

Measuring the treatment

The UNTOC in Africa

Olwethu Majola and Darren Brookbanks

Summary

The international community prescribed the United Nations Convention Against Transnational Organised Crime (UNTOC) as the treatment to slow the global spread of TOC. However, current diagnoses suggest that this has not been as effective as anticipated. This paper assesses the efficacy of the UNTOC and recommends some changes to the treatment that are likely to yield more successful results.

Recommendations

- Consider the bigger picture. The resilience developed by administering the medicine must be examined alongside a set of indicators that extend beyond the text of the convention.
- Broaden the technical nature of discussions about the UNTOC.
- Increase transparency about the data and international cooperation in terms of the UNTOC to ensure that it is integrated into broader responses.
- Consolidate data sources. A more systematic attempt to gather evidence would allow all stakeholders to better understand and design responses to organised crime in Africa.

Introduction

The United Nations Convention Against Transnational Organized Crime (UNTOC), a legally binding treaty adopted in 2000, is supplemented by, among others, protocols against Trafficking in Persons, Smuggling of Migrants and the Illicit Manufacture of Firearms.¹ The international community prescribed these instruments as the treatment that would help address the global and societal spread of transnational organised crime (TOC).

The intention behind the convention is that cooperation among different countries will allow legal and social interventions to immunise the body politic against the infiltration of organised crime. The treatment has been administered by almost all countries in the world. In Africa, for instance, only South Sudan and Somalia have failed to sign and adopt the convention.

Article 1 of the UNTOC states that its primary purpose is international cooperation and, more specifically, the promotion of 'cooperation to prevent and combat transnational organised crime more effectively'. International cooperation includes the creation of regional and international bodies and mechanisms to ensure the free flow of information among the different countries. These mechanisms include policies, the promulgation of legislation and the establishment of appropriate institutions.

The question is whether, 20 years on, the UNTOC has succeeded? The most recent ENACT *Organised Crime Index* classifies 37% of the continent's countries as victims of 'high criminality'. In human terms that amounts to 60.9% of the population of Africa,² suggesting that the convention has not been as successful as its creators had hoped. The challenge for the African continent now is to assess its efficacy and test whether it is being properly implemented, in order to understand how it can be applied more effectively in the future.

Criminality is the scale and impact of criminal markets and the composition and influence of criminal groups

Taking on the ambitious project of assessing the UNTOC's efficacy presented significant methodological challenges, the most important of which was the limited availability of data, especially that collected over a prolonged period of time. There is no comprehensive tool available to researchers and policymakers that enables them to assess to what extent the UNTOC is achieving its primary purpose, and therefore whether it is having a tangible impact on criminal markets.

The UNTOC's Implementation Review Mechanism is a state-centric peer review process that only began in 2020 and is yet to produce a single country report or analytical overview

of the implementation of the convention.³ However, there are numerous other sources of information that can be consulted about specific criminal markets on the continent. They are produced by governments, international and civil society organisations, academics and regional organisations.

The 2019 *ENACT Africa Organised Crime Index*, which was updated in 2021, provides the most comprehensive overview of criminal markets and state responses to organised crime, but it is limited.⁴ The *Index* analyses the criminality and resilience levels of the countries it surveys, including in the analysis the implementation of legislation and international agreements, among them the UNTOC. However, its broad set of criteria do not include a specific analysis of the UNTOC, which prevents researchers from determining in any detail the role the convention has played in bolstering resilience to organised crime.

Similarly, the UNTOC Review Mechanism is not yet able to provide useful data, despite the convention having been adopted more than two decades ago. So, in addressing the issue of the implementation and impact in Africa of the UNTOC, this research paper takes a broader approach to exploring whether it is having an impact on criminal markets. We use existing public information about its implementation, previous research into criminal markets and legislation, interviews with officials and experts and the data in the *Index*.

Methodological challenges were overcome using a research strategy that triangulated the available data by testing the following two research questions:

- Does long-term implementation of the UNTOC result in less TOC?
- Is the UNTOC an effective treatment ?

This paper provides data and analysis to improve understanding of whether the widespread adoption and ratification of the UNTOC is having an impact on TOC on the African continent. The research is both necessary and important as it fills an evidence gap and therefore serves to identify best practices and assist countries and the international community to develop enhanced policy responses to TOC.

The *Index* and the UNTOC

It is important to distinguish between the implementation of the UNTOC by member states and its impact on criminal markets and the different ways in which both the official data (and the Review Mechanism) and the *Index* help us understand the issues.

The UNTOC and its Review Mechanism focus primarily on the development and assessment of criminal justice responses by member states, while the *Index* determines resilience to criminality as indicated by a whole-of-society approach.

There are 12 different indicators of resilience, among them civil society, political leadership and governance, territorial integrity and judicial system and detention, most of which the UNTOC does not cover. The UNTOC is separated into thematic clusters by the Review Mechanism. They are: criminalisation and jurisdiction; prevention, technical assistance, protection measures and other measures; law enforcement and the judicial system, and international cooperation, mutual legal assistance (MLA), and confiscation.⁵

In contrast, the criminality scores in the *Index* define specific manifestations of organised crime and are the culmination of multiple factors that are not related to the UNTOC. Criminality is the scale and impact of criminal markets and the composition and influence of criminal groups. Criminality indicators in the *Index* include criminal actors such as mafia-style groups, criminal networks and state-embedded actors as well as the criminal markets themselves, which include human trafficking, arms trafficking and the heroin trade.

The resilience and criminality indicators give a general picture of a state's ability to counter organised crime, against the backdrop of existing criminal markets. The aggregate resilience and criminality scores, therefore, do not tell us much, as they are not comparable with an analysis of the implementation of the UNTOC. This methodological challenge is remedied in this paper by analysis that focuses on those indicators most relevant to demonstrating the impact of the UNTOC, namely, international cooperation, national policies and laws, judicial system and detention, law enforcement and victims, witness support, border management and control and anti-money laundering.

Methodology

It is difficult to analyse whether the UNTOC's implementation in Africa has had an impact on criminal markets because the data available has only been collected recently. Therefore, initial data was collected through desktop research, using the UNTOC ratification information and the *Index*'s criminality and resilience indicators.

The limited amount of academic literature available on the implementation of treaties and the UNTOC was also consulted. Information from other sources was found to be fragmented and scattered across websites such as those of the Financial Action Task Force (FATF) Mutual Evaluation Reports and the UN Office on Drugs and Crime (UNODC) and in media coverage of high-profile court cases. The limited amount of data presented a significant challenge, as TOC continues to be a broad topic.

The researchers supplemented the desktop review with interviews conducted with experts researching various types of TOC, members of governments, officials of international organisations and journalists. The data was analysed through the triangulation methodology described above.

At the outset it was clear that there is limited understanding of the nature of the implementation and impact of the UNTOC on the continent. The official intergovernmental UNTOC Implementation Review Mechanism was only launched in October 2020 after years of political disagreement and delays and countries are only now starting to carry out detailed peer review processes that will continue for many years.

The UNTOC, in common with most international treaties, does not have an independent oversight or evaluation mechanism; the review process relies on state-to-state communication and provides only for engaging voluntarily with civil society and other independent actors to assess implementation.

The mechanism will allow all states parties to gain a better understanding of the technical successes and challenges of implementation and identify gaps and the technical assistance needs of the countries. It will therefore provide a much-needed source of data and information for governments, international organisations and civil society to better design their interventions to improve responses to organised crime.

This paper will not, however, consider the Review Mechanism in much detail as, although the process is already underway it has not yet produced any meaningful data. Even when it does start to produce country and thematic reports, the mechanism will not include an analysis or understanding of the criminal markets involved and the impact on them of the implementation of the UNTOC, and this is the gap we intend to fill.

The longer the better?

Most African countries ratified the UNTOC early, 36 of them within the first five years. A significant length of time administering the medicine should have given these countries the upper hand and allowed them to feel the benefits. The reality, however, does not follow this logic.

This section takes a broad approach to determining whether the UNTOC is having an impact on criminal markets and therefore whether states have benefited from this almost universally prescribed treatment in the past 20 years. In considering this question we evaluate two possible theories that might help in the formulation of indicators of the UNTOC's effectiveness.

The most logical factors to consider when attempting to answer a fundamental question about a convention's impact include time (how long the instrument had been in force) and the amount of time the infrastructure supporting implementation has been in existence, leading to greater likelihood of remedial effect. A basic assumption would suggest that:

- the longer a country has ratified the Convention, the better the national responses to organised crime; and
- countries that have successfully implemented the UNTOC are likely to have also achieved positive outcomes in relation to indicators not directly related to the convention.

Senegal, South Africa, Egypt and Kenya, all of which ratified the convention between 2003 and 2004, have a diverse range of scores across the *Index* – both for levels of criminality and for state resilience to organised crime.

Interestingly, the 36 earliest implementors of the UNTOC also represented the full spectrum of criminality and resilience scores in both 2019 and 2021. This means there is no clear pattern linking the length of time the treatment is administered to remedial effect.

Nigeria, the first country in Africa to implement the convention, ranks second in Africa and fifth in the world for criminality. While its criminality levels did decrease between 2019 and 2021, it continued to have a very high score.⁶

For the purposes of our study we will also consider the position of the 15 countries that ratified the convention between 2005 and 2014. The last group comprises three countries that have not ratified it.

The assumption that early ratification of the UNTOC is a precondition for a positive outcome is tested against the criminality-resilience scores of the *Index*, which indicate the impact of action taken by states and communities against criminal markets. Criminality scores appear to be within the same range among early, later and non-ratifiers of the UNTOC.

Chart 1: Criminality score variation 2019–2021



Source: ENACT Organised Crime Index

Note: The order of countries is determined by the date of ratification of the UNTOC. The # depicts their criminality rankings.⁷

Criminality is shown to be high in countries that have not ratified the UNTOC, such as South Sudan and Somalia, which both received a score of 6.40 in the 2019 *Index*. Similar high criminality scores can also be seen among early ratifiers such as Nigeria (7.70) and Libya (6.26). The 2021 *Index* reflects a slight reduction in criminality in Nigeria but still a very high score of 7.15. In Libya there was an increase in criminality – from 6.26 to 6.55.

In the case of the middle group, too, there were increases in criminality, with Tanzania and Mozambique showing an increase of 0.52 and 0.67 respectively. Only São Tomé and Príncipe and Côte d'Ivoire recorded a decrease (by 0.10 and 0.08 respectively). So it remains difficult to attribute the middle group's criminality score variation to the length of time since they ratified the UNTOC.

Criminality and resilience

The criminality component not only encapsulates the activities that make up criminal markets, it analyses the structure and influence of four types of groups: mafia-style groups, criminal networks, groups embedded in states and foreign criminal groups.

The resilience indicator shows a state's ability to employ effective and quality defence mechanisms to withstand and disrupt organised criminal activities entirely, rather than on an individual basis.⁸ Experts assign scores to the criminality and resilience factors based on data collected and researched by the *Index* team. Each element is evenly weighted. The research is carried out in 54 countries.

The stronger a country's resilience, the less the possibility that it will be plagued by organised crime, and vice versa.⁹ The analysis categorises four broad groups, according to the interrelationship between their criminality and resilience scores:

- Low criminality-high resilience
- Low criminality-low resilience
- High criminality-high resilience
- High criminality-low resilience¹⁰

By highlighting four selected countries we offer insights into the varying nature of criminality and resilience on the continent and identify features or trends including the key indicators most closely associated with the implementation of the UNTOC. The countries selected represent each major region on the continent and illustrate the diversity of the criminality-resilience scores and the analysis shows their performance in relation to each other in their efforts to combat TOC.

Low criminality–high resilience

The countries in this quadrant are Senegal, Mauritius, Cape Verde, Botswana and Rwanda.¹¹ Senegal, one of the earliest signatories of the UNTOC in Africa, is also one of the most resilient, despite substantial exposure to criminality.

Senegal

Senegal signed the UNTOC on 13 December 2000 and ratified it on 27 October 2003.¹² On the same dates it signed and ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children¹³ and the Protocol against the Smuggling of Migrants by Land, Sea and Air.¹⁴ The country signed the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition¹⁵ on 17 January 2002 and ratified it on 7 April 2006.

At first glance, Senegal's early signing and ratification of the UNTOC supports the assumption that early adoption equals higher resilience and lower levels of criminality. A more detailed analysis reveals a more complex picture of apparently comprehensive implementation of the UNTOC, while the country responses reflected in the *Index* appear to be weak.

