



SOUTH AFRICA
ORGANIZED CRIME OBSERVATORY



**GLOBAL
INITIATIVE**
AGAINST TRANSNATIONAL
ORGANIZED CRIME

STATEMENT OF MARK SHAW ON BEHALF OF THE GLOBAL INITIATIVE AGAINST TRANSNATIONAL ORGANIZED CRIME

**RESPONDING TO ORGANISED CRIME
INFILTRATION OF SOUTH AFRICA'S
CRIMINAL JUSTICE SYSTEM**

SEPTEMBER 2026

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INTRODUCTION

1. As the Executive Director of the Global Initiative Against Transnational Organized Crime ("GI-TOC"), I make this statement on its behalf. The Global Initiative Against Transnational Organized Crime, is an independent international civil-society organisation and one of the world's leading centres of expertise and analysis on organised crime. While serving as GI-TOC's Executive Director since its founding in 2013, it has grown into the largest think tank globally dedicated specifically to understanding and responding to organised crime. Our work is supported by a network of more than 800 independent experts across the world, bringing together expertise from law enforcement, criminal justice, academia, government, civil society and the private sector.
2. Headquartered in Geneva, GI-TOC currently has several offices around the world and 17 regional observatories with more than 150 staff members. Globally, GI-TOC works across the full spectrum of organised crime response. We produce independent analysis of criminal markets, networks and emerging threats; engage directly with governments, multilateral institutions and policymakers to translate evidence into practical policy responses; and convene experts and practitioners across jurisdictions to exchange experience and develop solutions to common challenges. A significant part of our work is also focused on strengthening resilience in communities and institutions affected by organised crime, while supporting more effective approaches to disruption. Our interests are also very firmly grounded in South Africa. Through our South Africa Organized Crime Observatory, and our broader research over a number of years, we monitor the evolution of organised crime and illicit markets across the country and assess both the harms they generate and the effectiveness of responses to them.
3. I am not only speaking to you as the head of a global organisation. I am also a South African who has dedicated much of my professional life to understanding these challenges and to supporting stronger, more resilient institutions in this country. I have worked on organised crime, public safety and criminal justice reform for more than three

decades. I previously served as the National Research Foundation Chair: Professor of Justice and Security, and was director of the Centre of Criminology at the University of Cape Town (“UCT”). Prior to my time in academia, I spent more than a decade at the United Nations Office on Drugs and Crime (“UNODC”), including as Inter-regional Adviser and Chief of the Criminal Justice Reform Unit, conducting regular and numerous country assessments. During this time, I worked with the Global Programme against Transnational Organised Crime. Before joining the United Nations, I held various positions in the South African government, including as Director of Monitoring and Analysis: Secretariat for Safety and Security of South Africa, and was actively involved in civil society during the country’s transition from apartheid. As an independent advisor, I worked in various countries. I hold a doctorate from the University of the Witwatersrand and have published on organised crime, policing, illicit markets and justice reform.¹

4. This statement sets out GI-TOC’s expert assessment of the legislative and institutional interventions required to reduce organised criminal infiltration of South Africa’s criminal justice system. It draws primarily on the findings contained in a more comprehensive report by GI-TOC, entitled *Responding to Organised Crime Infiltration of the Criminal Justice System in South Africa* (“Comparative Report”), a copy of which I attach hereto as annexure “MS1”. For present purposes, I focus on the comparative principles, or lessons, that bear most directly on the Commission’s Terms of Reference, and canvass the specific short and long-term interventions which, in my opinion, follow from those principles.
5. One point is important at the outset: what we are seeing today did not develop overnight. Organised crime has been evolving in this country for more than three decades. It has adapted, diversified and become progressively more sophisticated, often outside public view. It has moved across criminal markets, into legitimate economies and, increasingly, into relationships with people and structures inside the state. Even now, despite everything that has already been revealed, we should not assume that we understand the full extent of the problem. What has emerged before this Commission is enormously significant, but it may still represent only part of a much broader system of criminal relationships, protection and influence that has developed over many years. The central challenge is to understand the depth of these networks and their trajectory. What will the next steps they take be, and how can we prevent them from taking them?
6. By way of background, in September 2022, GI-TOC released a Strategic Organized Crime Risk Assessment for South Africa. Receiving wide coverage in the country, the

