Italy, or other Schengen countries.

Human traffickers keep their contacts secret and their network decentralized. For example, their contact in the immigration department will not know who those in the police or the United Nations refugee office are whom the members of the network deal with. This makes it easier to maintain a low profile and more difficult for security agents to infiltrate the network. Human traffickers and smugglers of migrants therefore have a wide range of government officers on their payroll.³⁸

According to a reliable police source in Garissa, a well-known *mukhali* in the area is the brother of a member of Parliament from the North Eastern Province.³⁹ The man allegedly smuggles hundreds of Ethiopian refugees from Moyale, close to the Somali border, through Isiolo to Nairobi and then onwards to Tanzania, Malawi, Mozambique, and South Africa. It appears that the current *mukhali* took over the trafficking and smuggling network from his brother (the member of Parliament) when the latter was appointed as cabinet minister.⁴⁰

The network allegedly operates a bus on the Isiolo-Nairobi route and is the main conduit for smuggled Ethiopian migrants.⁴¹ The Ethiopian migrants are assembled by brokers appointed by the *mukhalis* and transported in taxis and other vehicles past roadblocks at barriers near Isiolo district hospital, near Mwangaza primary school, and at Subuiga police station at the Meru/Nanyuki and Meru Road junction. A new route has been opened to Ruiria and Meru through which immigrants are being ferried. Immigration officials and police are regularly paid by brokers to issue immigrants with entry permits.⁴²

Somalis from both Somalia and Kenya have invested heavily in real estate in Kenya—more than \$200 million. Some of these investors are *mukhalis*, who have made their money through human trafficking and migrant smuggling.⁴³

One *mukhali* gave the following account:

This [trafficking and smuggling persons] is a business like any other. It's like when you own a supermarket or some wholesale. A lot of processes and people are involved in this business and most families are saved and it's not always a smooth sailing as sometimes hitches do occur.

The process starts from Nairobi after half of the money is paid here. It involves agents in the diaspora, who prepare the papers for people to be smuggled. The papers, which include visas, are very

specific. For instance, they could be that one is travelling under the pretext of joining a college. The airlines, if it's air travels, are also involved in the chain. People working for airlines are involved and so are the embassies. It is a difficult process and things sometimes go wrong. We have to work with people at the subject's destination, at the different embassies here in Kenya for the visa and even at the airline so that no problem is encountered when one is about to leave or on landing. We also work with some immigration officials at the subject's destination to avoid problems when the subject lands.

There is always a market and now that there is a crackdown against Ethiopians and Eritreans by the Kenyan police, the market is even higher now. We could even put the fees up because of the crackdown. It has made our business more profitable. Everyone wants to leave Kenya because of the fear of being deported back to his or her countries of origins; hence they end up paying lots of money to be taken to another country. Once the subject gets to their destination with all the papers we have prepared, the subject destroys them. He disappears and seeks asylum after getting in touch with the next agents on the ground.

There are times, when children are involved. We partner children with families living in Norway or Sweden to act as close relative to the "orphaned" child. We prepare all the documents. We fake birth certificates and once they get to their destination the family will take care of him for a while before letting him to seek asylum.

The growth of this business can be attributed to stringent measures put in place by the Kenya government for Somalis or Ethiopians to get papers or visas in foreign embassies to travel like everyone else. If things do not go as planned and the subject is arrested, we simply disappear and the funds are not refunded.⁴⁴

Mukhali Networks and Corruption

The ability to corrupt senior police and immigration officers is crucial to the success of trafficking and smuggling operations. This does not so much relate to police officers in Eastleigh (Nairobi) or Mombasa but more to those in charge of border areas and routes from the border to Nairobi. A *mukhali* has to ensure that those he traffics or smuggles get across the border into Kenya and then to Nairobi. Police and border control officers are therefore important, also at the borders with Tanzania and to Uganda.

There are *mukhalis* who operate from Garissa and who own buildings there. The people living in Moyale and Garissa know this but they will not talk about it. A code of silence exists. A *mukhali* will try to find out whether the most senior officer in charge of the provincial police, the provincial police officer (PPO), is someone who can be “bought,” with a view to cooperating. If he succeeds he will have protection from the police officer in charge of the entire province. If the PPO cannot be bribed, the *mukhali* will target someone immediately below the PPO and will soon have the cooperation of a very senior officer at provincial level.

The *mukhali* will then inform his police contact in advance of the date and time when a vehicle with trafficked or smuggled persons is expected to travel from, for example, the provincial capital Garissa to Nairobi. Against payment in advance to the police contact, the immigration officer, or the UN officers at Dadaab refugee camp, a smooth passage for the human cargo will be assured. The senior police officer, who receives the payment, has to ensure that the amount trickles down to the rank and file of the police in charge of the many roadblocks and patrols along the main road to Nairobi. He will ensure that someone at the police roadblock is informed and will use his authority to ensure safe passage for the trafficked and smuggled persons. According to a *mukhali*,

We pay senior officers, who in turn alert their junior or colleagues not to stop our vehicles. The amounts are passed on to their juniors or colleagues and our cars’ ID.⁴⁵

The entire police system and not just individual police officers are therefore compromised. Thousands of people smuggled or trafficked

from Ethiopia, Eritrea, Somalia, or from the UN refugee camps have had a safe passage on their way to Nairobi as a result. A *mukhali* commented,

We only start the journey when they give us the go ahead. We give them a retainer fee for the work done. Eradicating the human trafficking and human smuggling from Somalia is difficult due to corruption. There are people who are willing to be bribed on the route.⁴⁶

Even if it happens that the human cargo is intercepted, *mukhallis* have their point persons in both the judiciary and prisons departments who will be paid off to “solve the problem.” For example, on October 25, 2010, sixty-four Somalis who were being trafficked to South Africa were arrested on the remote Kenyan island of Funzi in the Kwale district, and charged.⁴⁷ On the same day, police discovered that they had been released illegally from the Jela Baridi-Kingorani prison in Mombasa without a release order.⁴⁸ Another example involved a senior police officer who was arrested at the bridge in Garissa that spans the Tana River, illegally smuggling three Somalis.⁴⁹ He was charged under the Immigration Act for transporting three illegal immigrants but was acquitted by the court. However, point persons who can “solve the problem” are not in place in all transit countries, as was shown in the case where the Zimbabwean police arrested a Kenyan national in Zimbabwe while trying to smuggle twelve Somalis into South Africa. The Somalis had been intercepted as they were crossing the Zambezi River into Zimbabwe in canoes.⁵⁰

To facilitate their tasks, traffickers or smugglers prefer to use vehicles from nongovernmental organizations (NGOs) or government departments to move their human cargo. NGO vehicles have red number plates, which are often associated with diplomats and their immunity. According to a *mukhali*,

We prefer vehicles that belong to NGOs, because the red number plates are mostly not stopped for road checks. The drivers of cars with red plates also demand a lot from us. We pay the fee in advance.

It does happen that the retainer fee due to a senior police officer has not been paid in advance. In that case the individuals being

smuggled are dropped next to the road before the vehicle reaches a police roadblock to avoid detection.⁵¹ According to a person who was smuggled,

We were dropped so that we walk past the road check to board the bus after the check. This was at Tana Bridge a few kilometers from Garissa town.⁵²

Despite such tactics, police at Tana Bridge in Garissa arrest at least three people being smuggled into Kenya daily. As no government statistics are available on how many persons were arrested or convicted for smuggling or trafficking, it is not possible to make a reasonably accurate assessment of the extent of such practices. However, the police in some parts of the country keep information that might give an indication of what is happening. According to the provincial police officer for the Coastal Province, at least 140 people are arrested in Kenya weekly after either being trafficked or smuggled from other countries.⁵³ This figure, which adds up to about 7,280 arrests per year, is probably only the tip of the iceberg. It is sufficient to conclude that human trafficking and migrant smuggling by organized international networks present a major problem for Kenya.

Chapter Five

Small Arms Trafficking and Transnational Criminal Networks

In the murky world of arms trafficking there are myths, facts, and many aspects that we don't know anything about. We know that East Africa is awash with illicit arms. What we do not know, or have only scant knowledge of, is the identity and makeup of the criminal networks involved and who their suppliers are.

In only three years, the East African Community Illicit Arms Mobilization Unit has destroyed 170,000 illicit small arms.¹ How many of those were from within Kenya is not clear. In 2002, Human Rights Watch estimated that the number of automatic rifles smuggled into Kenya from Somalia could have been as high as 5,000 per month.² Kenya lends itself to arms trafficking for several reasons. It is the economic hub of a region in which a number of countries have experienced civil war and violent conflict during the past few decades, whether in the Great Lakes region, Somalia, or in what is now known as South Sudan. Add to that Kenya's long and porous borders, a large and busy port, and high levels of corruption, and the mix of factors that arms traffickers look for becomes very attractive. It therefore lends itself as a transit route for smuggled small arms, but not only for arms en route to conflict areas—arms also enter Kenya from conflict areas where violence is subsiding. Such firearms are then “recycled” to areas where a violent conflict is escalating.³ As armed conflicts scale down in one state and violence flares up in others, weapons smuggling patterns are adapted to meet changing needs.

This chapter focuses on the links between the illegal firearms that circulate in Kenya and the criminal networks that smuggle them. The chapter does not, therefore, pretend to provide a comprehensive study

of the extent and impact of small arms in Kenya. The hope is to gain a better understanding of how transnational organized crime groups contribute to arms trafficking in Kenya. These are networks that operate in more than one country. They tend to be dynamic and flexible and they adapt and mutate all the time, depending on circumstances. In the absence of more information, it would be wrong to try to define the structure and organizational makeup of these networks. But loose descriptions of the composition of three typical networks are in order.