Senegal, which was scored fifth among 54 African states and second among 15 West African states, is one of the most resilient African countries.¹⁶ It faces a common African challenge, however – extensive and porous land borders that facilitate transborder crimes.

Despite this challenge it has achieved positive results by implementing successful border management and controls: measures provided for under the UNTOC. According to the *Index*, however, it faces an increasing threat from foreign criminals, who view the country, with its comparatively high levels of development and stability, as a useful hub.¹⁷

A member of the West African Economic and Monetary Union, Senegal has made the greatest progress in another of the UNTOC-related indicators – combating money laundering through legislation and policy frameworks. There is, however, room for improvement, particularly when it comes to prosecuting people with political connections.

For this reason, Senegal appears to contradict the second assumption, which suggests that strong application of the UNTOC indicators also indicates that governments are undertaking a more holistic approach across a wider range of *OC Index* indicators, or what could be termed a ‘whole of society’ approach which refers to the collective approach of stakeholders such as individuals, civil society, the media and governments. For example, government transparency and accountability appear to leave much to be desired.

An example of this is a judge’s dismissal of a case of corruption, money laundering, embezzlement, fraud and criminal association brought in 2020 against Aliou Sall, brother of President Macky Sall.¹⁸

Another area that requires attention is the trafficking of firearms – there has been a reported increase in the circulation of arms near Senegal’s borders with Guinea Bissau and The Gambia.¹⁹

Senegal has ratified all organised-crime-related treaties including the UNTOC, but its progress in implementing the convention could be improved if it were to report more often on, for example, its rate of extraditions.²⁰ Information about international cooperation has been limited to a few media articles or cases reported by international organisations such as the International Criminal Police Organization (INTERPOL).

One such case is the arrest of a 42-year-old Senegalese man facing charges of people smuggling, money laundering and document fraud. The case related to a transatlantic ring smuggling migrants by air from Senegal to Brazil. The absence of a bilateral extradition agreement between the two countries resulted in international cooperation being conducted through diplomatic channels facilitated by INTERPOL. The limited reporting makes it difficult to determine whether the UNTOC constituted the legal basis for this collaborative effort.²¹

The stronger a country’s resilience, the less the possibility that it will be plagued by organised crime, and vice versa

Senegal cooperates increasingly with Guinea Bissau and The Gambia. Senegalese and Gambian law enforcement and drug agencies have signed a memorandum of understanding and the resulting joint international operations are facilitated by the UNODC.²² Senegal seems similarly set to ratify the Council of Europe MEDICRIME Convention.²³

The *Index* reveals that Senegal's resilience to organised crime is linked to a domestic legal architecture that is equipped to combat TOC – an UNTOC-focused indicator, namely, national policies and laws. There are sufficient laws pertaining to transnational terrorism, cyber security, and timber trafficking. In addition, the country has a national drug strategy and amendments were made to its drug laws. International cooperation and national policies and laws remained constant at the 2019 levels of 6.0 and 6.5 respectively. However, judicial system and detention, and law enforcement resilience scores for the country have declined to 5.0 and 6.0 respectively.²⁴

Considering the growth and evolution of criminal markets, the laws do not appear to be making an impact as average criminal market scores have increased by 0.55 points to 5.0.²⁵ The *Index* recommends that some of the laws be updated and made more effective.²⁶

Senegal's relatively high resilience rating does not reflect the situation in the West African sub-region, which is still plagued by numerous types of criminals, the most pervasive of whom are embedded in the state. Criminal networks are still prominent in regional organised crime and are involved in environmental crime such as illegal logging, trafficking in endangered species and the cross-border smuggling of goods, people and drugs.

Findings

The criminal networks in the region, which work closely with foreign criminals, are active in most West African countries.²⁷ In recent years criminality has increased and resilience decreased, with the region accounting for the second-highest rate in Africa after East Africa.²⁸ Senegal's score, therefore, demonstrates that despite the challenges high levels of resilience are possible.

The fact that Senegal was among the early signatories of the UNTOC does not appear to have given the country a significant advantage in the implementation of a robust counter-TOC framework and measures and on the effects on criminal markets.

Twenty years after signing, the country is facing more rather than fewer challenges. This example also shows that a high resilience and low criminality score is not necessarily supported by a more holistic 'whole of society' approach encompassing activity to show progress across a broader range of *OC Index* indicators, rather than just those related to legislation such as the UNTOC.

Senegal is increasingly exposed to organised crime in the region and the current measures might not continue to produce these levels of resilience and low criminality. Indicators, including international cooperation and national policies and laws, have not improved. Of particular concern too are the declining resilience scores for the judicial system, detention and law enforcement.

Low criminality-low resilience

The countries in this quadrant are Egypt, São Tomé and Príncipe, Tunisia, Seychelles, Djibouti, Malawi, Lesotho, Eswatini, Comoros, Namibia, Algeria, Mauritania, Eritrea, Equatorial Guinea, Burundi, Ethiopia, The Gambia, Morocco, Zambia, Gabon, Angola, Togo, Burkina Faso, Benin, Sierra Leone, Republic of the Congo, Liberia, Guinea, and Guinea-Bissau.²⁹

Egypt

Egypt signed the UNTOC on 13 December 2000 and ratified it on 5 March 2004.³⁰ It signed the Trafficking in Persons Protocol³¹ on 1 May 2002 and ratified it on 5 March 2004 and acceded to the Smuggling of Migrants Protocol³² on 1 March 2005.

The country has not signed or ratified the Firearms Trafficking Protocol.³³ Egypt was selected from this quadrant as it reflects the position of numerous North African countries and because it has not signed up to the Firearms Trafficking Protocol, presenting researchers with the opportunity to evaluate the effects of such a stand.

Although Egypt's criminality score is the 28th highest in Africa, it is categorised as having a low criminality-low resilience score.³⁴ One of the prominent problems is arms trafficking by armed non-state criminals with a significant presence in the Sinai region. Proximity to a country such as Libya, which has high criminality and low resilience, makes it possible that there will be an increase in arms trafficking.

Egypt also experiences the trafficking of foreign women and girls for sexual exploitation in the country. While smuggling of migrants destined for Europe has decreased in recent years, this is probably because smugglers are using alternative routes through Libya.³⁵

Egypt is both a source of and a destination for wildlife trafficking of protected species such as the Egyptian tortoise, falcons and fennecs, which are sold to illegal pet markets or for traditional medicine. Conditions in the Sinai Desert are ideal for poachers hunting protected animals such as the ibex, wild donkeys, oryx and Dorcas gazelles.³⁶

Despite comparatively small threats of organised crime in countries like Egypt, work towards building resilience should be prioritised.³⁷

Egypt's ability to fight TOC through international cooperation has been mixed. The country is party to many organised-crime-focused international agreements, works with international organisations and the UNODC and cooperates bilaterally with France and the United States (US), among other countries, mostly in relation to counter terrorism.³⁸

The country's judiciary and law enforcement bodies cooperate to a limited extent with partners around the world, specifically in relation to intelligence and criminal investigations. Egypt's laws outlaw numerous criminal markets and make it illegal to be a part of an organised crime group. But there are gaps both in the laws and their implementation.³⁹ For example, despite existing domestic legislation, Egypt's failure to adopt the UNTOC Firearms Trafficking Protocol may play a part in Cairo being home to an active illicit firearms market dealing in various types of small firearms and stolen police pistols.⁴⁰



Early ratification has not translated into high resilience

Findings

In North Africa, as in West Africa, resilience levels have declined and criminality is on the rise, with conflict driving the growth of certain types of criminal markets. Egypt and Libya have been particularly affected by the illicit arms trade. Much like Senegal, Egypt was an early signatory of the UNTOC. But unlike in Senegal early ratification has not translated into high resilience despite there being relatively low levels of criminality in the country.

Failure to sign the Firearms Trafficking Protocol might explain why the arms trafficking score is 7.0, comparable to that of Ethiopia. Ethiopia in fact acceded to the Firearms Trafficking Protocol in 2012, some 11 years after the instrument was adopted by the General Assembly of the United Nations.⁴¹ In this case, time of ratification or the lack of signature appears to be a common factor in the higher criminality scores in the arms trafficking criminal markets in both West and North Africa.

The so-called Arab Spring of 2011 was the catalyst for the circulation of illicit arms, and Egypt's proximity to Libya and its participation in the Libyan crisis created opportunities for those involved in arms trafficking.⁴² Egypt's low-resilience score is consistent with that of the sub-region, where the average score is 3.79.

The highest resilience indicator in the region is a state-centred approach and territorial integrity, as conflict has once again driven numerous countries to strengthen their border controls, law enforcement and security

agencies. However, such security measures may not be effective when implemented in isolation from other crime-prevention measures such as international cooperation, which has a score of 4.5, and an even lower judicial system and detention score of 3.5, the latter having declined by 1.5 since 2019.

Although whole of society approaches are commendable and necessary, Egypt has relied more on these measures than on those promoted by the UNTOC. A balanced application of a whole of society approach is also important, as a disproportionate focus on security can have a negative impact on the resilience indicator of civil society and on media freedom, which is crucial to building an effective response to organised crime.⁴³

High criminality-low resilience

Countries: Kenya, Somalia, Mali, Chad, Zimbabwe, Madagascar, Ghana, Côte d'Ivoire, Tanzania, Uganda, Niger, Cameroon, Sudan, South Sudan, Mozambique, Libya, Central African Republic and Democratic Republic of the Congo (DRC).⁴⁴

Kenya

Kenya, one of the earlier signatories, acceded to the UNTOC on 16 June 2004 and to the Trafficking in Persons Protocol, the Smuggling of Migrants Protocol and the Firearms Trafficking Protocol on 5 January 2005.⁴⁵ The country is rated fourth of 54 African countries in criminality and the first of nine East African countries. Its resilience score puts it in tenth place in Africa and second in East Africa. Despite the fact that it signed the UNTOC early on it appears to be among the countries worst affected by high levels of criminality and low resilience to criminal markets.

Kenya has some of the most diverse and prolific human-trafficking operations on the continent. Evidence points to the involvement of law enforcement officials in facilitating the movement of trafficked people, with irregular migrants directed to the United Arab Emirates held in 'trafficking houses'.⁴⁶

A new area of operation is trafficking women to India for sex purposes under the guise of employment opportunities.⁴⁷ The criminal market includes arms trafficking, which is perpetuated by conflict in the neighbouring regions of the DRC, Uganda and Somalia⁴⁸ and is reported to involve high-level politicians and state officials.⁴⁹

The regional picture of human trafficking is largely influenced by four countries – Eritrea, South Sudan, Sudan and Somalia.⁵⁰ The illicit arms trafficking market is the largest in Africa, although only by almost one point.⁵¹

The regional picture of human trafficking is largely influenced by four countries – Eritrea, South Sudan, Sudan and Somalia

Environmental crimes in the form of illicit logging of indigenous trees proliferate, facilitated by the ease of use of the Mombasa port. Wildlife trafficking is widespread, particularly in the form of ivory, rhino horn, African grey parrots and venomous snakes, which transit primarily through Mombasa and Jomo Kenyatta International Airport in Nairobi, often destined for Asia.

Other criminal markets include the smuggling of oil and minerals such as illicit gold, which originate in the DRC and are moved through Kenya where they are 'authenticated' before being sold to overseas markets as Kenyan products.⁵²

Kenya has ratified many conventions and international agreements relating to organised crime. The country has good relationships with other African countries and the EU, has a security collaboration with the US and has teamed up with 14 neighbours to create a think-tank to counter terrorism. But it has an unstable relationship with Somalia.⁵³

Although its legislation to combat organised crime is, on paper, among the best in the region, several factors limit its effectiveness. Kenya's UNTOC-related indicators such as international cooperation and national

policies and law scores are the state's highest resilience scores at 7.0 and 6.0. It is interesting to note that the state-centred approaches of political leadership and governance declined to 5.0, a reduction of 0.5.

Between 2019 and 2021 there were reductions in two other UNTOC indicators – national policies and laws dropped by 1.0 and law enforcement by 1.5 to 4.5.⁵⁴ This may relate to a shift in whole of society and the UNTOC indicators, with adjustments in the one affecting the other.