¹ Global Initiative Against Transnational Organized Crime, “Mark Shaw”, <https://globalinitiative.net/profile/mark-shaw/>.

report warned that the South African state faced an existential threat from organised crime. It identified five key features of South African organised crime. It is connected, diverse, embedded, entrepreneurial, and violent. The feature of embeddedness is directly linked to infiltration. We made the point in this 2022 report that symbiotic relationships between criminal actors and state officials become systematised to the point that state actors, notably in the justice system, become active participants in crime and stakeholders in illicit markets. At the time, we had a sense of the seriousness of the problem, but our understanding of the full extent to which the criminal justice system had been penetrated was still limited. That picture is now becoming clearer, even though we still do not know the full scale and depth of the infiltration.

7. To place South Africa's organised crime challenge in a broader context, I would like to briefly refer to the Global Organized Crime Index, published by GI-TOC every two years. The Index is built on a rigorous, expert-led methodology. It combines extensive research and data collection with assessments by country, thematic and regional experts, followed by several rounds of review, verification and calibration.
8. The purpose of the Index is to provide a standardised, comparative measure of the prevalence and influence of organised crime across the 193 countries it assesses, enabling policymakers to prioritise domestic vulnerabilities and measure the effectiveness of their responses.² Through the provision of country expert insight, it looks at criminal markets, the types of criminal actors, and the resilience of each country to respond, scoring each on a scale of 1 to 10. For criminality indicators, a score of 10 is the worst possible score; for resilience, a score of 10 is the best. A copy of the Index Methodology, which sets out the multi-stage process of expert evaluation, verification and calibration by which the criminality and resilience scores are derived, is attached hereto as annexure "MS2".
9. There have been four iterations (published in 2019, 2021, 2023, and 2025, respectively) in which South Africa has been assessed and scored, allowing us to track the trajectory over time and see how both the organised crime threat and the country's capacity to respond have evolved. And that trajectory is concerning. With each successive assessment, South Africa's position has worsened, pointing to a sustained and deepening organised crime challenge - organised crime in South Africa has become progressively more entrenched, more complex and more serious. In the 2025 Index, South Africa ranked 7th of 193 countries, 2nd of 54 African countries and 1st of 13 countries in Southern Africa. Despite this, we also assess that South Africa is uniquely placed in that

² Global Organized Crime Index 2025, Methodology, pp 1–11, available at: <https://ocindex.net/downloads>

while it has high levels of criminality, it also possesses relatively high resilience and is able to fight back against the tide of crime.

10. Of the 15 criminal markets, 12 received scores of 6 or more.³ The distribution of these individual criminality scores is important, since it explains three distinguishing features of South African organised crime: the diversity and connectedness of its criminal markets; the high levels of violence that govern those markets; and the extent to which criminal groups are embedded in communities, the licit economy, and state institutions. The diversity of South Africa's criminal markets is reflected in that we score highly across most markets assessed. These include drug trafficking, extortion, firearms trafficking, and non-renewable resource crimes, to name a few. These markets are interconnected at a macro level - as, for example, where the ready supply of illegal firearms enables criminal groups to protect existing drug trafficking operations while also establishing themselves within the emerging extortion economy.
11. The diversity of South Africa's criminal markets stands in contrast to countries like Guinea-Bissau, which is often associated with organised crime but has a lower aggregate criminal market score than South Africa. While fewer of the country's markets score highly, those that do are more pronounced, most notably the cocaine trade, whose links to state actors pose a significant threat to Bissau-Guinean society.⁴ In South Africa, no single market poses so concentrated a threat, although several are rated as high; it is the combined, mutually reinforcing effect of several markets operating together that distinguishes the country's criminal landscape. In contrast, Colombia has a higher, although comparable, score to South Africa and similar diversity of criminal markets and actors. It makes for an even comparison as it is considered a democratic regime with a similar population and Gini coefficient. Its criminality and resilience scores, while similar, demonstrate a difference as it scores slightly higher in criminality, but slightly lower in resilience. The constellation of criminality also shows a difference, as Colombia's drug markets, notably cocaine, score higher and are the main reason it ranks higher than South Africa on the Index.⁵
12. Measured across the full range of criminal markets (15) and criminal actors (5) assessed by the Index, South Africa now sits within the top 5 per cent of countries globally most affected by organised crime. Its criminality score of 7.43 is substantially above the global average of 5.08, African average of 5.11, and also well above the averages for some of the regions most strongly associated with organised crime globally, including

³ Global Organized Crime Index 2025, South Africa profile, <https://ocindex.net/country/south-africa>. The country received 7.43 for criminality, 7.17 for criminal markets, 7.70 for criminal actors and 5.67 for resilience.