Illustrative Case 5

Cross-border arms trafficking networks in Kenya

1. Ad hoc and mixed trafficking networks

These relatively small criminal networks are probably responsible for most of the arms trafficked into and through Kenya. They often consist of Somali nationals who work with Kenyans as well as with remnants of the Sudan People's Liberation Army (SPLA) from South Sudan. The nature of the association that non-core members have with the network depends on the nature of the trafficking task that needs to be undertaken and on the area to which the arms are to be smuggled. For example, known contacts in South Sudan would be enlisted to participate in a particular smuggling exercise into or from that country. These networks often rely on the "anthill" approach to traffic arms; that is, they smuggle small parts of the firearm and later assemble them into fully usable weapons.⁴

Between one and ten firearms at a time are normally transported across the borders by smugglers on foot, or sewn into animal carcasses or concealed in sand or vegetables ferried in trucks and on public passenger buses. Arms are also stashed in luggage on small aircraft that ply conflict areas or hidden in four-wheel-drive vehicles. These ad hoc trafficking networks are not high up on the ladder of sophistication, but they have their ears to the ground through wide networks of contacts, they know the terrain, they are adaptable and experienced, and they therefore succeed in smuggling large numbers of weapons into Kenya. Other contraband, such as

sugar, drugs, or counterfeit goods are often part of their smuggling activities. These networks generally do not have the capital or international contacts to operate successfully as international arms traffickers that link up with contacts beyond East African countries in other continents.

2. Clan-based networks

Smuggling networks based largely on clan membership are a common phenomenon in northern Kenya. In these parts of the country, where pastoralists traverse large stretches of grazing land with their herds, it is common to find members belonging to the same clan living on different sides of the Kenya-Ethiopia or Kenya-Somalia border. Close clan ties enable cross-border smuggling networks to be disciplined, difficult to penetrate, and well informed about what is going on on both sides of the border. In addition, clan members provide protection for each other. A code of silence reduces their operating risks.

3. Networks driven by high-profile individuals

These tend to be networks where the special skills, drive, and sophistication of an individual enable him (women rarely feature) to develop contacts with powerful persons in government and to then use that to his advantage. Access to power provides the individual and his associates with a special status, access to information, protection, and business contacts to facilitate illegal smuggling activities. An example of a powerful individual who controlled an arms trafficking network before becoming one of the most notorious drug barons in Kenya was Ibrahim Akasha from Mombasa. The family patriarch, who was killed in Amsterdam in May 2000, allegedly over a Ksh 200 million (\$2.7 million) payment for a heroin consignment he had delivered, is among the few crime barons profiled by authorities. According to intelligence sources, Akasha initially trafficked in small arms. He and his associates supplied them to individuals who required them for armed robberies in major cities and towns. But when arms trafficking became more lucrative and controversial because of escalating conflicts in Somalia, Zaire (now the Democratic Republic of Congo), Liberia, and Sierra Leone, the then Kenyan government contacted arms traders such as Akasha and applied pressure on them to cease their operations.

No longer involved in trafficking arms, Akasha turned his focus to drug trafficking, and close relatives and allies of senior Kenyan politicians took to arms trafficking to fill the void Akasha had left behind. These new players had connections to top political offices and access to resources to exercise control over arms flows to many parts of the African continent. One of those who played a leading role was a Kenyan of Indian descent, Sanjivan Ruprah Singh, described by the United Nations as “Africa’s most notorious arms dealer.”⁵ Using Simba Air, a cargo airline he co-owned with Raymond Moi, a son of the then president Daniel arap Moi, Ruprah (aka Samir Nasr) allegedly supplied arms to rebels in the Democratic Republic of the Congo (DRC), Liberia, and Sierra Leone.⁶ Jointly with Russian Victor Bout,⁷ a notorious international arms dealer who had a base in Kenya as well as in Angola, Libya, Uganda, Sudan, the DRC, Rwanda, Somalia, and Sierra Leone, Ruprah supplied arms to rebels in West Africa and to the Great Lakes Region. At one point Charles Taylor, the former Liberian head of state, made him a top official in his government in charge of maritime affairs.⁸

According to intelligence sources, Ruprah spun a web that spanned the globe and that may have directly or indirectly involved Kenyans who were politically well connected. He was linked to the private security company Executive Outcomes and his sister was married to Adolphe Onusumba, president of the Congolese rebel group RCD-Goma and defense minister in the DRC’s transitional government, who was also considered a great supporter of Moi. In an effort to curtail the growing illicit arms trade, Belgian police arrested Ruprah in February 2001 on suspicion of planning to provide millions of dollars to the RCD-Goma (Congolese Rally for Democracy-Goma) to assist in trafficking conflict commodities from the DRC.⁹

The history of well-connected Kenyans in trafficking arms to conflict zones in Africa in the 1990s is still waiting to be written up. According to an intelligence source, the network that involved, among others, Ruprah, Bout, and Lakhani may be “dormant but not out. They are just under, but not out.”¹⁰

The role of governments, including the Kenyan government, in arms deals and arms shipments deserves a chapter on its own but it is not dealt with in this report. A complicating factor is the difficulty of identifying what is licit and what is illicit in their dealings with small arms. Networks with close links to government do not only traffic in small arms. Their access to international arms dealers enables them to also include heavy armaments. The controversy sparked by the September 2008 hijacking of the Ukrainian arms carrier MV Faina by Somali pirates provides an indication of the dubious role played by governments in the shipment of arms to conflict areas.¹¹ The ship, en route to Mombasa port, had thirty-three Soviet-made T-72 tanks as well as rocket-propelled grenades and anti-aircraft guns on board.

Trafficking Routes and Conflict Zones

Reference has already been made to Kenya's vast and easy-to-cross borders. It is not realistic to expect Kenya to close all the border loopholes when some of the best-resourced countries in the world are unable to cope with the same problem along their own borders.

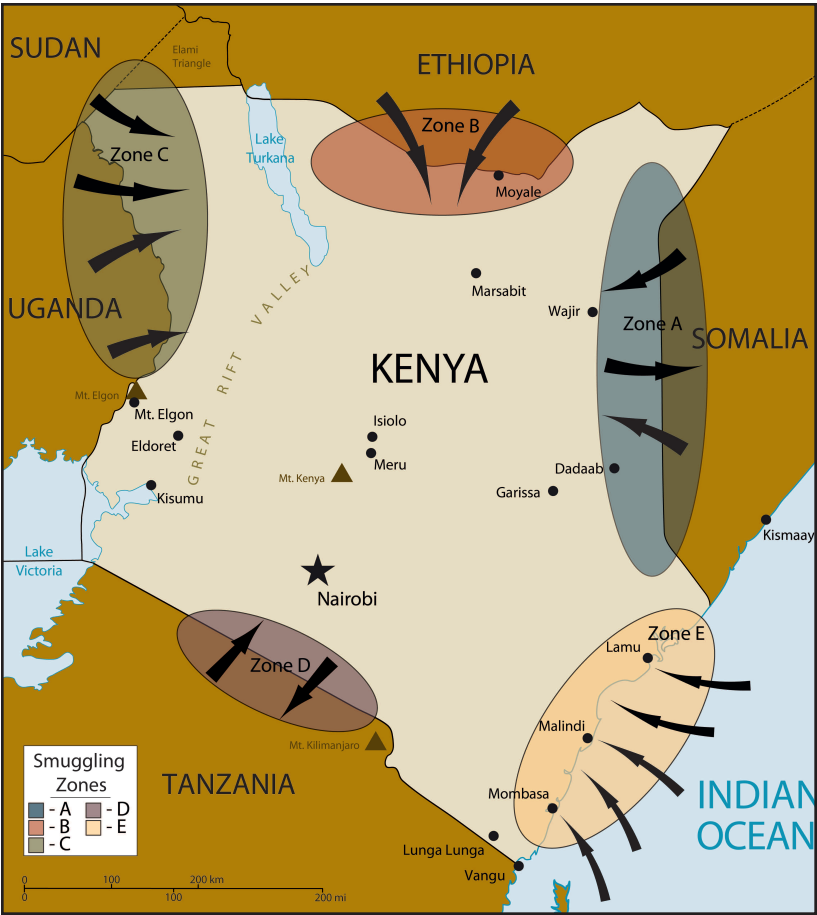
The following map provides an indication of the trafficking routes used by smuggling networks to move small arms in and out of Kenya. The actual routes used are many more than indicated by the arrows. It is not mere coincidence that the most violent regions in Kenya often coincide with the zones through which the trafficking and smuggling of arms takes place. These are areas of cattle rustling and clan- or ethnic-based violence. While other factors clearly play a role, the widespread availability of illicit firearms in the trafficking zones contributes to them being used with deadly consequences. The circles on the map denote the smuggling zones in which most of the trafficking routes used by criminal networks are located.

Cattle rustling and competition for resources in many of the trafficking zones result in hundreds of victims every year. Arms used in these raids have been traced back to the wars in South Sudan, Somalia, and the Democratic Republic of Congo. Others originated in Ethiopia and Uganda.

Zone A: The Somalia-Kenya border (682 kilometers)

Traffickers from Somalia enter Kenya through unofficial and

Figure 5. Kenya’s smuggling zones.



Map design by Chris Perry, IPI

makeshift entry points along the border and find their way to Isiolo, Garissa, Wajir, Mandera, Moyale, Lamu, Marsabit, and other frontier towns in Kenya's northern areas.¹² From there the arms are transported to Nairobi for use in the city or transmission to other parts of the country, or for onward transport to Tanzania. Clan violence has frequently occurred in the Wajir, Isiolo, and Garissa districts.

The Isiolo district plays a key role in the trafficking as the Trans-Africa Highway, which leads into Ethiopia, crosses the area.¹³ Garissa is also a critical transit point for arms from Somalia destined for Nairobi. During the first nine months of 2010 at least ten seizures en route from Somalia were reported. Weapons confiscated included Tokalev and Browning pistols, grenades, revolvers, and AK-47, G-3, and M16 automatic rifles. The traffickers were Somali nationals with Kenyans operating as the mules who did the transporting.¹⁴ According to police, more than 500 illegal firearms were recovered in Isiolo, Garissa, Marsabit, and Samburu during 2010.