One example is the September Africa Amnesty month campaign declared in 2017 by the African Union and the United Nations Office of Disarmament which called on citizens to surrender arms to the government.⁵⁵ The campaign was undermined by the government's inability to protect people against criminal gangs, which resulted in them re-arming themselves after the conclusion of the disarmament process.⁵⁶

Laws relating to the use of illicit drugs carry severe punishments. Similarly, Kenya's human trafficking laws are designed to penalise offenders and do not include adequate provisions to protect the interests of victims. This unbalanced approach does not sufficiently mitigate crime and neglects resilience-building efforts focused on the participation of citizens and civil society.⁵⁷ In this instance, factors supporting resilience outside of the UNTOC-specific provisions are demonstrated to be insufficient to ensure comprehensive and effective responses.

Findings

East Africa is in the unique position of experiencing an increase in both criminality and resilience. The region has the highest levels of criminality as a result of expansive and diverse criminal markets and the entrenchment of criminals in vulnerable areas affected by long periods of conflict. Early ratification of the UNTOC in the case of Kenya has not meant that the country is resilient and able to contain criminal markets.

Despite Kenya applying a combination of whole of state approach in the firearms disarmament programme and a regional initiative led by the African Union and underpinned by the values of the UNTOC,⁵⁸ it is evident that levels of criminality and the threat to security posed by criminal gangs have hindered these initiatives.

Like Southern Africa, East Africa has a low resilience score for law enforcement, with a lack of trust in law enforcement agencies, low levels of integrity, weak capacity and corruption driving the score. The judicial system and detention indicator is also deemed to be low and lack of independence, weak institutional capacity and poor access to justice are cited in the *OC Index* as factors affecting resilience.

High criminality-high resilience

Countries: South Africa and Nigeria.⁶⁰

South Africa

South Africa signed the UNTOC, the Trafficking in Persons Protocol and the Migrant Smuggling Protocol on 14 December 2000 and ratified them on 20 February 2004. The country signed the Firearms Trafficking Protocol on 14 October 2002 and ratified it on 20 February 2004.

The country had been an active participant in the UNTOC negotiations.⁶¹ Prior to that it had also been party to a number of international conventions such as the 1961 Single Convention on Narcotic Drugs and the 1972 Protocol that amended it, the 1971 Convention on Psychotropic Substances and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Legislative and institutional responses at this early stage also included the passing of the Financial Intelligence Centre Act in October 2001.⁶²

Ranking fifth among the top countries in criminality, slightly below Kenya, South Africa has the second-highest score for resilience. The human trafficking market there is unique, comprising both international criminals involved in cross-border illicit activities and domestic criminals who oversee human trafficking activities within the country.

Victims are forced into domestic servitude, sex trafficking and other forms of forced labour. Corruption, largely in the processing of paperwork and bribing border officials rather than showing a valid passport, is common.

Undocumented foreign nationals are usually smuggled into the country across land borders in operations in which South African police and immigration authorities are often involved.⁶³ The criminal landscape is diverse, comprising the trafficking of arms used in violent crimes, environmental crimes such as rhino poaching and trafficking rhino horn and the illicit trade in gold and, in some cases, diamonds.⁶⁴

South Africa is also a major transit point for illicit drugs, including Afghan heroin, which either comes directly by sea or air or indirectly through East Africa and is brought in by land.⁶⁵ The diverse drug market includes cocaine from Andean suppliers on the way to Europe and Middle Eastern markets. The production of domestic cannabis, the most-consumed drug in the country, is high. Synthetic drugs like Mandrax and 'tik' (methamphetamine) have dominated criminal markets that target poor communities in the country.⁶⁶

Despite its systems and standards for international cooperation, there have been difficulties with mutual legal assistance and extradition.⁶⁷ The country has a strong anti-organised-crime legal framework, but insufficient funding, corruption and law enforcement capacity constraints hinder the effective implementation of the law.⁶⁸

Findings

While Southern Africa has moderate scores for criminality – the lowest in Africa, resilience has declined and moderately effective anti-organised-crime frameworks make the region vulnerable to groups that exploit these weaknesses.⁶⁹

Illicit activities in the region include wildlife crime, illegal mining, which is especially rife in Zimbabwe, and the illicit drug trade, which is most prevalent in South Africa and Lesotho. Despite being a significant problem in South Africa, human trafficking and migrant smuggling in the region are limited.⁷⁰

The region outperforms most of the continent in resilience, with the strongest resilience indicators being international cooperation and national policies and laws. The weakest factor is law enforcement.⁷¹ South Africa's early and proactive stance in combating organised crime appears to have served the country well when it comes to building resilience. This, however, has not translated into a firm grip on containing criminal markets.

South Africa's resilience is attributed to an independent judiciary and a robust legal framework. However, the lack of institutional capacity combined with corruption, state capture and mismanagement has resulted in the loss of key staff members and institutional memory in state authorities such as the National Prosecuting Authority.⁷²

The *OC Index* records that the score for the whole of state approach, government transparency and accountability indicator declined by 1.0 to 5.5 between 2019 and 2021. The UNTOC-related indicator of law enforcement also dropped by 1.0 point to 5.0, while the international cooperation score improved by 1.0 to 6.5. Overall, in South Africa the UNTOC-related indicators appear to contribute more significantly to the country's strong resilience than to the whole of state approaches.

Summary of findings

What does the existing data tell us about the impact of the widespread adoption and implementation of the UNTOC on criminal markets and state resilience to organised crime on the continent?

Our approach to answering this question includes reference to the officially available indicators in the form of the UNTOC adoption data. As indicated above, one may hypothesise that the longer it is since a state has ratified or signed the UNTOC the greater the political will to reduce organised crime, and the more effective the treatment.

It may also be assumed that the longer a country has been party to the UNTOC the longer it has had the time to implement its provisions, resulting in lower levels of organised crime.

However, the analysis reveals that there is no correlation between the duration of ratification and the ability of the state to reduce criminal markets and counter criminal elements. Most African states were early signatories but have not benefited appreciably in the ability to limit criminality and become more resilient.

At best, the fact that the UNTOC has been ratified by many African countries suggests that there was initial political will to implement it. But it appears that over time this will has diminished, or that there are no means of monitoring or improving implementation. The *OC Index* shows that overall criminality scores are increasing across the continent, while resilience has decreased, except in East Africa.

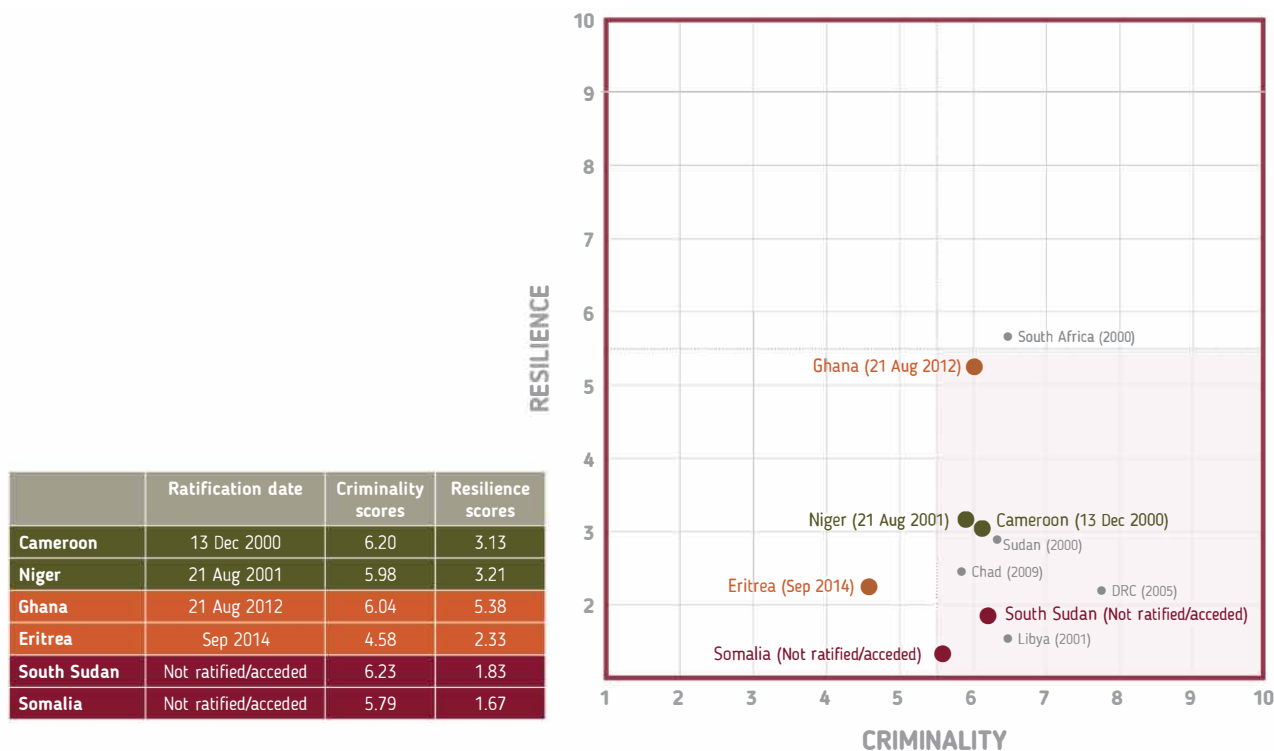
Strengths include the widespread adoption of the UNTOC, providing not only the legal basis but also the opportunity for improved responses to organised crime. The question for policymakers is how to turn these strengths into actions that further increase resilience and reduce criminality levels.

Among the weaknesses that affect implementation are ineffective law enforcement, the absence of free media and support for civil society, low institutional capacity, corruption and the growing influence of state-embedded actors. Organised crime increased between 2019 and 2021, possibly aggravated by the COVID-19 pandemic and ongoing challenges in sustainable development and other socio-economic factors.

Despite the lack of comparative data, however, it is clear that although in some places the length of time since ratification may correlate with a decrease in criminality and an increase in resilience, there is no clear evidence that it plays a role. In fact, the situation is largely deteriorating, despite the efforts made to implement the convention.

Below is a visual representation depicting how the duration of the UNTOC adoption appears to not have a direct effect on criminality and resilience scores. Early adopters such as Cameroon and Niger do still demonstrate higher levels of criminality and lower levels of resilience. Ghana, a later adopter, has higher levels of both criminality and resilience. Non-ratification in South Sudan and Somalia does however point to the UNTOC's implementation, in general, as having an effect on a state's ability to build resilience.

Chart 2: UNTOC ratification and the Africa Organized Crime Index



Source: OC Index 2019 and 2021, UNODC⁷³

Is the treatment effective?

Using a medical analogy, international cooperation could be defined as the sharing of an antidote to repel or prevent the virus of organised crime from entering the body politic. But how can we tell whether the positive effects of the antidote are being shared among the community of patients? Can immunity be built up through regular contact?

To answer this question it is necessary to try to find primary evidence of when such contact or cooperation has taken place and whether it has been successful. To do so it is necessary to consult a variety of sources to understand the extent to which international cooperation has been facilitated and improved by the UNTOC.

The lack of Review Mechanism data is exacerbated by a general lack of public information about international cooperation, which tends to take place behind closed doors. However, based on the information available, this section sets out to provide a picture of the extent to which African countries have been able to make use of the opportunities for cooperation presented by the UNTOC.

The convention sets out the legal grounds for international cooperation in two major areas – law enforcement, which includes joint investigations, the use of special investigative techniques and the transfer of sentenced persons to the countries where they are to serve their sentence,⁷⁴ and judicial cooperation, which encompasses mutual legal assistance, extradition and the transfer of criminal proceedings to the requesting state.⁷⁵

According to UNODC's 2021 *Digest* only three African countries have cooperated with international efforts to stem TOC

The UNTOC not only provides for more established modes of cooperation, it encourages the development of new methods of international cooperation and the confiscation and seizure of the proceeds of crime.⁷⁶ To achieve the international cooperation objectives of the convention member states and their local authorities should institutionalise bilateral or multilateral agreements or arrangements, as set out in Article 18, and work together to adopt a robust, effective and adaptable multi-agency approach to investigating and prosecuting TOC.⁷⁷

To this end there have been attempts to record the number of cases in which the UNTOC has formed the legal basis of international cooperation. In the case of African states included in the United Nations Office on Drugs and Crime (UNODC)'s 2021

Digest of Cases that number was especially low, despite almost all African states being party to the convention. In 2021 only 13 of more than 100 cases involved African countries. The countries were Egypt, Nigeria, Senegal, Libya, Ghana, Equatorial Guinea, and Cabo Verde.⁷⁸

According to UNODC's 2021 *Digest* only three African countries have cooperated with international efforts to stem TOC, a fact confirmed by Neil Boister's research.⁷⁹ They are Morocco (with the Netherlands) and Cape Verde and Ghana (with Spain). The crimes involved were murder by an organised crime group and drug trafficking.⁸⁰ No countries have proceeded to the cluster of review on international cooperation, so there is no data from that process.

