

Termites at Work: Transnational Organized Crime and State Erosion in Kenya

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SEPTEMBER 2011



INTERNATIONAL PEACE INSTITUTE

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Suggested Citation

Peter Gastrow, "Termites at Work: Transnational Organized Crime and State Erosion in Kenya," New York: International Peace Institute, September, 2011.

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ACKNOWLEDGEMENTS

IPI owes a debt of gratitude to the donors who contribute to its work on transnational organized crime. In particular, IPI would like to thank the government of Germany, whose support made this publication possible. The author wishes to express his thanks to the three Kenyan investigative journalists, Ken Opala, Andrew Teyie, and Dominic Wabala, who provided valuable assistance, as well as to those who were willing to be interviewed for the project. To preserve the confidentiality of the discussions, the identities of many of those interviewed remain anonymous. Finally, the author thanks Adam Lupel and Marie O'Reilly for their editorial support.

CONTENTS

Executive Summary	1
Introduction	1
Six Types of Transnational Organized Crime in Kenya	3
DRUG TRAFFICKING	
ILLICIT TRADE IN COUNTERFEIT GOODS AND OTHER ILLEGAL COMMODITIES	
TRAFFICKING IN WILDLIFE PRODUCTS	
HUMAN TRAFFICKING AND SMUGGLING	
SMALL ARMS TRAFFICKING	
MONEY LAUNDERING	
Assessing the Impact	8
Comparisons with West Africa	10
Recommendations	11
Conclusion	16

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 in it, run the risk of becoming criminalized or “captured” states. This paper 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.¹ 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 a criminalized state, but its foundations are under attack. Determined interventions are required to stem organized criminal networks from further undermining the state. The paper concludes with recommendations for steps to be taken at the national, regional, and international levels:

National

- Establish an independent, specialized serious crimes unit.
- Enhance research, analysis, and information dissemination on organized crime in Kenya and East Africa.
- Carry out a major overhaul of company registration systems to enhance accuracy, transparency, and public access.

Regional

- Significantly enhance police cooperation in the East African Community.

International

- Develop an East African Community Initiative that builds on the experience of the interagency West Africa Coast Initiative.

Introduction

Kenya’s position on the East Coast of Africa has for centuries made it a strategic location for trade. It is the economic hub of East Africa and a major tourist destination. Its civil society is active, its media free and vibrant, and it is generally admired as a country with major potential for growth and development. The International Monetary Fund (IMF) predicts a growth in Gross Domestic Product (GDP) of 5.78 percent for 2011, although the Kenyan government has recently scaled that down slightly.²

But the sunny image of Kenya, with its scenic beauty, vibrant people, and significant development potential, tends to obscure the less attractive side of the country, which includes endemic corruption, widespread organized crime, impunity for the elites, and the extensive pilfering of state funds by government officials. Part of the darker side of Kenya is transnational organized crime, which has expanded and penetrated government and business structures to the extent that state institutions no longer have the capacity to counter it effectively.

By definition, transnational organized crime entails criminal activity that is coordinated across national borders.³ For the international community, transnational organized crime in East Africa has not been of much concern. The focus has been on West Africa. About fifty tons of cocaine a year has, at times, been trafficked through that region en route to markets in Europe. This caused alarm and led to major international interventions in the West

1 This policy paper is based on a comprehensive research report on transnational organized crime in Kenya undertaken by the International Peace Institute, available at www.ipinst.org.

2 EconomyWatch, “2011 Kenya GDP Growth (Constant Prices, National Currency) Statistics,” April 9, 2011, available at www.economywatch.com/economic-statistics/Kenya/GDP_Growth_Constant_Prices_National_Currency/year-2011/.

3 Loosely described, and in line with the UN Convention Against Transnational Organized Crime, organized crime occurs when three or more persons who operate in a structured group or network, are repeatedly involved in the commission of serious crime for profit. Organized crime becomes transnational in nature if (1) it is committed in more than one state; (2) it is committed in one state, but a substantial part of its planning or perpetration takes place in another state; (3) it is committed in one state, but involves a criminal group that engages in criminal activities in more than one state; (4) it is committed in one state, but has substantial effects in another state. UN General Assembly Resolution 55/25 (November 15, 2000), UN Doc. A/RES/55/25, Annex I, art. 2.