Some of the arms trafficked from Somalia are first stored in the Dadaab United Nations refugee camps, while the traffickers plan their next move to get the arms to Nairobi's Eastleigh Estate or to the Mukuru Kayaba slums. The period required to "plan" the next phase of the trip is a euphemism for the time it takes to ensure that members of the police at roadblocks between Garissa and Nairobi have been bribed. The Dadaab refugee camp is reportedly an important storage and distribution center from which illegal arms are sent into Kenya as well as to Rwanda, Burundi, Uganda, and Sudan. Arms traffickers have a sophisticated smuggling system that links Somalia with the refugee camp and with Nairobi.¹⁵ The UN refugee agency appears to have accepted that it has a security problem on its hands at the Dadaab refugee camp and that steps need to be taken to address this.¹⁶

Traffickers who transport arms from Somalia into Kenya use existing tracks, which they refer to as "cut-lines." These are rough paths or tracks, some of them originally developed by oil prospecting companies, which can be used by donkeys or by sturdy vehicles to transport firearms or their parts. Somali-registered vehicles frequently use these "cut-lines" between the border and the United Nations refugee camp at Dadaab. As with the human trafficking flow described

above, Landcruiser vehicles that transport *miraa* (khat) from Kenya into Somalia also play a big role in transporting arms on their return to Kenya.¹⁷

Traffickers benefit from the fact that a number of frontier police posts have no or only obsolete communication equipment. Northeastern Kenya is a vast and sparsely populated terrain and no clear border demarcations exist. It is therefore easy to cross the border without realizing it. Government neglect has frequently been raised as an important reason for the backwardness of large parts of that region. Take the case of the 13,297-square-kilometer Lagdera district, which borders on Somalia. This administrative area is about the size of the state of Connecticut in the US or half the area of Rwanda. During a large part of 2009, only one police Landrover was available to patrol the area. In April 2009, there was no patrol vehicle available at all, as the Landrover had broken down. In 2008, the Apol police post in Dagahaley, Wajir district, had no communication set. In contrast, and to the frustration of the police, traffickers use sophisticated communication equipment to communicate with each other, including about any possible police movements. As a result, there have been incidents where arms traffickers have ambushed police patrols.¹⁸

To complicate their task, police posts often lack other basic resources to undertake patrols. For example, some police posts were allocated a mere four liters of diesel fuel or petrol per month—an amount hardly enough to last a day or cover more than forty-five kilometers at best.

Zone B: The Ethiopia-Kenya border (861 kilometers)

A relatively small supply of trafficked arms originates in Ethiopia and enters Kenya through Bula Hawa, a small frontier town in Somalia close to the Ethiopian border (known locally in Somalia as Beled Xaawo).¹⁹ Units of the Oromo Liberation Front (OLF), an Ethiopian liberation movement that has been fighting to topple the government of Ethiopia, have been involved in trafficking arms into Kenya. OLF units sometimes operate deep into Kenyan territory in the Marsabit district and have acted as a conduit for arms supplied to Nairobi through Isiolo, a district that has been described as the “arms supermarket of Kenya.”²⁰ However, the area south of the Ethiopian

border has witnessed many massacres involving illicit firearms also originating in Somalia and Uganda.

In these northern parts of Kenya, cattle rustling has been carried out for centuries among pastoralist clans. Typically, cattle raiding in traditional society was carried out at night and relied on stealth. If the raiders were detected, they would retreat. The population in these semi-arid parts of Kenya is sparse with the thousand of cattle that homesteads keep far outnumbering the population.²¹

The influx of small arms into these regions has radically changed the nature of cattle rustling. It has led to an arms race among the communities. Cattle raids have now become part of large-scale operations involving theft, even during daylight hours, of hundreds and sometimes thousands of cattle, leaving scores of villagers dead or wounded. The cattle are often driven for hundreds of kilometers from the point of theft to where they are slaughtered and converted into meat for sale in the domestic and international market.²²

One of the worst occurrences was a July 2005 attack on a village in northern Kenya in which seventy-six villagers died. Hundreds of armed men from a rival clan surrounded a primary school and neighboring houses before opening fire in what appeared to be a revenge attack in a feud over water and pastures.²³

Zone C: The Uganda-Kenya border (933 kilometers)

Uganda is both a source and recipient of small arms and light weapons that flow through Kenya. Both licit and illicit arms shipments cross the northwestern border between Kenya and Uganda. It is the route for official, government-sanctioned supplies of small arms on their way to the Democratic Republic of the Congo but also for illicit flows into Kenya, such as weapons from the DRC, Congo, Sudan, and Uganda.

The three cross-border corridors through which most of the illicit arms flow into Kenya from Uganda are the Mount Elgon forest,²⁴ the Karamojong/Pokot area, at a place called Amdat (a small town in Uganda near the border with Kenya), and the Turkana/Sudan area.

According to intelligence sources, networks involving Somali nationals provide a cover for their arms trafficking by engaging in cross-border trade in electronic goods, clothing, and *miraa*. Others

involved in the trafficking in this part of Kenya are deserters from the Sudan People's Liberation Army (SPLA) and Karamoja and Pokot tribesmen who frequently cross the Kenya-Uganda border. The corridors through which these arms are trafficked into Kenya have witnessed the most deadly impact that freely available small arms can have on communities. Widespread cattle rustling in northwestern Kenya and in northeastern Uganda, and violent tribal clashes in northern Kenya, are fuelled by guns trafficked from Uganda and Sudan. In this part of Kenya, guns are cheap and bullets a form of currency.

In 1999 SPLA deserters could reportedly sell an assault rifle to pastoralist Karamojong traders on the Sudan-Uganda border for Ksh 3,000 (\$48). The Karamojong traders in northwestern Kenya could in turn sell the weapons to Pokot traders living on the Uganda-Kenya border, who would sell them in Kenya for Ksh 10,000 (\$161). That same gun could then be sold in Nairobi for as much as Ksh 40,000 (\$645).²⁵

According to sources at the East African Community Secretariat, the guns originate from Aru, a town in northeastern Congo, which is said to be a market for weapons and where business is done by barter. There are weekly markets in Uganda for small arms at Kangole on Mondays and at Moroto on Thursdays.

Between 2006 and 2008, an outlawed militia, the Sabaot Land Defense Force, killed at least 500 people in the Mount Elgon area on the Ugandan border east of Eldoret.²⁶ In the Turkana, Pokot, and Laikipia districts, further north in this smuggling zone, numerous deadly tribal clashes and cattle raids have occurred. In September 2009, thirty-two people were killed in a Laikipia North district when more than 150 armed raiders stormed a village in an attempt to steal 10,000 head of cattle. Also killed were forty cattle, twenty goats, and thirty sheep.²⁷ An editorial in Kenya's largest daily newspaper reacted sharply.

Such shocking statistics are the norm rather than the exception in Kenya's forgotten territories... Those citizens, particularly in the border regions where armed raiders from Ethiopia, Sudan and Somalia have been allowed to invade Kenya at will, have

every right to wonder whether they are under the protection of a sovereign republic... The government must without further delay abandon the historical policy of neglecting citizens in far flung areas.²⁸

Zone D: The Tanzania-Kenya border (769 kilometers)

Another arms-trafficking route leads from the Democratic Republic of the Congo into Tanzania en route to Kenya. The criminal networks involved are Ugandans and nationals from Malawi, Mozambique, and Zambia. These networks are also involved in trafficking drugs.²⁹ The converse flow of small arms is from Kenya into Tanzania, with weapons smuggled by Kenyans, a number of whom have been killed or jailed by Tanzanian authorities for armed bank robberies.³⁰ A senior Tanzanian police officer commented,

They [criminals] come with guns from Kenya. We have recovered AK-47s, SMGs, and hand grenades from them. When we did further investigations, we found out that the Kenyans had acquired the guns from Somalia, Burundi, and the DR Congo.³¹

In this zone, the violence has therefore been more pronounced on the Tanzanian side of the border, with armed criminals frequently crossing the border from Kenya to commit robberies in Moshi and Arusha. In September 2007, Tanzanian police shot and killed fourteen armed men, all Kenyans, who had planned to rob a bank. In earlier attacks, criminals from Kenya had used grenades in addition to automatic weapons when robbing banks in Tanzania.³²

Zone E: The Indian Ocean coastline (536 kilometers)

Another popular entry and exit route for smuggled firearms is via the Indian Ocean. The recovery, in May 2010, of a small arsenal dumped in waters off the coastal town of Malindi raised the possibility of the Indian Ocean becoming the next preferred supply route to the East African coast. The weapons recovered included four rockets, one rocket launcher, five AK-47 rifles, one Ceska pistol, and eighteen magazines.³³

The smuggling networks transport the arms with unregistered boats or dhows that ply the ocean between Eritrea and Matadi port. Before his death, the Mombasa-based drug trafficker and arms

smuggler, Akasha, owned speedboats that were used to ferry arms and narcotics along the East African coastline. The International Maritime Organization (IMO) has endorsed the view that the large number of unregistered small vessels are a problem and that a registration system should be put in place.³⁴

In addition, the Tana River basin has witnessed numerous conflicts between armed pastoralists in the past.

General Impact of Small Arms Trafficking on Kenya

The East African Community Secretariat acknowledges that the relatively easy availability of small arms and light weapons in Kenya and the region is a matter of great concern.

It is not just arms from outside, but arms recycling, from one conflict area to another—from a conflict that is about to be resolved to one that is just starting. These weapons are transferred by arms traffickers.³⁵

The Kenyan government is also concerned about the proliferation of small arms in the country.

The problem has impacted negatively not only on the affected communities but on the country at large, with visible under-investment in the affected areas and the invariably huge cost of providing security at the expense of other social services. This has negated the impact of social programs in place and undermined the ability of the Government to facilitate achievement of the Millennium Development Goals....

These arms have continued to fuel urban crime, abet cattle rustling and fuel ethnic conflicts. The net effect has been high cost of providing security, underdevelopment of arid areas inhabited by armed pastoral communities and instability arising from cross border manifestation of these pastoral conflicts. Recent cases of terrorism and piracy have all strengthened the resolve of the Government of Kenya to work with all willing partners within sub regional, regional and global arrangements to address the problem of illicit Small Arms and Light Weapons.³⁶

The Kenyan government is aware that these violence-prone areas have vast potential for development and that, for as long as they are perceived as war zones, no investment will take place. It has stepped up its efforts to reduce the violence and introduced a program of disarming pastoral communities and of increasing border patrols to control the smuggling of guns and counterfeit goods.³⁷

Single and Multi-Commodity Networks

While the networks trafficking in small arms are known to trade in a wide variety of contraband, it is difficult to obtain reliable information about the range of illicit commodities in which the many other criminal networks trade. Do they specialize in specific illicit commodities such as drugs, or do they tend to diversify and traffic a wider range of goods, including, for example, small arms or counterfeit goods? Transnational criminal groups will presumably operate in a manner similar to corporations in the licit global economy. Many of the latter, particularly the larger and more sophisticated ones, occupy a specific niche in the global market and have developed their own global brand or specialization. But there are also those in the global economy who trade internationally with a wide range of goods. Transnational criminal networks follow a similar pattern.

