



RESPONDING TO ORGANISED CRIME INFILTRATION OF THE CRIMINAL JUSTICE SYSTEM IN SOUTH AFRICA

Prepared for the Judicial Commission
of Inquiry into Criminality, Political
Interference and Corruption in the
Criminal Justice System

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1. INTRODUCTION

President Cyril Ramaphosa appointed the Judicial Commission of Inquiry into Criminality, Political Interference and Corruption in the Criminal Justice System under section 84(2)(f) of the Constitution and Proclamation Notice 269 of 2025. The appointment followed allegations made by the KwaZulu-Natal Provincial Commissioner of Police, Lieutenant-General Nhlanhla Mkhwanazi, on 6 July 2025 that a criminal syndicate had infiltrated law-enforcement and intelligence structures. The Commission is chaired by Justice Mbuyiseli Madlanga. Its terms of reference require it to investigate the veracity, scope and extent of criminal-syndicate infiltration of law-enforcement, intelligence and associated institutions within the criminal justice system. The Commission must examine the suppression or manipulation of investigations, the inducement or corruption of law-enforcement leaders, the intimidation or removal of witnesses and officials, and any financial or political benefit obtained by serving or former office-holders. It must also assess the operation of oversight bodies and the adequacy of the laws, policies and institutional arrangements intended to prevent infiltration.¹

On 13 and 14 July 2026, the Global Initiative Against Transnational Organized Crime (GI-TOC) convened a two-day expert dialogue through its global network. The meeting brought together practitioners from, or with direct professional experience of, eight foreign jurisdictions in which organised criminal networks had infiltrated criminal justice institutions.² The experts described the nature and extent of that infiltration, the measures adopted in response, and the factors that shaped the success or failure of those reforms. The meeting produced first-hand accounts of particular measures and directed the research conducted for this report towards statutes, judgments and official sources. The dialogue's primary purpose was to identify practical lessons and promising reforms that could inform written submissions to the Commission and, in turn, its recommendations for strengthening integrity and accountability across South Africa's criminal justice system.

The present report is intended to guide the scope and content of those submissions. It reviews and consolidates the interventions examined during the expert dialogue, together with reforms identified through the research that followed. Section 2 explains how the GI-TOC selected the jurisdictions represented at the dialogue and briefly addresses the limits of the comparative policy analysis. Section 3 defines organised criminal infiltration and distinguishes it from ordinary corruption, political interference, institutional capture and administrative weakness. Section 4 sets out the findings of the report, which are structured in terms of a set of seven lessons, or principles, derived from the comparative material. Each principle identifies a weakness that organised criminal groups have

exploited to infiltrate criminal justice institutions, and thereafter provides an overview of the relevant interventions, from across the foreign jurisdictions, which address that specific weakness, arranged under sub-headings according to the type of intervention adopted.

Some principles concern the criminal organisation's capacity to survive the loss of individual members or escape sanction; others pertain to the conditions under which an institution is unable to detect and correct misconduct within its own ranks. Further principles concern the trade-off between fragmenting and consolidating crime intelligence, the personal risks borne by those whose evidence or decisions expose the organisation, and the lawful powers through which an effective specialist body may later be restricted or abolished. Accordingly, the same country may appear under every principle for which it has adopted reforms that address the relevant institutional weakness. Each principle's discussion closes with a comparison of the corresponding South African laws and institutions. The comparison identifies the part of each foreign measure that answers a South African institutional problem and the legal or practical limits on its transplantation.



2. COMPARATIVE METHOD

2.1. Selection of countries

The GI-TOC convened experts from, or with direct professional experience of, Italy, Hong Kong SAR,³ Colombia, Guatemala, Mexico, Brazil, Argentina and Albania. The dialogue also drew on the international policing experience of Jürgen Stock, former Secretary General of INTERPOL. The countries featuring in the expert dialogue were selected purposively according to five criteria.

First, each jurisdiction had to have experienced organised criminal infiltration of its criminal justice institutions on a scale that prompted a substantial legal, institutional or administrative response. High levels of organised crime or public corruption were insufficient by themselves. The country's experience, as reflected by its reforms, must have included the exercise of public office or public power for the benefit of an organised criminal group. Second, country selection accounted for the need to create a global and regional balance. Expert perspectives were accordingly sought from countries in Western Europe, East Asia, the Western Balkans and Latin America to provide a sample of jurisdictions reflecting different legal systems, forms of government, policing arrangements, and experiences of organised criminal infiltration and reform.

Third, preference was given to countries in which the relevant measures to counter organised criminal infiltration had been in place long enough for their implementation and longer-term impact to be assessed with a reasonable degree of confidence. Fourth, additional weight was given to countries whose reforms had produced mixed outcomes, that is, whose interventions had succeeded in some respects, yet failed in others, including countries whose initial record of success eroded over time or yielded uneven results. Finally, countries were selected for their comparative relevance to South Africa. Consequently, the sample includes jurisdictions that have contended with organised criminal violence, illicit markets, severe inequality and weak criminal justice performance under social, economic, and institutional conditions comparable to those of South Africa.

Georgia was added during the research conducted after the dialogue. It was not the subject of a presentation at the July meeting and did not form part of the original country selection. Its experience was included because it supplied additional material on several of the institutional problems raised by the participating experts.

2.2. Limits of comparative analysis

Comparative policy research is limited by the fact that a reform is not a discrete instrument that can be detached from the country that adopted it. Whatever effect it had was produced jointly by the measure and by the aggregate influence of the legal, institutional, and socio-political conditions in which it was implemented, and there is no reliable way of separating the contribution of the one from the other. For these reasons, the report does not attempt to account for the granular differences between the countries reviewed. Nor does it conclude that a measure which worked in one jurisdiction would or should work in another merely because the two faced a broadly similar problem. Instead, the report's lessons are necessarily asymmetrical. Its observations about the conditions that predict failure – dependence on ongoing political support, lack of entrenchment against successor governments, integrity systems that allow compromised officials to survive reform – are more robust and generalisable than those concerning the conditions that *ex facie* appear favourable to lasting success. Accordingly, the report's explanatory power lies in identifying the conditions without which a reform cannot succeed, even if it cannot show what would guarantee success in another setting.

On the other hand, the report's comparative value lies in the particularity of the experiences it examines: the legal measures, institutions, administrative changes, reversals and counter-reforms that characterised each country's response to organised criminal infiltration. In this sense, comparison is useful precisely because it enlarges the field of experience against which a country can assess its own institutions. In documenting what others have tried, comparative policy research can provide points of reference and open up questions for debate, rather than prescribe ready-made answers. For that reason, the findings in section 4 are presented as principles stated at a level of generality that allows them to be assessed against South African conditions, rather than at a level of specificity that would presuppose them.

2.3. The Latin American cases

Five of the eight jurisdictions represented at the dialogue are in Latin America: Colombia, Guatemala, Mexico, Brazil and Argentina. Their number in the sample was deliberate. Organised criminal groups in the region have used violence and corruption to obtain influence within police services, prosecution authorities, prisons and local government. The United Nations Office on Drugs and Crime reports that Latin America and the Caribbean have the world's highest regional homicide rate and the highest prevalence of homicide associated with organised crime.⁴ The five countries were selected for the institutional relationships behind that violence. Violence alone does not establish infiltration.

Several conditions affecting those responses also resemble conditions in South Africa. Severe inequality and spatial segregation affect access to policing, public services and legal protection. The World Bank's 2022 assessment ranked South Africa as the most unequal country in the Bank's global poverty data at the time of publication.⁵ Low conviction rates and large illicit drug markets place further pressure on criminal justice institutions. In some areas, criminal groups exercise territorial authority alongside the formal institutions of the state. These similarities explain the weight assigned to the Latin American cases. They do not establish that the institutions, criminal markets or available legal measures are equivalent.



3. DEFINING THE PROBLEM

3.1. Organised criminal infiltration

The report answers a defined question: how can a state protect its criminal justice institutions from organised criminal infiltration? It is not concerned with the question of how to reduce organised crime across society generally, or of how to combat police corruption specifically, including corruption involving organised criminal groups.

Article 2(a) of the United Nations Convention against Transnational Organized Crime defines an organised criminal group as a structured group of three or more persons, existing for a period of time and acting together to commit one or more serious crimes for a direct or indirect financial or other material benefit. Article 2(c) does not require formally defined roles, continuous membership or a developed hierarchy.⁶ The report uses those elements as a baseline rather than a complete domestic definition. Its country cases include mafia associations, drug-trafficking organisations, police-led militias, clandestine security bodies, prison-based groups and networks formed around officials, businesspeople and conventional criminals. Some operate across borders; others exercise power in a city, prison system, municipality or public body. Transnational activity is therefore unnecessary for inclusion. The group must display continuity and coordinated action beyond the immediate commission of a single offence, and its relationship with the institution must advance or protect that collective activity.⁷

Organised criminal infiltration is a continuing relationship between such a group and the exercise of public power within the criminal justice system. The group may recruit or bribe an official, place a member in office, obtain the assistance of a political intermediary, coerce an investigator, or buy information from a person with access to a case. Officials may also use their positions to create or operate the criminal organisation itself, as occurred in police corruption syndicates and police-led militias examined later in the report. The relevant access can concern intelligence, dockets, evidence, witnesses, appointments, procurement, firearms, detention, bail, charging decisions or the direction of enforcement against rivals. Criminal infiltration need not result in control over the whole institution. Access to one official, unit or decision may be enough where it allows the organisation to preserve itself. The enquiry turns on the organised use of state capacity for the group's interests and the continuity of that use.

Corruption is broader. It includes the abuse of entrusted power for private gain, whether the beneficiary is an organised criminal group, a business, a political faction, the official or another person. An isolated payment to avoid a traffic fine is corruption. It becomes relevant to infiltration where the payment forms part of an arrangement that gives a criminal group continuing protection, information, access or influence. The same distinction applies to fraud, theft of exhibits and procurement misconduct. Their presence inside a police service or prosecution authority may show serious administrative or criminal failure. They show infiltration when the evidence links the conduct to an organised group's activities or continued operation. A large number of corrupt acts may expose an institution to infiltration, but volume alone does not prove that a criminal organisation is directing or benefiting from them.

Political interference overlaps with infiltration where a person uses elected or executive office to alter appointments, budgets, investigations, prosecutions or disciplinary action for the benefit of an organised criminal group. Political pressure serving a party, office-holder or patronage network can damage the same institutions without involving an organised criminal group. That conduct remains within the Commission's wider mandate, while it enters this comparative report only when it creates, protects or conceals organised criminal access. Institutional capture describes a more extensive result. It exists where appointments, decisions, information or resources are controlled to the point that the institution repeatedly serves the private network rather than its lawful mandate. Infiltration can remain confined to a unit, case or function and still cause grave damage. Capture describes the condition reached when the institution's ordinary controls can no longer correct that damage.

Administrative weakness must also be kept separate from proof of infiltration. Vacant posts, weak supervision, obsolete information systems, poor record control, delayed procurement and insufficient training can prevent an institution from carrying out its mandate. Those defects create openings that a criminal group can exploit and can make the resulting conduct harder to detect. They also arise without criminal involvement. The same caution applies to an unsuccessful investigation or prosecution. Failure may result from inadequate capacity, negligence, intimidation, corruption or deliberate protection of the suspect. A finding of infiltration requires evidence linking the failure or decision to the organised group or to a person acting for its benefit.

3.2. Institutional consequences and scope of analysis

Organised criminal groups exploit the separation between individual acts and collective operation. A leader can issue instructions through intermediaries, a public official can provide a single piece of protected information, and a company or nominee can hold property used by the group. Removing one participant may leave the roles, money and relationships intact. A convicted leader may continue to direct the organisation from prison through visitors, lawyers, corrupt staff or illicit communications. Laws directed only at the predicate offence or the registered owner of property may therefore reach the immediate actor while leaving the organisation's capacity in place. Section 4 considers organisation-based offences, liability for outside facilitators, powers to trace and recover property connected to corrupt officials or criminal groups, and prison measures directed at continuing command. General financial investigation and ordinary prison administration are included only to the extent that they answer these infiltration risks.

Infiltration also changes the operation of the institution that should detect it. A compromised commander can redirect investigators, control access to intelligence, influence appointments or discipline, and decide which allegations receive resources. Internal review then remains formally available while

depending on the same chain of command that the criminal group has entered. A separate specialist body may remove an investigation from that chain, although its independence is limited if the parent institution controls staff, money, information or operational support. Where compromise has spread across personnel and command, case-by-case discipline may leave the working relationships intact and may take longer than the institution can function safely. The report therefore examines independent investigative and prosecutorial bodies, international–domestic partnerships, protected adjudicative jurisdiction, institutional replacement, transitional vetting, continuing personnel controls, preventive integrity measures and civilian oversight. Each measure answers a different degree or location of institutional compromise.

Information creates a related risk. Dividing intelligence among several agencies can prevent one compromised body from controlling the state's knowledge of a criminal organisation, yet the division may conceal links between cases and allow each agency to hold only a fragment of the evidence. Concentration can improve analysis and case coordination while giving an infiltrated office access to sources, operations and targets across the system. The report examines prosecutorial coordination, the separation of intelligence from investigation, joint teams and controlled access to interoperable records. The relevant question is who may obtain, combine and act on the information, and what record allows later review of that access. A general call for coordination is too broad for this purpose. The measure must specify the authority responsible, the information shared, the conditions of access and the body capable of detecting misuse.

Organised criminal influence can make lawful action dangerous for witnesses, investigators, prosecutors, judges and officials who report misconduct. A formal duty to report or testify has little practical force where the person faces dismissal, transfer, violence or retaliation against family members. Physical protection, relocation, confidentiality, sentence incentives and protection against occupational detriment answer different risks and require separate legal procedures. The officials who administer those measures may themselves be exposed to the same institution under investigation. Section 4 accordingly examines the authority that admits a person to protection, the services provided, the treatment of confidential information, the terms on which a participant may cooperate and the remedies available after retaliation. Measures are included where they preserve evidence or official action against an organised group. General labour protection and ordinary witness services remain outside the analysis where that connection is absent.

A specialist institution faces a final form of infiltration risk after it begins to investigate powerful targets. The persons affected may exercise lawful powers concerning appointments, appropriations, and restructuring, initiate disciplinary processes, or pursue legislative amendment to restrict the institution or remove its leadership. Independence may be secured at inception but gradually weakened or dismantled over time. The report reviews measures whose design left the relevant institutions vulnerable to counter-reform or reversal in order to determine which part of the foreign reforms may properly be compared with South African law and practice.



4. COMPARATIVE LESSONS: REFORM PRINCIPLES FOR COUNTERING ORGANISED CRIME INFILTRATION

4.1. Criminal organisations are resilient to laws and measures that fail to account for their collective character and continuity as a group

Measures directed at particular persons or acts may punish individual wrongdoing without disrupting the criminal organisation itself. Organised groups divide their work among members and intermediaries. Leaders may issue instructions through intermediaries without participating directly in the offences committed on their orders. The subordinates who carry out those offences may know no more than their own task requires and remain ignorant of the wider operation. When one participant is arrested or removed, another will take his place. Criminal proceeds may meanwhile be concealed through nominees, corporate structures and cross-border transactions. The organisation may therefore continue to operate despite the arrest, prosecution or imprisonment of particular members.

4.1.1. Offences and rules of liability directed at organised groups and their facilitators

Ordinary criminal liability is usually tied to the commission, attempted commission or assistance of a particular offence. That model is poorly suited to criminal organisations in which authority, support and the commission of offences are deliberately separated. Recruitment, funding and other forms of assistance may contribute to the organisation's activities without amounting to participation in the offences committed on its behalf. Organisation-based offences address this problem by criminalising specified relationships with, or contributions to, the group itself. Liability may attach to forming or belonging to the organisation, exercising authority within it, or knowingly contributing to its activities or continued operation. These offences are particularly important where organised criminal groups infiltrate state institutions by inducing officials or other insiders to disclose confidential information,

obstruct enforcement, influence appointments or facilitate access to public contracts and resources, without themselves participating in the group's underlying offences.

In Italy, the Sicilian Mafia's resurgence in the decades after the Second World War rested on trading violent control of territory for access to political office, public contracts and protection within the criminal justice system. Mafiosi mobilised votes for Christian Democratic politicians and received employment, contracts and favourable treatment in return. The growth of heroin trafficking in the 1970s increased the organisation's resources and produced a violent struggle led by the Corleonesi faction. Mafia killings then extended to investigators, magistrates and political figures who challenged these arrangements. Pio La Torre, the Sicilian Communist leader who had introduced a Bill criminalising mafia association and permitting the seizure of mafia assets, was murdered on 30 April 1982. General Carlo Alberto dalla Chiesa, appointed prefect of Palermo after directing the campaign against the Red Brigades, was murdered on 3 September 1982. Parliament enacted Law 646 of 13 September 1982, the Rognoni-La Torre Law, ten days later.⁸

Before Law 646, Article 416 of the Penal Code, enacted in 1930, criminalised an association of three or more persons formed to commit more than one offence. The offence did not specify the means by which a mafia organisation exercised authority in the lawful economy and in public institutions, and it required proof of a common criminal programme that did not readily extend to the organisation's wider system of intimidation and protection. Law 646 inserted Article 416-bis, which provided that an association is of a mafia type when its members use "the intimidating force of the associative bond, and the resulting conditions of subjection and silence", to commit offences, acquire or control economic activities, concessions, authorisations, public contracts or services, obtain unjust advantages, or influence voting. Participation in the association is an offence in itself. The penalties prescribed are ten to fifteen years for participation and twelve to eighteen years for promoting, directing or organising the association, with higher penalties where the association is armed. Upon conviction, the court must order confiscation of the things used or intended for the offence, and of its proceeds, product or profit. The provision extends to the Camorra, the 'Ndrangheta and other groups, including foreign groups, that use equivalent intimidation for corresponding purposes.^{9,10}

Article 416-bis did not itself criminalise the conduct of a person who remained outside the association but provided official information, political protection, financial or other support that kept it in operation. Italian courts closed this gap by developing a separate offence of external participation, which was formed by applying the general rule on participation in an offence in Article 110 of the Penal Code of 1930 together with Article 416-bis. The Joint Sections of the Court of Cassation first accepted this offence in *Demitry* in 1994, and the Court of Cassation later confined it to a conscious and voluntary contribution that materially preserved or strengthened the association, together with an intention to advance its criminal programme.¹¹ Professional contact or political proximity was insufficient. Prosecutors could accordingly charge a public official or business intermediary who knowingly provided protection of practical value without proving membership. In *Contrada v Italy*, however, the European Court of Human Rights held that applying the offence to conduct committed between 1979 and 1988 violated Article 7 of the Convention of 1950, because the elements which the courts developed through *Demitry* and later judgments were not sufficiently clear and foreseeable at that earlier time.¹²

Article 416-bis remains a key basis for proceedings against mafia organisations and has allowed investigators to examine links between mafiosi and the lawful economy. The statutory definition of a mafia-type association is harder to satisfy where groups expand into new regions through corruption, professional services and superficially lawful companies, because intimidation, subjection and silence

are harder to prove directly in these settings. External participation covers some of these relationships, but only where prosecutors can prove the contribution, its effect on the association, and the required intent.¹³

Georgia's organised crime problem centred on thieves-in-law, an elite criminal status inherited from the Soviet prison system whose holders commanded recognised authority over the criminal underworld. During the 1990s and the final years of President Eduard Shevardnadze's government, thieves-in-law exercised control over prisons and parts of the lawful economy, maintained business and protection relationships with officials, and offered private dispute resolution in place of the courts. The Ministry of Internal Affairs was itself organised around purchased posts and the upward distribution of bribes. Ordinary offences such as extortion and bribery punished particular acts, but none of them criminalised the publicly recognised status itself, through which a thief-in-law could direct the criminal underworld. After the Rose Revolution of November 2003, the new Georgian government targeted that status directly, treating the destruction of this parallel authority as part of the reconstruction of state institutions.¹⁴

Legislation adopted in December 2005 created the offences now contained in Article 223¹ of the Georgian Criminal Code. As enacted, membership of the criminal underworld carried five to eight years' imprisonment, and the status of thief-in-law carried seven to ten years. Amendments in 2018 increased those terms to seven to ten years and nine to fifteen years respectively. The same amendments introduced separate offences of participating in an underworld meeting and of actively supporting underworld activities, with a higher penalty where public office is abused. The support offence excludes routine professional or official conduct and relieves a person of liability where their voluntary cooperation materially assists the investigation of a serious crime. Police and prosecutors could therefore act against the status and organising functions of the network without waiting for proof that its leader had personally committed a predicate offence. The Interior Ministry reported that no thief-in-law remained at liberty in Georgia by June 2006; this was an official claim, and most accounts state that leading figures were imprisoned or left for Russia and Ukraine. At the same time, the authorities carried out mass police dismissals, seized assets, negotiated plea agreements and imposed stricter prison rules. This campaign curtailed the open authority of thieves-in-law, but it did so partly through coercive procedure and abusive treatment of prisoners. Article 223¹ targeted the organising role directly, yet its practical effect is inseparable from those same tactics.^{15,16}

In Brazil, Rio de Janeiro's *milícias*, originally formed by serving and former police officers, evolved into territorial criminal organisations that sold protection to residents, took control of transport, utilities and property markets, and used that economic base to influence local elections and secure police forbearance. Much of that forbearance came from within since several of its members were officials who suppressed investigations and diverted police enforcement onto rival groups. Brazil's response, Law No. 12.850 of 2 August 2013, adopted a general definition of criminal organisation rather than a mafia-specific status offence, namely: a structured association of four or more persons, with a division of tasks, formed to obtain an advantage through offences carrying a maximum penalty above four years or offences of a transnational character. Article 2 punishes promoting, constituting, financing or joining the organisation with imprisonment for three to eight years, in addition to the penalties for the offences committed, and the sentence increases where a public official participates in the organisation and the organisation makes use of that official's position to commit the offence.¹⁷ These provisions apply directly to criminal organisations involving police officers, but the Act is broader in scope and was not enacted solely to address state infiltration.¹⁸

Law No. 15.358 of 24 March 2026 (the Marco Legal do Combate ao Crime Organizado, popularly the 'Anti-Faction Law') created the Brazilian offences of structured social domination and of favouring structured social domination. Article 2 imposes twenty to forty years' imprisonment on a member of an ultra-violent criminal organisation, paramilitary group or private militia who, through violence, serious threat or means producing collective submission, exercises direct or indirect control over a territory, community or economic activity – among the ten forms of conduct listed in the provision are intimidating the population or public authorities, obstructing security forces or police operations, imposing control over economic or commercial activity, interfering with public or community services, and attacking essential services. Under Article 2, §2, the qualifying organisation itself need only consist of three or more persons using violence or serious threats for territorial or social control – a lower threshold than the four-person minimum under the general organised crime statute, Law No. 12.850. Article 3 criminalises promoting, founding, joining or otherwise supporting such an organisation in any form, with imprisonment for twelve to twenty years and a fine. Article 2, §1 increases the penalty by two thirds to double across eleven listed circumstances, including participation of a public official whose position the organisation exploits to commit the offence, and infiltration of the public sector or direct or indirect involvement in the administration of public services or government contracts. The offences are classified as heinous and are ineligible for amnesty, pardon, bail and parole. The statute addresses the combination of territorial command and official access used by Brazilian milícias and criminal factions, but it is too recent for its operation or effect to be assessed.¹⁹

In Argentina, the trafficking group Los Monos entrenched itself in the city of Rosario through violence and by corrupting the local police: several provincial officers were convicted or charged, in both provincial and federal cases, with leaking operational information to the group and providing it cover. Groups linked to Los Monos carried out a series of attacks in 2018 against courts and the homes of judges and judicial officials, and a further wave of murders and threats in March 2024 led the federal government to deploy additional forces and propose anti-mafia legislation. Law No. 27.786, published on 10 March 2025, inserted Articles 210-ter and 210-quater into the Penal Code. Article 210-ter imposes eight to twenty years' imprisonment on a person who takes part in, cooperates with or assists the formation or maintenance of an unlawful association devoted to a listed set of serious crimes. Under Article 210-quater, every member of that association becomes liable to the penalty for the most serious offence committed by the association itself, if the association is shown to meet any one of the following conditions: (i) it used violence or threats to achieve its aims; (ii) the acts were committed repeatedly and openly for the association's benefit; (iii) the acts were committed to displace or annihilate a rival organisation; (iv) the acts were committed to instil fear in the population generally or in particular sectors of it, or to intimidate executive, legislative or judicial authorities, or the armed forces, police or security forces; or (v) it is evident that the association sought to secure control of a territory in order to commit new offences, continue committing ongoing ones, or remove that territory from the control of national, provincial, municipal or Buenos Aires City authorities. The provision extends responsibility beyond direct participation and makes the association's methods and territorial power legally consequential in themselves. No settled body of judgments yet exists, so it is too soon to assess how the provision operates in practice.²⁰

4.1.2. Financial investigation and asset recovery

This subsection covers a subset of financial investigation and asset-recovery measures that are of relevance where public officials are suspected of ties to a criminal group seeking influence or control over state institutions, including the criminal justice system. It deals with two problems created by organised crime infiltration. The first is that corrupt officials often accumulate wealth that is difficult to attribute to a particular bribe, or bribes, because the manner in which the payments are made, and the correlative public power has been exercised, have been concealed. The second is that organised criminal groups commonly arrange for rights of ownership in their illicit property to vest in the personal capacities of their members, or their members' relatives, or in companies, trusts and other legal vehicles, thereby complicating the state's entitlement to confiscate such property. The measures briefly considered here allow the state to identify, trace, restrain and recover unexplained wealth, criminal proceeds, and property used by organised criminal groups to preserve their operations or official influence, including assets held through corrupt public officials, nominees or companies.