African region. Despite its vulnerability, East Africa seems to have been overlooked. The region appears to be in a slumber as far as the realities of organized crime are concerned, and national governments in East Africa continue with a business-as-usual approach. Very little reliable information is available that could serve as a barometer of the extent of the threat. Warnings such as the one by the former executive director of the United Nations Office on Drugs and Crime (UNODC) that East Africa “is becoming a free economic zone for all sorts of trafficking—drugs, migrants, guns, hazardous wastes, and natural resources”⁴ appear to have been largely ignored.

While to the onlooker Kenya appears to be in a relatively healthy state, it is in fact weakening due to a process of internal decay. Endemic corruption and powerful transnational criminal networks are “white-anting” state institutions and public confidence in them. Termites are at work, hollowing out state institutions from the inside. As a result, development is being hampered, governance undermined, public trust in institutions destroyed, and international confidence in Kenya’s future constantly tested.

The country is perceived as one of the most corrupt in the world, ranked far down at 154th on a list of 178 countries that feature in the 2010 Transparency International Corruption Perceptions Index.⁵ Close to 90 percent of Kenyans surveyed rated their country as being between corrupt and extremely corrupt, while only 8.5 percent regarded it as slightly corrupt.⁶ Bribery has become a normal part of life. In 2010, 58.6 percent of persons who sought the services of the Nairobi City Council paid bribes, 54.4 percent of those who sought the services of the police did the same, and 47.8 percent who sought the services of the judiciary also resorted to bribes.⁷ It is this corruption-ridden environment that enables criminal networks to thrive. They can buy protection, information, and power.

This paper is confined to transnational organized crime in Kenya. It was not possible to also focus on organized crime committed by domestic criminal groups solely within the borders of Kenya, even though it constitutes a considerable threat. In the neighboring states of Uganda and Tanzania organized crime trends are not dissimilar to those in Kenya. The recent introduction of a fully-fledged East African Community Customs Union involving Kenya, Uganda, Tanzania, Rwanda, and Burundi will result in the licit and illicit economies of these countries becoming even more interwoven and will produce organized crime that increasingly exhibits similar patterns. Somalia, another neighbor, has its own unique and distinct circumstances. The piracy and terrorism associated with that country are not dealt with in this paper, even though they both pose a growing threat to the region.

The consequences of organized crime for a democracy, particularly in developing and weak states, are most damaging where criminal organizations have penetrated the political domain in order to better consolidate or expand their economic opportunities and in order to limit competition.⁸ The impact is one that follows a path of a gradual expansion of power and influence:

Democracy around the globe is facing formidable challenges today, not from martial forces from outside, as we saw heretofore, but from subversive militants from within. Democracy is infected by a pernicious affliction initiated and propagated by organized crime that gains control progressively, maybe first as only a communal criminal gang, to later transform itself into a market driven force, eventually infiltrating the legitimate government at all levels, and finally rendering the government powerless. Throughout the metamorphosis organized crime enlarges its power structure and fortifies itself as democracy atrophies or is lost altogether.⁹

The key issues that this paper explores are the extent, threat, and impact of transnational organized crime in Kenya, particularly in relation to state institutions and their ability to maintain

4 UNODC, “Africa Under Attack: Drug Trafficking has Acquired a Whole New Dimension,” December 8, 2009, available at www.unodc.org/unodc/en/about-unodc/speeches/2009-08-12-africa-under-attack.html.

5 Transparency International, *Corruption Perceptions Index 2010* (Berlin, 2010), available at <http://www.transparency.org/content/download/55725/890310>.

6 Transparency International, “Kenya: Burundi Most Corrupt Country in East Africa as its Revenue Authority Tops List of Corrupt Institutions,” July 22, 2010, available at www.transparency.org/news_room/latest_news/press_releases_nc/2010/2010_07_22_ti_kenya_eabi.

7 Transparency International, *East Africa Bribery Index 2010* (Nairobi, 2010), p. 25.

8 Felia Allum and Renate Siebert, eds., *Organized Crime and the Challenge to Democracy*, (London: Routledge, 2003), p. xi.

9 Peter B. Martin, “Confronting Transnational Organized Crime,” in *Global Organized Crime and International Security*, edited by Emilio Viano (Aldershot: Ashgate 1999), quoted in Felia Allum, *ibid.*, at p. 14.

governance standards. The findings could also provide an indication of whether East Africa is likely to experience the same fate as some West African countries, namely, that regional governments and the international community wake up to the extent and destructive impact of organized crime at a stage when the criminal networks have already become deeply entrenched, making it very difficult and costly to reverse the trend.