Despite this, the *OC Index* reflects high levels of resilience in relation to international cooperation, not just with reference to the UNTOC. This apparent success is the result of a diverse range of developments in international cooperation on the continent. They include increased collaboration, bilateral partnerships between international organisations, arrangements between international and regional bodies, the pairing of states facing similar TOC concerns and addressing multiple TOC crime types in a single case as a method used to promote better cooperation.

Previous research, however, indicates that the implementation of the existing international legal framework and the fact that decision-makers prioritised cooperation over international criminal justice have been influenced by the extent to which TOC is perceived as a threat, along with the levels of dedication of policymakers to addressing these threats.⁸¹ This report notes the lack of data, transparency and meaningful application of the tools for international cooperation as key challenges that must be addressed in the future.

Financial crimes

Joint investigations and collaborative work have taken place in some notable cases, some of them enabled by the UNTOC. Among the more notable is one in which suspected members of an organised crime group were arrested in Cape Town and Johannesburg, South Africa, in April 2022. The investigation was conducted together with INTERPOL's Global Financial Crime Task Force, which focuses on international concerns about cyber-enabled financial crimes. The task force comprises 14 countries, including South Africa and the US.⁸²

This example shows how cooperation has evolved to include international organisations. These advances are enabled by instruments such as the United Nations General Assembly Resolution for Cooperation between the United Nations and INTERPOL. Clause 6 of the resolution grants INTERPOL the power to cooperate with the United Nations and its organisations and to work directly with its member states in matters of TOC.⁸³

Other initiatives using cooperation between the UNODC and INTERPOL include the Joint Action Plan signed in 2015 that has created a foundation for building the capacity of member states in six areas: terrorism, illicit drug trafficking and organised crime, cybercrime, maritime and border security, forensic, criminal justice and institutional capacity building. The result is a global platform from which to mitigate these threats and play a part in development and security.⁸⁴

Despite South Africa's high resilience score, shortcomings in its implementation of the existing legislative framework for facilitating judicial cooperation are evident from the fact that relevant measures are not used effectively or efficiently. Among the key findings on international cooperation in its Mutual Evaluation Report of South Africa, the FATF noted that although the country provided legal assistance to other states to help them finalise cases, the assistance was slow at times. A sizeable number of requests for assistance were returned unprocessed because they failed to meet South Africa's domestic legislative standards.⁸⁵

However, because South Africa does not initiate enough requests for international legal assistance and also in light of revelations about 'state capture', the country's risk profile has been questioned. The lack of a good case management system for MLA and extradition requests was also cited as a barrier to international cooperation.⁸⁶ To put this finding in context, South Africa received 202 extradition requests between 2015 and 2019. Of these only four related to money laundering, an average of one a year.⁸⁷

A recent request that the Gupta brothers, who are alleged to have been the biggest beneficiaries of the South African state capture project, be extradited from the United Arab Emirates to South Africa to be tried on charges of fraud, money laundering and corruption, was made in accordance with

Cooperation has evolved to include international organisations

the extradition treaty between the two countries and in line with the United Nations Convention Against Corruption. However, it is not clear whether the UNTOC had been used in the extradition request.⁸⁸ The application was unsuccessful.

The increasing amount of information provided by government institutions on their websites and through media statements in relation to some of the most important international cooperation matters does indicate the South African government's resolve to be more transparent in such matters.

Despite the challenges in transparency in understanding when distinct treaties have been used, we can be sure that multilateral cooperation in criminal justice matters may require the application of more than one treaty to a single case. International cooperation must, therefore, be underpinned by multilevel governance regimes, including the application of multiple international treaties when requests for mutual legal assistance are made. The inclusion of more relevant instruments may provide more opportunities to address complex challenges associated with political and legal logistics.⁸⁹

South African officials have failed to support MLA processes, allegedly because of problems within the South African Police Service

Another of South Africa's highly publicised experiences with international cooperation involves Czech Republic national Radovan Krejčíř. It reportedly took the South African authorities three to four years to respond to an extradition application from the Czech Republic⁹⁰ and according to a local expert the delay was not unusual - countries such as the Czech Republic have been complaining since 2012 about the lack of cooperation from South Africa. Krejčíř was finally convicted after a protracted process and is likely to be extradited once he has served his sentence in South Africa.⁹¹

South African officials have failed to support MLA processes, allegedly because of problems within the South African Police Service, meaning that no action has been taken in cases where

red notices have been issued by the INTERPOL National Criminal Bureau in Pretoria. The situation is, however, reported to be improving.⁹²

Rademeyer has indicated that prosecutors might not have the resources to deal with TOC and may be unfamiliar with the UNTOC and MLA and that because of state capture South Africa has lost institutional knowledge about these processes because so many have left their jobs.⁹³

A UNODC official points out that political actors and legal practitioners operate differently and in instances where discussions have not yielded resolutions because of political interference, there is a need to promote professionalism through capacity building.⁹⁴

There are complexities related to human rights concerns and granting extraditions, as evidenced in the standoff between South Africa and Botswana over the death penalty. South Africa, through its courts, has resolved not to grant extradition requests for offences that attract the death penalty in the country involved. The only exception is if the state applying for extradition provides an assurance that the death penalty will not be applied.⁹⁵

Both Mauritius and Madagascar have been involved in international cooperation over criminal matters. In 2010 Mauritius stated that it had received three MLA requests from France and one from Madagascar. It also noted that it had made three MLA requests between 2007 and 2010. A request to the UK based on the UNTOC and other instruments in relation to a drug trafficking matter was approved by the UK while one submitted to Indonesia based on the UNTOC and involving money laundering, financial crimes and fraud had not been completed at the time of writing.⁹⁶

In 2010 Botswana failed to approve an extradition request from Montenegro, despite the country being a state party to the UNTOC. Botswana's reason for rejecting the application was that the UNTOC was not the legal basis for international cooperation, and cooperation with states with whom it did not have other multilateral or bilateral treaties would be difficult. Extradition would largely only be granted to Commonwealth of Nations states that had consented to the London Scheme for Extradition within the Commonwealth.⁹⁷

Progress in East Africa?

East Africa has the second-highest level of resilience in the region, with a score of 4.39. Its national policies and laws score is 4.44.⁹⁸ Its success is due to key extraditions from Kenya and Tanzania to the US which were presumed to have been facilitated by the UNTOC and had a meaningful impact on criminal justice work.⁹⁹

Although the international cooperation indicator is high in most countries in the region, South Sudan, Somalia and Eritrea had particularly low scores, bringing the regional average down.¹⁰⁰ The ability of East African countries to work together has proved to be advantageous in various cases.

According to a UN expert, sub-regional-level engagements allow for more openness when addressing certain issues.¹⁰¹ Kenya's level of international cooperation is high, reinforced by the country being a party to multiple bilateral and multilateral treaties, including the UNTOC. It is particularly active in combating environmental crimes and has been assisted in dealing with high-risk destinations for wildlife trophies, such as China.

It has established procedures for cooperating in enforcing the law on environmental crimes through INTERPOL, the Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO) and other national forums.¹⁰² Among the measures used are the INTERPOL and AFRIPOL framework, Africa-Twix (Trade in Wildlife Information Exchange), an online tool for sharing information between law enforcement officers, and EAPCCO.¹⁰³

Like South Africa, Kenya has a robust domestic legal framework to facilitate international cooperation but has been slow to cooperate in some high-profile cases. In both countries domestic litigation has been a major stumbling block to the granting of extradition orders.

One such case, which began in the early 2010s, involved the former Kenyan Energy Minister and Member of Parliament Chris Okemo and former Kenya Power and Lighting Company CEO Samuel Gichuru. Both were accused of abusing public office and embezzling funds and were facing money laundering and fraud charges in Jersey, a self-governing Crown dependency of the United Kingdom.¹⁰⁴ Following a ten-year legal battle, towards the end of 2021 the Director of Public Prosecutions was given the authority to begin extradition processes in the matter.¹⁰⁵

In terms of the Conference of States Parties the UNTOC implementation processes allow for certain individuals to act as focal points for different states, but, according to an expert, it is a cause for concern when these individuals are connected to the political elite. However, they provide an entry and improve the government's ability to make contact with the relevant authorities. Over the years this function has enhanced international cooperation.

The ability of East African countries to work together has proved to be advantageous

Kenya's enhancement of its international cooperation policies and process can, however, also be attributed to the relationships among police agencies in different countries. Historical ties with police in the United Kingdom make it easier to cooperate with the Kenyan police because similar systems are used for drug seizures, for example. This, according to Peter Gastrow, has led some to suggest that bilateral relationships between police agencies have been more useful than the UNTOC.¹⁰⁶

Finally, Kenya maintains good relationships with other African states and the EU and a strategic security relationship with the US. The country has ratified nine of the ten most important international conventions and treaties relating to organised crime and continues to engage in high-level discussions on the issue.¹⁰⁷

The *OC Index* reflects similar successes in the Central African region, where the average score for international cooperation has improved, largely because Chad is cooperating better with France, the EU and the US over anti-terrorism and anti-organised-crime measures. The fact that the DRC has ended its self-isolation and has re-established good relations with the UN, the EU and Western development partners since President Felix Tshisekedi took office in 2019 has also played a role.

International cooperation in West Africa

Like other regions West Africa scores highest for international cooperation (5.13). However, initiatives led by various regional and international authorities and aimed at human and drug trafficking reflect the prevalence of these crimes and the support by states and international organisations for cooperative responses. The UNODC has been instrumental in improving awareness of the UNTOC in the region, leading to states strengthening their ability to deal with these crimes and the creation of networks such as the West African Network of Central Authorities and Prosecutors (WACAP).

While research has revealed that the network has helped to build personal connections and cooperation among prosecutors, facilitating some 167 cases, this does not square with the low number of cases recorded in the UNODC *Digest*.¹⁰⁹ The discrepancy indicates the extent to which African countries are under reporting international cooperation measures.

WACAP's reports reveal a considerably higher achievement rate but it is not clear whether these successes were the result of using the UNTOC or other bilateral agreements, formal and informal networks.¹¹⁰

The creation of WACAP has provided an institutional structure that bridges the gap between common law and civil law jurisdictions.¹¹¹ The challenge remains, however, as in other regions on the continent, that the extent to which the UNTOC has been adopted as part of domestic law, particularly as a basis for international cooperation, is difficult to quantify or evaluate.¹¹² There have been calls for robust monitoring, evaluation and measurement of the successes and failures of initiatives related to international cooperation.¹¹³

According to a UNODC official, resource and capacity constraints are the main challenges limiting this function. An example of such limitation is that there is only one UNODC official to coordinate the WACAP network of 17 states.¹¹⁴

Promoting international cooperation in West Africa has involved creating numerous other regional networks such as the Regional Judicial Cooperation Platform for Sahel Countries (Sahel Platform), the Asset Recovery Interagency Network for West Africa (ARINWA), the Security Cooperation Platform of the G5 Sahel, West Africa Coast Initiative, the Container Control Programme and the Airport Communication Project, which the UNODC claims contributed to significant improvements between 2016 and 2020.¹¹⁵

To supplement the work of regional networks the UNODC facilitates inter-regional dialogue between WACAP and Eurojust, a European Union agency under the authority of the national judicial authorities of EU member states, which is mandated to enforce criminal justice across borders and facilitate communication among authorities such as judges, prosecutors and police officers.

The focus of this engagement has been to enhance international judicial cooperation over crimes such as Trafficking in Persons (TIP) and Smuggling of Migrants. WACAP representatives from Nigeria, Senegal, Benin

and The Gambia, alongside their counterparts from Eurojust and members from Italy, Spain, France and Slovakia, attended a virtual meeting on 27 October 2021.¹¹⁶

In addition to regional and international networks, coordinated operations in West Africa have included Operation WEKA II, executed in June 2022, which succeeded in rescuing and protecting about 700 human trafficking victims and was instrumental in the arrest of 300 suspected traffickers and migrant smugglers.