In Hong Kong, police corruption was so extensive that it grew into a form of organised crime within the force itself. Triad societies controlled the colony's gambling, vice and drug markets, and by the 1950s and 1960s police corruption had grown into a syndicated system that ran alongside them: officers collected regular protection payments from those markets and distributed the proceeds up through district hierarchies. Senior officers protected the system, while the triads controlling the underlying markets paid for advance warning of raids or immunity from enforcement altogether. Before the Prevention of Bribery Ordinance came into force in 1971, a conventional bribery prosecution required proof of a particular payment and the exercise of public power influenced by it. Where police officers participated in a corruption syndicate, those facts were difficult to prove because the officers who enforced the law could conceal the payment and suppress evidence of the official act. Corrupt officers were therefore able to accumulate property far beyond what their salaries could support. The precipitating event occurred in 1973, when Chief Superintendent Peter Godber, who controlled assets of more than HK\$4.3 million, left Hong Kong while under investigation, using his police credentials to bypass immigration checks. Public demonstrations and the Blair-Kerr inquiry led Governor Murray MacLehose to remove corruption investigation from the police. The Prevention of Bribery Ordinance, Cap. 201, was enacted *inter alia* to address the limitations of the previous bribery offence through the unexplained-wealth offence created by section 10. Since the Independent Commission Against Corruption (ICAC), established in 1974, was independent of the police force it investigated, it could apply section 10 far more effectively than the police's own anti-corruption branch had previously done, and its investigations under that section have since underpinned many of the Department of Justice's prosecutions of public officials for unexplained wealth.²¹

Section 10(1) makes it an offence for a prescribed officer to maintain a standard of living above that commensurate with present or past official emoluments, or to control pecuniary resources or property disproportionate to those emoluments, unless the officer gives a satisfactory explanation. The prosecution must first prove beyond reasonable doubt that the accused was a prescribed officer and that the standard of living or assets were objectively incommensurate or disproportionate. Thereafter, the accused must adduce a satisfactory explanation on a balance of probabilities. Section 10(2) provides that the court may treat property held by a person closely connected to the accused, or property transferred as a disproportionate gift, as property under the officer's control, unless the contrary is shown.²²

Section 13 empowers the Commissioner, if satisfied that there is reasonable cause to believe that an offence has been committed and that an account contains evidence, to authorise an ICAC investigator in writing to inspect that account and require the production of the related records. In turn, section 14 empowers the court to authorise the Commissioner to serve a written notice requiring a person under investigation to provide information concerning their assets and liabilities, income and expenditure, and specified movements of money or property. These powers allow investigators to reconstruct an officer's financial position even where no specific bribe can be identified. Following conviction under section 10(1)(b), section 12AA authorises the court, on an application by the Secretary for Justice, to confiscate property found to have been under the officer's control and not satisfactorily explained. Third parties must receive notice and an opportunity to be heard, and the court may protect good-faith interests or refuse an unjust order.²³

The offence applies only to a 'prescribed officer' – broadly, a Hong Kong SAR government civil servant, as distinct from an employee of another public body – and is effective only if investigators can identify the assets under that officer's control. A corrupt official may conceal ownership through relatives, trusts, companies or property held abroad, in which case section 10(2), access to third-party records and international cooperation become important. The explanatory burden arises only after the prosecution proves the statutory disparity, and it is the court, not the investigator, that decides whether the explanation given is satisfactory.²⁴

Italy's asset recovery measures developed in response to mafia organisations that reinvested their proceeds into lawful businesses and public contracts, using that accrued capital to entrench their power. In terms of Article 416-bis, while a court was empowered to confiscate property, together with its proceeds, from a mafia association, it could only do so once the association's existence and the underlying offences were proved in criminal proceedings. Such conviction-based confiscation could not respond quickly enough where a suspected mafioso held assets through nominees, where intimidation prevented a case from reaching conviction, or where an infiltrated company went on performing a public contract while the case was still pending. As a result, Legislative Decree No. 159 of 6 September 2011 (the Anti-Mafia Code) consolidated Italy's preventive property measures, asset administration rules and anti-mafia controls concerning businesses.²⁵

The Anti-Mafia Code allowed the state to bring a separate, preventive proceeding against a person who falls into a 'socially dangerous' category, including a person merely suspected of belonging to a mafia-type association. The application does not require a criminal conviction or even a criminal charge. Once the proceeding is under way, Article 20 authorises the competent court to grant an interim preservation, or freezing, order over property owned or controlled by that person where its value is disproportionate to their declared income or economic activity, or where sufficient evidence shows it to be the proceeds or reinvestment of unlawful activity. If the state establishes the disproportion between lawful means and assets, or the illicit origin, as required under Article 20, the burden then shifts to the respondent to justify the asset's lawful origin, and confiscation follows if the respondent cannot do so. This is the same reverse-onus, unexplained-wealth logic underlying Hong Kong SAR's section 10 offence: the state need not prove that a specific asset is the proceeds of a specific crime; it need only prove the statutory trigger, after which the respondent must account for the asset or lose it.²⁶

Brazil's Law No. 15.358 of 2026 affords the courts a set of asset-based tools against ultra-violent criminal organisations, paramilitary groups and private militias that use companies, financial assets and payment systems to bolster territorial control and buy influence over public officials. Once there

is sufficient evidence of an offence under Article 2 or 3, Article 9 empowers the court to grant *ex parte* orders, *inter alia*, to: freeze movable, immovable, corporate or digital assets; suspend a business activity or payment instrument; remove an implicated official from office; and/or impose a provisional bar on public contracts, subsidies, tax benefits and official credit.²⁷ Article 9, §8 authorises the court to order the extraordinary forfeiture of property – without waiting for a criminal conviction – once the property's illicit origin is clear.²⁸ Article 10 applies where there is concrete evidence that a company is benefiting from one of the organisations covered by the Act. On application by the prosecutor, or on the police chief's representation, the court may remove the implicated partners and place the company under judicial administration. The court-appointed administrator may suspend suspect contracts, terminate the company's ties with persons under investigation, carry out financial and accounting audits, and identify and segregate illicit assets. While the intervention lasts, the company may not enter new public contracts, take part in tenders, or receive tax incentives or official credit. At the end of the intervention, the court may return the company to innocent partners, liquidate it, or forfeit its assets.²⁹

4.1.3. Prison measures that interrupt organisational continuity

In several countries, organised criminal groups wield influence in prisons disproportionate to the share of inmates who belong to them. Imprisonment can strengthen rather than weaken a criminal organisation by facilitating recruitment, reinforcing status within its hierarchy, and bringing members into ongoing contact with one another. Some major criminal organisations, including Brazil's Primeiro Comando da Capital, originated in prison and came to exert significant influence over prison wings and aspects of day-to-day prison life within these institutions. Prison rules designed for the general population may therefore be inadequate where organised crime prisoners can intimidate or recruit other inmates, corrupt staff, obtain contraband, or maintain links with associates outside prison. Correctional facilities need to account for the likelihood that incarcerated leaders may continue to order killings, direct drug trafficking and threaten witnesses from custody. This section examines the special prison rules and regimes used to restrict the accommodation, movement, communications and visitation rights of high-risk prisoners, together with the staff, facilities and intelligence required to enforce them.

Italy introduced a special regime for prisons to stop mafia bosses running their organisations from custody. Under the older penitentiary law of 1975, prisoners could work, study, associate with other inmates, and receive family visits and letters. Mafia leaders were quick to exploit those channels to resume command and control from the inside. Law No. 663 of 10 October 1986, the Gozzini Law, inserted article 41-bis into Law No. 354 of 26 July 1975. It empowered the Minister of Justice to suspend orthodox arrangements in a single prison during a revolt or similar internal disturbance. After the Sicilian mafia killed judge Giovanni Falcone in May 1992, Decree-Law No. 306 of 8 June 1992 added Article 41-bis(2), which authorised the Minister to isolate mafia prisoners in particular and restrict their visits, correspondence and contact with other inmates to break their links with the organisation outside.³⁰

Article 41-bis(2) now applies to a prisoner convicted of mafia association, terrorism or another offence listed in article 4-bis, or of an offence committed to facilitate such an association, where the evidence shows links to a criminal, terrorist or subversive organisation.³¹ A prisoner under the regime is held in a dedicated institution or separate section, preferably in an island facility, guarded by specialist prison police. Contact is confined to a small and stable group of other prisoners. The law ordinarily permits

one visit each month with family members or cohabitants, through a secure partition and with judicially authorised audio monitoring and recording. Correspondence may be screened by judicial order, except communications with specified public authorities, and the order may limit money, parcels, objects, cooking, and election as a prisoner representative. These restrictions address the known routes by which a leader can pass instructions.³²

The Ministerial order subjecting a prisoner to the special regime endures for an initial period of four years and may be extended for two-year periods so long as the prisoner retains the capacity to maintain links with the organisation.³³ The Constitutional Court has repeatedly required each restriction imposed under the regime to remain connected to the purpose of breaking external links with mafia groups.³⁴ The regime has remained in force for more than three decades. An official report recorded 728 prisoners subject to Article 41-bis on 31 October 2022. No independent evaluation has isolated the regime's effect on organised crime from the separate effects of prosecutions, confiscation, witness cooperation and changes within the mafia organisations themselves. Prisoners have nevertheless continued to pass messages through relatives, other prisoners and professional contacts.³⁵

Brazil's prisons, chronically overcrowded and under-administered, became incubators of the country's most notorious criminal factions. The *Primeiro Comando da Capital* in São Paulo and *Comando Vermelho* in Rio de Janeiro both developed inside state prisons, where overcrowding, weak administration and corrupt staff allowed faction leaders to settle disputes, recruit members and direct trafficking and killings on the outside. Paradoxically, removing a leader from the street could therefore strengthen the organisation's prison authority rather than weaken it. Accordingly, Law No. 10.792 of 1 December 2003 created the *Regime Disciplinar Diferenciado*, or RDD.³⁶ The RDD's significance lies in its preventive rationale: unlike an ordinary disciplinary sanction, which is inflicted for a proven act of prison misconduct, the RDD authorises renewable, indefinite isolation based on the continuing risk that a prisoner will direct a criminal organisation from custody.

Article 52 provides that a prisoner may be placed in the RDD regime where they pose a high risk to the security of the prison or the public, or where well-founded suspicions link the prisoner to a criminal organisation, criminal association or private militia. The prison director, another competent administrative authority or the prosecution service may ask the execution judge to impose the RDD.³⁷ The regime may last up to two years. The prisoner is held in a single cell. Visits are fortnightly, limited to two persons at a time for two hours, and conducted through a physical barrier that prevents contact and the passing of objects. The prisoner is entitled to two hours of outdoor exercise daily, in groups of no more than four and not with members of the same criminal group. Where there are indications that the prisoner leads a criminal organisation or operates across two or more states, the regime must be served in a federal prison and may be renewed in successive one-year periods so long as the risk or organisational links persist.³⁸

Law No. 11.671 of 8 May 2008 created a separate federal maximum-security system. The purpose of the system is twofold: to hold a prisoner whose continued presence in state custody endangers public security, and to protect a prisoner whose own life is at risk within the state system. A prisoner may be transferred to federal custody on proof of any one of the following grounds: leadership or a relevant role in a criminal organisation; membership of a gang involved in repeated violent crime; subjection to the RDD – that is, the prisoner is already serving the differentiated disciplinary regime in a state prison; violence or grave indiscipline in the originating state prison; having committed a crime that puts the prisoner's own physical integrity at risk in that prison; or being a cooperating defendant or informant where that status exposes the person to retaliation in the originating prison.³⁹ Generally,

a federal judge weighs each proposed transfer individually and may exercise his or her discretion in determining whether transfer is justified. Article 2(7) of Law 15.358 of 24 March 2026 removes that discretion for one defined class: those convicted of the offence of structured social domination (see section 4.1.1 above). Where a person has been convicted or remanded for that offence and there are concrete indications that the person leads the organisation or belongs to its command nucleus, the person must serve the sentence or custody in a federal maximum-security facility.

A transfer lasts up to three years and may be renewed for equal periods if the grounds persist. The prisoner is held in a single cell; visits take place virtually or in a parlor through glass, by intercom, with no more than two persons at a time, and are filmed and recorded; all means of communication, including written correspondence, are monitored.⁴⁰ While the federal transfer measure has been applied against senior faction leaders and broken up particular command arrangements, a scoping exercise for a 2026 audit by the Federal Court of Accounts reported continuing difficulty in isolating leaders, controlling visits and communications, and protecting prison staff from criminal pressure. Since 2023, the national Operation Mute has removed more than 8,000 illicit mobile telephones from prisons across multiple phases – a figure that suggests illicit communications remain widespread throughout the country's penitentiary system.⁴¹

Although the RDD and the federal system share the same restrictive elements (single cell, visits behind glass or by virtual means, monitored communications etc.), the RDD aims to confine and control an individual within an existing state institution, whereas a transfer to federal custody changes the custodial authority and the territorial setting altogether, removing the prisoner to a federal facility when the state prison cannot secure him. Both now target organisational leaders specifically: the RDD through its preventive triggers under Article 52, which require no prior disciplinary offence inside the prison, and the federal system through the mandatory placement introduced by Article 2(7) of Law 15.358.⁴²

Georgia's prisons bred their own version of the same problem. By 2003, the thieves-in-law exercised what the Public Defender called "full control over the process inside the prisons and, more importantly, control from within the prisons on the processes outside."⁴³ The status of being a thief-in-law was recognised across the whole prison system. Those crowned as among their rank could tax other prisoners for the right to work or trade, grant or withhold privileges, and settle disputes among inmates. They also enjoyed benefits unavailable to other prisoners: better cells, mobile telephones, alcohol and narcotics, and freedom of movement within and between facilities with the assistance of corrupt prison staff. After Parliament adopted the Law on Organised Crime and Racketeering in December 2005, the Georgian government moved all suspected thieves-in-law to Prison No. 7, a high-security facility in Tbilisi, stripped them of their privileges, and restricted their visits, telephone calls and correspondence. To disrupt the relationships through which the criminal network had governed the prisons, the authorities also dismissed senior prison officials and large parts of the line staff. According to studies of the reform, around 80 per cent of staff in some institutions were removed and the salaries of those who remained were increased by between 200 to 300 per cent.⁴⁴

The Georgian government did not enact any special legislation to impose these measures. The isolation of the thieves-in-law was implemented in accordance with ordinary prison law and the executive authority the Minister already held over the penitentiary system. The procedure adopted by the government did not require an individual ministerial finding that a particular prisoner had maintained links to the criminal group outside. Amendments to the Law on Imprisonment further reduced the frequency and duration of family visits and provided that pre-trial detainees required permission from

an investigator, prosecutor or court before they could receive visits or communicate with friends or family. These restrictions made it harder for recognised leaders to issue instructions. But because they were imposed on a category of prisoner rather than on a case-by-case basis, the sanctions were often applied to ordinary prisoners for whom no command risk had been established.⁴⁵

Within about two years, the authority of the thieves-in-law inside Georgia declined abruptly. Since the prison measures were only one part of the wider reform campaign – which included new offences, asset confiscation, replacement of the police, and the departure of senior thieves-in-law from the country – their relative contribution to the weakening of the thieves-in-law is unclear. The government's reforms also quadrupled the prison population, from approximately 6,000 in 2003 to about 24,000 by 2010-11, and relied heavily on plea agreements to secure convictions. Human Rights Watch, in a report published in September 2006, documented severe ill-treatment of prisoners and found that complaint mechanisms were unreliable.⁴⁶

South African comparison

South Africa enacted the Prevention of Organised Crime Act 121 of 1998 at a time when the common law and existing statutes did not deal effectively with organised crime, money laundering and gang activity. The Act's preamble identifies a specific evidential problem: the leaders of organised criminal groups commonly direct the organisation without committing the underlying offences themselves. Section 2 imposes RICO-style liability for patterns of criminal conduct performed by way of participation in, or management of, an enterprise and its affairs.⁴⁷ Section 2 criminalises conduct by which a person acquires or maintains control of an enterprise through such a pattern, conducts or participates in its affairs through the pattern, manages the enterprise while knowing or being expected reasonably to know that an associated person participates in that manner, or conspires or attempts to contravene one of the preceding section 2 offences. A racketeering charge must therefore identify the nature and purpose of enterprise, the pattern of predicate offences and the accused's part in conducting or managing its affairs. The prosecution must prove each statutory element, including the pattern and the accused's conduct and state of mind.⁴⁸

The offences under section 9(1) of POCA apply to a person who actively participates in, or is a member of, a criminal gang and aids criminal activity, threatens violence or threatens retaliation for or on behalf of that criminal gang. Section 11 allows a court to consider admissions, physical association, repeated arrests with identified members, and certain forms of physical evidence when deciding whether a person is a gang member. These provisions make membership relevant to liability, but do not punish a person solely because they possess a recognised rank or status in a criminal group. They are therefore narrower than the Georgian offence directed at the status of a thief-in-law. On the other hand, section 9(2) of the Act provides the closest South African analogue to Italy's offence of external participation in a mafia-type association. Its offences apply to "any person" who performs an act aimed at causing, bringing about, promoting or contributing towards a "pattern of criminal gang activity", or any person who incites, instigates, commands, aids, advises, encourages or procures another person to participate in such a pattern. The offences under section 9(2) extend to gang members and outside facilitators. The provision can therefore reach a non-member who knowingly assists the gang's continuing criminal activity. The scope of its object is confined to a "criminal gang" and a pattern of gang activity as defined in Chapter 4. The money-laundering offences in sections 4 to 6 apply where the assistance concerns the proceeds of unlawful activity. South African law therefore covers several forms of external assistance. However, a residual gap remains in respect of conduct

that consists in the once-off provision of material support or assistance to other forms of criminal association, where the person concerned has knowledge but not necessarily the intent, that their support or assistance is likely to enhance the criminal group's ability to further its aims. An offence directed expressly at such external, culpable assistance would close that gap.⁴⁹

The Act also provides for the recovery of property on which criminal organisations rely for their operations. Chapter 5 provides for a confiscation order after conviction in the amount of a benefit derived from the offence and related criminal activity. Chapter 6 creates a separate civil recovery mechanism. The National Director of Public Prosecutions may seek preservation and forfeiture of property that is the instrumentality of a Schedule 1 offence or the proceeds of unlawful activity. The court determines the civil applications on a balance of probabilities. The Constitutional Court confirmed in *Prophet v National Director of Public Prosecutions* that Chapter 6 proceedings can proceed without a criminal charge or conviction. For instrumentalities, the same Court has required a proportionate relationship between the statute's crime-fighting purpose and the severity of the impact on constitutional rights to prevent an arbitrary deprivation of property.⁵⁰

South African law does not contain a separate offence equivalent to section 10 of Hong Kong SAR's Prevention of Bribery Ordinance, in terms of which a prescribed officer must satisfactorily explain property or a standard of living that is disproportionate to official emoluments. In 2022, the Asset Forfeiture Unit, the Financial Intelligence Centre and the South African Revenue Service began an inter-agency pilot aimed at testing whether existing legislation can be effectively used to target unexplained wealth, or whether South Africa needs to pass standalone UWO legislation similar to other countries. The agencies stated that they would use the existing civil-forfeiture provisions in Chapter 6 of the Prevention of Organised Crime Act and ask a court to infer an unlawful source where property was materially disproportionate to declared lawful income and the respondent gave no satisfactory explanation. The purpose is evidentiary and confined to facilitating proof that the property was derived, received or retained, directly or indirectly, in connection with unlawful activity and is therefore "proceeds of unlawful activity". Proof of instrumentality requires separate evidence that the property was concerned in the commission or suspected commission of a Schedule 1 offence. The onus imposed by section 50 remains on the National Director, who must still establish on a balance of probabilities that the property is proceeds of unlawful activity or an instrumentality of a listed offence. The unexplained disparity in wealth is evidence from which the court may infer an unlawful source when it is considered with the remaining facts.⁵¹