Six Types of Transnational Organized Crime in Kenya

A study conducted by the International Peace Institute examined six categories of transnational organized crime in Kenya: drug trafficking, illicit trade in counterfeit goods, trafficking in wildlife products, the smuggling and trafficking of humans, trafficking in small arms, and money laundering. Additional categories could unfortunately not be accommodated.¹⁰ A few findings from each of the six categories may provide insight into the realities of transnational organized crime in Kenya.

DRUG TRAFFICKING

Increased volumes of heroin from Pakistan and Iran, and cocaine from Latin America, are being transited through Kenya, mainly to Europe and North America. No reliable estimates of volumes are available and the UNODC figure of thirty to fifty tons of heroin trafficked into East Africa each year has been difficult to substantiate.¹¹

At least ten major international drug trafficking networks, headed mainly by West Africans but also involving Kenyans, are responsible for the bulk of cocaine and heroin trafficked into and through the country.¹² These networks consist of between ten and twenty members, many of whom have developed strong links with members of the law-enforcement agencies and the judiciary. A recent trend has been the use of drug money to attain positions of influence, particularly in politics.¹³ The drug lords have established extensive international

links to facilitate their global reach, something that the Kenyan law-enforcement authorities are unable to stem.

Domestic seizures of cocaine are negligible and bear no relation to the actual cocaine flows. However, numerous arrests at international airports and elsewhere of “mules” transporting cocaine or heroin to and from Kenya provide an indication of the extent of the trade and the growing importance of Kenya as a transit country. Heroin consumption has increased, causing serious social problems with more than 200,000 addicts estimated countrywide.¹⁴ All indications therefore point to greater volumes being trafficked.

Four members of Parliament, one of them a former assistant minister for transportation, are currently under investigation for drug trafficking. A special police investigating team has been unable to find sufficient evidence to prosecute the suspects, but the investigation by the Kenya Anti-Corruption Commission is ongoing. In June 2011, the former assistant minister and current member of Parliament, John Harun Mwau, was one of two Kenyans designated by the US government as a foreign narcotics kingpin under the US Foreign Narcotics Kingpin Designation Act.¹⁵ Five others who were designated were from Mexico, Afghanistan, and Kyrgyzstan.

Ongoing allegations of the involvement in drug trafficking of politicians, police officers, and other government officials, without any of them being successfully investigated or prosecuted, have contributed significantly to low levels of public trust in politicians and government institutions. In a July 2009 national survey, only 7 percent expressed trust in Parliament, 8 percent in the judiciary, and 8 percent in the Kenya Police Service.¹⁶ The most trusted Kenyan institution was the media with 69 percent of those polled expressing their confidence in it.

Media reports of wide-scale involvement of politicians in drug trafficking are frequent and for a

10 For more extensive information about the six categories of organized crime in Kenya and a broader discussion of the issues raised in this paper, please see the complete research report published by IPI, on which this paper is based, at www.ipinst.org.

11 UNODC, “Africa Under Attack.”

12 Intelligence document, October 7, 2010.

13 Intelligence document, October 27, 2010.

14 Mugumu Munene, “Drug Barons Getting ‘Real Dirty,’” *Daily Nation*, May 8, 2010, available at <http://allafrica.com/stories/201005080003.html>.

15 Patrick Mayoyo, “Obama Targets Mwau in Drug War,” *Daily Nation*, June 2, 2011, available at www.nation.co.ke/News/-/1056/1174092/-/10wjvpuz/-/index.html.

16 Mutinda Mwanzia and Ann Kanina, “Kenyans Want Poll Chaos Suspects Tried at The Hague,” *The Standard on Sunday*, July 19, 2009, p. 4.

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.” In 2009, at the time of the survey, the degree of intertwinement between politics and criminality appeared to be getting worse, with letters in the media warning that Kenya would become a criminalized state.