Notably, this operation resulted in the police in Togo locating a teenage girl trafficked from Burkina Faso.¹¹⁷ Another notable case, reported in 2010, involved a meeting between high-level officials from the Liberian Security Agency and cocaine dealers who intended to bribe them. The drug dealers discovered that the officials were cooperating with the US Drug Enforcement Administration in an undercover operation.¹¹⁸

Among the African cases included in the UNODC's *Digest* was one from Nigeria. Others reflected cooperation with Senegal, Ghana, Equatorial Guinea and Cabo Verde. In reporting on international cooperation Burkina Faso informed the Conference of the Parties that it could not demonstrate the application of the UNTOC in matters of international cooperation since, like Botswana, it used other means for MLA and cooperation.¹¹⁹

According to the *OC Index*, in 2021 the top seven countries in Africa for cocaine trade were all in West Africa.¹²⁰ Despite the proliferation of international cooperation networks, the number of cases reported in the UNODC *Digest* does not correspond to the region's profile for human and drug trafficking.

Nigeria and Côte d'Ivoire share a common problem – they are the source of and transit point and destination for drugs and victims of trafficking. Côte d'Ivoire hosts the highest number of migrants in West Africa, both in actual numbers and as a percentage of its population. A total of 2.6 million migrants (almost 34% of the population) is based there. Nigeria accommodates the second-largest number – 1.3 million (17%).¹²¹

Despite limited reporting of actual cases of international cooperation among West African states, there have been attempts to address the gaps. These include promoting cooperation over law enforcement among countries facing the same types of TOC.

Through the Organized Crime: West African Response to Trafficking (OCWAR-T), a programme of the Economic Community of West African States (ECOWAS), multiple agencies from states, the UN and civil society, including the German Agency for Development Cooperation (GIZ), the United Nations Development Programme, the Mines Advisory Group, the International Centre for Migration Policy Development, the Institute for Security Studies and the Global Initiative against Transnational Organized Crime, commissioned and supported a week-long gathering to share information.

Among the law enforcement officials representing Nigeria were those working in the areas of TIP, customs, national security, immigration, drug-law enforcement, food and drug administration, the postal service and the police. Côte d'Ivoire representatives from specialised units of transnational crime, narcotic and drugs and territorial surveillance also participated.¹²²

The gathering promoted bilateral cooperation and facilitated the exchange of information, including challenges related to TOC cases, the most important aspects of arrests and the collapsing of networks trafficking in persons and drugs.¹²³ Although it is difficult to ascertain the number of cases or cooperation networks that can be attributed to the UNTOC, it is an important example of multisectoral and multilayered communication and information sharing.

Despite the changing landscape of international cooperation in the region, there are opportunities for improvement. Specific challenges include creating regional networks to bolster forensic sciences as a crucial source of evidence-based information exchange.

According to the *OC Index*, in 2021 the top seven countries in Africa for cocaine trade were all in West Africa

Regarded as an essential element for investigating TOC, the harmonisation of such functions could support better compliance with extradition requests and requests for mutual legal assistance.¹²⁴ Other challenges inhibiting cooperation include the lack of uniform witness protection laws. Most countries offer a level of protection; however, the provisions are spread across various pieces of legislation, resulting in inadequate implementation.¹²⁵

A UNODC official offered some insights about the day-to-day realities for African states, stating:

[L]imited capacity, particularly with access to internet, official email addresses and other IT-related resources are some of the challenges affecting the processing of MLA requests for some West African states. Further challenges within the African context, relate to extradition being seen as a political issue, however, there have been improvements in its institutionalisation [meaning the institutionalization of international cooperation in criminal matters in a general sense, and of the work of central authorities to deal with international cooperation in criminal matters more specifically].¹²⁶

While the UNODC has played a key role in facilitating some of the impressive array of cooperative networks and mechanisms available, it is still difficult to quantify the actual effects of the UNTOC on driving these initiatives. It is clearly part of the mix, but it is not the central factor in driving law enforcement and judicial cooperation across the region.

Summary

The findings contained in the *OC Index* that the continent is most resilient in the field of international cooperation are supported by the establishment of regional networks, partnerships between international and regional institutions and the extraditions, prosecutions and joint investigations that have leveraged these frameworks well.

One example was the inter-regional dialogue between WACAP and Eurojust, facilitated by the UNODC, and its support of the Sahel Platform and ARINWA. Similarly, international cooperation by African countries could be seen in OCWAR-T, with the UN and civil society, including the GiZ, UNDP and Mines Advisory Group and the INTERPOL and AFRIPOL framework and Africa-Twix.

This study, however, reveals that there is a lack of reported data, with only 10 African states mentioned in the UNODC's 2021 *Digest of Cases* and limited data on the number of extraditions and MLA requests that are either reported or have resulted in prosecutions, or on whether the UNTOC has been instrumental when there has been cooperation. The *Digest* reveals that there is limited reporting of the initiation and processing of MLA requests by African countries.

Available data is limited to a few high-profile cases reported in the media and reports issued by international organisations such as FATF. Such limited information makes it difficult to link international cooperation to prosecutions and arrests and, ultimately, to measure the impact, whether positive or negative, on criminal markets.

The extent of international cooperation among countries in the region remains undisclosed and the lack of transparency means there is no indication that the good resilience scores for international cooperation are driven by actual results and prosecutions, or merely reflect the setting up of regional or bilateral networks of communication and information sharing.

There is, however, strong evidence in support of other mediums for international and regional MLA and cooperation efforts boosting resilience indicators due to the presence of EU, US and French counterparts in certain cases. We do not know to what extent the UNTOC Review Mechanism assesses the impact of international cooperation and whether member states are participating meaningfully by initiating, processing and executing extraditions and requests for MLA.

What we do know is that there are inadequate case management systems and that bureaucracy and litigation delay the finalisation of cases and a large number of requests for MLA are returned unprocessed because of fears of a threat to human rights and a failure to meet international human rights standards.

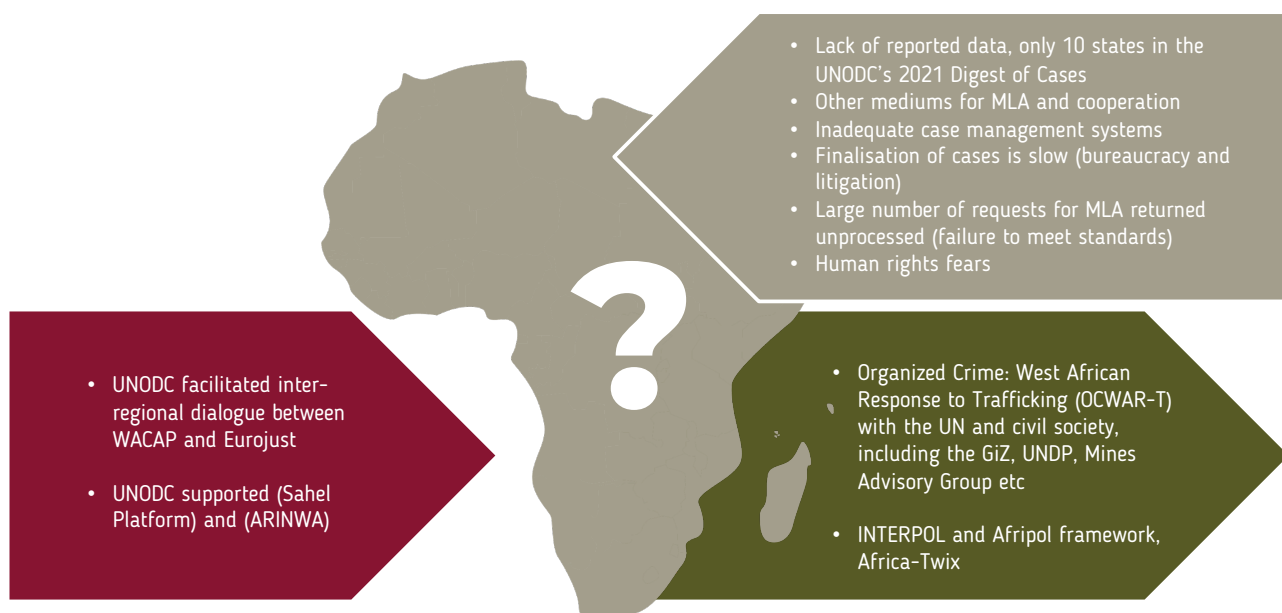
What is clear from the current data is that there is not enough evidence of the extent to which the UNTOC has been central to international cooperation in criminal matters in Africa.

International cooperation efforts indicate that it is not sufficiently embedded in domestic and regional contexts, as states rely on bilateral treaties, historical ties and diplomatic channels. There is a need for more data and evidence to help us understand whether the high resilience scores for international cooperation across the continent can be linked to the use of the UNTOC.

Key to this will be enhanced and increased transparency, including through the Review Mechanism of the UNTOC, which will begin its review of international cooperation provisions for the first group of countries once 70% of the countries in that group has completed its review of the first group of provisions on criminalisation and jurisdiction.

Overall, together with more data and evidence, a more transparent and coherent set of international cooperation interventions and mechanisms would help us understand better the impact of the UNTOC on enhancing international cooperation on the continent

Chart 3: State of international cooperation



Source: UNODC and FATF²⁷

The *African OC Index* paints a challenging picture for the African continent, with rising levels of criminality, largely decreasing resilience and the continued success and diversification of transnational criminal networks.

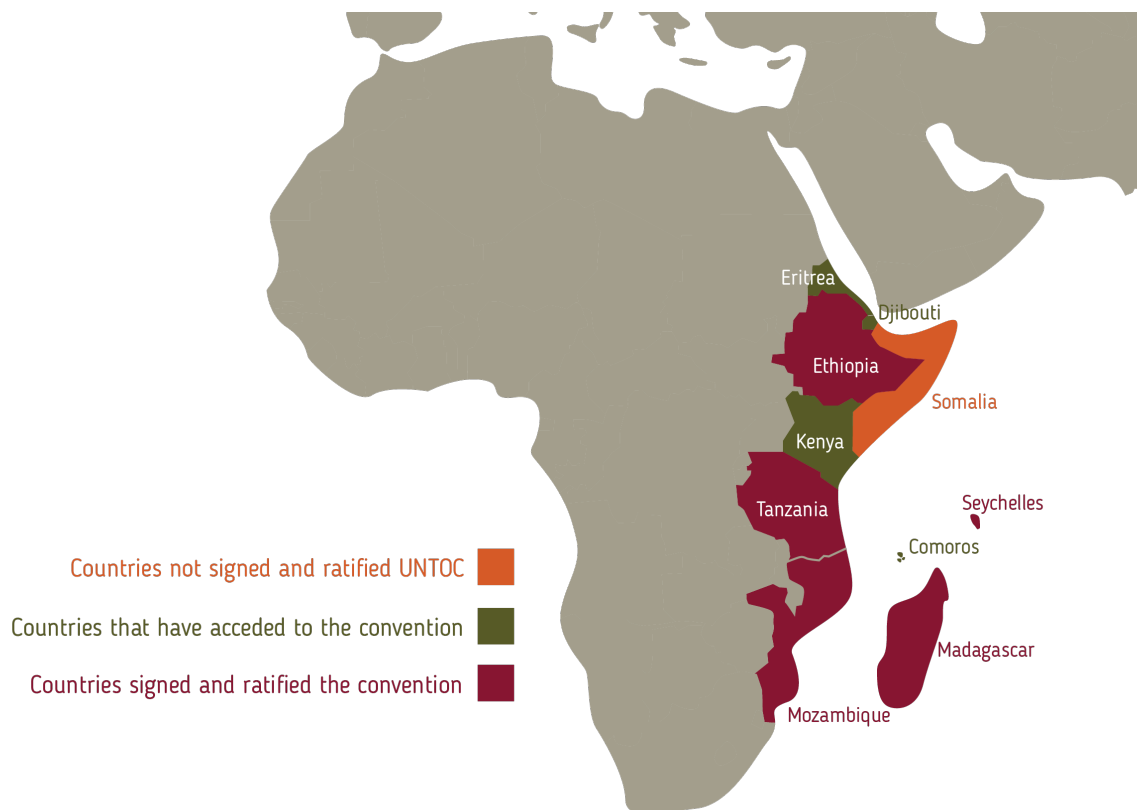
This is true for criminality generally, as well as the specific criminal markets addressed by the UNTOC's supplementary protocol. Africa has the second-highest level of criminality in the world, with human trafficking the most prevalent criminal market and human smuggling the fourth-most prevalent of the 10 evaluated by the *Index*.

Maritime crime

Maritime crime is an especially challenging form of TOC because of the border issues it involves. However, it has also given rise to a relatively rare example of international cooperation, most notably the case of piracy off the Horn of Africa.