The Correctional Services Act 111 of 1998 allows the Department of Correctional Services to classify inmates by security risk, regulate visits and communications, search inmates and cells, and prohibit unauthorised articles. The Department's published visitation rules require non-contact visits for inmates classified as super-maximum security. In theory, these ordinary powers can separate particular inmates and limit direct contact with associates outside prison. They are much less successful in practice because mobile telephones nevertheless appear to circulate on a large scale. During the 2025/26 festive-season security operation, correctional officials conducted 5,592 searches and seized 8,063 mobile telephones, 3,144 sharpened objects, more than 46 kilograms of cannabis and R102,726 in cash. The seizures indicate that inmates of every stripe, including imprisoned group leaders, can and often do retain the means to communicate with an outside network.⁵²

The Act and published correctional rules do not create a separate, judicially reviewable detention regime for a person proved to be directing or leading an organised criminal group from prison. South Africa relies instead on the rules under the ordinary correctional framework governing security

classification, non-contact visits, monitoring, searches and disciplinary control. The effectiveness of those measures depends largely on the officials tasked with preventing telephones, cash and other prohibited items from entering the facility. In sum, while racketeering liability and asset forfeiture address two important features of organised crime's collective character, South Africa's prison regime appears to lag behind to the extent that it fails to provide for measures that sequester members of criminal groups from each other, both within and outside prison walls.⁵³

Summary: Key comparative lessons

- Laws and measures that target or regulate the conduct of individuals do not endanger the continuity, wealth, or command and control networks of criminal organisations.
- Brazil specifically criminalises supporting violent organisations that exercise territorial control and increases the punishment where they infiltrate the public sector. Argentina exposes every member of a qualifying association to the penalty for the most serious offence committed by the group.
- Hong Kong SAR makes it an offence for a public officer to possess wealth disproportionate to official income without a satisfactory explanation. Italy allows disproportionate or illicitly derived property to be confiscated through preventive proceedings that do not depend on a criminal conviction.
- Italy's special prison regime isolates prisoners whose links to a mafia association persist and restricts the communications through which they can issue instructions. Brazil combines individual placement in a differentiated regime with the transfer of senior leaders to federal prisons when state institutions cannot contain them.
- While South Africa has RICO-style offences directed at managers and participants in racketeering enterprises, it lacks an offence that treats the infiltration of public institutions by violent criminal groups as an aggravating form of organised crime and has no rule exposing members or leaders to the penalty for serious offences committed by the group. South Africa is piloting an unexplained-wealth mechanism, but it is not confined to public officials and depends on the court inferring an unlawful source in each case; the presumption is not codified. South Africa also has no prison regime dedicated to identifying and severing the continuing links between incarcerated leaders and their organisations outside. ■

4.2. Organised crime infiltration can leave a public institution formally intact but incapable of self-correcting and fulfilling its mandate

An institution may be formally independent in terms of legislation and nevertheless unable to detect, prevent, or root out corruption and misconduct within its ranks. The capacity of an institution to self-review may fail when the officials managing complaints or investigations are themselves compromised. It may also fail when an office-bearer in another institution or branch of government has powers over its appointments or funding and exercises them to frustrate or impede corrective action. In other words, the fact that legislation may provide a dedicated body with a clear and distinct

mandate or jurisdiction does not entail that its operational independence is similarly protected and secured. In many cases, its staff can still be transferred, disciplined, removed or deprived of the cases and records required to perform their duties. The measures discussed under this principle concern the question whether an institution enjoys operational independence, that is, whether it possesses the necessary power and control over the people, information and decisions required to fulfil its mandate, and to self-correct when its internal processes are compromised. They include specialised bodies – independent commissions, agencies, or offices – with designated powers of investigation and/or prosecution in respect of corruption or organised crime offences, and which sit outside the ordinary police or prosecutorial chain of command. The accounts that follow examine how each body's structural location, and the rules governing the appointment of its leadership, staffing, budget, and case allocation, determine the extent of its operational independence.

4.2.1. Independent specialised bodies for investigating and prosecuting organised crime and corruption

Hong Kong SAR removed corruption investigations from the police and vested them in the ICAC, a statutory commission outside the police command structure.⁵⁴ Section 3 of the Independent Commission Against Corruption Ordinance, Cap. 204, establishes the Commission. Section 5 places the Commissioner under the orders and control of the Chief Executive, while Article 57 of the Basic Law provides that the Commission functions independently and is accountable to the Chief Executive. The Chief Executive nominates the Commissioner, appoints the Deputy Commissioner and approves the terms of employment of other ICAC officers, whom the Commissioner appoints. Police commanders have no part in those decisions.⁵⁵

Section 4 of the Ordinance provides that the Commission's expenses are charged to general revenue.⁵⁶ Section 11 authorises the Commissioner to issue standing orders on the control and administration of the Commission, the discipline, training, classification and promotion of officers, their duties, the financial regulation of the Commission, and any other matter necessary to prevent abuse or neglect of duty. This administrative scheme ensures that departments investigated by the ICAC cannot control its staff, internal discipline, budget or its accounting.⁵⁷

Section 12 requires the Commissioner to receive and consider corruption complaints, investigate alleged or suspected offences under the ICAC Ordinance, the Prevention of Bribery Ordinance and electoral legislation, and to examine the practices and procedures in government departments and public bodies in order to identify and revise those that may facilitate corruption. Three departments of the ICAC carry out these functions: the Operations Department conducts the criminal investigations, using the arrest, search, seizure, detention and property-restraints powers conferred by the Ordinance; the Corruption Prevention Department examines administrative systems for weaknesses that invite corruption; and the Community Relations Department receives information from the public and runs public education.⁵⁸ The ICAC does not have the power to initiate, or conduct, prosecutions. The Department of Justice controls public prosecutions under Article 63 of the Basic Law. ICAC investigators only manage and control the inquiry from complaints through to referral for prosecution.⁵⁹

By July 1977, the Commissioner reported to the Governor that no major corruption syndicates were known to exist and that those remaining were dormant or had fragmented into smaller groups. Public complaints concerning police officers fell from 45 per cent of corruption complaints in 1974 to less

than 15 per cent by 2002. Five decades on, the ICAC remains separate from the police and continues to receive adequate funding and resources.⁶⁰

In Albania, ordinary police, prosecutors and courts had repeatedly failed to deal with political corruption and organised crime. Criminal groups that had expanded through European drug markets cultivated informants within the police, corrupted public officials and influenced the course of judicial proceedings through these contacts. Public outrage over corruption and organised crime, coupled with pressure from the European Union, which made justice reform a precondition for Albania's accession, eventually generated the political will and momentum for reform. On 22 July 2016, Parliament adopted constitutional amendments – by 140 votes to none – establishing a Special Prosecution Office, an independent investigation unit and specialised courts for corruption and organised crime. The Special Structure against Corruption and Organised Crime (SPAK) became operational on 19 December 2019, when the first eight special prosecutors were sworn in.⁶¹

Article 148/b(4) of the Albanian Constitution establishes the Special Prosecution Office and an independent investigation unit subordinate to it, and provides that the Special Prosecution Office is independent of the Prosecutor-General. The Constitution further excludes the Special Prosecution Office from the Prosecutor General's power to issue general guidance to prosecutors, from his administration of the prosecution service, and from his responsibility for the prosecution budget. Article 148/dh provides that the High Prosecutorial Council, a body outside the ordinary prosecutorial hierarchy, must appoint the Office's prosecutors and elect its Chief Special Prosecutor from among them. Prosecutors serve non-renewable nine-year terms and the Chief a non-renewable three-year term. An individual prosecutor of the Office may be removed only for a crime or serious disciplinary misconduct, as determined by a two-thirds majority of the Council.

Law No. 95/2016 defines SPAK as the Special Prosecution Office together with the National Bureau of Investigation (NBI). Articles 4 and 5 of the statute assign prosecution to the former and investigation under special-prosecutor direction to the latter. Articles 8 and 10 vest the Special Prosecution Office with exclusive national jurisdiction over the offences listed in Article 75/a of the Code of Criminal Procedure, including offences committed by structured criminal groups, criminal organisations, terrorist organisations and armed gangs, and criminal charges against the President, the Prime Minister, ministers, senior judges, the Prosecutor General, and members of Parliament. Where such jurisdiction is engaged, an ordinary prosecutor or a regional police command cannot retain the case.⁶²

Law No. 95/2016 separates responsibility for the administrative direction of the Special Prosecution Office from control over investigations. Article 15 establishes the Chief Special Prosecutor as the administrative head of the office who is responsible for case allocation, general guidance, the budget, and reporting to the High Prosecutorial Council. However, the Chief has no operational control over individual cases and cannot take over a prosecutor's docket, direct the manner in which a particular investigation is conducted, or stop or redirect a particular prosecution.⁶³ The same is true for senior ordinary prosecutors. They may not instruct a special prosecutor on the substance of any investigation or case, and may only provide general instructions or guidance. The NBI is a specialised agency that operates only at the direction of the Special Prosecution Office. It is staffed with its own criminal investigators who conduct cases under the direction of the assigned special prosecutor and cannot be reassigned without the consent required by law. Seconded investigative officers are subject to the NBI's own reporting and pay arrangements.⁶⁴

Articles 28 and 29 secure SPAK's access to information and operational support. Article 28 requires state bodies to supply information requested by SPAK within twenty-four hours, subject to the rules for classified material. In terms of operational support, Article 29 requires the State Police to notify the NBI immediately when an officer becomes aware of an Article 75/a offence, transfer the docket to the Special Prosecution Office, and to execute searches, arrests and other duties on the instructions of the special prosecutor assigned to the case. Article 56 provides for SPAK's appropriation in a separate chapter of the state budget. The Anti-Corruption and Organised Crime Courts – comprising a first-instance court and an appeal court – are institutionally separate from SPAK. They adjudicate the cases investigated and prosecuted by SPAK officials.⁶⁵

On 29 May 2026, SPAK announced that it had sent three former State Police officers for trial in Criminal Proceeding No. 169/1 of 2022 on allegations that they had given operational information or protection to structured criminal groups involved in cannabis cultivation and trafficking.⁶⁶ In 2025, the European Commission reported that SPAK continued to investigate, prosecute and obtain convictions in high-level corruption cases, including against a former minister, a former President of the Constitutional Court and former city mayors. The same report noted continuing political and media pressure on SPAK, a low number of referrals from other state bodies, and shortages of staff and infrastructure that remained to be addressed.^{67,68}

4.2.2. International-domestic investigative and prosecutorial partnerships

Guatemala's organised crime problem grew out of its own civil war. Over the 36-year conflict, the intelligence services and specialised units of the armed services built a set of parallel structures – known after the 1996 Peace Accords as Illegal Clandestine Security Apparatuses (CIACS) – that survived the transition to democracy and continued to operate inside, or alongside, the police, the courts and other state institutions. As loosely connected networks of active and retired military and police personnel, the CIACS provided weapons, intelligence and protection to criminal groups while running operations of their own: drug trafficking, extortion, kidnapping, money laundering and "social cleansing" killings. Their members held positions in the security forces and the interior ministry, secured impunity through control of investigations and prosecutions, and intimidated or killed witnesses, prosecutors and judges who moved against them. Guatemala's first attempt to create an international body to dismantle the CIACS, proposed in 2004, was struck down by the Constitutional Court as unconstitutional. The government returned to the United Nations with a revised proposal that became the International Commission against Impunity in Guatemala (CICIG). Congress approved the Agreement between Guatemala and the United Nations by Decree 35-2007, and it entered into force on 4 September 2007.⁶⁹

Article 1 defines the Commission's purpose by reference to illegal security groups and clandestine security organisations linked, directly or indirectly, to state agents and able to act with impunity. Article 2 requires CICIG to identify their structures, financing and connections with state institutions, support their dismantling, and recommend legal and institutional reform. Article 2(2) provides that CICIG is to enjoy complete functional independence. Articles 4 and 5 concretised that independence by providing that CICIG would have its own legal personality and capacity to contract, hold property and institute legal proceedings. The United Nations Secretary-General appointed the Commissioner, who recruited the international and national staff, directed the Commission and reported back to the Secretary-General. Articles 4, 5 and 8 to 10 together prevented the government, Attorney-General and National Civil Police from dismissing the Commissioner, selecting the investigative team or seizing its files.⁷⁰

Article 3 authorised CICIG to collect, classify and evaluate information, file criminal complaints, join proceedings as a complementary private prosecutor, seek witness and victim protection, advise state institutions, report official misconduct, and select and supervise its own investigative team. Article 6 required public authorities to assist the Commission, give it unrestricted access to state premises and prisons, facilitate interviews and supply any relevant records and information without delay. Notwithstanding these powers and privileges, CICIG could not itself charge or arrest a suspect, or search and compel the production of evidence.⁷¹

The Public Prosecution Service and CICIG signed a cooperation agreement in February 2008. In September 2008, the Attorney-General established a special prosecutorial unit that later became the Special Prosecutor's Office against Impunity (FECI). The Attorney-General and the Commissioner assigned cases to FECI by agreement, although the office's prosecutors remained officials of the Public Prosecution Service, to be appointed and removed through the ordinary prosecution service.⁷² The partnership paired international investigators who were less exposed to local patronage with domestic prosecutors who could invoke Guatemalan procedure. In the *La Línea* case, CICIG and FECI used wiretaps and financial records to expose a customs-fraud network implicating President Otto Pérez Molina and Vice-President Roxana Baldetti. Both resigned in 2015. A high-risk trial court convicted them of unlawful association and customs fraud in December 2022 and sentenced each to sixteen years' imprisonment.⁷³

4.2.3. Specialised adjudicative jurisdiction

Specialised adjudicative jurisdiction involves removing a high-risk case from the court that would ordinarily hear it and transferring it to a court that is less exposed to intimidation, patronage or conflicts of interest. The transfer may be territorial – from a local court to national one situated in a place where the defendants hold less sway over police, prosecutors and judges – or functional, by distributing the investigative, accusatory and adjudicative stages of a case across distinct fora. The purpose is to protect the operational independence of judges, prosecutors and court staff from the proximate threats posed by criminal organisations embedded within their local environment, and to insulate the proceedings from the patronage networks that connect those organisations to local officials and security forces.

In Guatemala, geographically centralised courts were created to hear sensitive, high-risk cases involving potentially dangerous offenders. Decree No. 21-2009 (the Law on Criminal Jurisdiction in High-Risk Proceedings) defines a high-risk case by reference to a listed offence and a security danger requiring extraordinary arrangements to safeguard investigation, prosecution, judicial proceedings, and prisoner transportation. Listed offences include those involving organised crime, serious drug offences, money laundering and terrorist financing. Either the Attorney General or head of the Public Prosecution Service may request the Supreme Court of Justice to allocate a case to the high-risk jurisdiction. The Supreme Court may designate high-risk courts for the country as a whole, regardless of where the offence was committed. In practice, all high-risk courts sit in the Torre de Tribunales in Guatemala City, where the Supreme Court can allocate physical infrastructure – including restricted-access elevators, metal detectors, security cameras, dedicated prisoner-transfer cells and additional security detail – that is not available to ordinary courts across the country.⁷⁴ The high-risk case mechanism is intended to mitigate the risks associated with criminal infiltration by relocating the decision-making body away from the territorial networks in which defendants hold power and the local police and judiciary may be compromised.

In Colombia, Article 186 of the 1991 Constitution confers exclusive jurisdiction on the Supreme Court to investigate and try members of Congress. The jurisdiction was engaged in the parapolitics cases, the proceedings concerning agreements between political office-bearers and paramilitary organisations that began in 2005, after paramilitary commanders publicly claimed they controlled 35 per cent of the Congress. By 2009, the Court's Criminal Chamber, working with a specialised team of auxiliary magistrates and investigators, had opened investigations into more than 60 members of Congress and obtained the arrest of more than 30. The jurisdiction insulated these cases from local investigators, prosecutors and judges who might be subject to the political and military pressure that the paramilitaries could exert in the regions where they worked. After the original constitutional provisions were held to be incompatible with the right to appeal a criminal conviction, Congress amended the Constitution to provide separate courts to conduct investigations, trials, and to hear appeals. A six-member Special Investigation Chamber now investigates and accuses members of Congress; a three-member Special First Instance Chamber conducts the trial; and the Criminal Cassation Chamber hears the appeal.⁷⁵ The constitutional division of powers between adjudicative bodies responds to two sources of potential compromise: local patronage (cases are removed from the regions where the defendants hold political and paramilitary power) and concentration of adjudicative power in a single chamber (investigation, accusation and trial are distributed across distinct bodies, with appeal to a fourth).

South African comparison

South Africa distributes the investigation of corruption and police misconduct between institutions with different forms and degrees of independence. The Directorate for Priority Crime Investigation, or Hawks, is a directorate within the South African Police Service. In *Glenister v President of the Republic of South Africa*, the Constitutional Court held in 2011 that the Constitution requires an anti-corruption entity with adequate independence. Parliament may locate that entity in the police service, the prosecuting authority or a separate institution, provided that its legal design meets the constitutional standard. The Court invalidated the original Hawks legislation because insecure tenure, political influence over the directorate's jurisdiction and inadequate safeguards against interference left it vulnerable to executive control. While the 2012 amendments strengthened the office, in 2014 the Constitutional Court severed certain provisions that allowed the executive to extend the National Head's term, and the Minister to interfere through policy guidelines and the exercise of an unconstrained power of removal. The resulting statute provides the Hawks with stronger protection against direct interference in particular investigations, although its budget remains part of the police appropriation and its personnel, administration and institutional command remain within SAPS. The OECD Working Group on Bribery concluded in 2025 that this structure remained vulnerable to political influence and re-capture. It recommended a transparent procedure for appointing the National Head and a separate budget decided directly by Parliament.⁷⁶

The public record suggests that these legal safeguards have not held up under pressure. In 2017, the Supreme Court of Appeal dismissed an attempt to preserve Lieutenant-General Berning Ntlemenza's appointment as National Head after the Minister had disregarded judicial findings that he lacked honesty and integrity. An Institute for Security Studies review found that the Hawks had been badly compromised during his tenure, had weak capacity for complex corruption and financial investigations, lacked a coherent specialist structure and reported outputs that disclosed little about the quality or public importance of completed cases. The National Anti-Corruption Advisory Council (NACAC) reached a similar conclusion in 2025. It described the Hawks' statutory mandate as overbroad and unmanageable, found that the directorate devoted most of its work to violent organised crime, and

argued that it paid insufficient attention to serious corruption. The delays besetting the agency are visible by the limited outcomes. In May 2026, Parliament reported that only one of 17 material-irregularity matters referred by the Auditor-General had produced a prosecution and guilty verdict; most remained under investigation, including matters referred in 2021. The length of these investigations, and the small number of completed outcomes, demonstrate the practical weakness of the present enforcement chain. Ultimately, the directorate's legislative location, mandate, budget and capacity constraints continue to limit its ability to function as the state's principal specialised corruption investigator.⁷⁷

The Investigating Directorate against Corruption, or IDAC, is a body vested with the statutory authority to investigate serious, high-profile or complex corruption, commercial and financial crime, related offences under the Prevention of Organised Crime Act and other listed statutes, and, where appropriate, to institute criminal proceedings. The National Director may appoint permanent investigators on the recommendation of IDAC's head, and the Act gives those investigators criminal-investigation powers. The President appoints IDAC's head as a Director of Public Prosecutions after consultation with the Minister of Justice and the National Director. IDAC is therefore a prosecution-led structure that has investigators of its own, but it forms part of the single national prosecuting authority and the ordinary procedure for appointing a Director of Public Prosecutions governs the appointment of its head.⁷⁸

Section 22A of the National Prosecuting Authority Act created a complaints mechanism for the former Investigating Directorate and IDAC. The provision came into operation on 1 March 2026. A retired judge appointed for a non-renewable five-year term may receive complaints from members of the public about serious and unlawful infringements by an investigator. IDAC personnel may similarly complain about improper influence, interference, obstruction or hindrance. The judge may obtain information from the prosecuting authority and enter its premises for that purpose. The judge reports annually to Parliament.⁷⁹

IDAC's first annual account as a permanent body exposes the tangible gap between its legal mandate and its operating capacity. In 2024/25, it authorised investigations in 17 matters and enrolled nine state-capture and complex-corruption matters. While the NPA had a ring-fenced allocation of R260 million for IDAC's operations, the directorate had to rely on personnel reassigned from other law-enforcement bodies for some investigations due to difficulty recruiting experienced criminal and financial investigators, shortages in digital and commercial-investigation skills and a salary process that impeded recruitment. Weekly coordination with the Special Investigating Unit, the South African Revenue Service, the Financial Intelligence Centre, the Asset Forfeiture Unit and the Hawks assisted particular cases. However, the personnel and technical constraints continue to hamstring IDAC's performance.⁸⁰

The Independent Police Investigative Directorate, or IPID, is the external body specifically responsible for investigating police misconduct. Section 206(6) of the Constitution requires an independent police complaints body, and section 4 of the IPID Act requires IPID to operate independently of the police. In *McBride v Minister of Police*, the Constitutional Court set aside the Minister's unilateral suspension of IPID's Executive Director. The Court held that the ordinary public-service regime gave the Minister powers of suspension, discipline and removal that were incompatible with IPID's independence. The Independent Police Investigative Directorate Amendment Act 15 of 2024 now states expressly that IPID must be institutionally and operationally independent and must act without fear, favour, prejudice or undue influence. Most provisions of the amending Act commenced on 29 August 2025. Sections 6, 12, 14, 16 and 18 remained subject to a future proclamation on the government's consolidated legislation page at the date of this report.⁸¹

The distinction between IPID's mandatory and discretionary corruption investigation powers is noteworthy. Section 28(1)(g) of the current Act provides that IPID "must" investigate corruption within the police when the Executive Director initiates the matter, a member of the public submits a complaint, or the Minister, an MEC or the Secretary for the Police Service makes a referral. By contrast, section 28(2) provides that IPID "may" investigate systemic corruption involving the police. Accordingly, evidence that multiple officers across several units are collecting bribes, or that station commanders are regularly suppressing complaints or obstructing investigations, does not itself oblige IPID to open a broader systemic investigation. Whether the inquiry is extended beyond the individual incidents to examine matters on a systemic scale is therefore left to the Executive Director to decide. Section 16 of the 2024 Amendment Act would amend the list of matters governed by section 28. It was excluded from the 2025 commencement proclamation and remained outside the law in force at the date of this report.⁸²

Moreover, serious police corruption can fall within IPID's mandate, the Hawks' priority-crime mandate and IDAC's mandate over serious, high-profile or complex corruption. The governing statutes do not provide for clear allocation rules based on whether the conduct is systemic, serious, complex or high-profile. The Constitutional Court already noted the overlap between IPID and the Hawks in *McBride*. The World Bank's technical work for NACAC highlighted the undefined thresholds, duplication risks and apparent absence of a legal mechanism for resolving a case selected by more than one specialist body. In the absence of a clear, enforceable allocation mechanism, the same evidence can be requested twice, divided between institutions or left outside the scope of each inquiry.⁸³