Recent reports indicate that in strife-torn Somalia, militia groups have started to profit from drugs trafficked into Kenya. The main port in southern Somalia is in Kismaayo, a town that is under the full control of al-Shabaab, which receives its supplies through Kismaayo port and uses it as a source of revenue.¹⁷ 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 into Somalia through Kismaayo and Bosaso ports and transported as sugar or rice aboard trucks into Kenya.¹⁸

ILLICIT TRADE IN COUNTERFEIT GOODS AND OTHER ILLEGAL COMMODITIES

Kenya is the biggest market for counterfeit goods and contraband in East Africa. The counterfeit industry is sourced mainly from India and China and is worth about \$913.8 million, rivaling key foreign exchange earners tourism and tea and coffee.¹⁹ Estimates of annual revenue losses to the state as a result of counterfeit trade range from \$84 million²⁰ to \$490 million.²¹ Manufacturers have estimated that they incur an annual net loss of \$368 million as a result of the illegal trade in counterfeits. About 80 percent of all malaria drugs in the Kenyan

market are counterfeits and therefore harmful to users,²² and counterfeit drugs account for \$130 million in sales annually.²³

Approximately 25 percent of cigarettes smoked in the East African region are smuggled and illicit, causing governments to lose \$100 million in taxes.²⁴ Networks of cross-border smugglers target fast moving and highly profitable goods to import into Kenya illegally, including sugar, motor vehicles, electronics, pharmaceuticals, batteries, ballpoint pens, and cosmetics. Thousands of bags of sugar are smuggled into Kenya from Somalia every day, enriching Somali warlords.²⁵

A recent report to the United Nations Security Council confirmed that

well organized criminal networks with links to al-Shabaab are taking advantage of the porosity of the border to smuggle people, commercial goods and weapons. Several of the individuals involved are well-established businessmen and real estate investors in Kenya. An opportunistic and mutually beneficial kind of “pax commerciale” has been established between those criminal networks and al-Shabaab.²⁶

Mombasa port, which handles an average of 1,700 containers a day, is a strategic asset for Kenya and its hinterland. It has become notorious for its abuse by organized crime networks for the smuggling of drugs, counterfeits, and other illicit commodities. “Mombasa 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.”²⁷ Well-connected businesspeople and top politicians have exacted a strong authority over business and

17 United Nations, *Report on the Monitoring Group on Somalia Pursuant to Security Council Resolution 1853 (2008)*, UN Doc. S/2010/91, March 10, 2010, p. 11 and p. 48, available at <http://reliefweb.int/rw/rwb.nsf/db900SID/MUMA-83N2WN?OpenDocument>.

18 IPI interview with intelligence source and with Kenya Revenue Authority officers along the Kenya Somalia border, July 29 to August 1, 2010.

19 Ken Opala, “Merchants of Fakes Reap Sh70bn and Put Lives and Jobs at Great Risk,” *Daily Nation*, November 21, 2009, available at www.nation.co.ke/News/-/1056/801882/-/item/1/-/wkyff9/-/index.html.

20 Keynote address by the attorney general of Kenya, Amos Wako, “Promoting Better Legislation and Enforcement of Intellectual Property Rights in Kenya,” January 30, 2007, available at www.ccapcongress.net/archives/Geneva/Files/Wako.pdf. See also “KAM Urges Judiciary to Wage War on Illicit Goods,” *The Standard*, Nairobi, November 9, 2010, available at www.standardmedia.co.ke/archives/business/InsidePage.php?id=1144028054&cid=14&.

21 “Net Cast to Hire Fake Goods Boss,” *Daily Nation*, September 30, 2010, p. 24. See also Anti-Counterfeiting & Piracy Initiative (ACAPI), “Kenya’s Counterfeiting Agency Starts Operations,” December 9, 2009, available at www.ammado.com/nonprofit/111840/articles/13135.

22 Presentation by the chief executive of Kenya Association of Manufacturers, Betty Maina, “Anti-Counterfeit Bill – We Count on Legislators to Act Rightfully” September 2008, available at www.kam.co.ke/.

23 Ken Opala, “Merchants of Fakes Reap Sh70bn.”

24 Ibrahim Kasita, “Uganda Loses \$105 Million to Smuggling,” *New Vision*, December 2, 2009, available at www.newvision.co.ug/D/9/32/703020.

25 Ken Opala, “Dreaded Somali Terrorist Group Taps into Sugar Racket,” *Daily Nation*, April 10, 2009, available at www.nation.co.ke/News/-/1056/559404/-/item/0/-/sa49rk/-/index.html.

26 United Nations, *Report of the Monitoring Group on Somalia and Eritrea*, UN Doc. S/2011/433, New York, July 18, 2011, para 76, p.31, available at www.un.org/sc/committees/751/mongroup.shtml.