Consider international drug trafficking networks that source their product in one part of the world and sell it in others. They require a degree of specialization and sophistication that many other criminal networks do not possess. Their expertise and global reach places them at the top of the ladder of sophistication as far as criminal networks go. They tend to specialize in trafficking in one niche commodity or in a very limited number of commodities. Further down the ladder are those networks whose expertise and reach is not necessarily global, but who operate regionally and have acquired a specialized knowledge about local conditions. They tend to smuggle virtually any illicit commodity for which there is a market.

Little reliable information is available about the exact range of activities in which different criminal networks in Kenya engage. The brief assessment that follows is therefore partly based on work done for this study, partly on generalizations, and partly on inferences drawn from other work undertaken on organized crime.

- In general, international drug trafficking networks tend to focus primarily on their unique niche—namely, the global illicit market for drugs. This also appears to be the case in Kenya, although there are always deviations from this general approach. For example, drug traffickers often invest part of their profits in nightclubs and prostitution.
- Those networks in Kenya that are run by non-Kenyans, for example by West Africans, Europeans, or Asians, find it more risky to diversify their drug trafficking activities into other commodities than would be the case for those networks led by Kenyans. Foreigners in Kenya do not have the advantage of easy access to elites in politics and business that Kenyan nationals tend to have. For foreigners based in Kenya, the process of penetrating elites as well as political and government institutions is an expensive and time-consuming one. While most international criminal networks aim to do so, it is primarily to secure their drug trafficking operations and not to open access to additional criminal markets. Kenyan drug lords, on the other hand, can use their easily accessible contacts among the elites and within government structures and political institutions to diversify their activities into criminal markets other than drugs, such as counterfeit goods or smuggling illicit imports through borders and ports.
- Other criminal networks in Kenya that also focus mainly on their specific niche product are the *mukhalis* who manage the smuggling of migrants and trafficking of women and children. Again, despite this specialization, they may from time to time engage in related or additional illicit activities that produce a profit. For example, as previously mentioned, there is evidence that those who transport *miraa* (khat) from Kenya to Somalia make arrangements to return with women and children to be trafficked. *Mukhalis* also work with those who can obtain or who forge official documents to facilitate their business.
- A third category of criminal networks that has, in general, remained “product specific” relates to those groups engaged in smuggling wildlife products, such as ivory or rhino horn, across borders. They do not seem to be involved in any significant way in trafficking other commodities such as drugs, small arms, or

counterfeit goods.

- The most diversified operators in the criminal market are those many regional networks involved in trafficking small arms, counterfeit goods, and a wide range of other contraband. With their expert knowledge of border crossings, secure clan, police, and other contacts, and their knowledge of the terrain and languages, they act as conveyor belts for illicit commodities and products, from drugs to sugar and from electronic goods to small arms. These criminal networks are generally not high up on the ladder of sophistication, but they are skilled and very experienced and focus mainly on cross-border trade in the East Africa region. Demand and supply largely determine what they smuggle, and the composition of these networks is ad hoc, depending on what product is to be smuggled to what destination.

Only some categories of criminal networks in Kenya have therefore diversified the range of illicit commodities in which they trade. These are criminal networks that can be labeled as “general dealers in contraband.” They are many and operate mainly in the East Africa region. They are involved in the regional trafficking of small arms, drugs, counterfeit goods, and other forms of illegal trade. In contrast, those criminal networks that focus on international drug trafficking beyond the African continent, on smuggling migrants and trafficking humans, and on illegal trade in wildlife products, respectively, tend to concentrate mainly on their core illicit commodity. However, all of the networks are likely, from time to time, to engage in additional illegal activities that will secure their core criminal business or that could provide additional profits without increasing risks.

Chapter Six

Money Laundering

A recent report by the US State Department on money laundering in Kenya started with a short and simple sentence:

Kenya is developing into a major money laundering country.¹

This sentence summarizes the realities in a cold and non-dramatic way. The report mentions Kenya's increased use as a transit point for international drug traffickers and the substantial problem of Somali piracy-related funds being laundered in Kenya. It claims that more than \$100 million may be laundered through Kenya's financial system annually, consisting of both drug money and ransom funds originating in piracy incidents off the Horn of Africa.²

There are hopes that the rampant, illicit laundering of funds will be curtailed as the implementation of the new Proceeds of Crime and Anti-Money Laundering Act of 2009 becomes effective. The tortuous and drawn-out five-year journey that this legislation took before it was approved by Parliament on December 31, 2009, and finally put into effect on June 28, 2010, is an indication of the prevarication within government, Parliament, and the business community about introducing an effective anti-money laundering regime. Work on the 2009 act commenced with the appointment of a national task force in 2003. A bill was submitted to Parliament in 2004. Government and business response to the bill was lukewarm and considerable opposition came from influential members of Parliament.

From Lukewarm Support to Opposition

Kenya's business community did not support hard measures against money laundering with any enthusiasm for fear that a failure to clearly identify which activities constitute money laundering may hurt its

activities through restrictions on the free flow of domestic and international capital through the economy. Inferring that illegality had become the norm for business in Kenya, an expert noted,

It might sound strange, but illegal activities in Kenya are so entrenched and pervasive that having tough legislation that curbs money laundering could impose a heavy cost on the Kenyan economy and hurt its growth. Corruption in government and private sector supplies, tax evasion, cross border money transfers and funds from undisclosed sources are so significant in the Kenyan economy that curtailing them would have a definite impact. Some of these activities have been going on for such a long time that the beneficiaries may not even understand why these activities should now be criminalized.³

This points to one of the most complex societal problems that Kenyans will have to deal with, namely that, for many, normative standards in conducting business or undertaking work for illicit gain have become permissive. For many, paying bribes has become a norm. Plundering government funds through theft or fraud may be regarded as wrong, but it appears to result in only mild and occasional sanction or public shaming. Instead, a degree of quiet admiration for the suspect is often evident because he appears to have been “clever enough to get away with it.” This is not a Robin Hood-type of admiration because the effect of the mass corruption and theft is to widen the gap between rich and poor and not the other way round. It is an admiration for the so-called skills and business acumen that the suspect appears to have displayed in illegally enriching himself without anyone being able to prove the case against him. He must be smart! The fact that a corrupt criminal justice system may be the reason for the lack of prosecution is not significant. Many may regard it as normal for a criminal justice system to operate like that, even though they might also know that it is not just.

One would expect a different response from a relatively conservative and religious society. This may have something to do with the many top Kenyans who have been linked to major corruption and money laundering scandals in the past decade without ever being convicted or charged. In general, they get off scot-free, keep their positions, and often become role models whose standards others in

Kenya emulate. Impunity reigns.

The lukewarm support for the 2004 bill from both government and the private sector meant that there was no champion to promote its passage through Parliament.⁴ The international community, spearheaded by the US, frequently applied pressure on Kenya to implement specific anti-money laundering and terrorism financing legislation with stiff penalties for offenders, but without much effect. With the growing link between drug trafficking, money laundering, and international terrorism, international pressure was probably to be expected. Kenya had been identified as a vulnerable location, especially following the 1998 bombing of the United States embassies in Nairobi and Dar es Salaam in Tanzania, the more recent flows of piracy money from Somalia, and the role played by the al-Qaida-linked jihadist group al-Shabaab in Somalia and Kenya.

From within the East African region there was a degree of pressure from the Financial Action Task Force -linked Eastern and Southern Africa Anti-Money Laundering Group . This intergovernmental organization, which counts among its members the governments of eastern and southern Africa, inquired from time to time as to why no progress was being made with the bill.

Among those within Parliament who were opposed to the accountability proposed by the bill, and who therefore attempted to stall and stave off progress, were so-called robber-MPs. Some of these are members of Parliament who have been linked to crime, including drug trafficking, corruption, and other financial crimes. They are in touch with each other and they mobilize on issues that they wish to promote or oppose.⁵

The bill also met some opposition from Muslim members of Parliament who expressed fears that once passed, the law would be abused, because they linked it to Americanism. The (Kenyan) Somali lobby in Parliament is well coordinated and influential. The assistant minister for public service, Aden Sugow, strongly opposed the bill, claiming that it constituted an attack on the Muslim community.⁶

After more than five years in Parliament, the bill became law in June 2010. It raised the hopes of some but was also met with skepticism relating to its implementation. An editorial in the *Daily Nation*

commented,

Finally we have a legal regime to identify, trace, freeze and seize proceeds of crime. However, a law is only as good as how it is enforced.

Our problem has not been weak or non-existent laws, but the inability or refusal of the police, the AG, the KACC and other authorities to pursue the influential cartels behind organized crime and mega corruption.

It is not for lack of adequate laws that those turning Kenya into a haven for criminals still walk free; it is failure to apply existing laws.⁷

Money Laundering Scandals

Again, the assessment of money laundering in this report will confine itself to the links that organized crime networks have in the laundering of money in Kenya. A broader discussion about money laundering in Kenya is therefore not envisaged. Four fairly recent examples of mega-corruption and money laundering scandals in Kenya will illustrate the impunity that exists and the absence of any consequences for individuals who illegally enrich themselves with hundreds of millions of US dollars, often from public funds.⁸ They are the Kroll Report (2004), the major cocaine haul (2004), the Anglo Leasing case (2003) and the case of Charterhouse Bank (2006 to present).

The Kroll Report

Shortly after he came to power on an anti-corruption platform in 2003, President Kibaki commissioned an international risk consultancy, Kroll Consulting from London, to investigate allegations of large-scale illegal transfers of funds abroad, theft, and money laundering during the previous presidency of Daniel Arap Moi. It was meant to be the first step towards recovering some of the money stolen during Mr. Moi's twenty-four year rule, which earned Kenya a reputation as one of the most corrupt countries in the world.⁹

The Kroll Report, delivered to the Kenyan government in April 2004, revealed

the breathtaking extent of corruption perpetrated by the family of the former Kenyan leader Daniel Arap Moi. ...The [report] laid bare a web of shell companies, secret trusts and front men that his entourage used to funnel hundreds of millions of pounds [sterling] into nearly 30 countries, including Britain. It alleges that relatives and associates of Mr. Moi siphoned off more than £1 billion of government money. The assets accumulated included multimillion pound properties in London, New York and South Africa as well as a 10,000 hectare ranch in Australia.¹⁰

The report details how the two sons of Mr. Moi, Philip and Gideon, were reportedly worth £384 million and £550 million respectively and that former President Moi's associates colluded with Italian drug barons and printed counterfeit money.