IPID refers evidence of crime to the National Prosecuting Authority and may make disciplinary recommendations to SAPS or the relevant municipal police service. The ambit of IPID's powers end there, since decisions regarding such matters are the prerogative of those institutions. In 2024/25, IPID referred 2,165 disciplinary recommendations to the police. Of the 796 recommendations that called for disciplinary action, 357 hearings were initiated, 198 produced guilty findings, 141 resulted in no steps being taken, 14 were withdrawn and feedback remained outstanding in 33 matters. IPID also recorded 76 criminal convictions during the year after referral to the prosecuting authority. Its independence protects the investigation and recommendation, but the outcome remains dependent on the institution responsible for prosecution or employment discipline.⁸⁴

In sum, the Hawks investigate from within the police service, IDAC conducts prosecution-led investigations from within the NPA, and IPID investigates police misconduct from outside SAPS and hands the resulting criminal and disciplinary cases to other institutions. For the same reasons, the Hawks are vulnerable to police and ministerial influence over priority investigations, IDAC's work is susceptible to interference from within the executive and NPA, and IPID's ability to investigate the police turns on whether its referrals and recommendations are actually enforced. None of the three combines Hong Kong SAR ICAC's corruption investigation, corruption prevention and public education functions in an institution separated from both the police service and the prosecuting authority. Nor do they mirror Albania's SPAK to the extent that its Special Prosecution Office is constitutionally separated from the Prosecutor-General's direction, has a dedicated National Bureau of Investigation under special-prosecutor direction, and receives a separate budget allocation.⁸⁵

Summary: Key comparative lessons

- An institution may fail to prevent or eradicate infiltration where compromised officials retain control over internal investigations, or where corrupt political office-bearers can frustrate the work of the body charged with investigating them.
- Hong Kong SAR removed corruption investigation from the police and vested it in the ICAC, which directs its own investigations, and controls its staff and internal administration. Albania constitutionally separated SPAK from the Prosecutor-General and placed its investigators under the direction of the assigned special prosecutors.
- Guatemala paired international CICIG investigators, whose appointments and records were protected from domestic control, with FECl prosecutors who could initiate prosecutions and seek the coercive orders that CICIG could not. The arrangement allowed an external team to investigate networks within the state without displacing domestic prosecution.
- Guatemala's high-risk courts remove sensitive cases from local courts exposed to intimidation or patronage. Colombia assigns criminal cases against members of Congress to the Supreme Court, outside the regional networks in which political and paramilitary influence is strongest.
- South Africa's Hawks remain within SAPS, while IDAC forms part of the NPA and has struggled to recruit permanent investigators and technical specialists. IPID investigates police corruption from outside SAPS, but systemic-corruption inquiries are discretionary and its criminal and disciplinary outcomes depend on the NPA and the police. Their overlapping mandates lack enforceable allocation rules, and South Africa has no comparable national high-risk court mechanism designed to remove cases from local patronage or intimidation. ■

4.3. External criminal influence is marked by a pattern of institutional misconduct organised around the advancement of common criminal interests

Criminal infiltration of a state institution produces a pattern of institutional misconduct that is qualitatively distinct from opportunistic corruption by its officials. Where an external criminal group brings unrelenting pressure to bear on an institution, the conduct of officials in different parts of that institution tends to align around the advancement of its common criminal interests. The resulting pattern consists not merely in the recurrence of misconduct but in its direction and purpose: officials, who need not be aware of each other, may perform individual acts of wrongdoing that solidify into a discernibly collective practice because each act protects, assists or advances the same criminal interests. The kind of intervention required to eliminate such misconduct depends on the extent to which the pattern has crystallised into a concerted, institutionalised practice across posts, ranks, or functions such that the institution cannot identify and remove the practice through its usual procedures. Relevant considerations include the scale of the pattern, the seniority of the personnel involved, and the degree to which the misconduct is accepted as part of a broader institutional

culture. Where the pattern is confined to identifiable individuals, ordinary disciplinary and criminal proceedings may suffice. Where it extends across a unit, a rank structure, or an institution as a whole, more disruptive measures – such as one-off vetting, large-scale personnel replacement, dissolution of the body, or temporary external administration – may be necessary.

4.3.1. Exceptional measures to restore compromised institutions

This sub-section discusses interventions directed at an institution, class of incumbents, or governing leadership, rather than at separately identified offenders. They address situations in which the pattern of misconduct has so thoroughly compromised the institution that ordinary disciplinary measures – which proceed case by case, require proof of individual wrongdoing, and typically remain under the authority of the institution's own leadership – are likely to prove ineffective in restoring lawful governance and control. The measures vary in scope and duration: some reassess an entire occupational class, some abolish and replace a body or authority, and some only displace a compromised body temporarily.

Albania's transitional re-evaluation formed part of the 2016 justice reform that established SPAK. Earlier domestic and international evaluations of the Albanian justice system, including reports by the European Commission, the Council of Europe's Venice Commission, and national integrity bodies, had consistently found that corruption, political interference, and suspected links between parts of the judiciary and organised crime, compromised the integrity and impartiality of the courts and prosecution authorities. As a result, SPAK and the other new special anti-corruption institutions could not operate as intended since there were reasonable grounds to suspect their cases remained subject to judges and prosecutors whose assets, professional records and criminal associations had never been credibly scrutinised. Parliament therefore amended the Constitution on 22 July 2016 and enacted Law No. 84/2016 on the Transitional Re-evaluation of Judges and Prosecutors. Article 179/b required all serving judges and prosecutors, including those of the Constitutional Court, the High Court, and the Prosecutor General, to undergo a one-off reassessment. The process was disciplinary in character. It did not determine criminal guilt.⁸⁶

The Independent Qualification Commission conducted the initial vetting and decided cases in four panels of three commissioners. Its decisions could be appealed to a seven-member Appeal Chamber, which heard appeals in panels of five. A judge or prosecutor could appeal an adverse decision; separately, two Public Commissioners were empowered to appeal in the public interest, including where they considered that the Commission had wrongly confirmed an office-holder or imposed an inadequate sanction. The Commission, Appeal Chamber and Public Commissioners were institutionally separate from the bodies whose members they assessed and were provided with their own budgets, staff and facilities. These arrangements reduced the ability of a governing majority acting alone to control the composition of the vetting bodies.⁸⁷

In terms of Law No. 84/2016, every serving judge and prosecutor was required to undergo three assessments. The first was an asset assessment that examined declared property, compared it with the lawful sources of the income used to acquire it, and determined the accuracy and completeness of the office-bearer's disclosures. The second involved a background assessment that considered whether the incumbent had inappropriate contact or communications with persons involved in organised crime. The final, professional assessment sought to determine whether the official possessed the competence required to remain in judicial or prosecutorial office. On completion of the assessments, the Commission could confirm the person in office, suspend the person for one year of

remedial training, or dismiss them. The Commission's discretion was circumscribed by certain rules. For example, assets that exceeded twice the amount justified by legitimate income gave rise to a rebuttable presumption in favour of dismissal. The judge or prosecutor was given an opportunity to answer the Commission's adverse findings and produce evidence to the contrary. If a decision was appealed, the Appeal Chamber could uphold, vary or quash the decision, but could not remit it back to the Commission.⁸⁸

In *Xhoxhaj v Albania*, the European Court of Human Rights upheld the essential structure of the vetting procedure, finding the Commission and Appeal Chamber sufficiently independent and impartial and the dismissal in that case proportionate. By completion of the appellate process in 2026, 804 final decisions had been recorded: 348 confirmations, 283 dismissals and 173 terminations of the reassessment process, of which 114 were by resignation. The vetting mechanism was deliberately transitional and did not become the permanent system for supervising judicial integrity. The High Justice Inspector now verifies complaints, investigates alleged disciplinary violations and initiates disciplinary proceedings. The High Judicial Council and High Prosecutorial Council exercise the corresponding governance and disciplinary powers over judges and prosecutors respectively.⁸⁹

Law No. 12/2018 extended the vetting model to personnel in the State Police, Republican Guard and the service then responsible for internal affairs and complaints. The transitional assessment examined each person on the same three grounds: assets, background and professional competence. In conducting the assessments, the vetting bodies could draw on classified information and records held by the financial intelligence authority, State Intelligence Service, police, prosecution service, courts and other law enforcement bodies. The employee was entitled to know and answer the case against them, to appear at a hearing with a representative, and to receive a written decision identifying the evidence and reasons on which it rested. A satisfactory assessment on all three components was required for confirmation in office. The law provided for dismissal from office where *inter alia* the employee failed to make the required declarations, supplied false information, could not justify declared assets from lawful income, or received a seriously adverse background assessment.⁹⁰

The institutional arrangements changed substantially while the scheme was being implemented. Under the 2019 amendments, the External Evaluation Commission retained responsibility for senior police and Republican Guard officials and personnel of the internal affairs service, while the latter service was to assess the remaining police and Guard personnel. In 2021, however, the transitional vetting of State Police and Republican Guard personnel was suspended while the personnel who would perform their internal assessments were themselves vetted. The scheme was redesigned again by Law No. 78/2022: responsibility for transitional and periodic vetting passed to the Police Oversight Agency, the External Evaluation Commission was wound up, and transitional vetting was confined to specified senior and high-risk positions, including senior police management and certain posts concerned with organised crime. The original ambition to reassess the police service as a whole was therefore abandoned in favour of a narrower scheme directed at positions considered particularly important or vulnerable to corruption. The results have been less determinate than those of the judicial and prosecutorial vetting programme. In 2025, the European Commission reported that both transitional and periodic police vetting were continuing, but that their impact remained limited and that the State Police remained highly vulnerable to corruption.⁹¹

The Colombian government used two exceptional measures to restore compromised bodies at different stages of its conflict with drug-trafficking and paramilitary organisations. The first was directed at the National Police during the 1990s, when traffickers had thoroughly infiltrated their

rank and file. After General Rosso José Serrano became Director General in 1994, the government introduced exceptional powers that allowed compromised personnel to be removed without requiring a criminal conviction or disciplinary dismissal. Congress authorised the President to amend the police career regime in Law 180 of January 1995, and Decrees 573 and 574 of 4 April 1995 empowered the Government and Director General to retire officers, non-commissioned officers and agents for “reasons of service”. Serrano deployed these exceptional powers during a wider restructuring of the Police in which several thousand personnel were removed from the institution.⁹²

Removal was considered case by case. Before an officer or non-commissioned officer could be retired, the Committee for the Evaluation of Senior Officers examined the reasons for the proposed removal, including the person’s record of service and relevant intelligence, counter-intelligence and anti-corruption reports, and made a recommendation to the competent authority. The Director General could then order the member’s retirement for reasons connected with the police service. The Constitutional Court upheld the mechanism as an exceptional administrative power intended to permit the rapid removal of personnel whose continued service compromised the integrity or effectiveness of the Police. Retirement under these provisions was characterised as administrative in nature, not as a disciplinary sanction or a finding of criminal guilt: the purpose was precisely to enable the institution to remove members on sufficiently serious information without having to establish grounds to charge, convict or formally dismiss them.⁹³

The second Colombian intervention followed the capture of the Administrative Department of Security, the DAS. Investigations disclosed cooperation between senior DAS officials and paramilitary organisations in connection with the illegal surveillance of Supreme Court magistrates investigating political links with paramilitaries, opposition politicians, journalists and human-rights defenders. The Supreme Court sentenced former DAS director Jorge Noguera to twenty-five years’ imprisonment for *inter alia* aggravated conspiracy and the disclosure of secret information. Since the DAS combined intelligence, counterintelligence, migration, protection and investigative functions, replacing its director did not remove the information systems, personnel and overlapping powers through which the abuse had occurred. Accordingly, exercising the powers conferred by Law No. 1444 of 2011, the President issued Decree-Law No. 4057 of 31 October 2011 and abolished the DAS.⁹⁴

By the end of the Shevardnadze era, Georgia’s traffic police – the uniformed branch of the Ministry of Internal Affairs known by its Soviet designation, GAI – had become the country’s most visible symbol of institutional corruption. Officers purchased their posts and recouped the outlay, commonly around \$2,000, by extracting bribes from motorists once in the job, and passing a share thereof up the chain to their complicit superiors. According to the Ministry’s own later estimates, officers were also involved in drug trafficking, kidnapping and racketeering, and maintained ties with thieves-in-law. Because the payroll, the traffic-enforcement function, and the officers who protected it had become components of a vertically integrated system of corruption, disciplining individual officers as complaints arose would have left the system safely intact. In July 2004, six months after the Rose Revolution brought Mikheil Saakashvili to the presidency, the government dismissed the entire traffic police, roughly 16,000 officers, in a single day and without instituting disciplinary proceedings against any individual.⁹⁵

For approximately one month, Georgia had no uniformed police service at all. In August 2004, the Ministry deployed a new Patrol Police at a strength of roughly 2,300 officers (less than one-sixth the size of the force it replaced), who were recruited through a competitive process, trained at the

Police Academy, and paid between \$400 and \$500 per month, nearly ten times the nominal salary of the old service. The government provided dismissed officers with two months' severance pay and an amnesty from prosecution for past offences, in exchange for which most left without organised resistance. Routine roadside bribery declined significantly after the new Patrol Police took up duty.⁹⁶

Italian law authorises the national government to dissolve and replace a municipal council where mafia organisations have influenced or captured its decisions. The legal provision is codified in Article 143 of Legislative Decree 267/2000, the Unified Code on Local Government (*Testo Unico degli Enti Locali*), and derived from Article 15 of Law 164/1991. The measure addresses a limitation of the law in cases where vanquishing the wrongdoers does not dislodge the criminal influence from the institution. The dismissal or conviction of a mayor or councillor may leave intact the council majority, procurement relationships, and network of compromised municipal employees through which the mafia exercises control over the municipality. Article 143 recognises two forms of mafia involvement that may justify dissolution. The first requires "concrete, unambiguous and relevant elements" establishing direct or indirect links between elected administrators and mafia-type or similarly organised criminal associations. The second is where those administrators are subject to "criminal conditioning", that is, pressure exerted by mafia organisations. In either case, the links or conditioning must be such as to alter the free determination of elected or administrative bodies and compromise the impartiality or proper functioning of the administration, the regular provision of public services, or public order and security. Even if the statutory threshold for dissolving the council is not met, Article 143 authorises the suspension, reassignment or disciplinary action against individual municipal employees identified during the inquiry.⁹⁷

The procedure begins with the prefect (*prefetto*), the central government's territorial representative. The prefect appoints a three-member commission of inquiry, ordinarily composed of magistrates or senior administrators, and grants it three months to inspect the municipality's acts, decisions, contracts and personnel. The prefect transmits the commission's findings to the Minister of the Interior and the President of the Republic, after consulting the Minister, then dissolves the council. Dissolution removes the elected office-holders and replaces them with a temporary, extraordinary commission that governs the municipality for twelve to eighteen months until fresh elections are held.⁹⁸ By 30 September 2025, a cumulative total of 402 dissolution measures had affected 294 local entities, 288 municipalities and six provincial health bodies. Eighty-three entities had been dissolved at least twice; twelve had been dissolved three or more times. Calabria, Campania and Sicily account for the majority of cases, reflecting the territorial concentration of 'Ndrangheta, Camorra and Cosa Nostra organisations. The recurrence of dissolution in the same municipalities indicates that the measure does not, by itself, prevent re-infiltration after the extraordinary commission withdraws and elected government is restored.⁹⁹

The main limitations of dissolution are twofold. First, dissolution automatically removes the elected council but does not automatically remove permanent administrators or technical staff.¹⁰⁰ Second, the extraordinary commission's term is fixed and finite. The commission may interrupt the criminal organisation's leverage over municipal decision-making and may review, and overturn compromised public contracts, but the firms, subcontractors and personal relationships through which the mafia entered public procurement can survive the commission's mandate. Once elected government resumes, the same commercial networks may re-establish the links to the new administration that the dissolution was designed to break.¹⁰¹

4.3.2. Continuing personnel integrity

Continuing personnel integrity measures address the risk that officials who are ethically compromised, vulnerable to coercion, or linked to established criminal organisations will enter or remain in the criminal justice system. Unlike the exceptional interventions discussed in the section 4.3.1, which may compel an entire class of office-bearers to requalify through a comprehensive, one-off assessment, the measures considered here establish recurrent procedures – regulating the entry, re-entry, retention, promotion, or transfer of personnel between public bodies – that apply to applicants and serving personnel, year on year, during the ordinary life of an institution.

For most of the twentieth century, Mexico's drug-trafficking organisations negotiated with a single, centralised corrupt counterpart: the Institutional Revolutionary Party, or PRI, which held the presidency continuously from 1929 and used that dominance to manage complicit relationships with traffickers through police and political channels. The PRI's seventy-one year hold on the presidency ended with the 2000 election. And while the centrally managed political order went with it, the underlying corruption did not. Power dispersed to a larger number of independently elected state and municipal governments, and drug-trafficking organisations adapted by negotiating separately with officials across the larger, fragmented set of institutions, gaining footholds in municipal, state and federal police forces and, in some places, among prosecutors and prison officials.

The fragmentation meant that an officer dismissed for corruption by one police force could seek employment in another, in a neighbouring state or municipality, without any record of his dismissal following him. Federal investigators, in turn, had no sure way of knowing in advance whether sharing information, equipment or an operation with a given local force was safe. The General Law of the National Public Security System of 2 January 2009 sought to respond to that problem by creating uniform national standards for the recruitment, certification, retention, promotion and division of police personnel. The law required federal and state confidence-control centres to subject serving personnel to evaluations that combined documentary and background checks with medical, toxicological, psychological, socio-economic and polygraph examinations. The programme provided a common screening standard across a federal structure in which appointment and discipline otherwise remained divided among the Federation, 32 states and more than 2,400 municipalities.¹⁰²

Congress replaced the 2009 Act with a new General Law of the National Public Security System, published on 16 July 2025, extending the national certification framework beyond police officers to prosecutors, forensic staff and prison officials at all three levels of government. The Executive Secretariat of the National Public Security System sets national accreditation and certification policy, which every security institution must follow. Certification combines two evaluations: one verifying a person's knowledge, skills, aptitudes and competencies, and a separate confidence-control evaluation screening for risk factors that could compromise police, prosecutorial, forensic or penitentiary work, including unexplained wealth relative to declared income, substance abuse, links to a criminal organisation, or a final conviction, pending prosecution, or dismissal from public office.¹⁰³ Only a person who passes the confidence-control evaluation at an accredited centre may join a security institution, and that evaluation must stay current for the person to remain in service, be promoted, or access specialist training.¹⁰⁴

The confidence-control regime established by the 2009 law and continued, in revised form, by the 2025 Act has been applied at scale. Reviewing the programme's operation, the Washington Office on Latin America (WOLA) found that, despite the thousands of officers screened, the measure was

treated too often as a substitute for internal affairs, supervision and criminal investigation. Analysts have also raised concerns about the reliability and consistency of the polygraph and psychological results, the absence of reasons given to officers who failed, and the limited avenues for appeal.¹⁰⁵

Albania coupled its one-off transitional re-evaluation of judges and prosecutors with standing integrity controls for the new institutions mandated to investigate and adjudicate corruption and organised crime i.e. the SPAK, the NBI, and the special courts for corruption and organised crime. These controls apply before appointment and continue throughout the official's service. The rationale is specific to the work of these bodies. Since SPAK prosecutors and investigators conduct covert operations, examine financial intelligence, and prosecute senior officials, a single compromised appointment could easily scupper an entire high-risk case and jeopardise the physical safety of state witnesses.