The countries most affected by piracy and maritime crimes in the Western Indian Ocean (WIO) are Somalia (which has not signed or ratified the UNTOC), Djibouti, Eritrea, Kenya and Comoros (which have) and Ethiopia, Mozambique, Tanzania, Seychelles and Madagascar (which have both signed and ratified it).¹²⁸

Chart 4: UNTOC ratification and links to piracy and maritime crime



Source: United Nations¹²⁹

At the peak of the crisis, piracy in the Horn was distinguished from that in other zones because of the nature and frequency of the attacks. Data contained in the *World Bank Report Ending Somali Piracy: Go After the System, Not Just the Pirates*, published in April 2013, at the height of the problem, revealed that since 2005 Somali pirates had carried out 1 068 attacks.¹³⁰ About 218 of these were successful, resulting in the abduction of about 3 741 crew members (of 125 different nationalities) and the payment of ransoms amounting to between US\$315 million and US\$385 million. It is estimated that between 82 and 97 non-Somali seafarers died during attacks, detention or rescue missions.¹³¹

Initially, maritime law enforcement in the West Indian Ocean from the Horn to East Africa was not very effective. However, as piracy increased so did law enforcement, largely influenced by international pressure and the push for interventions because of the threat to the global economy.

The International Maritime Bureau estimates that maritime piracy costs US\$16 billion a year in economic losses resulting from theft, ransoms, logistical delays, escalating insurance costs and anti-piracy security.¹³² While piracy was the catalyst for the current maritime security presence in the WIO, the naval/law enforcement presence eventually evolved to respond to other forms of maritime crime, though not all, and with arguably far less success.¹³³

In December 2021 the United Nations Security Council (UNSC) resolved to fight piracy off the Somalian coast. It called on states to 'take appropriate actions ... to prevent the illicit financing of acts of piracy and the

laundering of its proceeds ... [and] to criminalize piracy under their domestic law.¹³⁴ The renewed resolution facilitated the expansion of the UNODC Global Maritime Crime Programme's counter-piracy programmes to include more general maritime crimes.¹³⁵

The programme, which includes detention, prosecution and law enforcement, began in the Horn of Africa and played a key role in the creation of a 'piracy prosecution model' in the region.¹³⁶ It now covers most of the world. In addition to official international and national responses, counter-piracy became a business for many organisations and private security companies, thereby creating a highly profitable 'counter-piracy economy'.¹³⁷

Interventions leverage regional cooperation through the Indian Ocean Forum on Maritime Crime, which comprises 22 states focused on issues that also include Somalian charcoal smuggling, fisheries crime and maritime drug trafficking.¹³⁸

While piracy may be considered a type of organised crime, the only convention in which it featured was the United Nations Convention on the Law of the Sea (UNCLOS), because it can only be committed in an international arena – the high seas, where no country has jurisdiction.

Article 15 of the UNTOC confirms flag-state jurisdiction, which reflects Article 92 of UNCLOS. States exercise jurisdiction according to their national laws, which established flag-state jurisdiction as a result of UNCLOS, and not the UNTOC. However, the UNTOC protocols such as the one against migrant smuggling extend state jurisdiction beyond the ambit of UNCLOS.¹³⁹

Similarly, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the 1988 Convention) precedes the UNTOC and has provisions that apply specifically to drug trafficking at sea – something the UNTOC lacks because it has no drug trafficking protocol, arguably because the 1988 Convention had already addressed this issue.¹⁴⁰

The UNTOC is more relevant in the case of migrant smuggling, with Article 8 of the Migrant Smuggling Protocol providing for the interception of migrants at sea and the responsibilities of states when they encounter vessels suspected of carrying smuggled migrants.¹⁴¹

With the threat presented by piracy averted, resources are now directed at more general maritime crimes in that location. Criminal activities include illegal fishing, which overlaps with arms smuggling; narcotics smuggling, with drugs originating from Iran being moved through East and Southern Africa, and human smuggling across the Gulf and the Red Sea on routes from Djibouti and Ethiopia to Yemen and Saudi Arabia.

The response to piracy off Somalia was successful because as the rate of the crime increased law enforcement also increased significantly, largely influenced by international pressure. This increase also stemmed from the political will of the countries involved, innovative solutions and trust building among countries. But the UNTOC does not appear to have been part of the response, so the medicine appears to have been irrelevant in this rare case of patient recovery.

Human smuggling in North Africa/Sahel

In all, 23 African countries¹⁴³ have signed and ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air.¹⁴⁴ Three – Congo, Equatorial Guinea and Guinea-Bissau – have merely signed it and 14 have acceded to it (Angola, Central African Republic, Comoros, Côte d'Ivoire, Djibouti, Egypt, Gabon, Ghana, Kenya, Liberia, Malawi, Niger, São Tomé and Príncipe and Zambia).¹⁴⁵

However, local human smuggling laws on the continent are very different from the position envisaged in the protocol. It has been found that while 22 states have domesticated the protocol they have done so from

The response to piracy off Somalia was successful because as the rate of the crime increased law enforcement also increased significantly

different perspectives. These differences relate particularly to the perpetrator's intention to gain 'financial or material benefit'. This makes it difficult to establish best practice.¹⁴⁶

Some states, especially in North Africa and the Sahel, regard irregular migration as a burden placed on them by neighbouring and other countries. Some destination countries in Europe also regard themselves as 'victims of geography and circumstances'.¹⁴⁷

Continued economic inequality in Africa, coupled with globalisation, means that many countries are victims of their geography and they argue that they are disadvantaged by international instruments targeted at irregular migration. For example, Libya claims these tools can be used to manipulate the country into agreeing to host a large number of migrants, particularly when the Universal Declaration of Human Rights is applied to refugees and asylum seekers.¹⁴⁸ There is a similar attitude to human smuggling.¹⁴⁹

The widespread adoption of the Protocol Against the Smuggling of Migrants appears to have had no significant impact

In many countries migrant smuggling is an economic activity that sustains livelihoods, with individuals using their connections to facilitate both this activity and the transportation of legal and illicit goods across borders.

The fact that this trade is profitable has led to a reluctance to intervene. In Niger, for example, migrant smuggling was banned in 2015, resulting in a serious impact on the economy of northern Niger, where, in the past 20 years, gold and people smuggling had become a significant source of income.¹⁵⁰

A research report from the Global Initiative Against Transnational Organized Crime noted that the flow of migrant workers was reduced significantly by the implementation of legislation in

mid-2016 and 2017 criminalising human smuggling.¹⁵¹ Regionally 2021 proved to be a significant year as 108 541 migrants – the highest number since 2017 – arrived in Europe through the Central Mediterranean, the Western Mediterranean and north-west Africa.¹⁵²

According to a report by the International Crisis Group in 2020, smugglers hired armed groups to watch over their activities in order to counter state surveillance and fend off fierce competitors. They have also concluded deals with state officials, in some cases to conceal their illicit business dealings from the state, and in others to purchase the services of soldiers to protect their convoys.

Some traffickers have turned into 'legitimate businessmen' and have even entered national politics, gaining political influence over commercial activities.¹⁵³ The implementation of interventions in human smuggling has, to an extent, demonstrated that these measures can have both economic and political consequences, including an impact on the prevalence of the crime.

Regional economic communities such as ECOWAS provide for the free movement of persons across borders, which means that migrant smuggling should not be commonplace, but in fact it ranks as the sixth-most pervasive crime in Africa, with a score of 4.85. Eritrea has the highest score on the continent (9.5) and is one of the biggest refugee-creating states in the region.¹⁵⁴

In North Africa there is a notable conflation of high criminal risk and low resilience scores, emanating from weak economic and political resilience. Poor justice and corruption indicators in many cases amplify instances where state-embedded actors are involved in human trafficking and migrant smuggling across the region. There are heightened risks that these crimes will increase because of weak governance and economic strains compounded by the COVID-19 pandemic, the war in Ukraine and the possibility of a global recession.¹⁵⁵

According to the *OC Index*, human smuggling remains one of the most pervasive forms of TOC. East and North African countries – notably Eritrea, Libya, Somalia, Sudan and Djibouti – are most affected by this type of crime. Eritrea and Sudan have not yet ratified the protocol.

The widespread adoption of the Protocol Against the Smuggling of Migrants appears to have had no significant impact and the prevalence is aggravated by ongoing conflicts in Mali and Libya and complex political issues in countries such as Tunisia, Egypt, Algeria and Morocco.

The decline in human trafficking and smuggling that resulted from the implementation of the law in Niger is evidence of the impact of such actions. However, because, as stated above, the crackdown had a negative impact on the economy of Northern Niger, the government reduced the pressure a year or two later and, as a result, the numbers have increased again.

However, the smuggling economy never really recovered and remains generally subdued compared to the rate of activity prior to 2015. In Libya in 2021 political stability was higher on the former Interior Minister Fathi Bashaga's priority list than law enforcement. As a result, there was a gradual increase in and return of this illicit market, aggravated by factors unrelated to regulations and policy.

These factors included Libyan armed groups in control of important territory partnering with foreign *manadib* (middlemen), creating a system for the movement of higher numbers of migrants through several countries in the region.¹⁵⁶ Improvements in Libya after 2017 were not driven by the UNTOC responses, they were the result of external factors that gave Libya a reputation as a location that abused migrants.¹⁵⁷ A combination of external factors and political priorities had a greater impact than the UNTOC on this criminal market in the region.

Interventions, both the UNTOC-related and whole of country, include those in Libya, where, in 2018, the UNSC sanctioned individuals for human smuggling, which had an impact on criminals working in the area.¹⁵⁸ Some retreated from the activity, while others fled the country. Unfortunately, the action was not sustained effectively and the impact has dissipated. However, overall this is seen as another example of good practice.¹⁵⁹

Ultimately, irregular migration is one of the results of globalisation, with migrants moving from Africa to Europe for economic reasons, and of increasing demand by the middle class in Europe for domestic and service labour, among other reasons.¹⁶⁰

The UNTOC Migrant Smuggling Protocol remains relatively new in Africa and it is anticipated that more substantial and visible progress linked to the instrument's application will take time to assess and determine.

While 23 countries on the continent have signed and ratified the protocol, local human smuggling laws in the region are different from those it envisaged. Widespread adoption does not appear to have had a significant impact on crime, in another manifestation of the widely administered medicine seeming not to be able to dent the success of this 'human smuggling' variant of organised crime.

Conclusion

To extend the medical analogy used above, in 2000 the global community of experts diagnosed the virus of organised crime and came up with an antidotal response – the UNTOC. Almost all countries, including almost all of those in Africa, signed up to take delivery of the antidote in the following years.

Those who did not take it still suffer from high levels of TOC but even those who signed up early have continued to experience symptoms, some even worse than they were before.

International cooperation has had an impact in some cases, both when it has involved the UNTOC and when it has not.

The research paper has considered whether the widespread adoption and implementation of the UNTOC is having an effect on criminal markets throughout Africa. Because most African countries ratified the UNTOC early, or within the first five years of its introduction it was expected that they would be in a better position to contain and reduce criminal markets. However, the reality reflects the opposite.

There is little difference between the criminality scores of early, later and non-ratifiers of the UNTOC and no significant improvements are recorded in the 2021 edition of the ENACT OC *Index* over those noted in the 2019 *Index*.

Data in the *Index* does not provide enough evidence of whether the UNTOC is making an impact on criminal markets, despite the application of international standards set out in the convention. While state resilience can definitely be seen to be bolstered by adherence to the UNTOC and other frameworks, the resilience provided by its implementation must be complemented by a broader range of measures which go beyond its provisions.

The absence of data and evidence make it difficult to understand whether the UNTOC is effective. Current evaluations and review processes, which are limited to its technical implementation, will be measured by the UNTOC Review Mechanism, but the mechanism cannot measure its impact on criminal markets.

Based on the data available, there is not enough evidence to lead us to conclude that:

- The length of time since ratification has a significant impact on its responses;
- The implementation of the UNTOC is fundamental to holistic state resilience to organised crime;
- The UNTOC is fundamental in facilitating international cooperation over combating TOC; and
- The UNTOC has played a central role in successful responses to transnational criminality.

That is not to say that the UNTOC has not played a role, but there is not enough data available to prove the value of its widespread implementation across Africa. Efforts to cooperate at international levels indicate that the UNTOC is not sufficiently embedded domestically or regionally, as states rely for cooperation on bilateral treaties, historical ties and diplomatic channels.

African countries have not benefited as expected from the UNTOC. In fact, more than 20 years since its adoption it is not clear what effect it has had. Notable successes in the fight against manifestations of TOC cannot necessarily be credited to adherence to the UNTOC. The successful campaign against piracy along the Horn of Africa, for instance, and gains against human smuggling in the Sahel region were achieved without using the convention. It has, however, successfully created awareness of the importance of fighting TOC, garnered initial political will to address the problem and provided a universal standard in terms of which more work can be done.