27 IPI interview with Njuguna Mutonya, former bureau chief, Nation Media Group, Coast Province, August 18, 2010.

smuggling activities at the port. They constitute a close network that includes Chinese, Somalis, and Pakistanis, as well as a Kenyan woman linked in the past to a top politician, an assistant minister, three members of Parliament, several political activists with connections to senior politicians, and two former members of Parliament in Mombasa. They control networks involving police, customs and immigration officials, clearing and forwarding agents, among others.²⁸

Illegal imports that are ordered online from Dubai, China, Turkey, India, and Singapore have flooded Kenyan markets. They are often flown into underutilized airports and ferried to Nairobi by road.²⁹ Kenyan criminal networks, with close involvement of Somalis linked to al-Shabaab, operate from northern Kenya and from within Somalia.

TRAFFICKING IN WILDLIFE PRODUCTS

The tourism industry is Kenya's leading foreign exchange earner, and the country's national parks and wildlife constitute a key attraction. Kenya's unique wildlife asset is under increasing threat due to the activities of international crime syndicates in the illegal wildlife trade. According to the Kenya Wildlife Society the illicit trade "involves networks of organized dealers, financiers, suppliers, brokers and merchants."³⁰ Ivory is the most sought after item. Its illicit trade continues to increase at an accelerated rate.³¹ Between 2002 and 2010 the price of ivory increased eighteenfold from about \$100 per kilogram to \$1,800,³² fuelled mainly by a surge of demand in Asia. Elephants killed through poaching between 2006 and 2009 increased sevenfold in Kenya.³³ An April 2011 seizure in Thailand of 247 elephant tusks smuggled from

Kenya can be equated to at least 123 elephants killed.³⁴

A relatively new factor in ivory smuggling is the widespread involvement of East Asian nationals within Kenya, particularly the 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.³⁵ 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.³⁶

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, leopard and lion skins, claws, and teeth are frequently among the items traded internationally. Crime syndicates made up of Kenyans and foreigners have established commercial reptile parks disguised as conservation or tourist-attraction centers. International criminal networks operating along the Kenya-Somali border, and at Kismaayo port in Somalia, have diversified and now smuggle lion cubs to Europe, where they are ordered as pets.³⁷

HUMAN TRAFFICKING AND SMUGGLING

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.³⁸ Kenya

28 IPI interviews with Intelligence sources, Nairobi, August 20, 2010.

29 David Okwembah, "Corruption Rules as Illegal Imports Flood Kenyan Market," *Sunday Nation*, July 11-12, 2009, available at www.nation.co.ke/News/-/1056/622814/-/ukwnd77/-/.

30 IPI questionnaire completed by Kenya Wildlife Society, Nairobi, September, 2010.

31 Jason Straziuso, Michael Casey, William Foreman, "Ivory Trade Threatens African Elephant," *Associated Press*, May 15, 2010, available at www.msnbc.msn.com/id/37167109/ns/world_news-world_environment/.

32 Ibid.

33 Ibid.

34 Cyrus Ombati, "Sh274 Million Ivory Confiscated in Thailand in Largest Seizure Ever," *The Standard*, April 2, 2011, available at www.standardmedia.co.ke/InsidePage.php?id=2000032412&cid=4&.

35 Anita M. Gossmann, "Tusks and Trinkets: An Overview of Illicit Ivory Trafficking in Africa," *African Security Review* 18, No. 4 (2009): 52, available at www.iss.co.za/uploads/18n4gossmann.pdf.

36 Ibid.

37 Ministry of Tourism, Kenya, "KWS Investigates Somalia Lion Cub Smuggling Ring," November 29, 2006, available at www.tourism.go.ke/ministry.nsf/pages/news_29Nov06_03.