⁴ Global Organized Crime Index 2025, Guinea-Bissau, <https://ocindex.net/country/guinea-bissau>

⁵ Global Organized Crime Index 2025, Colombia-South Africa comparison, <https://ocindex.net/country/colombia/south-africa>

Central America at 6.32 and South America at 6.13. Put simply, South Africa's organised crime problem is exceptional even by comparison with regions facing some of the world's most entrenched criminal economies.

13. South Africa's high scores for arms trafficking and mafia-style groups (each at 8.0), in conjunction with an even higher score for extortion and protection racketeering (8.5), describe a criminal economy in which illicit firearms are used in gang warfare, syndicated extortion, robberies and contract killings (which has developed into a criminal market in its own right). By contrast, Costa Rica, another developing economy with high crime but a high resilience framework, has a relatively high aggregate criminality score of 5.9 with a score of 5.0 for arms trafficking and a considerably lower rate of violence compared with South Africa. Brazil, another democratic developing state, also scores highly across diverse criminal markets with an aggregate score of 7.07, including an arms trafficking score higher than South Africa's.⁶ Its level of resilience is also similar. However, it has a much lower homicide rate compared to South Africa.⁷ Ghana, another democratic African country with a relatively high criminality score at 5.77, including an arms trafficking score of 6.5,⁸ has an exceedingly low rate of reported murder,⁹ indicating how it is a comparable jurisdiction to South Africa, but one where violence does not characterise its criminal markets to the same degree. South Africa's neighbour, Botswana, has a considerably lower criminality score at 4.17, despite its proximity to South Africa. Its firearms' trafficking score is low at 3.0, and its murder rate is also correspondingly lower than that of South Africa.¹⁰
14. South Africa's levels of violence are another distinguishing feature of its criminal markets. The country's rate of murder, despite being a notable decline compared with recent years,¹¹ remains higher than other countries for which recent murder statistics are available with similar criminality scores, including Mexico and Colombia.¹² The country most directly comparable to South Africa in terms of criminality score and violence is Ecuador, which in recent years suffered a massive organised crime and violence problem. It is difficult to ascertain precisely how much of South Africa's violence is directly attributable to organised crime, as interpersonal violence remains a

⁶ Global Organized Crime Index 2025, Brazil country profile, <https://ocindex.net/country/brazil>

⁷ Recent estimates put Brazil's murder rate at just under 20, making it roughly half that of South Africa, InSight Crime, 2025 homicide rates in Latin America, <https://insightcrime.org/news/insight-crime-2025-homicide-round-up/>

⁸ Global Organized Crime Index 2025, Ghana country profile, <https://ocindex.net/country/ghana>

⁹ Reliable estimates are difficult to find, but those that exist put Ghana's murder rate at 1.85 per 100 000, World Stats, Ghana crime rate & safety, <https://worldstats.io/crime/gh>

¹⁰ Global Organized Crime Index 2025, Botswana country profile, <https://ocindex.net/country/botswana>; Botswana's murder rate sits between 11-12 per 100 000 according to World Stats, Botswana crime & safety, <https://worldstats.io/crime/bw>

¹¹ The murder rate in SA is most recently assessed to be 36.6 per 100 000: GroundUp, SA murder rate edges down, 29 May 2026, <https://groundup.org.za/article/sa-murder-rate-edges-down/>

¹² The most recent estimates are 17 for Mexico and 25 for Colombia per 100 000 respectively, although some experts have questioned Mexico's processes Mexico News Daily, Mexico's homicide rate dropped 30% in 2025, preliminary data shows, 8 January 2026, <https://mexiconewsdaily.com/news/mexico-homicide-rate-2026/>

big issue in the country. However, we can say with certainty that extreme levels of violence characterise many of its most prolific markets, notably the drug trade, extortion and protection racketeering, and non-renewable resource crimes like illegal mining. We also see pronounced levels of violence present in localities assessed to have high street gang presence, like Gqeberha and Cape Town.¹³