Article 6 of Law No. 95/2016 bars the appointment of any special judge, SPAK prosecutor, investigator, or staff member until the candidate has passed rigorous asset and background verification. As a condition of appointment, the candidate and each of their close adult family members must consent, in writing, to periodic monitoring of their bank accounts and personal telecommunications.¹⁰⁶ Article 48 further requires every prospective official to sign, before appointment, a waiver of any expectation of privacy in their telecommunications and financial records. Upon appointment, each official receives a government-issued mobile phone and email address, and is prohibited from using any other form of electronic communication. A Responsible Officer within the BKH conducts periodic monitoring of telecommunications activity in accordance with a monitoring schedule that is altered every three months. If the Responsible Officer identifies information giving rise to a reasonable suspicion of corruption or criminal activity, he must report it to the Special Prosecutor on Duty within 24 hours. Financial accounts are monitored monthly by a designated officer of the money-laundering prevention directorate, who may inspect asset and association declarations and must report information supporting a reasonable suspicion of corruption or criminal activity to the duty prosecutor.¹⁰⁷

South African comparison

South African public-service policy distinguishes between a lifestyle review, a lifestyle investigation, and a lifestyle audit. The Department of Public Services and Administration's 2021 guide defines a lifestyle review as the initial screening performed by a departmental ethics officer whereby the officer compares financial disclosures and available records with the employee's known income, assets, liabilities and expenditure. If a material discrepancy arises during the review process, a lifestyle investigation follows where an investigator then gathers evidence, tests the employee's explanation and determines whether the facts support disciplinary proceedings or a criminal referral. A lifestyle audit is the specialist financial examination used in a complex matter to assess the person's standard of living and identify assets or possible proceeds of unlawful activity. These processes represent continuing integrity measures and are distinct from security vetting by the State Security Agency, conflict-of-interest verification, and tax audits.¹⁰⁸ Lifestyle reviews became compulsory for national and provincial departments under the Public Service Regulations.¹⁰⁹

The South African Police Service applies separate security and counter-intelligence controls. In 2024/25, Crime Intelligence finalised 766 security-clearance processes. It issued 549 clearances and denied 217 because of service terminations or non-compliance with vetting requirements. The division also completed 2,968 information-technology security assessments. It found 1,743 items compliant, 416 partly compliant and 809 non-compliant. Of 546 physical-security assessments, 157 premises complied and 389 failed. These figures reflect weaknesses in access control, passwords, anti-virus

protection, storage of classified material and physical security. The annual report does not indicate whether, or what percentage of, serving officials were removed because of corruption or links to an organised criminal group.¹¹⁰

However, in February 2026, the President directed the State Security Agency to re-vet the senior management of the South African Police Service and metropolitan police departments, including through lifestyle audits. By 2 June 2026, the Minister in the Presidency reported that the first phase, covering 32 lieutenant-generals and major-generals, was at an advanced stage. The State Security Agency was also revising the vetting regulations to provide for referral of suspected crimes to law-enforcement bodies and continuous lifestyle audits for personnel in strategic positions. The programme reassesses specified serving officials through an agency outside the police service. However, at the reporting date, the government had not published a set of completed findings on removals or replacements.¹¹¹

If enacted, the South African Police Service Amendment Bill B18-2026, currently before Parliament's Portfolio Committee on Police, would place additional integrity controls in the SAPS Act. It would require every person newly recruited or appointed as a police official to undergo and pass an integrity test comprising, among other measures, fingerprinting, DNA sampling, polygraph testing, and verification of financial disclosures, credit history, company directorships and contracts with the state. A new section 28A would also authorise lifestyle audits for serving members reasonably suspected of living above their legitimate income. The Bill is contested chiefly over whether this reasonable-suspicion trigger sets too low a bar for those already serving. The long-term utility of the new measure is questionable in the absence of continuing integrity controls that apply periodically to members throughout their careers in the service, rather than only when an irregularity triggers a suspicion.¹¹²

The National Prosecuting Authority began a separate, phased vetting programme in March 2026. It started with members of the Executive Committee, Management Committee and staff in functions assessed as presenting a higher risk. The NPA stated that an adverse finding would be referred for investigation and, where misconduct was proved, consequence management would follow. Existing employment and criminal procedural law will govern the relevant phases of the vetting programme, although the measure should be construed as a continuing integrity control over selected serving personnel that leaves earlier appointments undisturbed unless an investigation establishes grounds for action.¹¹³

The historical role fulfilled by Crime Intelligence reflects a defect in institutional design. The National Anti-Corruption Advisory Council reported in August 2025 that many posts in Crime Intelligence had been filled improperly during the state-capture period. It recommended that the occupants be vetted but noted that Crime Intelligence itself appeared to perform the relevant vetting, an arrangement that required the affected division to examine its own personnel. NACAC received a proposal to dissolve and reconstruct the division. It did not endorse it. Instead, it recommended that the Madlanga Commission examine Crime Intelligence as a priority and consider whether IDAC and the Hawks should be given dedicated intelligence capacity. What significance the Commission will attach to the State Security Agency's 2026 reassessment of selected senior SAPS managers remains to be seen. In any event, the South African measures announced to date are considerably narrower than Albania's transitional vetting process, which subjected every serving judge and prosecutor to individual reassessment by constitutionally established external bodies.¹¹⁴

Summary: Key comparative lessons

- Once misconduct that repeatedly serves the same criminal organisation is embedded across an institution, resort to ordinary disciplinary procedures may be incapable of restoring lawful governance and control.
- Albania required every serving judge and prosecutor to undergo an independent reassessment of assets, organised-crime affiliations and professional competence. Italian law authorises the dissolution of a municipal council infiltrated by mafia interests, replacing it with an external administration for a fixed period until new elections are held, although permanent staff and compromised commercial networks can outlast the intervention.
- Mexico applies a common national certification system to new appointments and existing personnel across police, prosecution, forensic and prison institutions. Albania screens SPAK personnel before appointment and monitors their financial accounts and telecommunications throughout their service.
- South Africa has no procedure equivalent to Albania's independent requalification of an entire occupational class. The current SAPS and NPA programmes cover selected senior or high-risk personnel; neither requires all incumbents in a compromised body to qualify afresh. The proposed SAPS amendments would require integrity tests for new appointees and introduce lifestyle audits for serving officers on reasonable suspicion, but it is unclear whether they would establish continuing controls for all law enforcement officials. ■

4.4. The division of intelligence between state agencies fragments the state's knowledge of organised crime, but concentrating that information in one institution magnifies the damage caused by infiltration

Criminal organisations may operate across the boundaries that divide law enforcement agencies, whether territorial, functional, or jurisdictional. Often, they can adapt faster than multiple agencies can collaborate to gather a complete and accurate intelligence picture of their activities. Concentrating intelligence in a single body might solve that asymmetry, but it creates a different vulnerability: whoever controls a central store of intelligence on every investigation can also see, and potentially frustrate, all of them from one centralised position. The fragmentation and concentration of intelligence each trade one risk for the other. The measures considered under this principle seek to strike an appropriate balance. Some involve a national coordinating body with access to a shared case database that can identify connections across jurisdictional lines while leaving each prosecutor in charge of their own docket; others provide mechanisms to establish joint teams or interoperable databases that pool intelligence from several agencies without merging their institutional identities permanently. Ultimately, each measure represents a judgement about how much coordination is worth how much concentration of risk.

4.4.1. Prosecutorial coordination and cross-case linkage

Italy's prosecutors are generalist magistrates assigned to territorial offices. The country is divided into court-of-appeal districts, each covering a larger territory than the individual tribunal districts within it. Before the 1991 reform, a mafia case that originated in any town was handled by the prosecutor at the local tribunal – the court of first instance – whose jurisdiction covered a single town or small district. As a result, a single mafia organisation might run drug trafficking through Calabria, launder the proceeds through companies in Lombardy, and corrupt officials in Lazio, with each activity falling within the jurisdiction of a different local tribunal prosecutor. There was no system for connecting those files. A prosecutor who was compromised, or who simply lacked the resources to pursue a complex investigation, could leave a case dormant without any other office knowing that related material existed elsewhere.

Decree-Law No. 367 of 20 November 1991 restructured the system in two significant ways. First, it concentrated mafia cases in fewer, larger offices. Article 51(3-bis) of the Code of Criminal Procedure assigns investigations and first-instance proceedings for the listed mafia and related offences to the prosecutor's office at the tribunal located in the capital city of each court-of-appeal district. Italy has 26 such districts. The effect was to take mafia cases away from the hundreds of local tribunal prosecutors and assign them to 26 designated offices, each covering a larger territory and headed by a "district prosecutor" (*procuratore distrettuale*). Second, Article 70-bis of the Judicial Order requires each district prosecutor to constitute within his office a District Anti-Mafia Directorate (*Direzione Distrettuale Antimafia*, or DDA), composed of a team of magistrates selected for their aptitude and professional experience in mafia and organised-crime cases.¹¹⁵

The same decree created a national coordinating body. Article 371-bis of the Code of Criminal Procedure establishes the National Anti-Mafia Directorate (*Direzione Nazionale Antimafia e Antiterrorismo*, or DNA), composed of the National Anti-Mafia Prosecutor and 20 magistrates designated as substitute national prosecutors. The National Prosecutor's function is to coordinate the work of the 26 DDAs: he may obtain and analyse information from any district office, convene district prosecutors, issue directions to secure effective coordination, and regulate the investigative use of the DIA and of central or interprovincial police services. The district prosecutors retain control over the docket and the relevant prosecutorial decisions. The National Prosecutor may only take over an investigation in specific exceptional circumstances, such as prolonged and unjustified inactivity in the investigation, or unjustified and repeated violation of the coordination duties prescribed by the Code. The scheme is intended to preserve the independence of the district prosecutors while providing a legal means to overcome deliberate inaction or the withholding of connected information.¹¹⁶

The coordination system outlined above is supported by SIDNA and SIDDA: two linked databases maintained by the DNA and the 26 DDAs. The system stores case material – including crime reports, judicial orders, wiretap transcripts, and financial records – to provide access to names, companies, communications and events that can be linked across proceedings in different districts. Article 117(2-bis) of the Code of Criminal Procedure gives the National Prosecutor direct access to the databases to eliminate the need for a separate request to each DDA.¹¹⁷ SIDNA and SIDDA have operated for more than three decades and allow prosecutors to identify connections that are difficult to discern within a single district. As soon as its uploaded, related case material becomes visible to another district office and to the national coordinator, making it harder for one local official to isolate or suppress a case without the connection being noticed. The common systems do not eliminate omissions or leaks. Incomplete data entry, misclassification of offences, and access by a compromised user remain

the principal weaknesses of the Italian coordination and analysis system. The system's effectiveness depends on the accuracy and timeliness of what each district prosecutor enters into it, and on the integrity of the officials who hold access credentials.¹¹⁸

4.4.2. Separation and control of intelligence and investigative functions

An agency that controls strategic intelligence, surveillance and criminal investigation can use the same information to protect a criminal organisation and to obstruct the proceeding that might expose it. The measures discussed in this sub-section address that concentration of power. Colombia separated the two functions institutionally, splitting strategic intelligence and criminal investigation across distinct bodies with separate chains of command. Italy addressed a narrower aspect of the same problem: the DIA retains both intelligence and investigative functions, but cannot direct, redirect or suppress a criminal investigation on its own authority, because once a criminal investigation begins, it acts under the direction of an independent prosecutor who is not part of the executive. While the Italian design reduces the risk that a compromised investigative body can obstruct a criminal proceeding, it does not prevent a compromised DIA official from accessing and leaking intelligence.

From its inception, Colombia's DAS combined functions that most jurisdictions distribute across separate bodies: internal and external intelligence, counterintelligence, judicial-police investigation, immigration control, criminal-records management and protective security for senior officials. Decrees 512 of 1989 and 643 of 2004 granted DAS officials with judicial-police powers – namely, powers to investigate offences, execute search warrants, intercept communications and gather evidence for prosecution – alongside their intelligence and counterintelligence responsibilities. That combination proved catastrophic. In February 2009, a public scandal revealed that DAS had intercepted the communications of Supreme Court justices, opposition politicians, journalists and human-rights defenders, transmitting the information to advisers in the presidential palace. The Attorney General's office described the rogue unit as a “criminal cartel” operating inside the service. The combination of intelligence and judicial-police powers had given one agency access to interception technology, criminal case files and the means to suppress or redirect investigations.

After the DAS was abolished, Decree-Law No. 4057/2011 redistributed its functions. Criminal investigation and judicial-police files moved to the Office of the Attorney General, Colombia's prosecution service. Criminal-records management was transferred to the National Police under the Ministry of Defence. Protective security relocated to a new National Protection Unit under the Ministry of the Interior. The DAS's intelligence archives remained under the custody of the liquidating entity, supervised by the Procurator-General, pending a process of review and declassification that continued for more than a decade. In November 2011, the President issued Decree No. 4179 to create the National Intelligence Directorate (DNI) as a separate administrative department and a civilian body without judicial-police powers. Article 6 directs the DNI to produce strategic intelligence and counterintelligence on threats to national security, including organised crime, drug trafficking, money laundering, attacks on public administration, and threats to the constitutional order. While it may cooperate with domestic and foreign intelligence services, the DNI may not conduct the criminal investigations that produce evidence for prosecution.¹¹⁹

Statutory Law 1621 of 2013, which provides the general legal framework for intelligence and counter-intelligence activity in Colombia, confines intelligence activity to specified national security priorities, including organised crime, drug trafficking, money laundering and threats to the public administration. Each intelligence agency is required to maintain a Data Protection Centre, with a designated responsible

officer, and committees to purge information that is irrelevant, outdated or unlawfully retained. Article 19 establishes a Congressional Legal Commission for Monitoring Intelligence and Counterintelligence Activities that receives classified reports from the directors of all intelligence agencies and exercises powers of oversight.¹²⁰ Together with the institutional split between the DNI and the Prosecution service described above, these statutory safeguards replaced the DAS's concentrated model with one built on separation of intelligence and investigative functions, external legislative oversight, and internal data controls. The resulting scheme reduces the concentration that enabled the DAS's abuses, but it still depends on accurate contributions from every service and effective oversight of the military and police intelligence bodies that were not abolished. Later disclosures of unlawful military surveillance – including revelations that the Army's intelligence unit had intercepted the communications of peace negotiators, journalists and NGOs – confirmed that abolishing the DAS did not eliminate political targeting or leakage elsewhere in the intelligence system.¹²¹

In Italy, the government's approach was not, like Colombia's, to create a separate intelligence service and a separate investigative body, but rather to establish a single multi-force investigative body, the Anti-Mafia Investigation Directorate (DIA), and to place it under the direction of independent prosecutors whenever it conducts a criminal investigation. The law assigns two functions to the DIA. The first is preventive investigation of organised crime: the DIA collects and analyses information on the structure, internal and international connections, objectives and operational methods of criminal organisations, and proposes preventive measures to the competent courts. The second is criminal investigation of the offence of mafia-type association under Article 416-bis of the Criminal Code and offences connected to it. This function is tied to a specific offence and is conducted under the direction of a district prosecutor. The DIA cannot, under its own mandate, investigate an ordinary murder, theft or extortion as such – but only insofar as those offences are connected to a mafia-type association.¹²²

When DIA officers conduct a criminal investigation, they act under the direction of the district prosecutor who leads that case. Article 371-bis of the Code of Criminal Procedure empowers the National Anti-Mafia Prosecutor to direct the DIA's deployment for coordination across district lines. The investigative body and the prosecuting authority therefore remain legally distinct: the executive appoints and administers the DIA, but independent magistrates control the criminal investigation and the use of its investigative powers in any given case. However, the Italian scheme accepts a residual risk that Colombia's does not. Because the DIA holds both intelligence and investigative functions, a compromised DIA official can frustrate investigations or leak sensitive information about criminal organisations. On the other hand, what Italy gains in exchange is operational integration – officers from the State Police, the Carabinieri and the Guardia di Finanza work under one roof, to one case strategy, with a single intelligence picture.^{123,124}

4.4.3. Joint investigative teams and interoperable databases

The measures discussed below address the fragmentation problem not by merging bodies but by linking them up, whether temporarily or on a standing basis. Each body exercises its own statutory powers in full; what changes is that operational agreements and shared information allow them to collaborate more closely, and therefore more effectively, than before.

Brazil's Law No.15,358, which established a national legal framework for combating organised crime, provides for police, prosecution and intelligence bodies to form integrated task forces for the purpose of creating a temporary, defined operational collaboration in which each body retains its identity and authority. A task force is formalised through a cooperation instrument that must define the objective,

area of operation, duration, operational command, and rules governing confidentiality and information-sharing. Participating bodies may share data and intelligence securely, conduct joint operations and provide mutual technical and logistical support.¹²⁵ Article 29 creates a National Database of Ultra-Violent Criminal Organisations, Paramilitary Groups and Private Militias. The database records the natural and legal persons identified as members, collaborators or financiers of the organisations covered by the Act, together with their structural, operational and financial branches. States must create their own state-level databases that are interoperable with the national database and with each other, allowing direct information exchange and information updates in real time. Once a person or company is formally included in a database, the person is presumed to be linked to a criminal organisation for all administrative and operational purposes, including data sharing, registration restrictions and preventive security measures.¹²⁶

Argentina's federal and provincial investigations have long operated in a setting in which local police could sell protection, collect payments and direct enforcement against competing groups, and in which the national intelligence service was repeatedly accused of political surveillance and interference with criminal cases. Fragmentation between law enforcement agencies made it difficult to combine information about criminal groups across jurisdictions. The history of intelligence abuse, however, made concentrating new collection powers in a single body a hazardous response. Decree 383, signed on 16 June 2025, attempted to navigate between these two risks. It repealed the organic statute that had governed the Argentine Federal Police (PFA) since its creation, and approved a new Statute redefining the force as a federal police and criminal investigation body within the national internal security system, under the President through the Ministry of National Security.¹²⁷

Rather than route new collection powers through the DNIC – the National Directorate of Criminal Intelligence, a separate agency within the Ministry of National Security that otherwise coordinates and directs intelligence activity generally – the Statute vests the PFA with expanded powers to investigate federal and complex organised crime. The PFA may access public databases for investigation or crime intelligence purposes, request access to private databases, and conduct crime prevention activities in public digital spaces without judicial authorisation. It may also form joint investigative teams or working groups with other federal, provincial and Buenos Aires City police forces, the Public Prosecution Service, the Financial Intelligence Unit, and the DNIC itself.¹²⁸

Decree 383 thus addresses the fragmentation problem through coordination, but leaves the concentration problem unaddressed: the PFA retains both intelligence and investigative functions within a single institution, and internal affairs remains embedded within the police command. While the PFA is entitled to request certification of counterpart personnel before sharing sensitive information with them, the law provides no reciprocal safeguard against a compromised PFA official leaking intelligence that a partner has shared with the PFA. The scheme therefore tilts toward PFA-led coordination without the checks on concentration embedded in the Colombian and Italian systems, and it remains too recent to assess in practice.¹²⁹

South African comparison

South Africa allocates different intelligence functions to various institutions. Crime Intelligence within the South African Police Service collects and analyses crime information, produces tactical, operational and strategic intelligence, and performs counter-intelligence functions within the police service. The Directorate for Priority Crime Investigation and other police investigators gather intelligence in the investigation of criminal offences. The Financial Intelligence Centre is mandated to receive

regulatory reports from accountable institutions, analyse financial information, and disseminate financial intelligence to the police, prosecuting authority, revenue service and other competent authorities. The National Intelligence Co-ordinating Committee integrates intelligence supplied by the civilian and departmental intelligence structures for national strategic purposes. Information about the same criminal organisation may nevertheless remain dispersed across intelligence agencies, financial-intelligence bodies, police investigators and prosecutors.¹³⁰

The SAPS Annual Report for 2024/25 SAPS gives some indication of the volume of Crime Intelligence activity. The division registered 528 network operations directed at criminal groups and syndicates, of which 432 were recorded as successfully concluded, 67 as unsuccessful and 29 as still in progress. The completed operations concerned offences involving robbery, narcotics, vehicle hijacking, extortion, corruption, commercial crime and money laundering. Crime Intelligence also generated 29,058 proactive reports, of which 28,821 were recorded as having been operationalised at district, provincial or national level. These figures are of limited value outside SAPS itself. They record internal intelligence activity, but do not indicate how often information held by different institutions was integrated, how many criminal networks were dismantled or disrupted, or how many investigations or prosecutions resulted from the intelligence produced.¹³¹

The Reformed Fusion Centre provides an existing mechanism for inter-agency sharing of financial and investigative information. It brings together the Financial Intelligence Centre, the National Prosecuting Authority and Asset Forfeiture Unit, Crime Intelligence, the Hawks, SAPS detectives, the Special Investigating Unit, the South African Revenue Service, the State Security Agency and the National Intelligence Co-ordinating Committee. In 2024/25, the Financial Intelligence Centre produced 3,104 reactive and 1,092 proactive financial-intelligence reports, together with 51 reports on illicit financial flows. The Fusion Centre monitored 562 registered cases, of which 363 remained under investigation, 100 were before court, 52 had resulted in convictions and 31 had been closed. Its Asset Recovery Hub initiated 11 investigations and recovered more than R33 million. The arrangement allows participating agencies to combine financial and investigative information while leaving responsibility for individual cases with the institution conducting the investigation.¹³²

NACAC proposed a more formal mechanism for allocating cases in August 2025. Its proposed Case Management Committee would comprise senior representatives of IDAC, the National Prosecuting Authority, the Hawks, SAPS, IPID and the proposed Office of Public Integrity. A secretariat located in IDAC would receive and record reports of corruption, commercial crime and organised crime. The Committee would allocate each matter to the appropriate investigative body, monitor progress and call upon the Financial Intelligence Centre, the South African Revenue Service and the Auditor-General where their information was required. The National Director of Public Prosecutions would chair the Committee and resolve deadlocks. NACAC recommended that the mechanism be established by statute. The proposal remained pending as at the date of this report. Existing arrangements provide for cooperation and information sharing, but no equivalent body has statutory authority to direct the transfer or consolidation of a criminal investigation between agencies.¹³³

South Africa's experience with the State Security Agency demonstrates the opposite risk: concentrating extensive intelligence powers in a single institution may magnify the consequences of political capture or internal compromise. The 2018 High-Level Review Panel found political misuse and factionalisation within the intelligence community, ministerial involvement in operational matters, appointments outside prescribed procedures, deficient audit trails and a culture of unaccountability. The State Capture Commission later concluded that defects in the intelligence framework had left

the Agency vulnerable to use for political and personal purposes. The General Intelligence Laws Amendment Act 37 of 2024 responds in part by providing for the replacement of the State Security Agency with separate domestic and foreign intelligence services, strengthening the powers of the Inspector-General of Intelligence and NICOC, and regulating additional intelligence functions. The President assented to the Act on 28 March 2025, but its provisions had not yet been brought fully into operation at the date of this report. Section 52 requires commencement by presidential proclamation in the Government Gazette and permits different provisions to commence on different dates.¹³⁴

The same risk arises inside the police intelligence function. NACAC reported in 2025 that legislation defined Crime Intelligence's mandate imprecisely, left the extent of its corruption work unclear, and allowed a vetting problem to persist after posts had been filled improperly during the period of state capture. It recommended consideration of dedicated intelligence capacity in IDAC and the Hawks, together with coordination between agencies.¹³⁵

Summary: Key comparative lessons

- Fragmentation of intelligence between state agencies obscures a complete view of a criminal organisation's activities, while concentrating intelligence increases the risk of a single, compromised institution frustrating investigations across the board.
- Italy assigns mafia prosecutions to designated district offices and uses a national prosecutor and shared databases to connect related mafia investigations. Each district prosecutor retains control of the case. National intervention is confined to prolonged inaction or repeated failures to coordinate.
- Colombia abolished the DAS after the agency used its combined intelligence and criminal investigation powers for unlawful surveillance and obstruction. Its replacement, the DNI, cannot conduct criminal investigations, which fall under the prosecuting authority.
- Brazil authorises temporary task forces and interoperable national and state databases without transferring the participating bodies' statutory powers. Argentina's recent reform allows joint teams but concentrates expanded intelligence and investigative powers in the Federal Police.
- South Africa's Fusion Centre combines financial and investigative information without authority to assign, transfer or consolidate cases. NACAC's proposed statutory Case Management Committee has not been established. The capture of the State Security Agency illustrates the danger of concentrating intelligence in a single body; recent legislation intended to separate domestic and foreign intelligence has not yet entered fully into force. Crime Intelligence's mandate is imprecise, and neither IDAC nor the Hawks has the dedicated intelligence capacity recommended by NACAC. ■

4.5. Organised criminal infiltration of the criminal justice system can make adherence to law and public duty privately irrational

Where a criminal organisation has infiltrated an institution, anyone considering cooperation with law enforcement faces a heightened risk of serious harm. If the state cannot sufficiently reduce that risk to protect the people on whom successful investigations, prosecutions and adjudications depend, silence or complicity will generally cost less than cooperation – and may become the rational choice.

4.5.1. Physical protection of witnesses, collaborators and their families

Ordinary police protection is insufficient when an organised criminal group can locate a witness through local officials, threaten relatives or continue retaliation after the trial. A protection programme may require secure accommodation, relocation, protected records, controlled travel and financial or practical support. Admission must depend on a current risk connected to the person's cooperation, and the programme must remain separate from the prosecutor's assessment of the criminal case.