The Kenyan government has never acted on the Kroll Report and none of Mr. Moi's relatives or close allies was prosecuted. A government spokesman described the report as incomplete, inaccurate, not credible, and based on hearsay.¹¹

The 2004 Cocaine Haul

The seizure of 1.1 tons of cocaine in the coastal town of Malindi at the end of 2004 has been mentioned previously in this report. It had an estimated street value of \$85 million and was, at the time, reported to be the largest cocaine haul ever made in Africa. A few scapegoats were prosecuted but none of the drug barons was touched. Nor is there any information available on how the millions of US dollars involved were laundered. Kenya remains a convenient transit location for international drug smugglers and the laundering of millions of dollars of drug money through Kenya goes hand in hand with that.

The Anglo Leasing Case

Not long after he assumed office, President Kibaki faced what has been termed as the biggest financial scandal during his administration. Described as the Anglo Leasing case, it involved deals worth some \$100 million. President Kibaki inherited the transactions and firms involved from the Moi regime when he took office in January 2003.

The Anglo Leasing case involved public officials and a series of dubious international financial transfers relating to suspect govern-

ment security contracts through several intertwined local and international firms. They were linked to numerous projects under the Office of the President. The scandal was a major embarrassment to the Kibaki administration because some of the new political elite, who stood to benefit from the deals, were involved in them. One of President Kibaki's ministers was implicated in the scandal and was prohibited from travelling to the UK and the US.¹²

Every year, Kenya's controller and auditor-general reports numerous cases of irregularities or mismanagement in the use of public funds allocated to government ministries. Such cases point to the large amounts of public funds that are laundered by public officials through inflated supply contracts or outright theft. Investigations into Anglo Leasing pointed to three permanent secretaries, who were removed from office and charged with corruption and abuse of office, but their accomplices remained at large. Those who were part of the networks that fleeced government funds through the Anglo Leasing scandal did not always fit the description of conventional criminals who tend to be associated with the underworld or part of drug or arms trafficking networks. They were respected senior public servants with suits and ties who constituted part of the Kenyan government elite. Criminal justice systems, not only in Kenya, remain reluctant to deal with the suit-and-tie criminal as they deal with the conventional criminal associated with organized crime. Different criteria are applied as though their station in society or their appearance makes them morally less blameworthy than the conventional thief or fraudster. There is no basis for such differentiation.

The three cases referred to above (Kroll Report, cocaine funds and Anglo Leasing) are recent examples of broad conspiracies involving a wide range of individuals, including international contacts outside Kenya, to illegally enrich themselves and externalize funds by laundering money. Prior to the new Proceeds of Crime and Anti-Money Laundering Act coming into force in June 2010, existing anti-money laundering measures were inadequate to prosecute transgressors. The problem lay not only in inadequate measures but also in systemic corruption—from the police right through to the investigators and the judiciary. Police, especially, have been fingered for

providing protection to known drug barons and gangs, and those who are unlucky enough to be arrested and taken to court can always buy their freedom from police investigators and corrupt officials in the judiciary.¹³

The fourth case, Charterhouse Bank, is currently still under the spotlight and deserves a more detailed assessment.

Illustrative Case 5

The Charterhouse Bank saga

According to a diplomatic cable sent by the US Embassy in Nairobi to Washington, DC, in 2004, an internal auditor at the now closed Charterhouse Bank in Nairobi uncovered a multibillion-Kenyan-shilling tax evasion and money laundering scam.¹⁴ According to the cable, the scheme involved companies linked to local politicians and businessmen as well as a leading supermarket chain. Information from within the financial industry indicated that the declared shareholders and directors of the bank might be nominees for politically influential individuals who were thought to be the real owners of the bank.¹⁵ The internal auditor apparently found many personal savings accounts at Charterhouse Bank with annual turnovers in excess of Ksh 2 billion (\$26.1 million). His investigation showed that funds were being diverted from Nakumatt Supermarket—a national supermarket chain—and related firms into various personal savings accounts, presumably to avoid paying taxes by underdeclaring revenues to the Kenya Revenue Authority. The internal auditor collected information relating to about eighty-five accounts with an annual turnover of about Ksh 20 billion (\$261.3 million) and presented it to the Kenya Revenue Authority (KRA) for investigation.

In early June 2006, Nakumatt Holdings and Charterhouse Bank were publicly linked to money laundering and tax evasion amounting to Ksh 18 billion (\$248 million) by a member of Parliament.¹⁶ The report he tabled in Parliament had been leaked from a government task force conducting investigations into the affairs of Charterhouse Bank. It was claimed that although the report had been compiled and handed over to the minister for finance one-and-a-half years earlier, he had neither acted on its recommendation nor made it public.¹⁷ Among the allega-

tions was that Nakumatt, which had a 10 percent stake in Charterhouse Bank, was helped by Charterhouse Bank to effectively underdeclare its sales. According to the cable, the auditor told US Embassy officials that although the supermarket chain had some “south Asian Kenyans listed as the owners, some of them were proxy holders of shares actually owned by (the two MPs).”¹⁸ But according to the cable, KRA took no action. When the internal auditor started to receive threats to his life, he and two of his colleagues sought asylum in the USA.¹⁹

The public disclosure of documents in Parliament, indicating that Charterhouse was a “money-laundering machine” with transactions involving billions of shillings disguised and hidden from view, led to fears of a run on the bank. On June 23, 2006 the Central Bank of Kenya placed Charterhouse Bank under statutory management and froze all bank accounts.²⁰ This was the beginning of a tortuous route that would show up how criminalized business conduct has penetrated mainstream Kenyan business, and how protective strong elements in business and politics are about the impunity that exists.

The international auditing and consulting firm Price Waterhouse Coopers (PWC) was commissioned to undertake a forensic audit of Charterhouse Bank and to submit a report. They did so in July 2006 and, among other findings, reported the following:²¹

- Before the investigation started, a fire had suspiciously destroyed documents relating to certain transactions; the bank’s general manager went on leave just as PWC arrived; and the bank’s computer system was not functioning.
- PWC received “only minimal cooperation” from the bank’s staff.
- The report referred to systematic wrongdoings and identified numerous accounts for further investigations. Some of the “unusual transactions” related to a high turnover. For example, one of the accounts of a company had a turnover of Ksh 4.57 billion (\$61.5 million) in less than two years and another account in the same company had a turnover of Ksh 3.9 billion (\$52.2 million).
- Charterhouse had repeatedly failed to follow Kenyan Know Your Customer regulations.
- Charterhouse Bank had breached the Banking Act. There were numerous suspicious transactions and irregular banking practices.

- The bank regularly colluded with customers to hide foreign exchange transactions from the Central Bank of Kenya. Massive transfers had been made to a “mysterious” Italian in Turin who issues email instructions for frequent transfers designed to avoid detection by the Central Bank of Kenya.
- Nakumatt featured prominently in many transactions and PWC queried the massive transfers made by Nakumatt from its collection account with Barclays Bank into Charterhouse Bank.

The reaction of the statutory manager of Charterhouse Bank was that the PWC report “demonstrates the reckless and fraudulent manner with which the management of Charterhouse Bank and its Board conducted affairs” and that the bank had “been used as a conduit for secret funds transfers for related parties and associates in money laundering and, highly likely, tax evasion schemes.” He recommended that the bank’s license be revoked and that it be placed under liquidation, which would enable genuine depositors to access their funds.

Also in July 2006, the commissioner general of the Kenya Revenue Authority confirmed that there had been cases of massive tax evasion at the bank, and the acting governor of the Central Bank of Kenya declared: “Charterhouse is not a bank and it should never have been allowed to open.”²³ (Later in the year she was demoted and she then resigned.)

In another report compiled by the Kenya Anti-Corruption Commission, its deputy director also confirmed that there had been “significant tax evasion” to the extent of between Ksh 2 billion (\$27 million) and Ksh 3 billion (\$40 million) per year. He also found that “the John Harun Group had multiple accounts which are linked to the Nakumatt network but were not examined.”²³ The similarity in names between the “John Harun Group” and John Harun Mwau, the assistant minister for transport, who recently resigned after he was named as a suspected drug trafficker, may be pure coincidence.

Early in 2010, thirty-five account holders in Charterhouse Bank, whose deposits were still being held by the bank, petitioned Parliament to carry out an independent investigation. This led to yet another investigation, this time by the Parliamentary Committee on Finance, Planning and Trade. By September 2010, there were indications that the committee was keen to have Charterhouse Bank reopened. A section of civil society termed such a move as “scandalous.” Parliamentary

committee members denied reports that they had been bribed to make the recommendations.²⁴

In December 2010, the parliamentary committee cleared Charterhouse Bank of any wrongdoing and recommended its reopening. It dismissed allegations of tax evasion, money laundering, drug trafficking, and siphoning of money to offshore accounts.²⁵ However, the director of the Kenya Anti-Corruption Commission (KACC) announced that, following additional evidence that he had received, among others from the US embassy in Nairobi, the KACC would reopen its investigation. The director described the file as making out a “grave case.” A dossier, handed over by the US ambassador to the KACC in November 2010, claimed that Ksh 60 billion (\$738.5 million) had been lost through financial malpractices by Charterhouse Bank.²⁶ As long as Charterhouse Bank is under investigation it cannot be re-opened. The Charterhouse saga therefore continues.

What the Charterhouse Bank experience also illustrates is that laws mean very little if the state and the main pillars of society do not support them, whether it is tax evasion, contravening the Banking Act, or failure to comply with banking regulations. The new Proceeds of Crime and Anti-Money Laundering Act is unlikely to make much of a difference to the current, apparently criminalized environment in which operations such as Charterhouse Bank have been allowed to operate. It will be difficult to stem money laundering unless there is political support to enforce the law, unless the law-enforcement agencies are committed to doing so, and unless the business community helps to change business culture towards greater transparency and accountability. For example, the issue of nominees and the identity of those they represent needs to be addressed. As far as the Kenyan public is concerned, they have become very disillusioned about any promises or steps that government takes to counter money laundering or corruption.

Kenya's Cash Inflow

In 2010, two national financial issues made news in Kenya:

- The balance of payment statistics published by the Central Bank

of Kenya showed a large foreign currency injection, in hard currency, into the Kenyan economy, which could not be explained or accounted for. The staggering amount of Ksh 164 billion (\$2.1 billion) had found its way into Kenya without the government being able to explain its source.