At this point in the history of the UNTOC the community of experts and policymakers should be asking itself fundamental questions about its effectiveness and efficiency and seeking evidence and data to help them understand better which elements work, which do not and how its design and application could be improved. The official processes of the UN do not allow for this kind of discussion, but civil-society-led inputs and data could help guide the way.

The Review Mechanism will provide certain useful data to states and stakeholders in the coming years, based on the thematic clusters of the review, and the bi-annual Africa OC *Index* will continue to provide longer-term evidence.

Together with other studies and data sources, the *Index* and the review could be combined in a central repository of evidence, data and best practice. This would allow for a more methodical and longer-term effort to better understand and address the problems that everyone involved hopes to address by disrupting criminal markets in Africa as part of common efforts to boost development, economic prosperity and social safety.

Recommendations

Chart 5: Challenges for analysis



Source: Authors

After considering the evidence, we have four recommendations:

- *Consider the bigger picture.* The resilience developed by administering the UNTOC needs to be examined alongside a wider set of resilience indicators which extend beyond the text of the UNTOC.

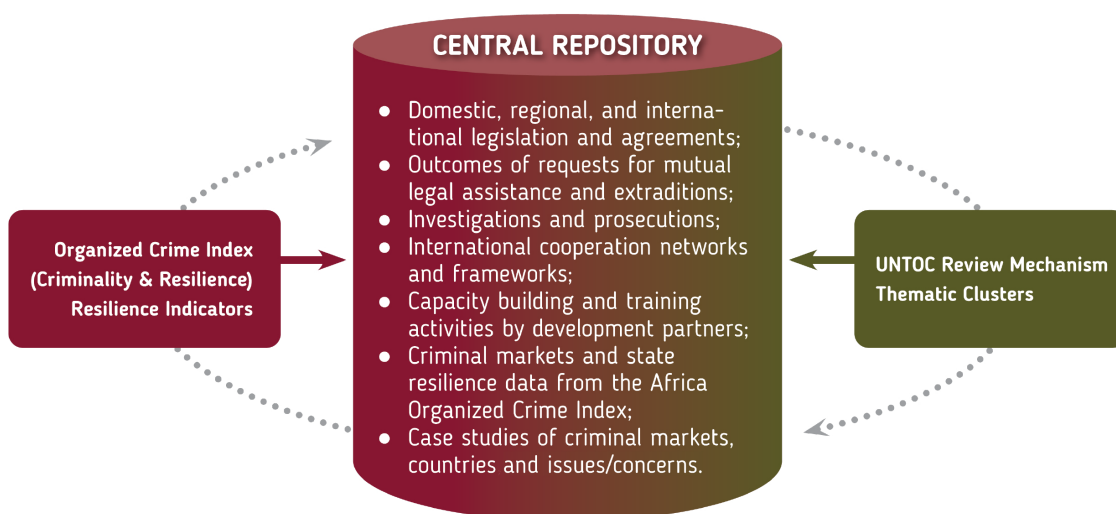
Neither the UNTOC Review Mechanism nor the ENACT *Index* can provide sufficient proof that the UNTOC is having an impact on criminal markets, notwithstanding the convention’s international applicability and the *Index’s* broad set of indicators. States, researchers and other practitioners should ensure that the UNTOC and its impact are considered as part of broader sets of responses and indicators of progress which ultimately point to increased resilience and decreased criminality. Such indicators may include the strength and effectiveness of civil society and the media, government transparency, and accountability mechanisms – the ‘whole of society’ response. It is not sustainable or effective to continue to discuss the UNTOC in isolation if we want to better understand its impact.

- *Broaden the technical nature of discussions about the UNTOC.* There is little knowledge about its effectiveness in practice. The review processes and evaluations are confined to its technical implementation but there is an opportunity for states and civil society to lead the way in promoting more comprehensive discussions about the dynamics and nature of criminal markets. Despite the restricted nature of discussion within the Review Mechanism there is scope for more substantive data and evidence to be discussed.
- *Shine a light.* Increase the transparency of the data and of international cooperation in terms of the UNTOC to ensure that it is integrated into broader responses.

One of the challenges of this paper has been to understand when the UNTOC has facilitated international cooperation, and how. Information is often not published or not clear. At the same time, we found that states rely on bilateral treaties, historical connections and diplomacy, often without a clear role for the UNTOC. Increased transparency about the UNTOC-based cases would help the international community better understand how it can best be used and applied in different circumstances, including in conjunction with other processes and responses.

- *Consolidate the data.* Data and evidence from the ENACT *Index* and the UNTOC Review Mechanism could be combined in a central repository. A more systematic and sustained attempt to gather evidence would allow all stakeholders to better understand and design enhanced responses aimed at disrupting and decreasing organised crime in Africa. Such a central repository could be jointly owned by different international bodies and fed into by governments, civil society and academia – both from a national and international perspective.

Chart 6: Missing data



Source: Authors

Acknowledgments

The authors thank Mark Shaw and Ian Tennant for their continued belief in the importance of this work. Similar gratitude is extended to Tuesday Reitano and Laura Adal for their invaluable advice and guidance. Mark Ronan was equally central to the editing process, while Claudio Landi and the communications team provided immense help. Thank you to the ENACT and ISS team for helping see this through to publication. A final word of appreciation for the interviewees who helped give life to this challenging project.

Notes

- 1 UNODC, www.unodc.org/unodc/en/Organized-crime/intro/UNTOC.html.
- 2 ENACT, *Organised Crime Index 2021: Evolution of crime in a Covid world*, Vulnerability classifications, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf, 17.
- 3 GI-TOC, New resources for civil society to engage with the UNTOC review mechanism, 6 September 2022, <https://globalinitiative.net/analysis/new-resources-for-civil-society-to-engage-with-the-untoc-review-mechanism/>.
- 4 *OC Index 2021*, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf.
- 5 UNODC, UNTOC Review Mechanism Timeline, www.unodc.org/unodc/en/organized-crime/intro/review-mechanism-untoc/timeline.html.
- 6 *OC Index 2021*, Nigeria, <https://africa.ocindex.net/2021/country/nigeria>.
- 7 *OC Index 2019*, https://africa.ocindex.net/assets/downloads/enact_report_2019.pdf & *OC Index 2021*, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf. UNODC UNTOC ratification information <https://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>.
- 8 *OC Index 2021*, Resilience indicator definitions, https://africa.ocindex.net/assets/downloads/2021/ocindex_summary_south_africa.pdf, 11.
- 9 *OC Index 2021*, Complex relationship between criminality and resilience, <https://globalinitiative.net/wp-content/uploads/2021/09/GITOC-Global-Organized-Crime-Index-2021.pdf>, 109.
- 10 *OC Index 2019*, Relationship between criminality and resilience, https://africa.ocindex.net/assets/downloads/enact_report_2019.pdf, 33.
- 11 *OC Index 2021*, Low criminality-high resilience, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf, 87.
- 12 UNODC, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en.
- 13 UNODC, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.
- 14 UNODC, Protocol against the Smuggling of Migrants by Land, Sea and Air, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&clang=_en.
- 15 UNODC, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-c&chapter=18&clang=_en.
- 16 *OC Index 2021*, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf, 87.
- 17 *OC Index 2021*, Senegal profile, <https://africa.ocindex.net/country/senegal>, 6.
- 18 *AfricaNews*, Senegal: Judge Quashes Graft Case Against Aliou Sall, www.africanews.com/2021/01/02/senegal-judge-quashes-graft-case-against-aliou-sall/.
- 19 *OC Index 2021*, Senegal profile, 2.
- 20 *Ibid.*, 4-5.
- 21 INTERPOL, Tracking a suspected migrant smuggler from Senegal to Brazil, www.interpol.int/en/News-and-Events/News/2022/Tracking-a-suspected-migrant-smuggler-from-Senegal-to-Brazil.
- 22 *OC Index 2021*, Senegal profile, 4-5.
- 23 The Council of Europe MEDICRIME Convention is a binding international instrument in the criminal law field on counterfeiting of medical products and similar crimes involving threats to public health.
- 24 *OC Index 2021*, Resilience scores, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf, 148.
- 25 *OC Index 2021*, Criminal scores, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf, 145.
- 26 *OC Index 2021*, Senegal profile, 4-5.
- 27 *OC Index 2021*, Criminal actors, West Africa, https://africa.ocindex.net/assets/downloads/2021/ocindex_summary_south_africa.pdf, 54.
- 28 *Ibid.*, 51.

- 29 *OC Index* 2021, Low criminality-low resilience, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf, 88.
- 30 UNODC, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en.
- 31 UNODC, Protocol, Trafficking in Persons.
- 32 UNODC, Protocol, Smuggling of Migrants.
- 33 *OC Index* 2021, Low criminality-low resilience, 88.
- 34 *Ibid.*
- 35 *OC Index* 2021, Senegal/Egypt Comparison, <https://africa.ocindex.net/country/senegal/egypt>, 6.
- 36 *Ibid.*, 3.
- 37 *OC Index* 2021, Low criminality-low resilience, 89.
- 38 *OC Index* 2021, Egypt profile, 4.
- 39 *Ibid.*
- 40 Mara Revkin, The Egyptian State Unravels: Meet the Gangs and Vigilantes Who Thrive Under Morsi, 27 June 2013, <https://law.yale.edu/yls-today/news/egyptian-state-unravels-meet-gangs-and-vigilantes-who-thrive-under-morsi-article-mara-revkin-15>.
- 41 United Nations Treaty Collection, Status as at 06-02-2023, Chapter XVIII Penal Matters, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, New York, 31 May 2001, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-c&chapter=18&clang=_en.
- 42 *OC Index* 2021, Criminal markets, North Africa, https://africa.ocindex.net/assets/downloads/2021/ocindex_summary_egypt.pdf, 69.
- 43 *Ibid.*, 71.
- 44 *OC Index* 2021, High criminality-low resilience, 90.
- 45 UNODC.
- 46 *OC Index* 2021, South Africa/Kenya Comparison, https://africa.ocindex.net/country/south_africa/kenya, 1.
- 47 *Ibid.*
- 48 *Ibid.*, 2.
- 49 *Ibid.*, 1.
- 50 *OC Index* 2021, Criminal markets, East Africa, https://africa.ocindex.net/assets/downloads/2021/ocindex_summary_south_africa.pdf, 45.
- 51 *Ibid.*, 46.
- 52 *Ibid.*, 3.
- 53 *OC Index* 2021, Kenya profile, https://africa.ocindex.net/assets/downloads/2021/ocindex_summary_kenya.pdf, 5.
- 54 *OC Index*, Resilience scores, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf, 148.
- 55 Arms Trade Treaty, RECSA AU Amnesty Month Illicit Firearms Destruction Event in Kenya, <https://att-assistance.org/index.php/activity/recsa-au-amnesty-month-illicit-firearms-destruction-event-kenya>.
- 56 Florah Koech, Kenya: Inside the Government's Failed Disarmament in Banditry-Prone North Rift, <https://allafrica.com/stories/202106230639.html>, 23 June 2021.
- 57 *OC Index* 2021, Kenya profile, 5.
- 58 African Union, African Union Master Roadmap of Practical Steps to Silence the Guns in Africa by Year 2020 (Lusaka Master Roadmap 2016), Assembly/AU/6(XXVIII), https://dppa.un.org/sites/default/files/170201_au_silencing_the_guns_roadmap.pdf.
- 59 *OC Index* 2021, Resilience, East Africa, https://africa.ocindex.net/assets/downloads/2021/ocindex_summary_south_africa.pdf, 48.
- 60 *OC Index* 2021, High criminality-high resilience, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf, 91.
- 61 UNODC, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, https://www.unodc.org/pdf/ctoccop_2006/04-60074_ebook-e.pdf.
- 62 UNODC, South Africa Country Profile, https://www.unodc.org/pdf/southafrica/country_profile_southafrica.pdf.
- 63 *OC Index* 2021, South Africa/Kenya Comparison, 1.
- 64 *Ibid.*, 2.
- 65 *Ibid.*, 4.
- 66 Zoom interview, Julian Rademeyer, Director of the Civil Society Observatory of Illicit Economies in East and Southern Africa at the Global Initiative Against Transnational Organized Crime (GI-TOC), August 2022.
- 67 *OC Index* 2021, South Africa profile, https://africa.ocindex.net/assets/downloads/2021/ocindex_summary_south_africa.pdf, 5.
- 68 *Ibid.*
- 69 *OC Index* 2021, Southern Africa, 75.
- 70 *OC Index* 2021, Criminal markets, Southern Africa, 76.
- 71 *OC Index* 2021 Resilience, Southern Africa, 79.
- 72 *OC Index* 2021, South Africa/Kenya Comparison, 4.
- 73 *OC Index* 2019, https://africa.ocindex.net/assets/downloads/enact_report_2019.pdf & *OC Index* 2021, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf. UNODC UNTOC ratification information <https://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>.
- 74 United Nations Convention Against Transnational Organized Crime (UNODC) and the Protocols thereto, Article 26, www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.
- 75 UNTOC, Articles 16, 18 and 21.
- 76 UNODC, *Digest of Cases: International Cooperation in Criminal Matters Involving the United Nations Convention Against Transnational Organized Crime as a Legal Basis*, 2021.
- 77 *Ibid.*
- 78 *Ibid.*