Italy enacted its statutory protection programme for collaborators of justice in 1991, in response to the experience of protecting mafia turncoats on an ad hoc basis during the previous decade. Tommaso Buscetta, a Palermo boss of Cosa Nostra, was arrested in Brazil and extradited to Italy in July 1984. He began to cooperate with the authorities and provided the first detailed account of Cosa Nostra's structure, membership rules, commission system and allocation of offences. His testimony furnished the evidentiary foundation for the Maxi Trial, which ran in Palermo from February 1986 to December 1987 and secured 338 convictions. At the time, there was no statutory protection programme. Buscetta was protected by the police through improvised measures such as safe houses, police escorts and restricted access to his location. The experience demonstrated that cooperation against Cosa Nostra required a permanent, codified protection framework rather than ad hoc arrangements. The murders of magistrates Giovanni Falcone on 23 May 1992 and Paolo Borsellino on 19 July 1992, both killed by Cosa Nostra bombs, reinforced the need for systematic protection of collaborators and justice officials.¹³⁶

Decree-Law No. 8 of 15 January 1991 established the special protection system for collaborators and witnesses under the Minister of the Interior. A central commission chaired by an Under-Secretary of State for the Interior decides on admission and the content and duration of a programme. The public prosecutor conducting the case normally makes the proposal, which must identify a grave and current danger arising from the person's cooperation, explain why ordinary police measures are insufficient, appraise the value of the proposed contribution, and show that the contribution is intrinsically credible and possesses novelty, completeness or other elements of considerable importance to an ongoing investigation or trial.¹³⁷ The commission may order local police protection, security at a home or workplace, transfer to another place, secure accommodation, secure modes of travel and measures to protect records and communications. The programme may provide housing, medical and legal assistance, a maintenance allowance, continuity or transfer of public employment and help with social reintegration. The Chief of Police and the prosecutor may arrange urgent provisional protection while the commission decides on admission. A collaborator in custody may be separated, moved and transported under special conditions.¹³⁸

Law No. 6 of 11 January 2018 created a separate programme for a witness of justice: a person who is not a member of the criminal organisation, who has not been convicted of non-negligent offences

connected to those on which he testifies, and who has not profited from his relationship with the criminal context. To be admitted, a witness's testimony must be intrinsically credible and relevant, and there must be a grave, concrete and current danger for which ordinary police measures are inadequate. Once admitted, a witness of justice receives physical protection, measures to preserve an economic condition equivalent to that enjoyed before testifying – including reimbursement of protection-related expenses and a periodic allowance where testifying prevents them from working – and support for social and occupational reintegration, generally while remaining in their place of origin rather than relocating.¹³⁹

Guatemala adopted a general protection law before the investigations that later exposed clandestine security networks in the police, prosecution service and political system. The Law for the Protection of Parties to Proceedings and Persons Connected with the Administration of Criminal Justice, created a Protection Service within the Office of the Public Prosecutor. The Service may extend protection to officials and employees of the judiciary, officials of the civil security forces, officials of the Public Prosecutor, expert witnesses, consultants, complementary prosecutors, witnesses, complainants and other persons exposed to risk because of their participation in criminal proceedings. Protection also extends to journalists exposed to risk in the exercise of their function.¹⁴⁰ The prosecutor handling a case initiates an assessment of a threatened witness, either on request or without one, and the director decides admission. The test considers whether the threat is reasonably certain, its gravity, the value of the person's evidence, alternative means of securing it and the risk created for other people or the community. The protection measures include guards, protection of the beneficiary's residence and workplace, change of the beneficiary's place of residence, change of identity, and any other service the Governing Council deems necessary.¹⁴¹

4.5.2. Cooperation agreements and sentence incentives

Italy's cooperation regime developed incrementally. Law No. 82 of 15 March 1991, the same law that established the protection programme, introduced the first statutory sentence reduction for mafia collaborators: Article 4 directs the court, in deciding on a reduction, to weigh the importance and quality of the collaboration, the seriousness of the collaborator's own links with the criminal organisation, and the relevance of the circumstances declared. The 2001 amendments responded to the rapid growth in the number of collaborators after the early anti-mafia trials and to disputes about late, opportunistic or incomplete accounts. Article 16-quater now gives a collaborator 180 days from admission to the protection programme to state all useful information about the offences, participants and criminal assets known to them; the declarations must be concrete rather than rumour or conjecture, and materially incomplete or false declarations justify the refusal or revocation of protection. Prison benefits for collaborators are likewise determined by a court after considering the importance of the assistance, the person's conduct, and whether links with the organisation have ended.¹⁴²

Colombia's Justice and Peace Law offered members of demobilised armed groups an alternative sentence of five to eight years' imprisonment, equivalent to the minimum applicable to the underlying offences, in return for demobilisation, the surrender of assets, and an effective contribution to truth, justice and reparation. The benefit was available to members of armed groups who had demobilised collectively or individually before 25 July 2005, and who were not the subject of convictions or proceedings for conduct unrelated to the group. Article 17 required the applicant to make a voluntary statement dealing truthfully and completely with all circumstances connected to his participation in the group, including the hierarchy, structure, sources of financing, arms, criminal activities and the

identity of collaborators and victims. In judgment C-370/06, the Constitutional Court held that the benefit depended on full disclosure and could be revoked if the applicant deliberately concealed a related offence or maintained links with the group.¹⁴³

4.5.3. Protection of judges, prosecutors and adjudicative processes

Judge Patrícia Acioli was shot dead outside her home in Niterói, Rio de Janeiro state, on 11 August 2011. Acioli had spent a decade investigating police involvement in death squads, militias and extermination groups in the São Gonçalo region. She had issued arrest warrants for military police officers accused of fabricating “resistance” reports to cover up extrajudicial killings. Amnesty International reported that her name appeared on a death list compiled by a militia run by former police officers, and that she had been placed under police protection which was withdrawn in 2007. The investigation identified the mastermind as Lieutenant-Colonel Cláudio Luiz Oliveira, former commander of the 7th Military Police Battalion in São Gonçalo, who was under investigation by Acioli for executions and corruption. Her murder demonstrated that an individual judge handling cases against police-linked criminal groups could be identified, located and killed through the very networks she was investigating.

Brazil enacted Law No. 12.694 of 24 July 2012 the following year. It authorises a judge presiding over proceedings involving an organised criminal group to convene a three-judge panel for the performance of certain judicial acts, including the grant of orders providing for detention, provisional release, sentence, or transfer to a maximum-security prison. The competence of the panel is limited to the act for which it is convened. Every judge signs the decision, but the published version thereof does not identify the author of any dissent. The mechanism therefore distributes responsibility: a threat directed at one judge to secure a particular outcome cannot succeed because the decision is made by three, and the identity of the author of any dissenting vote is not disclosed. The statute also provides immediate protective measures for judges and prosecutors at risk because of their functions, including reinforcement of security, partial or total escort, ballistic vests, armoured vehicles, schooling places for dependants, and remote work. Law No. 15.245 of 29 October 2025 created two new offences in the Penal Code: Article 21-A punishes soliciting, promising or conceding an advantage, or ordering violence or serious threats, against public officials, lawyers, jurors, witnesses, collaborators or experts, with the intent of impeding or retaliating against the regular conduct of proceedings or investigations involving organised crime; and Article 21-B punishes conspiracy for the same purpose.¹⁴⁴

Law No. 13.964 of 24 December 2019 added Article 1-A to Law No. 12.694 which provides that state courts and federal regional courts may now establish standing collegiate criminal courts with jurisdiction over cases involving members of armed criminal organisations, and related offences. If a matter falling within this jurisdiction is allocated to a non-collegiate court, the presiding officer must decline to hear it and remit the file to the collegiate court. The measure protects adjudication against threats by armed organisations and militias by making a panel, rather than a single judge, responsible for the entire course of the case.¹⁴⁵

In Colombia, the Statute for the Defence of Justice created a specialised public-order jurisdiction with national territorial competence and protective measures for threatened judicial officers, including provisions under which judges and certain witnesses, expert witnesses and investigators could withhold their identities. Decree No. 99 of 1991 amended that Statute, and Decrees No. 2271 and No. 2266 of 1991 then adopted most of its provisions as permanent legislation, once the 1991 Constitution authorised the conversion of emergency decrees into ordinary law. The system became known as regional justice or “faceless” justice (*justicia sin rostro*): judges sat behind opaque screens, their voices

were distorted, and the identities of judges, prosecutors and witnesses were concealed from the accused and the public.¹⁴⁶

The Constitutional Court reviewed the system in Sentencia C-053 of 1993 and upheld the constitutionality of identity reservation for judges and witnesses under the conditions then prevailing: although the measure was exceptional, it was justified by the extraordinary circumstances and did not violate due process since a witness's anonymity was compatible with the right to challenge the evidence so long as the judge and the prosecutor knew the witness's identity and could assess their credibility. Law No. 270 of 1996 then set a sunset date, providing that the regional justice system would cease to function after 30 June 1999, and Law No. 504 of 1999 formally brought the general system of anonymous judges to an end. The specialised courts that succeeded it retained a limited power, under Article 293 of the Code of Criminal Procedure, to reserve a witness's identity in specified cases, but Article 247 of the Code barred any conviction resting solely on such reserved-identity testimony.¹⁴⁷

South African comparison

South African criminal procedure provides two general mechanisms through which a participant in an offence or criminal organisation may assist the prosecution. Under section 204 of the Criminal Procedure Act 51 of 1977, a prosecutor may call a witness whose evidence may incriminate that witness in respect of a specified offence. The witness must answer questions put by the prosecution, the defence and the court. If, in the court's opinion, the witness answers all such questions frankly and honestly, the court must discharge the witness from prosecution for the specified offence and any offence of which a competent verdict could be returned on that charge. In *Mawanda Makhala v Director of Public Prosecutions, Western Cape*, the Constitutional Court described section 204 as an important prosecutorial and crime-control tool, particularly in organised crime cases, and confirmed that discharge depends on the court's assessment of whether the witness has testified frankly and honestly. The other mechanism is found in section 105A of the Act, which provides for a written guilty-plea and sentence agreement between an authorised prosecutor and a legally represented accused before plea. The prosecutor must consult the investigator, consider the circumstances of the offence and the accused, and afford the complainant a reasonable opportunity to make representations. The agreement takes effect only if the court is satisfied that the plea is supported by the facts and that the proposed sentence is just.¹⁴⁸

South Africa has no separate statutory regime for members of an organised criminal group who cooperate with the authorities. Section 204 may secure an insider's testimony, but it does not offer a predetermined reduction in sentence or immunity in return for cooperation. Only the court may rule on whether the witness qualifies for discharge. Section 105A provides that an accused may negotiate a plea and sentence agreement but imposes no conditions requiring continuing cooperation against a criminal group. Neither provision confers an automatic right to physical protection. Cooperation, sentence mitigation and witness protection must therefore be arranged through separate statutory mechanisms and prosecutorial decisions in each case.¹⁴⁹

The Witness Protection Act 112 of 1998 establishes the Office for Witness Protection within the Department of Justice and provides for the protection of threatened witnesses and related persons, including temporary protection, relocation, change of identity and associated support services. A witness who reasonably believes that his or her safety, or that of a related person, is threatened because of the evidence to be given may apply for protection. The application may be initiated through the investigating officer, a police station, a prosecutor or other designated functionary, a member

of the Office or, in the case of a detained witness, the person in charge of the prison or a qualifying state-employed social worker. The Director considers the application and, if it is approved, enters into a written protection agreement with the witness and any related person placed under protection. The agreement may require the witness to give evidence, comply with security directions and refrain from conduct that endangers the witness or another protected person. The Minister appoints the Director, who exercises the statutory powers of the office subject to the Minister's control and directions. The Office is established within the Department of Justice and administered by the NPA.¹⁵⁰

The Office has reported a strong record of protecting persons admitted to the programme. In its 2024/25 annual report, the NPA stated that, during the preceding 25 years, no witness or related person had been harmed, threatened or killed because of his or her participation in the programme. The same report records significant operational constraints. The Office was severely understaffed; operational personnel travelled long distances to protect witnesses and remained on continuous standby; and allowances paid to protected persons had not been increased since the programme began. Delays in prosecutions also resulted in some witnesses remaining under protection for prolonged periods. The available evidence therefore indicates that the programme has been effective in protecting persons admitted to it, but that staffing shortages, prosecutorial delay and inadequate financial support increase the burden of remaining under protection.¹⁵¹

The Protected Disclosures Act 26 of 2000 protects employees and workers against workplace retaliation for reporting specified forms of wrongdoing. A disclosure may concern a criminal offence, breach of a legal obligation, miscarriage of justice, danger to health or safety, environmental harm, unfair discrimination or the deliberate concealment of such conduct. To qualify for protection, the disclosure must be made through one of the routes prescribed by the Act and satisfy the conditions applicable to that route. These include disclosure to a legal adviser, the employer, a relevant member of the national or provincial executive, specified or prescribed public bodies, or another person under the provisions governing a general protected disclosure. Section 3 prohibits an employer from subjecting an employee or worker to an "occupational detriment" because of a protected disclosure.

An occupational detriment includes dismissal, suspension, disciplinary action, demotion, harassment, intimidation, involuntary transfer, refusal of promotion and other adverse consequences for employment or professional work. A court may award compensation or damages or order steps to remedy the detriment. Dismissal in breach of section 3 is treated as automatically unfair, while other occupational detriment constitutes an unfair labour practice. An employee who reasonably fears adverse consequences may also request transfer to another post where that is reasonably possible or practicable. Section 9A further permits a court, in defined circumstances, to exclude civil, criminal or disciplinary liability arising from a protected disclosure that would otherwise breach a duty of confidentiality. The Act remains principally a system of protection against occupational retaliation. It does not itself provide physical protection, living expenses or a financial reward for information.¹⁵²

The draft Protected Disclosures Bill released for public comment on 9 April 2026 would repeal and replace this framework with a broader system of protection and investigation. It extends protection beyond occupational detriment to other forms of detrimental action against a discloser or related person and makes retaliation an offence. Once a discloser establishes that a protected disclosure was made and that the discloser or a related person suffered a linked detriment, the evidential burden shifts to the person responsible to show that the action was not retaliatory. The Bill would also apply the Witness Protection Act to disclosers and related persons, provide access to legal assistance in qualifying proceedings, and permit a court in defined circumstances to award a qualifying discloser

up to one quarter of a monetary sanction imposed following a conviction to which the disclosure contributed. It also introduces procedures for the investigation and referral of disclosures.¹⁵³

Witness protection does not address threats to prosecutors or judicial officers who are targeted because of their official functions rather than because they are witnesses. In September 2025, the Minister of Justice reported that five prosecutors had been shot and killed during the preceding five years, and that a sixth prosecutor based at NPA head office had also been shot and killed at his home. All six murders remained under police investigation; in the most recent case, involving prosecutor Tracy Brown, evidence before court indicated that the killing may have been ordered in connection with a case she had handled. The NPA maintains a database of high-risk and high-profile cases, classifies them according to a security-risk matrix and coordinates protective measures with SAPS, Crime Intelligence and other security bodies. Its close-protection policy provides for protection where a threat is confirmed, with immediate activation where the threat is direct and imminent. In May 2025, 24 prosecutors were receiving close protection.¹⁵⁴

Responsibility for security services in the Superior Courts began moving from the Department of Justice to the Office of the Chief Justice on 1 April 2026 as part of the first phase of the transition to judiciary-led court administration. The transferred functions include security and guarding at Superior Courts, close protection for threatened judges and related security services. The OCJ also received a once-off allocation of approximately R127 million from the Criminal Assets Recovery Account for 2026/27 to strengthen court security and administration. The Criminal Procedure Act separately permits a court, in specified circumstances, to exclude the public from criminal proceedings and restrict publication of information disclosed during a closed hearing. Those measures can reduce exposure to threats without displacing the accused's ability to know and challenge the evidence relied upon at trial. South African law does not provide a general procedure under which the identity of the presiding judicial officer, or of a witness whose evidence is relied upon against the accused, is withheld from the accused.¹⁵⁵

Summary: Key comparative lessons

- Cooperation with the criminal justice system becomes irrational when it exposes a person or their family to harms from which the state cannot effectively protect them.
- Italy admits witnesses and collaborators according to the danger created by their cooperation and may provide relocation, a protected identity and continuing support. Guatemala extends statutory protection to justice officials and others endangered through criminal proceedings.
- Brazil can distribute adjudicative responsibility in high risk proceedings among three judges and has standing collegiate courts for cases involving armed criminal organisations.
- South Africa's Witness Protection Office reports that no admitted witness or related person has been harmed because of participation in the programme, although staff shortages and prosecution delays make prolonged protection difficult. South African law does not join organised-crime cooperation, a defined sentence benefit and physical protection in one statutory regime: Section 204, plea agreements and witness protection operate separately. The Protected Disclosures Act addresses retaliation at work, and no statute establishes collegiate adjudication for threatened organised-crime cases. ■

4.6. An institution created to investigate organised crime and corruption should be designed on the assumption that its future targets may exercise lawful powers and procedures to disrupt or disband it

An institution's independence may be subject to *de jure* or *de facto* conditions which render it vulnerable to future attacks by officials under investigation. Public powers, including powers to alter the institution's personnel, budget or jurisdiction, may be exercised for lawful but ulterior purposes. Institutional design must anticipate foreseeable retaliation through powers conferred by the law. An institution may be operationally independent in the ordinary course and yet remain vulnerable to these later measures. A mandate may expire or be withheld from renewal. Legislation or executive reorganisation may abolish the institution without any unlawful act.

4.6.1. Constitutional and statutory entrenchment, jurisdiction and case control

The Albanian Special Prosecution Office cannot be abolished or subordinated to the Prosecutor-General by executive action. Article 148, paragraph 4 of the Albanian Constitution, added by constitutional amendment on 22 July 2016, establishes "a Special Prosecution Office, which is independent from the Prosecutor General, and an independent investigation unit" to investigate and prosecute corruption, organised crime and crimes committed by senior officials. Article 148/b of the Constitution, which lists the powers of the Prosecutor General, provides that the Prosecutor General "manages the Prosecution Office administration, with the exception of the administration of the Special Prosecution Office" and "proposes and administers the budget of the Prosecution Office with the exception of the budget for the Special Prosecution Office." Article 148/dh provides that the Chief Special Prosecutor is elected by the High Prosecutorial Council from the ranks of special prosecutors for a three-year term without the right to re-appointment, and that a special prosecutor may be removed before the end of his nine-year mandate only for serious misconduct or commission of a crime, by a two-thirds majority of the High Prosecutorial Council. Accordingly, the abolition of SPAK, or the removal of its constitutional independence, would require a constitutional amendment – a process that demands a two-thirds majority of all members of the Assembly, with a public hearing before the Constitutional Court.¹⁵⁶

In Italy, the National Anti-Mafia and Anti-Terrorism Directorate (DNAA) is established within the Prosecutor General's Office at the Court of Cassation – the apex of the Italian prosecution hierarchy – by the Anti-Mafia Code. The Directorate is composed of a National Anti-Mafia Prosecutor, two deputy prosecutors and 20 substitute prosecutors. The National Prosecutor is appointed by the High Council of the Judiciary (CSM), the self-governing body of the Italian judiciary, under the procedure established for the appointment of heads of prosecuting offices. That procedure requires the appointment proposal to be formulated "in concert" with the Minister of Justice. The Constitutional Court has held that "in concert" imposes a procedural duty of good faith cooperation between the CSM and the Minister, not a substantive veto power. The CSM makes the appointment; the Minister may express views on the candidate's organisational aptitudes but cannot block the appointment. The Minister's role does not confer power to direct an investigation, transfer the office-holder, or remove the National Prosecutor. The National Prosecutor and his deputies serve four-year terms, renewable once.¹⁵⁷

Article 112 of the Italian Constitution requires the public prosecutor to take criminal action: the principle of obligatory prosecution. If a prosecutor considers that an investigation should end without charges, Article 408 of the Code of Criminal Procedure requires him to file a request for *archiviazione* (closure) with the judge for preliminary investigations. The judge is not bound to grant the request. If the injured party opposes, or if the judge considers the investigation incomplete, Article 409 permits the judge to order further investigation within a defined period or to require the prosecutor to formulate a charge. The executive cannot direct a prosecutor to abandon a case. The prosecutor cannot close it without judicial scrutiny. A successor who wished to terminate an existing investigation would have to satisfy the preliminary investigations judge that the case was unfounded, a decision reviewable on appeal.¹⁵⁸

Hong Kong SAR's Independent Commission Against Corruption (ICAC) provides a contrasting example of an institution that is structurally and deliberately vulnerable to the executive it served. Section 5 of the Independent Commission Against Corruption Ordinance (Cap. 204) provides that the Commissioner "shall, subject to the orders and control of the Governor" (now the Chief Executive), "be responsible for the direction and administration of the Commission." Section 5(2) provides that the Commissioner "shall not be subject to the direction or control of any person other than the Governor." The Commissioner therefore enjoys operational independence from all persons except the head of the executive. The executive exercised its authority over the Commission in November 1977, after the ICAC's investigations into police corruption produced a confrontation with members of the force. By 1977, the ICAC had arrested and charged 269 serving or former police officers. Several officers prepared a petition to the Police Commissioner listing their grievances; the petition was signed by more than 11,000 of the force's 17,000 members. On 28 October 1977, more than 2,000 police officers and their families marched to Police Headquarters to deliver the petition. Separately, a group of about 40 officers attacked the ICAC Operations Department Headquarters, beating five ICAC staff and vandalising the offices. On 5 November 1977, Governor Sir Murray MacLehose announced a partial amnesty: the ICAC would not normally act on complaints or evidence relating to offences committed before 1 January 1977, except in relation to persons who had already been interviewed, persons against whom warrants of arrest were outstanding, persons outside Hong Kong on 5 November 1977, and offences so heinous that action was unavoidable, in which case the Governor's personal approval was required. The Governor's direction ended the immediate confrontation and allowed the Commission to concentrate on current conduct, at the cost of abandoning corruption investigations that were still ongoing. For all its successes, the ICAC was not designed to withstand retaliation or political upheaval given its dependence on the executive's political support for its existence and mandate.¹⁵⁹

4.6.2. Mandate renewal and counter-reform

Article 14 of the Agreement between Guatemala and the United Nations establishing CICIG provided that the Commission would have an initial term of two years, renewable only by written agreement between the two parties. The mandate was renewed in 2009, 2011, 2013, 2015, and 2016 – each time by formal agreement. On 31 August 2018, President Morales announced that Guatemala would not seek a further extension of the Agreement when the existing term expired on 3 September 2019. On 7 January 2019, the government issued a communication purporting to terminate the Agreement within 24 hours, citing the Vienna Convention on the Law of Treaties and alleging that CICIG had exceeded its mandate and acted in violation of Guatemalan sovereignty. The Constitutional Court

set aside the purported cancellation. The Court held that the Agreement was a treaty in force, that its termination was governed by the Agreement's own terms, and that the executive could not unilaterally terminate it before the expiry of the current mandate. The Court upheld the Agreement for the remainder of its term, but CICIG closed on 3 September 2019, its closure being the product of the executive branch's refusal to renew.¹⁶⁰