38 "Study: Smuggled Migrants from Horn and East Africa Abused," *Voice of America*, June 23, 2009, available at www.voanews.com/english/news/a-13-2009-06-23-voa42-68826352.html.

is normally the first step in their long journey, with corrupt police and immigration officers facilitating the trip. These illegal smuggling activities generate annual revenues of about \$40 million.³⁹ At least five to ten networks, each headed by a *mukhali*, coordinate and organize this trade in northern Kenya and Nairobi. They tend to be respected and well-known figures in society who operate within “legitimate” businesses.⁴⁰ Their connections with top government and political figures contribute to the relatively low-risk environment in which they operate.⁴¹

Corrupt staff members at the United Nations refugee camp at Dadaab in the northeast of Kenya, close to the Somali border, have also facilitated smuggling efforts,⁴² and so have staff at some foreign embassies.⁴³ Originally designed for 90,000 refugees from Somalia, Sudan, and Ethiopia, the Dadaab refugee camp now accommodates more than 350,000. Unscrupulous brokers pay bona fide refugees approximately \$10,000 to “buy” their slot on the UN list containing the names of those due to be sent to recipient countries as refugees. The broker in turn sells the slot on the UN 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.⁴⁴

Mombasa and the Eastleigh district in Nairobi constitute East Africa’s hub for the smuggling of migrants as well as for the trafficking of women and children for prostitution, the sex industry, and other forms of forced labor. This practice continues to grow in Kenya. In Mombasa young girls between the age of ten and fifteen are sold against their will into the sex industry and virtual slavery at a fee of about \$600.⁴⁵ On average about fifty girls, mainly from Somalia, are trafficked every week from northeastern Kenya to Nairobi. Vehicles that transport *miraa* (khat) from Kenya to Somalia

return with young girls and women who end up in brothels in Nairobi or Mombasa or who are then shipped to other parts of the world.⁴⁶ They form part of the many thousands that are trafficked every year.

And the 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.⁴⁷

SMALL ARMS TRAFFICKING

Kenya is the hub of a region in which a number of countries have experienced civil war and violent conflicts during the past decades. Add to that its long and porous borders, a large port, and high levels of corruption and the combination of factors makes it attractive for arms smugglers. During the first nine months of 2010 at least ten seizures were reported on the Garissa Road en route from Somalia to Nairobi. Arms traffickers have a sophisticated smuggling system that links Somalia with the United Nations refugee camp at Dadaab and Nairobi.⁴⁸ Arms from Somalia are sometimes stored at the refugee camp before being transported to Nairobi and beyond.

Relatively small ad hoc criminal networks appear to be responsible for most of the small arms trafficked into and through Kenya. They often consist of Somali nationals who work with Kenyans and others, including remnants of the SPLA from Southern Sudan. 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. The smugglers often include other contraband in their activities, such as sugar, drugs, or counterfeit goods.

The most violent regions in Kenya often coincide with the zones through which the trafficking of

39 An IOM estimate. Brian Hungwe, “Tracing Africa’s People Smugglers,” *BBC News*, August 1, 2009, available at <http://news.bbc.co.uk/2/hi/africa/8178587.stm>.

40 IPI telephone interview with smuggled person, South Africa, July 10, 2010.

41 IPI interview with senior police source, Moyale, July 26, 2010.

42 Andrew Teyie and Abdilatif Maalim, “How Kenyans Are Smuggled to Europe,” *The Star*, November 4, 2009.

43 United Nations, *Report of the Monitoring Group on Somalia*, p. 34.

44 Teyie and Maalim, “How Kenyans are smuggled to Europe?”

45 IPI interview with a tour operator, Mombasa, August 22, 2010.

46 Sarah Wambui and Catherine Karongo, “Womankind Kenya,” *Capital FM*, October 12, 2009.

47 Adow Jubat, “Suspect Held Trafficking Ten Children,” *The Standard*, September 23, 2010.

48 Library of Congress, Federal Research Division, *Nations Hospitable to Organized Crime and Terrorism* (Washington, DC, October 2003), p. 14, available at www.loc.gov/tr/fird/pdf-files/nats_hospitable.pdf.

arms takes place. These tend to be the more remote and sparsely populated areas where nomadic clans herd their cattle. 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 there and to hundreds of deaths. Cattle rustling has now become part of large-scale operations involving the theft, even during daylight hours, of hundreds and sometimes thousands of cattle, leaving scores of villagers dead or wounded. One of the worst cases was a July 2005 attack on a village in northern Kenya, when seventy-six villagers were killed.⁴⁹

MONEY LAUNDERING

A recent report by the US State Department on money laundering started with a short and simple sentence: “Kenya is developing into a major money-laundering country.”⁵⁰ The report claims that Kenya’s financial system may be laundering more than \$100 million each year, including an undetermined amount of narcotics proceeds and Somali piracy-related funds.⁵¹ Other reports estimate that \$100 million in drug money is laundered through Kenya’s financial system every year.⁵²

In 2010 a staggering \$2.1 billion found its way into the Kenyan economy without the government being able to explain its source.⁵³ Debates about the extent to which this amount might consist of laundered ransom moneys from piracy, remittances, drug money, or other proceeds of crime remain unresolved.