- 79 Neil Boister, The Cooperation Provisions of the UN Convention against Transnational Organized Crime: A 'Toolbox' rarely used?, *International Criminal Law Review* 16, 2016, 39-70.
- 80 Ibid.
- 81 Yvon Dandurand and Jessica Jahn, *The Future of International Cooperation Against Transnational Organized Crime: The Undoing of UNTOC?*, GI-TOC, October 2021.
- 82 INTERPOL, Financial Crime: South African fraud gang dismantled, 5 April 2022, www.interpol.int/en/News-and-Events/News/2022/Financial-crime-South-African-fraud-gang-dismantled.
- 83 United Nations General Assembly, Resolution adopted by the General Assembly on 26 November 2018, Cooperation between the United Nations and the International Criminal Police Organization (INTERPOL), A/RES/73/11/, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/403/50/PDF/N1840350.pdf?OpenElement>.
- 84 INTERPOL, INTERPOL and UNODC Chiefs meet to Strengthen Cooperation in Combating global crime, 6 June 2018, www.interpol.int/en/News-and-Events/News/2018/Interpol-and-UNODC-Chiefs-meet-to-strengthen-cooperation-in-combating-global-crime.
- 85 FATF, Anti-money laundering and counter-terrorist financing measures – South Africa, Fourth Round Mutual Evaluation Report, Paris, www.fatf-gafi.org/publications/mutualevaluations/documents/mer-south-africa-2021.htm.
- 86 Ibid.
- 87 Ibid.
- 88 Department of Justice and Constitutional Development of the Republic of South Africa, Status update on priority Mutual Legal Assistance and Extradition requests to and from South Africa by Minister Lamola, 25 July 2022, www.justice.gov.za/m_statements/2022/20220725-MLA.html.
- 89 Dandurand and Jahn, *The Future of International Cooperation*.
- 90 Interview, Julian Rademeyer.
- 91 Ibid.
- 92 Ibid.
- 93 Ibid.
- 94 Ibid.
- 95 Obonye Jonas, Human Rights, Extradition, and the Death Penalty: Reflections on The Stand-Off Between Botswana and South Africa, *International Journal of Human Rights* 10(18), 2013, 181-204.
- 96 UNODC, *Digest of Cases of International Cooperation in Criminal Matters Involving the United Nations Convention Against Transnational Organized Crime as a Legal Basis*, 2021, 65.
- 97 Ibid.
- 98 *OC Index* 2021, Evolution of Crime in a Covid World: A Comparative Analysis of Organized Crime in Africa, 2019–2021, https://africa.ocindex.net/assets/downloads/enact_report_2021.pdf.
- 99 Zoom interview, Peter Gastrow, Chair of the Africa Board at GI-TOC, 10 August 2022.
- 100 *OC Index* 2021, Evolution of Crime.
- 101 Zoom interview, UNODC official, 3 August 2022.
- 102 Republic of Kenya, Money Laundering and Terrorism Financing National Risk Assessment Report, October 2021.
- 103 Ibid.
- 104 Denisse Rudich, *The Sentry*, Kenya Illicit Finance Risks and Assessment, October 2021, <https://cdn.thesentry.org/wp-content/uploads/2021/10/KenyaIllicitFinance-TheSentry-Oct2021.pdf>.
- 105 *The Citizen*, DPP gets greenlight to extradite ex-Minister Chris Okemo, Former Kenya Power Boss Samuel Gichuru, 5 November 2021, www.citizen.digital/news/dpp-gets-green-light-to-extradite-ex-minister-chris-okemo-former-kenya-power-boss-samuel-gichuru-n286429.
- 106 Interview, Peter Gastrow.
- 107 Zoom Interview with anonymous expert, August 2022.
- 108 *OC Index* 2021, Evolution of Crime.
- 109 Interview, UNODC official; UNODC *Digest*, 2021.
- 110 Ian Tennant, *The Promise of Palermo: A Political History of the UN Convention against Transnational Organized Crime*, GI-TOC, October 2020, <https://globalinitiative.net/wp-content/uploads/2020/10/The-promise-of-Palermo-GI-TOC-Tennant.pdf>.
- 111 Interview, UNODC official.
- 112 Tennant, *The Promise of Palermo*.
- 113 Dandurand and Jahn, *The Future of International Cooperation*.
- 114 Interview, UNODC official.
- 115 UNODC, Regional Programme for West Africa 2016–2020: In Support of the Economic Community of West African States (ECOWAS) Action Plan to Address Illicit Drug Trafficking, Organized Crime and Drug Abuse in West Africa 2016-2020, www.unodc.org/documents/westandcentralafrica/UNODC_Regional_Programme_for_West_Africa_2016-2020.pdf.
- 116 UNODC, Eurojust and WACAP meet virtually to discuss Judicial Cooperation in prosecuting Transnational Organized Crime, www.unodc.org/westandcentralafrica/en/2022-01-04-eurojust-and-wacap-meet-virtually-to-discuss-judicial-cooperation-in-prosecuting-transnational-Organized-crime.html.
- 117 INTERPOL, World Day against Trafficking in Persons: INTERPOL highlights coordinated efforts, 29 July 2022, www.interpol.int/en/News-and-Events/News/2022/World-Day-against-Trafficking-in-Persons-Interpol-highlights-coordinated-efforts.
- 118 Boister, The Cooperation Provisions, 39-70.
- 119 UNODC, *Digest*, 64–65.
- 120 *OC Index* 2021, Evolution of Crime.

- 121 UNODC, OCWAR-T Peer Exchange on Trafficking in Persons & Drugs, 12 November 2021, www.unodc.org/westandcentralafrica/en/2021-11-12ocwar-t-peer-exchange-on-trafficking-in-persons-tip-and-drugs.html.
- 122 Ibid.
- 123 Ibid.
- 124 UNODC, Regional Programme for West Africa.
- 125 Ibid.
- 126 Interview, UNODC official.
- 127 UNODC, *Digest of Cases: International Cooperation in Criminal Matters Involving the United Nations Convention Against Transnational Organized Crime as a Legal Basis*, 2021, FATF, *Anti-money laundering and counter-terrorist financing measures – South Africa*, Fourth Round Mutual Evaluation Report, 2021.
- 128 Zoom interview, Carina Bruwer, Lawyer and Researcher, 21 September 2022.
- 129 United Nations Treaty Collection, Status of Treaties – United Nations Convention against Transnational Organized Crime, 2003.
- 130 World Bank, *The Pirates of Somalia: Ending the Threat, Rebuilding a Nation*, Washington, DC, 2013, www.worldbank.org/en/news/feature/2013/04/11/ending-somali-piracy-go-after-the-system-not-just-the-pirates.
- 131 Çağlar Akar, The Development of Piracy in the Horn of Africa, *Journal of Marine and Engineering Technology* 2(1), 2022, 31–39.
- 132 R M Desai and G E Shambaugh, Measuring the global impact of destructive and illegal fishing on maritime piracy: A spatial analysis, *PLoS One* 16(2), 2021, 24, www.ncbi.nlm.nih.gov/pmc/articles/PMC7904167/pdf/pone.0246835.pdf.
- 133 Interview, Carina Bruwer.
- 134 *United Nations News*, Somalia: Security Council Adopts Resolution to Keep Pirates at Bay, 3 December 2021, <https://news.un.org/en/story/2021/12/1107192>.
- 135 *United Nations News*, Somalia.
- 136 UNODC, Maritime Crime Programme – Indian Ocean, www.unodc.org/unodc/en/piracy/indian-ocean-division.html, 2022.
- 137 Ibid.
- 138 Ibid.
- 139 Interview, Carina Bruwer.
- 140 Ibid.
- 141 UNTOC, Article 8, www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.
- 142 Interview, Jay Bahadur, Independent Researcher and Investigator, 9 August 2022.
- 143 The countries are Algeria, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde, Cameroon, Eswatini, Gambia, Lesotho, Libya, Madagascar, Mali, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Togo and Tanzania.
- 144 United Nations Treaty Collection. (2004). Status of Treaties – Protocol against the Smuggling of Migrants by Land, Sea and Air. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&clang=_en
- 145 UNODC, Protocol, Smuggling of Migrants.
- 146 Lucia Bird, Criminalisation of human smuggling in Africa: Looking at the law, 22 July 2020, <https://enactafrica.org/research/policy-briefs/criminalisation-of-human-smuggling-in-africa-looking-at-the-law>.
- 147 Interview, Mark Micallef, Director of the North Africa and Sahel Observatory at the GI-TOC, 23 September 2022.
- 148 Human Rights Watch, No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya, www.hrw.org/sites/default/files/report_pdf/eu0119_web2.pdf.
- 149 Interview, Mark Micallef.
- 150 Human Rights Watch, No Escape.
- 151 Mark Micallef, Rupert Horsley and Alexandre Bish, The Human Conveyor Belt Broken – assessing the collapse of the human-smuggling industry in Libya and the central Sahel, March 2019, https://globalinitiative.net/wp-content/uploads/2019/04/Global-Initiative-Human-Conveyor-Belt-Broken_March-2019.pdf.
- 152 Mark Micallef and Matt Herbert, Fragile States and Resilient Criminal Ecosystems: Human Smuggling and Trafficking Trends in North Africa and the Sahel, August 2022, <https://globalinitiative.net/wp-content/uploads/2022/06/Human-smuggling-and-trafficking-ecosystems-Overview.pdf>.
- 153 International Crisis Group, Managing Trafficking in Northern Niger, *Africa Report* 285, 6 January 2020, <https://icg-prod.s3.amazonaws.com/285-managing-trafficking-in-niger.pdf>.
- 154 ISS, INTERPOL and GI-TOC, Criminal markets, *OC Index* 2021, ENACT, 32–33.
- 155 Interview, Mark Micallef.
- 156 Rupert Horsley and Jessica Gerken, Libya Stability Fuels Rebound in Human Smuggling, July 2022, <https://globalinitiative.net/wp-content/uploads/2022/06/Human-smuggling-and-trafficking-ecosystems-LIBYA.pdf>.
- 157 Ibid.
- 158 United Nations, Security Council Committee concerning Libya Adds Six Individuals to its Sanctions List, 7 June 2018, <https://press.un.org/en/2018/sc13371.doc.htm>.
- 159 Interview, Mark Micallef.
- 160 Ibid.



This project is funded by the European Union

About the authors

Olwethu Majola is a researcher at the Center for Criminology at the University of Cape Town. She is an attorney and holds an LLM degree in Transnational Criminal Justice from the University of the Western Cape and Humboldt University, Berlin.

Darren Brookbanks is an Analyst at the Global Initiative Against Transnational Organized Crime. He is based in Vienna, where he works as part of the UN engagement team. Outside of this role, Darren is a PhD candidate at the Wits School of Governance.

About ENACT

ENACT builds knowledge and skills to enhance Africa's response to transnational organised crime. ENACT analyses how organised crime affects stability, governance, the rule of law and development in Africa, and works to mitigate its impact. ENACT is implemented by the ISS in partnership with INTERPOL and the Global Initiative Against Transnational Organized Crime.

Acknowledgements

ENACT is funded by the European Union (EU). This publication has been produced with the assistance of the EU.



Cover image © Amelia Broodryk/ISS

The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views or position of the European Union, or the ENACT partnership. Authors contribute to ENACT publications in their personal capacity. © 2023, ENACT. Copyright in the volume as a whole is vested in ENACT, its partners, the EU and the authors, and no part may be reproduced in whole or in part without the express permission, in writing, of the authors and the ENACT partnership.