- The property boom in Kenya, which had been growing for a few years, reached “boiling point” proportions, which threatened to cause serious distortions in the property market, making it increasingly difficult for middle-income families in Kenya to buy a house.²⁷

These two issues are interlinked and will therefore be dealt with together. How international criminal networks are linked to these two phenomena is not obvious. Only very general information is publicly available. Much more is known by intelligence agencies and embassies in Nairobi, but they remain coy about releasing such information. It would make for a more realistic debate and therefore facilitate a search for solutions that are workable if such information was released. The current debate is based on speculation and inferences, and it is difficult to know how much weight to attach to allegations relating to ransom money, or the role of al-Shabaab.

To try to throw some light on the mystery inflow of Ksh 164 billion (\$2.1 billion) into Kenya, a special team was set up to investigate its source. The team, formed by the Central Bank of Kenya and the Kenya National Bureau of Statistics, has not made any report public to date. The overheated property boom prompted the Office of the President to order an investigation into property purchases in Nairobi.²⁸

The unexplained large flow of funds into Kenya has sparked off a public debate in which the differences of opinion center more on emphasis than on substance. The differences of emphasis relate to the role played by pirate ransom money paid to Somali pirates and the extent to which that forms a major part of the Ksh 164 billion (\$2.1 billion). The US and others in the international community tend to emphasize the contribution made by piracy funds (and the possible involvement of al-Shabaab), while many Kenyans are not persuaded that piracy funds constitute a significant portion of the money flowing

into the country from Somalia. The senior representative of the IMF in Kenya accepted that part of the billions flowing into the economy may be coming from Somali pirates, but stressed that the situation was not wholly attributable to such activity.²⁹ What appears to be generally accepted as true is the following:

- Property prices have skyrocketed. A real estate agent explained that it would normally take ten years for real estate prices in Nairobi to double but they have, instead, tripled over the past five years.³⁰
- Somalis have bought properties, normally in cash and often through lawyers and middlemen, in Nairobi (mainly Eastleigh and neighboring areas), Mombasa, and the coastal area including Lamu Island. They sometimes pay 50 percent more than the asking price.³¹
- The large Somali diaspora around the world, including Kenyan Somalis, remit significant sums, which end up in the Kenyan property market. This is often channeled through the *hawala* system by word of mouth and on trust, which means that no paper trails are available in the formal financial sector.³²
- General remittance inflow into Kenya during 2009 was \$609.2 million, a drop of \$2.2 million from 2008.³³
- Businessmen from Somalia, the DRC, and Burundi are also investing in property in Kenya. So is the growing middle class of Kenya.
- Officials believe that drug money is also heavily invested in Kenyan properties. Drug traffickers reportedly launder approximately \$100 million through Kenya's financial system every year.³⁴
- The Somali community in Nairobi's Eastleigh neighborhood is one of the fastest growing communities in the capital.

International law-enforcement officials believe that pirates are using the Eastleigh cash-based money transfer network to launder at least a part of the ransom money in Kenya.³⁵ Most in Kenya would probably not dispute that a part of the unrecorded inflow of hard currency might originate from ransom money, even though no facts

are available to substantiate this. But it is unlikely to account for the lion's share of the cash that is inflating property prices. A property conveyance lawyer in Nairobi explains,

The perception that it is only Somalis – Kenyan or otherwise – buying property using proceeds from piracy on the high seas is at best a widely held fallacy and at worst a scorn at the prudent investment model that the Somali use whenever they invest.... In all these accusations there is really no proof to link the piracy money to rise in property prices as we have seen in the country.³⁶

Recent analyses have shown that on average, earnings from the real estate sector since 2000 were three times more than stock market returns. Property therefore constitutes an attractive investment for Kenyans and non-Kenyans alike.

Somali traders and transporters operate across Central Africa and the Horn. In addition, despite the chaotic situation in Somalia, there are some thriving businesses that are unlikely to invest surplus funds in that country because of the uncertainty. An analyst explains,

Traditional social organization allows Somalis in Africa and abroad to pool their financial resources. These contemporary factors and traditional pastoralist resilience, mobility, and risk-taking – not pirates and banditry – go a long way towards explaining the dynamics of Somali capitalism. Much of the capital is finding its way into Kenya.³⁷

Allegations have also been made that funds from Kenya sometimes end up with al-Shabaab, in Somalia. Credible information that this might be the case is contained in the report of the UN Monitoring Group on Somalia.

Kenya's large Somali community, its proximity to Somalia and the notoriously porous border between the two countries all contribute to Kenya's emergence as a major base of support for Somali armed opposition groups. Members of Shabaab and Hizbul Islam travel with relative freedom to and from Nairobi, where they raise funds, engage in recruitment and obtain treatment for wounded fighters. A key pillar of this support network is a community of wealthy clerics-cum-businessmen,

linked to a small number of religious centres notorious for their links to radicalism.... in Nairobi.”³⁸

It is reasonable to assume that if elements in the diaspora wished to channel funds to al-Shabaab, they would transfer such funds to Kenya for further transmission to Somalia. The *hawala* system makes that possible without relying on the formal banking system.

Following concerns of rampant money laundering, tax evasion, and possible terrorist funding, the Central Bank of Kenya in August, 2010 ordered all forty-four commercial banks licensed to operate in the Kenya to regularly submit quarterly reports on suspicious transactions and businessmen who fund fighting in Somalia. In early September 2010, all the banks reported nil suspicious transactions.

Chapter Seven

Assessing the Impact

The levels of transnational organized crime in each of the six categories mentioned above (trafficking in drugs, counterfeit goods, wildlife products, humans, and small arms, as well as money laundering) have increased in Kenya and become more pervasive during the past ten years. Criminal networks have penetrated the political class and there are growing concerns about their ability to fund elections and to exercise influence in Parliament and in procurement processes.

In penetrating government and political institutions, transnational organized crime and corruption are the flipsides of the same coin. The ability to “persuade” and then “buy” a senior police officer or a judge to work for a criminal network requires a significant degree of sophistication and a lot of money. This is corruption at its most dangerous. But the sophistication, and ability to corrupt with large amounts of money, is often confined to those involved in transnational organized crime networks. They are the ones who have moved up the social ladder and who mix with the elites because of their wealth, skills, and international exposure, and they are the ones who have the means to corrupt top figures in government and politics because of the vast profits they earn from their illicit trade.

The impact that this has on the state and its institutions is like slow biological warfare or radiation. It is hard to tell how much danger the state and its institutions are in at any given time. The poison or the effects of radiation accumulate and the impact may be delayed. The infrastructure and the institutions appear to remain intact, but there is a slow degeneration until it becomes clear that they have become so contaminated that they are no longer functional and unable to enforce

their rules. The institutions can then, in fact, become a threat themselves and often have to be destroyed or radically transformed.¹

Once the judge or prosecutor has ensured that the police docket relating to drug charges against a drug kingpin is “misplaced,” once the provincial police chief instructs his subordinates at the roadblock to let certain vehicles with women and children on their way from Somalia pass unhindered, and once the member of Parliament with links to drug traffickers is able to persuade the parliamentary committee on which he serves to oppose or dilute proposed legislation relating to money laundering or other crimes, the departments and institutions concerned commence on the slippery slope that leads to ineffectiveness and the loss of public trust in state institutions. Not only does it lead to the criminalization of state departments, but public service delivery slows down, effecting the health, education, and development of the population as a whole. When that happens, ordinary citizens increasingly identify democratic government with impunity for criminal elements in the elites and an inability to deliver justice and development for the majority.

In Kenya, impunity is rife for political and government elites and hardly any top-level prosecutions for transnational organized crime have taken place. The criminal justice system, including the judiciary and prison service, has been perceived as corrupt and inept and has enjoyed low levels of public trust and legitimacy. However, the new constitution, adopted in 2010, has resulted in elaborate and more transparent nomination and vetting processes being followed for the new appointments of the chief justice, deputy chief justice, and the director of public prosecutions. The three appointees so identified in June 2011 have engendered new hope and optimism that the institutions of Kenya’s criminal justice system may soon turn a corner towards becoming more trusted and legitimate.

Transnational organized crime and corruption have therefore set Kenya back and could cause it to slide in the direction of becoming a captured and criminalized state. This is not an outrageous notion. When a state can be said to have become criminalized is difficult to define or stipulate. Studies that have grappled with the concept have avoided attempts to arrive at a strict juridical definition of criminalization and have instead offered more general and generic definitions,

such as the following:

The criminalization of politics and of the state may be regarded as the routinization, at the very heart of political and governmental institutions and circuits, of practices whose criminal nature is patent, whether as defined by law of the country in question, or as defined by the norms of international law and international organizations or as so viewed by the international community, and most particularly that constituted by aid donors.²

Even though Kenya is experiencing exceptionally high levels of corruption and organized crime, it would be wrong to conclude that it has reached the stage where a central function of its political and government institutions is to routinely engage in criminal practices. Corruption, pilfering of public funds, and links to organized crime are widespread, but they are mainly the result of omissions rather than of acts of commission by the state. It would appear that for a state to justifiably carry the label of a “criminalized state” it ought to be directly involved in widespread criminal practices as a matter of routine. Kenya has not reached that point.

The concept of the “captured state” is sometimes used to describe a state whose government structures have become captives of uncontrolled corruption. State capture has tended to occur in transitional economies where, as a result of grand corruption,³ so-called oligarchs have been able to manipulate policy formation and even shape the emerging rules of the game to their own advantage. State capture has been defined as “the efforts of firms to shape the laws, policies, and regulations of the state to their own advantage by providing illicit private gains to public officials.”⁴

Most types of corruption are directed at influencing the implementation or non-implementation of existing laws and regulations—for example, corruptly influencing an official not to apply a specific legal provision. However, the type of corruption that can result in state capture relates to corrupt conduct aimed at shaping the content of laws and regulations and not merely the non-implementation of laws. State capture “refers to corrupt efforts to influence how those laws, rules, and regulations are formed. Bribes to parliamentar-

ians to ‘buy’ their votes on important pieces of legislation, bribes to government officials to enact favorable regulations or decrees, bribes to judges to influence court decisions—these are the classic examples of grand corruption through which firms can encode advantages for themselves into the basic and regulatory structure of the economy.”⁵

In Kenya powerful criminal networks with links to Parliament, rather than conventional firms, currently pose the bigger threat to shaping “the laws, policies, and regulations of the state to their own advantage.” Questions have been raised about the extent to which drug lords and others with links to transnational crime networks have been able to manipulate parliamentary processes and influence the content of legislation, but insufficient evidence is available to point to specific instances where it has, in fact, happened. The handling of the Charterhouse Bank issue by the relevant parliamentary committee raised serious suspicions, and police investigations of members of Parliament and a deputy minister for alleged links to drug trafficking cause even more questions to be asked. This has seriously undermined the standing of Parliament.