15. South African organised crime has embedded itself through two distinct but related dynamics. First, it has secured a foothold within the state by cultivating symbiotic relationships with corrupt public officials. Prominent examples include police officers implicated in supplying firearms to criminal gangs or participating in racketeering arrangements involving the taxi industry. Second, organised crime exploits state failure to consolidate its influence: where the state cannot provide adequate security and essential services, poor communities often become dependent on criminal gangs for alternative forms of protection and welfare, allowing the gangs to entrench territorial control through systems of patronage. These two dynamics converge in the rise of organised extortion syndicates targeting public infrastructure. Here, criminal groups deliberately cripple public utilities to create, and then profit from, the resulting public demand for the provision of essential services. In a seminal report on organised extortion networks in Gauteng, GI-TOC documented how criminal syndicates vandalise municipal water infrastructure to create artificial scarcity, forcing local governments to hire private contractors on an emergency basis to truck in water. Through the influence of corrupt municipal officials, the multi-million-rand emergency contracts are then awarded back to the very criminal networks responsible for the sabotage.¹⁴
16. These patterns reflect a broader feature that South Africa shares with many of the countries at the top of the Index: the most serious organised crime environments are frequently characterised by higher concentrations of criminal actors within and across state institutions. South Africa itself scores 8 out of 10 for state-embedded criminal actors. And one the key finding of the Index globally is that state-embedded actors are not only the most influential criminal actor type but also the criminality indicator that shows the strongest negative correlation with resilience. Reducing the extent of their influence therefore acts as a proxy for the overall reduction of organised crime.

¹³ Gqeberha and Cape Town have current rates of 119 and 69 murders per 100 000 people respectively by some estimates. Gqeberha's numbers are alarming and, by the estimates of the Mexican Council for Public Security and Criminal Justice (Consejo Ciudadano para la Seguridad Pública y la Justicia Penal, A.C.), rank it third in the world in terms of homicide per capita.

¹⁴ Jenni Irish-Qhobosheane, *Calling the shots: The strong arm of extortion in Gauteng*, October 2024, <https://globalinitiative.net/analysis/calling-the-shots-the-strong-arm-of-extortion-in-gauteng/>

PROBLEM STATEMENT

17. Organised criminal infiltration represents a continuing relationship between an organised criminal group and the exercise of public power within the criminal justice system.¹⁵ Criminal infiltration should be distinguished from isolated acts of corruption. An official who accepts gratification in exchange for taking an unlawful decision may commit the offence of corruption without entering a continuing relationship with an organised criminal group. The conduct would cross the threshold into infiltration only if the official provided recurring protection, information, resources or influence which enables the group to operate or avoid detection. A large number of corrupt acts may expose an institution to infiltration, but volume or frequency alone does not demonstrate that a criminal organisation is directing and benefitting from them.
18. South Africa's criminal justice system distributes responsibility among institutions with different constitutional and statutory mandates. Very few, if any, were designed on the foreseeable likelihood that criminal organisations would seek to infiltrate their ranks, or that the institutions would need to detect, resist and root out any such criminal penetration as a condition of their own integrity. The police service is the clearest example. The Interim Constitution, the final Constitution and the South African Police Service Act 68 of 1995 sought to replace the fragmented and oppressive police institutions of apartheid with a single, demilitarised national service subject to a new Bill of Rights and the aspirational goal of transforming relations between its members and the communities traumatised by police brutality.¹⁶
19. The threat posed by organised crime was not absent from the policy debate in the early years of democracy. The preamble to the Prevention of Organised Crime Act 121 of 1998 ("POCA") expressly records Parliament's concern that existing common law and statutory measures were inadequate to deal with organised crime, money laundering and criminal gang activities. The perceived causes of that threat nevertheless centred on the proliferation of street gangs, weak border controls, transnational syndicates engaged in drug trafficking and arms smuggling, and the illicit financial flows arising from an increasingly globalised criminal economy. What Parliament did not adequately recognise as a central policy concern was the more specific risk that the police, intelligence, and prosecutorial agencies tasked with enforcing those measures could