Major financial scandals have broken out without resulting in any prosecutions. Allegations in the Kroll Report (2004) suggest that relatives and associates of former President Moi siphoned off more than \$1.8 billion of government money into

banks and acquisitions abroad.⁵⁴ The government has ignored these allegations. The Charterhouse Bank scandal involved prominent businesspersons and politicians, none of whom have been prosecuted. The bank, described as a “money-laundering machine,”⁵⁵ had its accounts frozen amidst allegations of massive tax evasion, fraud, and money laundering, including massive transfers into accounts abroad. The prominent businessmen and politicians involved appear to enjoy impunity and have not been called to account for fleecing and laundering billions of Kenyan Shillings, or for undermining Kenya’s economy and international integrity.⁵⁶

New anti-money-laundering legislation that came into force in June 2010 has raised the hopes of some and the skepticism of others. 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.⁵⁷

Funds laundered from Kenya sometimes end up with al-Shabaab in Somalia. Credible information that this is 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

49 “Hunt for Child Killers in Kenya,” *BBC News*, July 14, 2005, available at <http://news.bbc.co.uk/2/hi/africa/4678211.stm> .

50 US Department of State, Bureau of International Narcotics and Law Enforcement Affairs, *2010 International Narcotics Control Strategy Report* (Washington, DC, 2010), available at www.state.gov/p/inl/rls/nrcrpt/2010/vol2/137212.htm .

51 Other estimates are lower: Anthony Gitonga, head of risk and compliance at Kenya’s I&M Bank, estimates that in the past two decades about \$91.25 million (Ksh 7.3 billion) has been laundered into Kenya. But he conceded that “there is a lot of stuff that is hidden.” See Emanuel Citterio, “Kenya: New Law to Guard Against Money Laundering,” *Afronline*, October 5, 2010, available at www.afronline.org/?p=9222 .

52 “Pirate Booty Causes Kenya Property Prices to Skyrocket,” *Voice of America*, March 18, 2009, available at www.voanews.com/english/news/a-13-2009-03-18-voa40-68798557.html?moddate=2009-03-18 .

53 Jaiindi Kiseru, “Mystery of Sh164bn Smuggled into Kenya,” *Daily Nation*, May 21, 2010, available at <http://allafrica.com/stories/201005200888.html> .

54 Xan Rice, “The Looting of Kenya,” *The Guardian*, London, August 31, 2007, available at www.guardian.co.uk/world/2007/aug/31/kenya.topstories3 . For a copy of the 110-page report, published on April 27, 2004, see The Basel Institute on Governance, International Institute for Asset Recovery, *Kroll Report*, available at www.assetrecovery.org/kc/node/0086b5a2-c6c8-11dd-b3f1-fd61180437d9.0.jsessionid=63546BFC111DD623D4FEC137B1C20A71 .

55 “Kenya: State Deep in Charterhouse Conspiracy,” *Nairobi Star*, October 1, 2010, available at <http://allafrica.com/stories/201010010131.html> .

56 For a comprehensive report on the Charterhouse Bank scandal see “Smouldering Evidence – The Charterhouse Scandal,” African Centre for Open Governance (Africog), Nairobi, 2011, available at www.africog.org/?q=reports/smouldering_evidence .

57 Peter Warutere, “Detecting and Investigating Money Laundering in Kenya,” *ISS Monograph Series* No. 124, Money Laundering Experiences, edited by Charles Goredema, Pretoria: Institute for Security Studies, June 2006, p. 56.

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.⁵⁸

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.⁵⁹

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 flip sides 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 appearance of 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.⁶⁰

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 set out 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

58 United Nations, *Report on the Monitoring Group on Somalia*, p. 25.

59 *Hawala* is an informal system of money transfer that operates on word of mouth and trust alone. There are no papers or documents to sign and the transactions are done in hard currency alone. This makes it extremely difficult to put a finger on illegal money entering the system. The locations where these transactions are concluded, *hawalas*, are unregulated in Somalia and operate below the radar in other countries such as Kenya. According to recent media reports, one *hawala* in Eastleigh is said to have received in excess of \$40 million in a single day. The money was sent in four tranches of \$10 million each and was stashed in briefcases by a young Somali man who immediately disappeared in the backstreets and alleyways of Eastleigh. See Denis Gathanju: “Laundered Ransom Cause Kenyan Property Boom,” *Baird Maritime*, February 25, 2010, available at www.bairdmaritime.com/index.php?option=com_content&view=%20article&id=5693:piracy-cash-lands-in-kenya-property-market-in-nairobi-skyrockets-&catid=113:ports-and-shipping&Itemid=208.