Buenos Aires provides a further example of a reform left vulnerable to executive reversal. From 1980 until the 1998 reform, the Buenos Aires Provincial Police operated under an Organic Police Law (Decree-Law 9.551/1980) inherited from the military government. The law established the force as a single, centrally commanded body headed by a Chief of Police who exercised unified operational command over preventive policing, criminal investigation, personnel deployment and internal discipline through a hierarchical chain running from his office through regional commands to individual stations. A single officer at the apex of the force could decide how personnel were deployed, which cases were pursued, which officers were disciplined, and which information reached the civilian authorities. The 1998 reform, enacted through Laws Nos. 12.154 and 12.155, abolished the position of Chief of Police and replaced it with a General Coordinator of Security Police, broke the force into 18 decentralised departmental commands, separated preventive, investigative and road-safety functions across distinct bodies, and created civilian oversight mechanisms including neighbourhood security forums and an Office for the Control of Corruption and Functional Abuse. Its implementation was never complete. Only 22 of 134 mayors had created the new municipal ombudsman offices after one year. Municipal leaders resisted the new departmental structures and citizen oversight bodies because they reduced their direct influence over local police.¹⁶¹

Carlos Ruckauf won the 1999 gubernatorial election on a platform of “bullets for delinquents” and quickly used the executive's control over police organisation to recentralise authority. Ruckauf appointed Aldo Rico as Minister of Justice and Security. Because the opposition-controlled legislature blocked amendments to Laws Nos. 12.154 and 12.155, Rico could not formally recreate the position of Chief of Police. Instead, he strengthened the existing role of Director of Coordination through ministerial resolutions, conferring on it the operational command functions that the reform had distributed across 18 departmental commands – all within two years of Arslanián's departure. The neighbourhood security forums were deactivated. The Internal Affairs Auditor and the Ethics Tribunal established by Decree 4.574/1998 were closed. However, Laws Nos. 12.154 and 12.155 were not repealed because the enabling statutes granted Rico organisational powers that were sufficiently broad to see much of the structure reversed by executive reorganisation without legislative amendment.¹⁶²

Law No. 13.482 of 2006 later repealed Law No. 12.155 as part of a unification of the legislation governing the provincial police. The law retained civilian ministerial command, organised security, investigative and information functions in separate areas, and placed the General Internal Affairs Audit (AGAI) on a statutory footing. The AGAI was authorised to prevent, identify, investigate and sanction serious police misconduct and obtain information capable of indicating corruption or collusion with crime. Police personnel and other bodies within the Ministry were required to cooperate, and the statute directed that the AGAI be staffed principally by civilians. The civilian Audit sat outside ordinary police command and had an express statutory mandate to investigate serious corruption or collusion. The statute did not entrench the distribution of police authority against later executive reorganisation.¹⁶³

Decree No. 74B/2007, issued by Governor Daniel Scioli on 12 December 2007, created a permanent General Police Superintendency. The decree authorised the Superintendency to direct provincial police operations, redistribute personnel, and decide disciplinary matters referred to it. Decree No. 75B/2007 appointed Superintendent General Daniel Alejandro Salcedo to lead it. While the civilian AGAI continued to operate because Law No. 13.482 had expressly entrenched it, the organisation of operational police command remained subject to executive regulation. Scioli could therefore restore a senior police command by decree without amending the law or abolishing the civilian Audit. The counter-reform was partial: the civilian oversight body survived, but the operational recentralisation that Ruckauf and Rico had first achieved was now restored by a governor of a different party, under a different statutory framework, eight years after Arslanián's dismissal. The Buenos Aires experience illustrates a vulnerability in hierarchy of laws that neither the 1998 reform nor the 2006 statute addressed: where the distribution of police authority is set by executive regulation rather than entrenched by statute, a successor governor can recentralise command without legislative action.¹⁶⁴

South African comparison

The Directorate of Special Operations (DSO), commonly known as the Scorpions, provides the clearest South African example of a specialised investigative body whose statutory establishment did not protect it from later abolition. Parliament established the DSO through the National Prosecuting Authority Amendment Act 61 of 2000, which placed investigators, analysts and prosecutors in a multidisciplinary structure within the NPA to investigate and prosecute national priority crimes. The Khampepe Commission, appointed to examine disputes over its mandate and institutional location, concluded in February 2006 that the rationale for the DSO remained valid and recommended that it remain within the NPA. In 2008, the government introduced legislation to dissolve the Directorate and establish the Directorate for Priority Crime Investigation (DPCI), or Hawks, within SAPS. Parliament enacted the National Prosecuting Authority Amendment Act 56 of 2008 and the South African Police Service Amendment Act 57 of 2008, which abolished the DSO and transferred the relevant investigative functions to the new police directorate.¹⁶⁵

The first *Glenister* challenge did not prevent the Scorpions' disbandment. In October 2008, the Constitutional Court declined to intervene while the abovementioned legislation were still Bills before Parliament. After their enactment, in the second *Glenister* challenge, the Court held in 2011 that the legislation establishing the Hawks was unconstitutional to the extent that it failed to secure an adequate degree of independence for the state's anti-corruption machinery. The court noted that the constitutional obligation attaches to the existence and independence of the state's anti-corruption capacity, rather than to a particular institution. The Constitution does not require the restoration of the Scorpions, prescribe that the function be located in the NPA, or require a prosecution-led model. The court concluded that Parliament may therefore redesign or replace the institution, provided that the resulting framework maintains anti-corruption machinery with the degree of independence required by the Constitution.¹⁶⁶

The Hawks are now more strongly protected than the directorate first established in 2008. Amendments enacted after *Glenister* gave the National Head a fixed, non-renewable term, prescribed grounds and procedures for removal, and control over funds specifically appropriated to the Directorate. In *Helen Suzman Foundation v President of the Republic of South Africa*, the Constitutional Court further invalidated and severed provisions that permitted extension of the National Head's term, excessive ministerial influence over the offences selected for investigation, and aspects of the removal scheme

inconsistent with adequate independence. While these safeguards constrain executive control over the Directorate's leadership, resources and investigative mandate, they are a far cry from constitutionally recognising or entrenching the Hawks as an institution. Parliament remains free to amend Chapter 6A of the SAPS Act or replace the Directorate, provided that the state continues to maintain anti-corruption machinery satisfying the constitutional standard established in *Glenister*.¹⁶⁷

IDAC is more securely established than the temporary Investigating Directorate created by presidential proclamation in 2019. Section 7(1A) of the NPA Act, inserted by the National Prosecuting Authority Amendment Act 10 of 2024, now establishes IDAC within the Office of the National Director and assigns it a statutory mandate over serious, high-profile or complex corruption and related commercial and financial crime. Its existence nevertheless remains statutory rather than constitutional, and Parliament may alter or repeal section 7(1A), subject to the state's continuing obligation to maintain adequately independent anti-corruption machinery.¹⁶⁸

In August 2025, NACAC recommended the creation of a new Chapter 9 institution, the Office of Public Integrity and Anti-Corruption. The Office would conduct civil investigations and systemic audits, issue binding remedial recommendations, coordinate implementation of the National Anti-Corruption Strategy, support whistleblowers and seek civil asset-recovery orders. It would be governed by a multi-member council appointed by the President on the recommendation of Parliament following a public selection process. As a constitutional body, the Office would have stronger protection against abolition or political interference, while proposed funding safeguards would reduce its exposure to financial pressure. While the Office would operate alongside IDAC, it would not exercise criminal-prosecution powers. In February 2026, the President stated that government would finalise its response to NACAC's recommendation. The constitutional amendment and enabling legislation required to establish the Office remained outstanding at the date of this report.¹⁶⁹

The Constitution Twenty-First Amendment Bill B22-2024 proposes a different model. Introduced as a private member's bill on 1 November 2024, it would establish an Anti-Corruption Commission as a Chapter 9 institution with concurrent powers to investigate and prosecute serious corruption and high-level organised crime. The Bill provides for a non-renewable ten-year term for the National Commissioner and twelve-year terms for the other commissioners. Commissioners would be appointed by the President following a recommendation supported by at least 60 per cent of the National Assembly and could be removed only through the Chapter 9 procedure, requiring a two-thirds majority in the Assembly. The Bill remained at the introduction stage on Parliament's Bills page at the date of this report (although in December 2025 the Minister of Justice informed the National Assembly that the Department and law-enforcement agencies opposed the proposal).¹⁷⁰

The Constitution requires the state to maintain adequately independent anti-corruption capacity and an independent police complaints body but gives no express constitutional status to either the Hawks or IDAC. The Scorpions could therefore be abolished by ordinary legislation despite the Khampepe Commission's recommendation that they remain within the prosecuting authority. IDAC's statutory establishment now prevents its abolition through withdrawal of a presidential proclamation, but Parliament remains free to amend or repeal its statutory basis. Both current proposals would go further by entrenching the proposed institution in the Constitution, ensuring that its abolition or fundamental alteration could not be effected by ordinary legislation alone.¹⁷¹

Summary: Key comparative lessons

- Officials targeted by a specialised anti-corruption and organised crime body may use lawful powers and processes to disable it. Freedom from interference in current operations offers no defence against those later attacks.
- Albania entrenches SPAK in its Constitution and separates its administration and budget from the Prosecutor-General. Abolition or subordination requires constitutional amendment.
- CICIG remained protected during each agreed term but dissolved when the Guatemalan executive refused to renew its mandate. In Buenos Aires, police command was decentralised by statute but broad executive powers over the distribution of operational authority allowed successive governors to restore central command without repealing the wider reform.
- South Africa's Constitution requires adequately independent anti-corruption capacity rather than the continued existence of a particular institution. The Scorpions were therefore abolished by ordinary legislation, and Parliament may alter or replace the Hawks and IDAC if constitutionally adequate machinery remains in place. The two proposals for a Chapter 9 anti-corruption institution would provide stronger protection against abolition; neither has been enacted. ■

4.7. Organised crime infiltration can remain concealed when no civilian or parliamentary body examines the state's response as a whole

Where no institution has a legal mandate to review the formulation and implementation of organised crime and anti-corruption policy across the full length of the criminal justice ecosystem, or where some institution does but the civilian voice is in any event excluded from taking part in that review, failures of policy, abuses of power, and organised criminal influence over public life are identified late, in fragments, or not at all. This section examines bodies outside the operational chain of the agencies whose work they review. Their functions extend beyond the investigation of individual complaints. They inform high-level operational and strategic policy, monitor the implementation thereof by the relevant institutions, and provide an independent conduit that bridges the gap between civil society and elected officials. A body may perform some of these functions without performing all of them. They include statutory councils, parliamentary bodies, and related entities which review policy and institutional performance, obtain information from the agencies under review, receive evidence from outside government, and report to Parliament or the executive.

4.7.1. Parliamentary inquiry into the organised-crime response

Italy's Parliamentary Anti-Mafia Commission provides the closest example of oversight directed at the state's response to organised crime as a whole. Law No. 22 of 2023 establishes the bicameral Commission for the life of the current legislature. Twenty-five senators and twenty-five deputies sit on it, in proportions that reflect the parliamentary groups in both Houses.¹⁷² The Commission reviews the implementation of anti-mafia laws, witness and collaborator protection, special prison rules,

investigative resources, information systems, and the dissolution of local authorities infiltrated by mafia groups. It also investigates links between mafia organisations and political office, public administration, corruption and electoral activity. The Commission may propose legislative or administrative changes after completing its investigative work.¹⁷³

The Commission has the same powers and limitations as a judicial authority for the purposes of its inquiries, subject to the statutory limits on measures affecting personal liberty. It may obtain documents, hear witnesses, conduct field missions, and publish thematic and annual reports to Parliament.¹⁷⁴ Civil society participates in the Commission's work only through hearings, field missions and a standing mandate to examine the civic anti-mafia movement and monitor the contribution of associations combating organised crime. The Commission does not direct criminal investigations or prosecutions, and its recommendations do not bind the executive. Its value lies in its power to assemble evidence from separate institutions and test whether legislation and national policy are working. Its parliamentary character also exposes it to party conflict, and a new commission must be established for each legislature.

The preceding Commission used the same form of inquiry to examine corruption-prevention and transparency controls in municipalities dissolved for mafia infiltration. Its report of 26 April 2022 found that extraordinary administrations had often failed to use those controls adequately. The Commission linked that failure to the risk that formal dissolution would leave in place the administrative conditions that had allowed mafia influence.¹⁷⁵ The inquiry therefore examined whether a major anti-mafia intervention had produced lasting changes in the affected administrations.

4.7.2. Standing councils for policy review, implementation monitoring and public participation

Brazil combines policy advice and institutional monitoring in a single standing council that includes civil society. The National Council for Public Security and Social Defence sits within the Unified Public Security System and is chaired by the Minister of Justice and Public Security. Its membership brings together federal and state security institutions, the judiciary, the prosecution service, the public defender, the bar association, elected civil-society representatives and recognised specialists. In its advisory role, the Council proposes policy guidelines and reviews the National Public Security and Social Defence Plan, commenting on its objectives, targets, indicators, funding and management. In its oversight role, it monitors the performance of operational institutions against public targets, the handling of complaints in internal disciplinary offices, and public confidence in those institutions, and it publishes its evaluations and recommendations.¹⁷⁶ At its June 2025 meeting, for example, the Council reviewed current ministerial policy and considered its own role in relation to interstate and transnational crime.¹⁷⁷

By combining these functions in one forum, the Council allows the institutions that implement policy to be questioned by other state bodies, practitioners and civil society alike. Since organised crime and corruption form part of the national public-security policy, the Council can examine them as matters of policy, expenditure and institutional performance – although its remit extends well beyond those areas. However, its oversight capacity is nonetheless limited since the Council functions only as an advisory body within the Ministry it is meant to help scrutinise. The Minister chairs the Council, holds a casting vote, appoints several of its expert members and controls its administrative support, while the governing decree bars disclosure of discussions in progress without the Minister's prior consent.¹⁷⁸ Together, these features constrain the Council's ability to expose executive resistance or to examine the conduct of the Ministry itself.

Mexico's National Anti-Corruption System brings the principal federal bodies responsible for audit, administrative control, prosecution and adjudication into a Coordinating Committee. Five citizens form a separate Citizen Participation Committee, whose president chairs the Coordinating Committee. The policies established by the Committee must be implemented by all public entities whose compliance and progress the Committee captures in its annual report. The citizen committee may propose non-binding recommendation, maintain a registry of civil-society organisations, and request the Coordinating Committee to issue public exhortations requiring clarification of specific corruption matters.¹⁷⁹ The system covers corruption across government. Conduct falling outside that mandate remains outside its review.

Colombia isolates policy coordination from citizen oversight and monitoring. No. 1474 of 2011 establishes the National Moralisation Commission, whose members include the President, ministers, prosecutorial authorities, audit bodies, the heads of Congress and senior judicial office-holders. It coordinates anti-corruption policy and works through technical sub-commissions for prevention and for detection and sanction. A separate National Citizens Commission represents business associations, non-governmental organisations, universities, the media, citizen oversight groups, organised labour and religious organisations. Its functions are to monitor compliance with the anti-corruption statutes, to produce at least one annual report evaluating the government's policies, plans and programmes against corruption, to follow high-impact corruption cases, and to receive the information consolidated by the council's technical secretariat. The President appoints its members from lists submitted by the represented sectors, and its recommendations bind neither the Moralisation Commission nor any law enforcement agencies.¹⁸⁰

Guatemala's National Commission Against Corruption is a more executive-centred arrangement. The Commission advises the Presidency on anti-corruption priorities and follows the implementation of policy within the executive branch. Its director can obtain information from executive institutions. Six delegated advisers – two from academia and civil society, two from Indigenous peoples and two from the private sector – take part in validating reform proposals. The Commission's mandate excludes the investigation of corruption complaints. The institution remains dependent on the Presidency and has no authority over the wider criminal justice system.¹⁸¹

South African comparison

South Africa already has a body that combines three of the relevant functions within policing. Section 208 of the Constitution establishes a civilian secretariat under the direction of the Minister of Police. The Civilian Secretariat for Police Service Act grants the Secretariat four clusters of functions. First, it advises: the Secretary is the Minister's adviser on police and policing policy, and the Secretariat must give strategic advice on developing and implementing policy. Second, it must monitor the performance of the police service, regularly assess the adequacy of its policies and systems and recommend corrective measures, monitor the utilisation of the police budget for compliance with ministerial policy directives, monitor compliance with the Domestic Violence Act, and assess the service's ability to receive and deal with complaints. Third, the Secretary may enter any building or premises under the control of the police service and request and obtain information and documents relating to any matter under its control, and members of the service must provide full cooperation, including information and records, for the Secretariat's monitoring function. Lastly, it reports quarterly to the Minister and to the parliamentary committees responsible for police, and annually through a report the Minister must table in Parliament. Provincial secretariats monitor the implementation of national policing policy in each province and report to the provincial executive, the provincial legislature and the national

Secretary, and the Secretariat must monitor the implementation by SAPS of IPID's recommendations and report on compliance to the Minister.¹⁸²

Regarding public participation, the Act requires the Secretariat to implement a partnership strategy mobilising role-players outside the department, to develop at least one civil-society reference group, to guide community police forums, and to conduct ongoing interaction with citizens.

The Secretariat's monitoring and oversight capacity is limited by three facts. First, its mandate is in respect of the police service only. Second, the Secretariat functions under the direction of the Minister: the Secretary is appointed and removable by the Minister and performs such further functions as the Minister considers necessary, and the Secretariat is funded from the police vote. Third, its outputs are advisory: while the Act empowers it to "recommend corrective measures", it imposes no general duty on SAPS to implement its recommendations or to respond to them within a fixed period. The Portfolio Committee on Police identified the practical consequence in its report of 8 May 2026. It found continuing uncertainty between the Secretariat's coordination, monitoring and oversight functions and recommended amendments that would compel information, require formal SAPS responses, track implementation and create escalation and consequence procedures for non-compliance. The Committee's recommendations confirm that the Secretariat still depends on SAPS cooperation when it seeks action on a finding.¹⁸³

There is no overarching body responsible for setting strategy, monitoring progress, or advising on organised crime policy. The Civilian Secretariat is the closest existing body because its mandate combines policy advice, monitoring, access to police information and public participation. As for anti-corruption policy, the National Anti-Corruption Strategy 2020–2030 is a Cabinet policy whose enabling body was the National Anti-Corruption Advisory Council, appointed by the President in September 2022 as a non-statutory body advising on the strategy's implementation. However, it had no power to require the production of information from law enforcement agencies, and its mandate concluded in 2025.

Summary: Key comparative lessons

- Separate civilian and parliamentary bodies may fail to detect a common pattern of organised criminal influence when each entity reviews only one of the institutions responsible for policing, prosecution, intelligence or corrections.
- Italy's Parliamentary Anti-Mafia Commission examines the implementation of anti-mafia law across the state with judicial inquiry powers and reports to both Houses. It can obtain evidence beyond ordinary departmental reporting, although it cannot implement its findings or direct a prosecution.
- Brazil's national public-security council places government bodies, practitioners and civil society in one standing forum that reviews policy, plans and institutional performance. Mexico and Colombia place citizen representatives within, or alongside, national anti-corruption coordination bodies, while executive institutions retain responsibility for implementation.
- South Africa's Civilian Secretariat advises the Minister, monitors SAPS, obtains police records and creates channels for public participation. Its mandate ends with policing. There is no overarching body responsible for setting strategy, monitoring progress, or advising on organised crime policy. ■



5. CONCLUSION

The comparative material presented here demonstrates that organised criminal infiltration of the criminal justice system is best understood as a systemic, symbiotic relationship that converts individualised acts of corruption into the functional capture of public power. Criminal organisations exploit one of a number of institutional weaknesses – whether in statutory design, jurisdiction, recruitment, personnel integrity or inter-agency coordination – to embed their influence directly. Over time, these groups progressively weaken the checks and balances on which the affected institution, and the wider state apparatus, depends to detect and eliminate their very presence. The seven principles examined in this report are not independent recommendations. Each identifies a different point at which the relationship between a criminal organisation and a compromised institution defeats the state's ordinary response, and each of these tipping points reinforces the others.

An institution whose personnel are compromised cannot correct itself through internal discipline. But replacing those personnel without changing the procedures that allowed the misconduct to recur will produce the same pattern under new names. Similarly, concentrating intelligence in a single body cures fragmented coordination but creates a target for infiltration; separating intelligence from investigation reduces that risk but leaves the state dependent on the integrity of the bodies that hold separate pieces of the picture. Protecting witnesses and collaborators is necessary if their evidence is to reach a court, but protection is futile if the prosecutor or judge handling the case can be removed or reassigned by an official whose interests the investigation threatens. An independent institution can plough its resources into the investigation of complex offences that exceed the capabilities of the ordinary police service, but if the institution depends on a single political sponsor, a renewable mandate, or an appropriation controlled by the executive, its legal and operational existence is imperilled the moment its work threatens the powers that be. No single measure addresses the infiltration problem because the problem itself consists in a set of mutually reinforcing vulnerabilities, each of which can be exploited to neutralise a reform directed at another.

The comparative material does not support a single institutional model, or specific set of reforms. The comparisons speak mostly to what defeats a reform. Every foreign jurisdiction reviewed provides at least one instance of this kind of failure, several of them in institutions that also produced real gains. The foreign interventions support seven findings that should guide the assessment of reform proposals to the Madlanga Commission.

First, a response directed only at an identified offender leaves the organisation's continuity intact, because organised groups deliberately separate authority, funding and the commission of offences among different people. The reforms that address this weakness share a common technique: each detaches liability, forfeiture or confinement from proof of a specific act and attaches it instead to a continuing relationship with the organisation. Argentina and Brazil extend criminal liability to members generally once the organisation's methods and aims are proved, rather than requiring proof of each member's part in a predicate offence. Hong Kong SAR and Italy apply the same logic to property: once a disparity between known income and actual wealth is shown, the burden shifts to the official or associate to account for it, sparing the state from tracing a particular bribe to a particular tainted decision. Italy and Brazil extend a similar line of reasoning into prisons, treating a leader's proven capacity to direct the organisation, rather than an offence committed inside jail, as the trigger for enhanced restrictions. Georgia achieved a comparable result by treating recognised criminal status itself as an offence, but through mass dismissals and prisoner mistreatment that do not augur well for a constitutional democracy.

Second, an institution cannot correct its own failure when implicated officials control the inquiry. Independence in these cases is not one attribute but three: control over the staff who conduct an investigation, over the funds that support it, and over the cases and information it can obtain. A reform is only as strong as the weakest of the three. Hong Kong SAR's ICAC and Albania's SPAK each secured all three, by different routes: Hong Kong SAR by giving its Commissioner sole authority over appointment, discipline and a budget charged directly to general revenue, subject only to the territory's chief executive; Albania by placing its special prosecutors, investigators and funding outside the ordinary prosecutorial hierarchy, and by imposing binding duties on the police and other state bodies to supply information within a fixed period. Guatemala achieved a version of the same result without creating a wholly new institution, by pairing international investigators who could not be dismissed or redirected by domestic authorities with a domestic prosecutorial unit able to exercise the coercive powers the international body lacked. Guatemala's high-risk courts and Colombia's exclusive Supreme Court jurisdiction over sitting legislators extend the same principle to adjudication: a case is only as safe from local capture as the court that finally decides it.