Available information does not, therefore, justify categorizing Kenya as a captured or criminalized state, but the country is clearly on its way to achieving that dubious status. The outward veneer of respectability is wearing thin and unless there are far-reaching interventions by the Kenyan government, the slide will lead to criminal networks, also involving top political and government figures, becoming a routine part of governance in Kenya, operating in the shadow of, and parallel to, the formal state administration.

Comparisons with West Africa

Even though organized crime in Kenya is pervasive, deeply imbedded, and seriously corroding the integrity of government and its institutions, it has not reached the alarming proportions experienced in some West African states during the past ten years. The volumes of drugs trafficked through Kenya and East Africa are significantly less than those in West Africa, and they do not constitute as serious a threat for most of the demand countries in the developed world. Kenyan civil society—mainly the media and some NGOs—and some development partners have contributed to making it more difficult for

criminal networks to penetrate government and business structures than was the case in several West African countries. While the penetration that has occurred in Kenya is alarming, the weaker and more fragile states in West Africa provided hardly any resistance to international criminal groups and enabled them to become deeply embedded as part of government and business operations. East African countries therefore still have an opportunity to stem and reverse the wave of organized crime, but this will not happen without fundamental reforms and the full support of international partners.

It remains a reality that international involvement to counter transnational organized crime outside domestic jurisdictions, particularly drug trafficking, is largely determined by the extent to which such trafficking is perceived by individual countries to pose a threat to themselves. The US has concluded that its own interests are sufficiently affected by the drugs that transit through Kenya to warrant direct engagement to counter drug trafficking in East Africa. The United States Drug Enforcement Administration (DEA) will soon establish an office in Nairobi. The US acknowledges that the decision was informed by the fact that drugs passing through Kenya are consumed in the US. In addition to countering drug trafficking, the DEA's presence in the country was also intended to limit drugs-driven corruption prevalent in Kenya's "law enforcement, judiciary and political institutions."⁶

The international community has not yet sounded alarm bells, as it does not yet perceive the organized crime threat from Kenya or East Africa as significant enough to cause undue concern. US activism through its Nairobi embassy, resulting in the constant monitoring of transnational organized crime, and in interventions to address it, seems to have been an exception to the rule. And yet, it has become urgent to formulate national and international responses to transnational organized crime in Kenya. The international community's reactive response to organized crime and drug trafficking in West Africa needs to be replaced by a proactive one for East Africa.

Developing countries whose political and state institutions are being penetrated by criminal networks can learn from the Kenyan experience and take timely steps to avoid ending up in a similar situation. Kenya's police no longer have the capacity to effectively

investigate and prosecute powerful suspected organized-crime figures, as shown by the investigation involving the parliamentarians, as well as a recent case involving the seizure of 102 kilograms of heroin at Mombasa. This creates a vicious cycle in which organized networks become even more powerful and brazen and penetrate deeper into government, politics, and the business sector while the government and its criminal justice system become even more impotent to act. This cycle can only be broken by massive external involvement, as per West Africa, or through decisive and far-reaching internal political interventions, or both.

Although the warning lights are flashing for Kenya, it remains a country that has the political reserves and the capacity to correct its current course. As mentioned before, key elements in government—even if they have a low profile and appear to be in the minority—together with a vibrant civil society can tilt the scales in favor of the rule of law and governance with integrity. International pressure and support can play an important role, as was illustrated by the US embassy in Nairobi handing over a dossier containing information on drug trafficking in Kenya to the Kenyan authorities. However, given the political sensitivities of such interventions, they can also lead to a backlash, and ought to be very carefully considered.

At present there are no indications in Kenya that the government intends to take far-reaching steps to counter organized crime, corruption, or impunity. It has a business-as-usual approach and continues to regard the appointment of special police task forces to investigate drug trafficking, or the issuing of dire threats of action against those involved in corruption, as sufficient. Systemic changes, or radical interventions that risk a serious political fall-out because of the intertwinement of politics and organized crime, are required, but they are not in the cards. The government appears too weak and lacks the political will to take such steps.

The United Nations Security Council has recognized that “drug trafficking and transnational organized crime contribute to undermine the authority of the state.”⁷ This is of direct relevance to Kenya and some of the other East African countries. The global, regional, and domestic reach of transnational organized crime requires responses at global, regional, and domestic levels if it is to be

countered effectively. Purely national solutions will not suffice. They will have to be augmented by international and regional responses. These are major and complex tasks that go well beyond law-enforcement activities. For Kenya this means that it will have to look beyond its borders and seek partnerships and collaborative arrangements with other states and organizations if organized crime is to be countered effectively. Over-sensitive reactions against international collaboration to counter transnational organized crime, on the grounds that it would dilute the country's sovereignty, will hamper states from taking effective steps against international security threats. Purists who play the sovereignty card will be doing so to the benefit of international criminal networks. Governments that are serious about combating transnational organized crime therefore need to take heed of the statement made by chancellor Angela Merkel that "the greatest consequence of globalization is that there aren't any purely national solutions to global challenges."⁸

Chapter Eight

Recommendations: National, Regional, and International

The World Development Report 2011 seeks to find answers to, among others, the question of how countries can escape from violence and achieve institutional resilience. The framework that is proposed is one from which key elements can be borrowed and applied to Kenya when considering how to respond to the undermining impact of transnational organized crime.¹ The report lists as the first priority the need to restore confidence before embarking on wider institutional transformation. A second priority that is emphasized is one of transforming institutions that provide citizens with security, justice, and jobs. These two key considerations also ought to be taken into account when formulating responses to transnational organized crime. The Kenyan public lacks confidence in government, party politics, and state institutions. The development report suggests that low trust levels require strong signals of real change at a time when longer-term institutional reforms are being implemented. Such longer-term institutional reforms, affecting among others the police and judiciary, are underway in Kenya. They are likely to take many years before there is a noticeable turnaround and public trust is restored.

The recommendations below on steps to counter transnational organized crime are offered in summary form, they are few in number, and they are offered with an acknowledgement that they deserve a far more comprehensive treatment than can be provided in this report. Nevertheless, a limited number of recommendations are suggested because they appear to leap out from the findings of the study and because a debate on such recommendations could be beneficial. Lack

of time and resources prevented the recommendations from being discussed with key actors in East Africa. They are therefore offered for further debate and refinement.

The police are currently undertaking the time-consuming and complex task of substantially reforming their structures and practices in line with the many recommendations made in the 2009 report of the government-appointed National Task Force on Police Reforms. These reforms are aimed at restoring the integrity, credibility, and effectiveness of the Kenya Police. If properly done, they will take many years before positive results will become evident. In addition, the Kenya Police are still too compromised as a result of widespread corruption and a lack of public confidence in them. Trust levels, although improving, remain low.

The police transformation process must take its course and it would be unwise to appoint yet another police taskforce to address transnational organized crime. A short and medium term response should not be dependent on the police for its success. The response should be such that it generates public confidence and strengthens the belief that the government has the will and the capacity to address crime and deal with the powerful figures involved in it. It is important to bear in mind the earlier-mentioned warning by the former executive director of the UNODC that “East Africa is becoming a free economic zone for all sorts of trafficking—drugs, migrants, guns, hazardous wastes, and natural resources.”

The Kenyan government should therefore consider taking immediate steps to establish a capacity independent from the police to effectively investigate complex organized crime and corruption cases.

National Recommendations

1. Establish an independent, specialized serious crime unit.

A task team should be appointed to consider and report on the desirability of establishing a carefully vetted and highly specialized unit with a mandate to investigate and prepare for prosecution cases relating to serious and sophisticated organized crime in Kenya. The unit should:

- consist of specially selected persons with the highest degree of

integrity and skills;

- have a multi-disciplinary skill composition, including detectives, prosecutors, forensic experts, accountants, electronic device experts, undercover experts, analysts, etc.;
- be equipped with the most modern and effective equipment available and be trained to utilize the best international practices;
- operate in line with a legislative mandate, which also sets out its powers, jurisdiction, and accountability;
- operate outside the Kenya Police with a significant degree of autonomy and be accountable to an authority to be determined;
- focus only on the most complex cases and most powerful or sophisticated criminal networks, while the Kenya Police continue to address general organized crime.

The advantages of establishing such an independent specialized unit include:

- generating public support and confidence in the criminal justice system at a time when the police and judiciary are undergoing longer-term, fundamental institutional reforms;
- increasing the risk for sophisticated international criminal networks operating in Kenya and stemming the gains they have made in penetrating government and political structures;
- prosecuting powerful crime figures in Kenya, thereby rolling back the long reign of impunity that many have enjoyed;
- injecting international financial support and expertise from development partners;
- improving international cooperation with similar specialized units elsewhere and with other law-enforcement agencies;
- improving Kenya's standing as an important partner to counter transnational organized crime globally.

Nonetheless, the establishment of such a specialized unit does not come without considerable risks and challenges. Strong political commitments will be required to set it up; parties with a vested

interest may try to prevent its establishment, or sabotage it once it is up and running; political opponents (sometimes with criminal elements involved) may wish to create political conflicts around such a unit; and it will be a costly exercise. It will be important to ensure that the relationship between the proposed unit, the Kenyan anti-corruption commission, the Kenyan intelligence services, and the Kenyan police are clearly outlined. Unless there is absolute clarity about mandates and accountability, rivalry and turf battles with other law-enforcement branches are bound to undermine the effectiveness of a special unit.

Other countries have relied on independent specialized units or institutions to effectively counter organized crime.⁸ The realities of international police collaboration determine that any new specialized unit will have to earn the respect and trust of international partners before full and effective collaboration can take place. Trust, integrity, and professionalism are what effective international collaboration is based on.