60 Sam Sole, “The Meaning of Radovan Krejcir,” *Mail & Guardian*, April 1-7, 2011, p. 37.

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.⁶¹

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,⁶² 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."⁶³

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 parliamentarians 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."⁶⁴

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 parlia-

61 Jean-Francois Bayart, Stephen Ellis, and Beatrice Hibou, *The Criminalization of the State in Africa* (Oxford, Bloomington, and Indianapolis: James Currey and Indiana University Press, 1999).

62 "Grand" or high level corruption takes place at the policy formulation end of politics. It refers not so much to the amount of money involved as to the level at which it takes place. It is usually (but not always) synonymous with political corruption. See "Corruption Glossary," U4 Anti Corruption Resource Centre, available at www.u4.no/document/faqs5.cfm#grandcorruption.

63 Joel Hellman and Daniel Kaufmann, "Confronting the Challenge of State Capture in Transition Economies," *Finance & Development* 38, No. 3 (September 2001), available at www.imf.org/external/pubs/ft/fandd/2001/09/hellman.htm.

64 Ibid.

mentary 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."⁶⁵

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 102kg 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

65 Fred Mukinda, "US to open DEA office in Kenya," *Daily Nation*, April 5, 2011, available at www.nation.co.ke/News/US+to+open+DEA+office+in+Kenya/+1056/1139598/-/f99a12/-/index.html.

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 fallout 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.”⁶⁶ 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.”⁶⁷

Recommendations

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.⁶⁸ 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.

66 United Nations Security Council, *Statement by the President of the Security Council*, UN Doc. S/PRST/2010/4, February 24, 2010.

67 Chancellor Angela Merkel quoted in Catherine Mayer, “Merkel’s Moment,” *TIME Magazine* (Europe Edition) 175, No. 2 (January 11, 2010), p. 23, available at www.time.com/time/magazine/article/0,9171,1950954-1,00.html.

68 World Bank, *World Development Report 2011: Conflict, Security and Development* (Washington, DC, 2011), chap. 3, pp. 99-117, available at <http://wdr2011.worldbank.org/fulltext>.

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 paper. 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.⁶⁹ 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 policy-makers 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

⁶⁹ For a comparative study of specialized institutions that were set up in South Africa, the United Kingdom, and Italy, respectively, see: Rada Smedovska, "Specialized Institutions for the Combat of Organized Crime: Comparative Legal Study," Risk Monitor Foundation, Sofia, 2010, available at www.riskmonitor.bg. See also: Jean Redpath, "The Scorpions: Analyzing the Directorate of Special Operations," *ISS Monograph Series* No. 96, Pretoria: Institute for Security Studies, March 2004, available at www.issafrica.org/pubs/Monographs/No96/Contents.html.

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.⁷⁰ 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 Burundi, Kenya, Rwanda, Tanzania, and Uganda, 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.

70 "East Africa, Horn Unite to Fight Organized Crime," *Afrol News*, September 14, 2009, available at www.afrol.com/articles/13953.

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 providing for such improved cooperation.

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.”⁷¹ 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.”⁷² 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.⁷³ WACI is a joint UN interagency

71 UNODC, *Promoting the Rule of Law and Human Security in Eastern Africa: Regional Programme 2009-12* (Vienna, 2009), p. 3, available at www.unodc.org/documents/easternafrika/regional-ministerial-meeting/Eastern_Africa_Regional_Programme_Final_Draft.pdf.

72 UNODC, *Regional Programme for West Africa 2010-2014* (New York, 2010), p. viii, available at www.unodc.org/documents/commissions/WG-GOVandFiN/Regional_Programme_for_West_Africa.pdf.

73 For a brief description of the initiative, see UNODC, “West Africa Coast Initiative,” available at www.unodc.org/westandcentralafrika/en/west-africa-coast-initiative.html.

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 that they 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, it will require 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.

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