Third, once misconduct has become an institutional pattern, ordinary disciplinary proceedings, which require proof tied to one person and one act, may be unable to restore lawful governance. Albania's wholesale re-evaluation of every judge and prosecutor, Colombia's power to retire police personnel on adverse intelligence rather than a proven charge, Georgia's dismissal of an entire police force in a single day, and Italy's power to dissolve an infiltrated municipal council share a common substitution: each replaces individualised proof, which a captured process cannot reliably produce, with an assessment addressed to the class, rank or body as a whole. The measures differ sharply in the quantum of procedural rights they afforded: Albania granted full adversarial rights, appeal and reasoned decisions to every incumbent; Georgia extended none. That choice, between speed and scale on one hand and individual due process on the other, is a genuine trade-off for any reformist to weigh. None of these measures endures unassisted. Italy's recidivism among dissolved municipalities, eighty-three of them dissolved more than once, shows that removing a compromised generation of officials does not remove the commercial networks through which infiltration occurred. Mexico demonstrates the opposite risk, that a continuing vetting requirement, applied at scale without matching investment in supervision, can become a substitute for internal investigation rather than an instrument to support it.

Fourth, the state needs a complete view of related organised-crime activity, but the body that holds the combined information may itself be compromised. The reforms considered in this report accepted that trade-off. Colombia dismantled the DAS and rebuilt its intelligence function without judicial-police powers, but only after learning that combining surveillance capacity with the power to investigate and suppress criminal cases in one body could prove disastrous. Italy subordinated its Anti-Mafia Investigation Directorate's criminal-investigation function to the direction of an independent prosecutor, in part to ensure that any concentration was checked by an external institution. Each solution accepts a residual risk the other does not: Colombia's separated agencies still depend on the integrity of whichever agency was not abolished, as later disclosures of unlawful military surveillance confirmed; and Italy's integrated directorate continues to rely on the honesty of the official who has access to the national store of intelligence.

Fifth, as rational actors, witnesses and collaborators will withhold cooperation when the state cannot protect them in practice. The same is true of the judges and prosecutors who decide their cases. The protection regimes reviewed in this report require that admission depends on a current, case-specific danger connected to the person's cooperation which is assessed by a body separate from the relevant investigator or prosecutor. For judges, a measure must address the vulnerability inherent in the public nature of their duties. Colombia concealed the identity of judges and witnesses, but bounded the measure by a sunset clause and a rule against any conviction resting solely on anonymous testimony. Brazil instead diffuses responsibility across a panel of three judges whose decision is published without disclosing the identity of any dissenting judge.

Sixth, officials under investigation may later use lawful political powers to disable the institution investigating them. What protects an institution from this eventuality depends on the level at which its independence is fixed. In Buenos Aires, authority over the police was distributed by executive decree, allowing a later governor to recentralise it by decree without a legislative or constitutional battle of any kind. A statutory guarantee resists that kind of reversal but not every kind: South Africa's own experience with the Hawks proves that fixed terms, defined removal grounds and a protected budget, all conferred by ordinary legislation, still leave Parliament free to redesign or replace the institution. Similarly, while Italy's principle of obligatory prosecution insulates an individual case from executive interference, it does nothing to protect the institution itself, whose existence rests on ordinary statute, from abolition. Only constitutional entrenchment, of the kind Albania gave SPAK, and which requires a supermajority, will confer the strongest possible protection from political adversaries.

Seventh, organised criminal influence may remain concealed in the absence of an oversight body that monitors the whole of the state's response. Admittedly, no jurisdiction reviewed in this report combines independence from the institutions under review, investigative power and an oversight mandate spanning the whole criminal justice system. Italy's Parliamentary Anti-Mafia Commission has judicial-style powers to obtain evidence and compel testimony across every institution it examines, but its findings do not bind the executive and it must be reconstituted for each legislature, exposing it to the same party politics it is meant to examine impartially. Although Brazil's National Council brings every relevant institution and civil society into one forum, the minister whose department the Council is meant to scrutinise chairs it, holds the casting vote and controls the disclosure of its proceedings. Mexico and Colombia remove that conflict by separating the citizen body from the body that coordinates policy, albeit at the cost of making citizen oversight advisory only. Guatemala's Commission answers to the Presidency alone and excludes the investigation of complaints. Each institutional design purchases independence, investigative power or a binding mandate at the expense of one of the other two.

Implications for South Africa

The largest South African lacuna concerns the independence and durability of specialist anti-corruption and organised crime capacity. The Hawks remain within SAPS. IPID stands outside of it, but the NPA and the police determine the criminal and disciplinary consequences of its findings. IDAC forms part of the NPA and has struggled to recruit permanent investigators and technical specialists. Not only do the mandates of these bodies arguably overlap without an enforceable rule for allocating cases, but none is entrenched in the Constitution – each therefore remains reversible, or liable to encumbrance, by the same ordinary legislative majority that created it.

South Africa also lacks an independent procedure for reassessing all incumbents in an institution whose personnel have been compromised on a wide scale. Current SAPS and NPA programmes apply to selected senior or high-risk personnel, while other incumbents remain in office without qualifying afresh. Proposed SAPS amendments would strengthen screening before appointment and authorise lifestyle audits on reasonable suspicion, though their long-term utility is at risk without continuing integrity controls that apply to members throughout their careers in the service and which concentrate on the posts that carry the greatest risk of criminal influence.

A further disparity lies in the allocation of information and responsibility across the criminal justice system. The Fusion Centre shares financial and investigative information, but it cannot assign or consolidate cases. NACAC's proposed Case Management Committee has not been established. The Civilian Secretariat for Police Service can obtain police records and monitor SAPS, although its mandate ends with policing. Parliamentary committees supervise separate departments and institutions. No standing civilian or parliamentary body examines the implementation of organised-crime policy across policing, prosecution, intelligence and corrections.

South Africa's substantive law and correctional framework contain narrower but noteworthy gaps. While POCA criminalises participation in and management of a racketeering enterprise, the Act does not contain an aggravated offence directed at the infiltration of the public sector by an ultra-violent or harmful criminal organisation. Most likely for constitutional reasons, it also refrains from codifying any rule similar to that under which every member of a qualifying organisation may become liable to suffer the penalty for the most serious offence committed by that organisation, on grounds other than traditional common purpose. The NPA's recent unexplained-wealth initiative depends on a court drawing an inference of unlawful provenance in each case; the presumption has not been codified or tailored to corruption by public officials. Under the current correctional laws, there is no dedicated regime for identifying and severing the continuing links between imprisoned leaders and their criminal organisations outside.

The record of the Office for Witness Protection distinguishes cooperation from the other areas considered in this report. Despite the fact that no admitted witness or related person has been harmed because of participation in the programme, its current weaknesses concern capacity, delay and the separation of the legal mechanisms involved. Section 204, plea agreements and witness protection operate under different statutes and decisions. Protection for threatened prosecutors and judges depends on administrative security arrangements, and South Africa lacks a statute that establishes collegiate adjudication for high risk organised-crime cases.

The foreign cases are not ready-made answers. They show that organised criminal infiltration is sustained through relationships that outlast particular offences, office-holders and reform programmes. The effectiveness of any response ultimately turns on whether it changes those relationships in practice. That is the central comparative lesson of this report.

NOTES

- 1 Constitution of the Republic of South Africa, 1996, s. 84(2) (f); Proclamation Notice 269 of 2025, Government Gazette No. 53048, 23 July 2025, Schedule, paras. 1–6.
- 2 Global Initiative Against Transnational Organized Crime, *Cleaning the Police: Agenda and Biographies*, 13–14 July 2026. The programme included Jürgen Stock, former Secretary General of INTERPOL.
- 3 Hong Kong SAR refers to Hong Kong Special Administrative Region of the People's Republic of China, its official designation as of 1 July 1997. References to the region before this date are simply 'Hong Kong'.
- 4 United Nations Office on Drugs and Crime, *Homicide and Organized Crime in Latin America and the Caribbean*, research brief drawn from the Global Study on Homicide 2023, pp. 3–8, https://www.unodc.org/documents/data-and-analysis/gsh/2023/GSH_2023_LAC_web.pdf.
- 5 World Bank, *Inequality in Southern Africa: An Assessment of the Southern African Customs Union* (2022), pp. 1–4 and 19–25, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099125303072236903>.
- 6 United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 on 15 November 2000, arts. 2(a) and 2(c). See also United Nations Office on Drugs and Crime, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime* (2nd ed., 2017), paras. 30–33, https://www.unodc.org/documents/treaties/Legislative_Guide_2017/Legislative_Guide_E.pdf.
- 7 United Nations Convention against Transnational Organized Crime, art. 34(2). The Convention requires the offences in arts. 5, 6, 8 and 23 to be established in domestic law independently of the transnational nature of the conduct or the involvement of an organised criminal group, except to the extent that art. 5 itself requires such involvement.
- 8 Jane Schneider, 'Fifty Years of Mafia Corruption and Anti-mafia Reform' (2018) 59(S18) *Current Anthropology* S16–S27, doi:10.1086/695801; Law No 646 of 13 September 1982 (Italy), *Gazzetta Ufficiale* No 253 of 14 September 1982.
- 9 Italian Penal Code, arts. 416 and 416-bis, the latter inserted by Law No. 646 of 13 September 1982, art. 1, as amended; Gabriele Baratto, Andrea Di Nicola and Barbara Vettori, 'The Two Pillars in the Fight against Serious Organised Crime in Italy: An Assessment' (2022) 7(3) *International Journal of Forensic Sciences* 000272, pp. 3–5, doi:10.23880/ijfsc-16000272.
- 10 The law offered prosecutors a means to prove the organisation and its method before proving every offence carried out in its interests. Article 416-ter, introduced in 1992 and amended by Law No. 43 of 2019, criminalises accepting or procuring votes obtained through mafia-style intimidation in exchange for money, another benefit, or a promise to serve a mafia association's interests or needs. Article 416-bis.1 functions as an aggravating circumstance rather than a standalone offence: it increases the penalty by one third to one half for an offence, other than one punishable by life imprisonment, committed either by using the conditions described in Article 416-bis or in order to facilitate a mafia-type association. The aggravating provision does not require proof that the offender was a member. It also brings the proceeding within the district and national coordination rules in Article 51(3-bis) of the Code of Criminal Procedure and, upon conviction, within the restrictions in Article 4-bis of the Prison Administration Act; see Italian Penal Code, arts. 416-ter and 416-bis.1; Decree-Law No. 152 of 13 May 1991, art. 7, converted by Law No. 203 of 12 July 1991; Decree-Law No. 306 of 8 June 1992, converted by Law No. 356 of 7 August 1992; Law No. 62 of 17 April 2014; Law No. 43 of 21 May 2019, art. 1; Legislative Decree No. 21 of 1 March 2018, art. 5; Code of Criminal Procedure, art. 51(3-bis); Law No. 354 of 26 July 1975, art. 4-bis, official texts, *Gazzetta Ufficiale*, <https://www.normattiva.it/> and <https://www.gazzettaufficiale.it/eli/id/2018/03/22/18G00046/SG>.

- 11 Italian Penal Code, art 110; Court of Cassation, Joint Sections, 5 October 1994, No 16, Demitry, Rv 199386; Court of Cassation, Joint Sections, 12 July 2005, No 33748, Mannino.
- 12 *Contrada v Italy* (No 3), Application No 66655/13, European Court of Human Rights, judgment of 14 April 2015, paras 64–76.
- 13 Baratto, Di Nicola and Vettori (n 2), pp 6–11; Italian Anti-Mafia Investigation Directorate, Report on Organised Crime, first half of 2024 (English edition, January 2025), pp 7–14.
- 14 Gavin Slade, *Reorganizing Crime: Mafia and Anti-Mafia in Post-Soviet Georgia* (Oxford University Press 2013), chs 3–6; Alexander Kupatadze, *Organized Crime, Political Transitions and State Formation in Post-Soviet Eurasia* (Palgrave Macmillan 2012), pp 91–121.
- 15 Criminal Code of Georgia, art. 223¹, as inserted by Law No. 2354-rs of 20 December 2005, official historical text, Legislative Herald of Georgia (Matsne), pp. 97–98, <https://www.matsne.gov.ge/en/document/download/16426/175/en/pdf>; Criminal Code of Georgia, arts. 223¹–223³, as amended by Law No. 2152 of 18 April 2018, official consolidated text, Matsne, <https://www.matsne.gov.ge/en/document/view/16426?publication=209>.
- 16 Slade, *Reorganizing Crime* (n 7), pp 163–195; Gavin Slade, 'Informality as Illegality in Georgia's Anti-Mafia Campaign' (2017) 5(1) *Caucasus Survey* 51–64, doi:10.1080/23761199.2017.1283940; Alexander Kupatadze, 'Georgia: Breaking Out of a Vicious Cycle?' ANTICORRP Work Package 3 Process-Tracing Report (2015), pp 10–24.
- 17 Where there are sufficient indications that an official belongs to the organisation, a judge may order that official's precautionary suspension from office, without loss of pay, if the investigation or trial requires it; if the official is convicted, they are removed forthwith from office and are further barred from holding public office for a period of eight years after the sentence has been served. If a police officer is implicated, the police's internal-affairs body must open its own inquiry and notify the Public Prosecution Service, which appoints a prosecutor to oversee that inquiry through to its conclusion; see Legislative Assembly of the State of Rio de Janeiro, *Relatório Final da Comissão Parlamentar de Inquérito destinada a investigar a ação de milícias no âmbito do Estado do Rio de Janeiro* (2008), pp 32–52, 151–185; F Daniel Hidalgo and Benjamin Lessing, 'Endogenous State Weakness: Paramilitaries and Electoral Politics in Rio de Janeiro' (working paper, 2015), pp 1–7.
- 18 Brazil, Law No 12.850 of 2 August 2013, arts 1(1), 2(1)–(7), official consolidated text, Presidency of the Republic.
- 19 Brazil, Law No. 15.358 of 24 March 2026, arts. 1–4, especially arts. 2(1), 2(2), 2(4), 3 and 4, official text, Presidency of the Republic, https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2026/lei/l15358.htm.
- 20 Argentina, Law No. 27.786, sanctioned 20 February 2025 and published in Official Gazette No. 35,624 on 10 March 2025, arts. 1–9, especially Penal Code arts. 210-ter and 210-quater, <https://www.boletinoficial.gob.ar/detalleAviso/primera/322273/20250310>; Presidency of Argentina, 'El Gobierno nacional anunció medidas para reforzar la seguridad en Rosario' (11 March 2024), <https://www.argentina.gob.ar/node/419992>.
- 21 Hong Kong SAR, Prevention of Bribery Ordinance (Cap. 201), originally Ordinance No. 97 of 1970 and in force from 1971; Independent Commission Against Corruption, 'Brief History' (2026), <https://www.icac.org.hk/en/about/history/index.html>.
- 22 In *Attorney General v Hui Kin Hong*, the Court of Appeal reinstated a charge against a public officer after the trial court had held section 10(1)(a) inconsistent with the Hong Kong SAR Bill of Rights. The Court of Appeal accepted that requiring the accused to give an explanation departs from the presumption of innocence, but held that this departure was compatible with the Bill of Rights because corruption of this kind falls within the exceptional situations in which some deviation from the ordinary rule – that the prosecution must prove guilt beyond reasonable doubt – can be justified, citing the Privy Council's reasoning on the same provision in *Mok Wei Tak v The Queen*; Prevention of Bribery Ordinance (Cap. 201), ss. 10(1)–(2); Attorney General v Hui Kin Hong, CACC 52/1995, Court of Appeal of Hong Kong SAR, 3 April 1995, [1995] 1 HKCLR 227, Hong Kong SAR Judiciary Legal Reference System, https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=5125&QS=%2B&TP=JU; judgment reproduced at <https://vlex.hk/vid/attorney-general-v-hui-862797736>.
- 23 Prevention of Bribery Ordinance (Cap. 201), ss. 12AA–12AB, 13–14 and 31; see the official extract published by the Civil Service Bureau, https://www.csb.gov.hk/english/admin/conduct/files/pobo_e_extract.pdf.
- 24 Independent Commission Against Corruption, Annual Report 1977, paras. 3.1–3.9 and Appendix III; Ian Scott, 'The Evolution of the Hong Kong Integrity System' in Ting Gong and Ian Scott (eds.), *Routledge Handbook of Corruption in Asia* (Routledge 2017), pp. 79–94.
- 25 Italian Penal Code, art. 416-bis; Italy, Legislative Decree No. 159 of 6 September 2011, Code of Anti-Mafia Laws and Prevention Measures, as amended.
- 26 Legislative Decree No. 159/2011, arts. 4, 17, 20, 24–25 and 27; Anti-Mafia Investigation Directorate, Italian Anti-Mafia Legislation (rev. 3, 2025), pp. 25–31, https://direzioneeinvestigativaantimafia.interno.gov.it/wp-content/uploads/2025/08/Normativa_Antimafia_Italia_rev3.pdf.
- 27 The order may be granted without a prior hearing, but the court must give reasons addressing the order's necessity, adequacy and proportionality.

- 28 Article 9, §9 protects an injured party or third party who, acting in good faith, had no way of knowing the property's illicit origin, use or destination; Brazil, Law No. 15,358 of 24 March 2026, art. 9, official Portuguese text, Presidency of the Republic, https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2026/lei/l15358.htm.
- 29 Article 11 applies once there has been a final conviction for an offence under Article 2 or 3 and no extraordinary forfeiture has already occurred under Article 9, §8; it requires the court to order a package of measures for the organisation's definitive financial dismantlement, including converting any existing freeze or seizure into permanent forfeiture where illicit origin or destination is shown, extended confiscation of any asset disproportionate to the convicted person's declared income over the preceding five years unless they can offer conclusive proof of its lawful origin, compulsory dissolution of any implicated company, and a 12- to 15-year bar on public contracting; see Brazil, Law No. 15.358 of 24 March 2026, arts. 9(15), 10(3), 10(7)–(10) and 11(IV)–(V), official Portuguese text, Presidency of the Republic, https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2026/lei/l15358.htm.
- 30 Italy, Law No. 354 of 26 July 1975, art. 41-bis; Law No. 663 of 10 October 1986, art. 10; Decree-Law No. 306 of 8 June 1992, converted by Law No. 356 of 7 August 1992, art. 19.
- 31 The Minister of Justice issues a reasoned decree, on his own initiative or at the Interior Minister's request, after consulting the competent prosecutor and obtaining information from the National Anti-Mafia and Anti-Terrorism Prosecutor and the police. Parliament made the anti-mafia regime permanent through Law No. 279 of 23 December 2002; Law No. 94 of 15 July 2009 then fixed the duration and renewal periods now in force; Law No. 354/1975, art. 41-bis(2)–(2-bis), as amended; Law No. 279 of 23 December 2002; Law No. 94 of 15 July 2009, art. 2(25).
- 32 Law No. 354/1975, art. 41-bis(2-quater); Italian Department of Prison Administration, Circular No. 3676/6126 of 2 October 2017 on the organisation of sections holding prisoners subject to article 41-bis.
- 33 In deciding whether to renew the order, the Minister must weigh the person's role in the organisation, its continued activity, the results of the prisoner's rehabilitation, and any other concrete indication that the links have not ended. The Minister's order is subject to judicial review. The prisoner may complain within twenty days to the Rome Surveillance Tribunal, which reviews whether the statutory conditions exist; a further appeal on law lies to the Court of Cassation. A complaint does not automatically suspend the order.
- 34 In judgment No. 143 of 2013, it invalidated statutory limits on the number and duration of interviews with defence counsel because they impaired the constitutional right of defence (Constitutional Court of Italy, Judgment No. 143 of 17 June 2013). In judgment No. 197 of 2021, it held that a prohibition on exchanging objects between prisoners in the same association group lacked a rational connection to preventing communication with the organisation outside the prison. In judgment No. 18 of 2022, it declared article 41-bis(2-quater)(e) unconstitutional insofar as it permitted censorship of correspondence with defence counsel, because confidential communication with counsel forms part of the right of defence under article 24 of the Constitution; see official judgments, <https://www.cortecostituzionale.it/>.
- 35 Italian Ministry of Justice, report on the application of the special prison regime, recording 728 persons subject to Article 41-bis on 31 October 2022, reproduced in Italian Senate, 19th Legislature, Doc. XXVII No. 7, <https://www.senato.it/leg/19/BGT/Testi/Allegati/00000378.pdf>; Gabriele Baratto, Andrea Di Nicola and Barbara Vettori, 'The Two Pillars in the Fight against Serious Organised Crime in Italy: An Assessment' (2022) 7(3) International Journal of Forensic Sciences 000272, pp. 7–11; Letizia Paoli, Mafia Brotherhoods (2003), pp. 213–219.
- 36 Brazil, Law No. 7.210 of 11 July 1984, art. 52; Law No. 10.792 of 1 December 2003; Law No. 13.964 of 24 December 2019; Law No. 15.358 of 24 March 2026; Law No. 15.407 of 11 May 2026, official consolidated text, https://www.planalto.gov.br/ccivil_03/leis/l7210compilado.htm.
- 37 Article 54 requires the judge to issue a written order stating the grounds, first on an urgent interim basis and then finally after hearing submissions from the prosecution and defence.
- 38 Brazil, Law No. 7.210/1984, art. 52(1)–(7), as amended; Chamber of Deputies, official updated text, <https://www2.camara.leg.br/legin/fed/lei/1980-1987/lei-7210-11-julho-1984-356938-normaatualizada-pl.pdf>.
- 39 Decree No. 6.877 of 18 June 2009. The prison administration, the prosecution service or the prisoner may request transfer. The state judge first decides whether it is necessary. The competent federal judge then makes a reasoned admission decision after receiving the record and hearing the relevant authorities. In an emergency, the federal judge may authorise immediate transfer and review it once the parties have been heard. During the transfer, the federal execution judge assumes jurisdiction over the administration of the sentence, while the originating state court retains jurisdiction over the criminal proceedings, including any pending trial, appeal or provisional detention order.
- 40 Brazil, Law No. 11.671 of 8 May 2008, arts. 2–5 and 10, as amended by Law No. 13.964/2019, official text, https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/lei/l11671.htm; Decree No. 6.877 of 18 June 2009, arts. 2–3, https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decreto/d6877.htm; Law No. 15.358 of 24 March 2026, art. 2(7), https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2026/lei/l15358.htm.

- 41 Federal Court of Accounts of Brazil, 'Auditoria avalia ações de combate ao crime organizado no sistema prisional' (24 July 2026), <https://portal.tcu.gov.br/imprensa/noticias/auditoria-avalia-acoes-de-combate-ao-crime-organizado-no-sistema-prisional>.
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