2. Enhance research, analysis, and information dissemination on organized crime in Kenya and East Africa.

Many an expert on transnational organized crime has emphasized the importance of information, both in the form of intelligence for successful investigations and information to equip policymakers and the public to understand and counter organized crime more effectively. Some go as far as claiming that the key to the successful countering of transnational organized crime lies in three things: information, information, and information. The Kenyan public and its representatives should have regular access to reliable information to enable them to develop an appreciation of the threats that organized crime and corruption pose, and so that a realistic debate can take place about effective countermeasures. Decision makers who are not properly informed about the phenomenon of organized crime are unlikely to make appropriate policy decisions to counter it, and a public that has scant information available will not understand the threat that organized crime holds for citizens and the country as a whole. While the Kenyan media has played an admirable role in reporting on incidents and providing investigative pieces, a more sustained initiative that results in coordinating, analyzing, and

publishing credible information is required.

No Kenyan university or research establishment appears to be undertaking such work. The little research that is undertaken originates primarily from nongovernmental and international organizations based in Kenya. They are sometimes nervous about reporting on the full realities of organized crime for fear of being placed under pressure by the Kenyan government, something that can easily result in information on organized crime and corruption being sanitized.

A Kenyan university or research establishment should therefore make a commitment to undertake ongoing critical research and analysis into organized crime and corruption, and it should assume the responsibility of making such information available to the public through regular dissemination and publications.

Foreign embassies also have a role to play in disseminating information on organized crime, drug trafficking, etc. They often have valuable information on organized crime in the region but tend to be reluctant to share it publicly. No one expects embassies to release sensitive information that could jeopardize ongoing investigations or endanger the lives of others, but information that does not fall into this category ought to be made public. Governments with embassies in Kenya should explore ways for their embassies to share their information and assessments of organized crime with the public in a manner that does not present political or diplomatic risks for the embassy concerned. It seems unconscionable to withhold important information that could be made available, thereby depriving Kenyans of the potential to stay informed about matters relating to their security and the stability of their country.

3. Carry out a major overhaul of company registration systems to enhance accuracy, transparency, and public access.

Financial crimes, including money laundering, are facilitated by company and property records that are not accessible to the public, contain false information, enable front men to conceal the real shareholders or owners, or that can be taken and controlled by senior officials other than the ones duly authorized to do so. The Charterhouse Bank saga provides an example of how major financial criminal activities are difficult to unravel in the absence of a clear and

well-functioning company registration system.

Regional Recommendation

4. Significantly enhance police cooperation in the East African Community (Burundi, Kenya, Rwanda, Tanzania, and Uganda).

Eastern African Police Chiefs Cooperation Organization (EAPCCO) is an intergovernmental organization representing the law-enforcement agencies of the following eleven member states: Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, Sudan, Tanzania, and Uganda. These countries cover the Horn and East Africa, a large and very complex part of the world in which some member states are deeply antagonistic towards each other. For example, Eritrea, Sudan, and Ethiopia are traditional foes, and they find it politically impossible to extradite persons to their neighboring countries.³ This makes police cooperation across the region very difficult. Deep divisions among some of the EAPCCO member states have put a break, but not a stop, on more effective regional police cooperation. Agreements developed by EAPCCO to promote law-enforcement cooperation in the region have seldom been signed by all member states. The INTERPOL subregional bureau in Nairobi serves as the secretariat for EAPCCO and provides equipment and support for the activities of EAPCCO. Such activities include promoting regional police cooperation, joint crime-combating operations, and providing police training.

Despite the very difficult political environment, EAPCCO has undertaken some successful joint operations to combat cross-border crimes. These operations have, however, not made much of a dent on organized crime in member states such as Kenya, and their impact has been far from impressive. Exchanging and sharing relevant and reliable information between member states remains a key problem.

In the East Africa/Horn of Africa region, some countries have adopted a faster pace in moving towards economic integration than others. The East African Community (EAC), which consists of Kenya, Uganda, Tanzania, Rwanda, and Burundi, started to implement a fully-fledged customs union between its five members on January 10, 2010. This will have far-reaching, positive implications for trade and the free movement of people, goods, and services. It will also make it

easier for criminal networks to cross borders within the EAC unhindered and to therefore expand their activities and consolidate criminal markets. Should the slow-paced police cooperation provided by EAPCCO continue to apply to the fast pace of developments in the East African Community? Would it not serve the interests of the East African Community to augment its improved economic and trade integration with enhanced law-enforcement cooperation and integration in some respects? The European Union and Europol have had the benefit of many years of development and experience in reaching their current levels of relatively successful internal collaboration, also among law-enforcement agencies. The EAC countries could benefit from the lessons-learned by Europol.

The East African Community member countries should consider whether, in addition to their membership in EAPCCO, they should not establish an additional mechanism to place police cooperation between EAC countries on a faster and more effective track. The greater opportunities that the EAC customs union offers to cross-border criminal networks will enable such networks to rapidly consolidate a regional criminal market. This needs to be countered by the EAC with more integrated and effective police collaboration between EAC member states. Without such enhanced police collaboration, transnational organized crime will continue to remain one step ahead of law-enforcement agencies. The EAC Secretariat in Arusha would play a key role in this.

International Recommendation

5. Develop an East African “WACI.” East African governments should work with UN agencies and international partners to learn from the interagency West Africa Coast Initiative (WACI) and develop an East African Community Initiative for the East African region that meets the needs and suits the conditions of that region.

The UNODC is currently implementing major programs in eastern and western Africa that, among other objectives, aim to address transnational organized crime.

In eastern Africa, the UNODC Regional Programme: Promoting the Rule of Law and Human Security in Eastern Africa (2009-12), is

designed to cover thirteen countries. The purpose is “to support the efforts of the member states in the Eastern Africa region to respond to evolving security threats and to promote the rule of law and human security.”⁴ The program identified three sub-programs as strategic priorities in the region:

- countering illicit trafficking, organized crime and terrorism;
- fighting corruption and promoting justice and integrity;
- improving health and human development.

In West Africa a more recent and very ambitious UNODC Regional Programme for West Africa, 2010-2014 has as its overall objective “to contribute to and support the efforts of West African States, as well as those of regional organizations and the civil society, to respond to evolving security threats, such as drug trafficking, promote human rights and the rule of law, and good governance.”⁵ It covers sixteen countries and has similar sub-programs to the eastern Africa program. It arose out of the realization in 2004 that alarming volumes of cocaine were being trafficked through West Africa and that transnational organized criminal networks had deeply penetrated government and political structures in a number of countries. It is therefore understandable that the West Africa regional program has a stronger focus on addressing drug trafficking and transnational organized crime than the eastern Africa program.

It is too soon to be able to assess the impact of these two programs. The concern is that they are both so extensive in their geographic and thematic reach, and the issues are so complex, that the high expectations raised at the launch of such programs are often not met and the before-and-after differences are often not identifiable, particularly as far as transnational organized crime is concerned.

In addition to long-term systemic changes that need to be addressed, some short-term, well-focused initiatives are crucial to ensure that by the time the main programs are completed, organized crime will not have changed and expanded to such an extent that the impact of the main program is neutralized. Shorter-term initiatives that are seen to make a difference and that build confidence in domestic capacity to counter transnational organized crime could be

crucial, also for mobilizing domestic public support.

The West Africa Coast Initiative (WACI) is an example of a complementary strategy that has the potential to impact more visibly on transnational organized crime and on domestic capacity to counter it.⁶ WACI is a joint UN interagency program involving UNODC, DPKO, DPA/UNOWA, and Interpol. This “one UN” approach has much potential. Key to the initiative is the planned establishment of Transnational Crime Units (TCUs), initially in four ECOWAS states. These will be elite units with expertise from different domestic law-enforcement sectors pooled in one unit. They will be trained and equipped to fight transnational organized crime and act as the focal point for domestic and international interaction relating to organized crime.

East Africa lacks such an additional component to the more general and longer-term aspects of the UNODC Regional Programme for Eastern Africa. This study has shown how inadequate the capacity of law enforcement in Kenya is to deal with sophisticated transnational organized crime. The concept of Transnational Crime Units could be a useful additional initiative for East Africa provided it is not just copied from West Africa and provided that East African governments have an interest in establishing them and are part of conceptualizing and developing the initiative from the outset. UN agencies would play a key role in training and mentoring such units.

Although there appear to be similarities between the concept of a “transnational crime unit as envisaged for West Africa and the independent specialized serious crime unit recommended in this report for Kenya, they are, in fact, very different. The independent specialized serious crime unit recommended for Kenya would be regulated by a dedicated statute and run by the Kenyan government. It would be autonomous from the police and other domestic law-enforcement branches, and a legislative and functional firewall would therefore be installed to prevent penetration by criminal networks or influence by corrupt members of the police. In contrast, the transnational units envisaged for West Africa will be dependent on the multilateral support of the United Nations; they will work with the police agencies of the countries concerned; and their main function will be to build capacity and skills that would enable the units to be

more effective in undertaking their operational tasks.

While the establishment of an independent specialized serious crime unit is suggested as an immediate and effective step for Kenya, it does not detract from the great potential value that a plan similar to the West Africa Coast Initiative (WACI) could have for eastern Africa. It is therefore suggested that the United Nations and other international players interact with national and regional authorities in eastern Africa with a view to exploring the establishment of an appropriate Eastern Africa Regional Initiative similar to WACI but designed to take account of the particular conditions and circumstances pertaining to the eastern Africa region.

Conclusion

Kenya is in the process of implementing far-reaching and fundamental institutional changes following the adoption of a new constitution in 2010. The judiciary, police, and prosecution services are directly affected. If transnational organized crime is to be addressed effectively in Kenya, this requires interventions that result in early wins, that can generate quick and tangible results, and that contribute to restoring public confidence and legitimacy in government institutions while these institutions are being transformed. These are aspects stressed in the World Development Report 2011. The recommendations in this report are aimed at these objectives. They are skewed towards law-enforcement measures, but they are measures that can be introduced in the short to medium term. The recommendations are made with a full appreciation that law-enforcement responses should only constitute one element in a wider range of tools and strategies used to counter transnational organized crime. If implemented effectively, the proposed interventions have the potential to build confidence in domestic and regional capacity to counter transnational organized crime, and to enhance the security of citizens.

Although organized crime and corruption are gradually undermining Kenya's foundations, the country has the people, the energy, and the creativity to reverse this process of self-destruction. If organized crime and corruption are confronted head-on, without denying their extent, there will be widespread international support for effective countermeasures. Kenyans deserve a better deal and they have the wherewithal to ensure that it becomes reality.

Peter Gastrow
September 15, 2011

Endnotes

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