¹⁵ Article 2(a) of the United Nations Convention against Transnational Organized Crime ("UNTOC") 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 serious crime for a financial or other material benefit. The group need not possess formally defined roles, continuous membership or a developed hierarchy. Infiltration arises when a criminal group acquires influence or control over the exercise of public power such that decisions taken pursuant thereto are conditioned, on a continuing basis, by and in favour of the group's interests rather than the purpose for which the power was conferred. United Nations Convention against Transnational Organized Crime, arts 2(a), 2(c) and 5; Comparative Report, pp 5–7

¹⁶ Constitution of the Republic of South Africa, 1996, ss 199, 205–208; South African Police Service Act 68 of 1995; Comparative Report, pp 5–7.

themselves become vulnerable, not just to corruption, but to systemic penetration by organised criminal networks. The risk was peripheral to the prevailing threat assessment, which conceived organised crime chiefly as a malign, alien force confronting the state from outside.¹⁷

20. Several cases support the conclusion that South Africa's criminal justice system has been infiltrated by organised crime. I will deal with a few of the most egregious examples. One of the first and most prominent involved former National Commissioner of Police, Jackie Selebi, who was convicted of corruption in 2010.¹⁸ Bribes received from convicted drug trafficker Glenn Agliotti ensured high-level protection of Agliotti's operations and his syndicate members. This illustrates a simple, but very pertinent example of infiltration in that the corruption of a single official can have considerable impact and benefits for organised crime groups. While Selebi was convicted and this particular syndicate eventually dismantled, this represents an early case of infiltration and a model that has been replicated since.
21. In 2016, former SAPS Colonel Christiaan Prinsloo pleaded guilty in the Bellville Regional Court to charges arising from the systematic theft and sale of firearms held by the police for destruction.¹⁹ Prinsloo, then the Gauteng provincial commander responsible for Firearms, Liquor and Second-Hand Goods Control, admitted his involvement in an operation through which approximately 2,400 firearms were confirmed removed from police custody and supplied through intermediaries to criminal groups. It is likely that the number of firearms was actually much higher, possibly more than 9000.²⁰ Guns-to-gangs arrangements continued well after Prinsloo's conviction, in one case with even greater sophistication and collusion with the police. Systemic issues with the Central Firearms Registry left it open to manipulation, and this was taken advantage of by criminal elements seeking access to firearms. The investigation led by Col. Charl Kinnear led to the arrest of 15 serving members of the SAPS who were based at various Gauteng stations and officials at CFR.²¹ These were not just the issuing of firearms, but of firearm licenses.²² The recurring nature of the interactions and provision of resources (in this case, guns) and the systematic means of its operation distinguish it from ordinary corruption. In other words, this is a case of infiltration by criminal

¹⁷ Prevention of Organised Crime Act 121 of 1998, preamble and ss 2, 4–6 and 9; White Paper on Safety and Security, 1998.

¹⁸ Adriaan Basson, Selebi sentenced to 15 years, *Mail & Guardian*, 3 August 2010, <https://mg.co.za/news/south-africa/2010-08-03-selebi-sentenced-to-15-years/>

¹⁹ Mark Shaw, *Give us more guns: How South Africa's gangs were armed*, Cape Town, Jonathan Ball Publishers, 2021.

²⁰ Mark Shaw, *Give us more guns: How South Africa's gangs were armed*, Cape Town, Jonathan Ball Publishers, 2021, pp.16.

²¹ Risk Bulletin #15, Poor implementation of firearms legislation and corruption in South Africa's firearms registry has put guns in the hands of gangsters, January-February 2021, <https://riskbulletins.globalinitiative.net/esa-obs-015/04-poor-implementation-of-firearms-legislation.html>

²² Mark Shaw, *Give us more guns: How South Africa's gangs were armed*, Cape Town, Jonathan Ball Publishers, 2021.

elements, perhaps typified by the murder of Kinnear in 2020 while investigating this network.²³

22. The bail appeal judgment of the Western Cape High Court in *Adams and another v the State* in 2022 outlines evidence of a criminal gang, in this case the 28s street gang, having access to police senior management in the province and receiving protection and assistance from members of the police on a consistent basis.²⁴ GI-TOC's own research includes reports from field monitors that have identified police stations in Cape Town considered to have corrupt elements within them. This includes reports by affected community members of the unlawful elicitation of payments by police. A map of Cape Town, indicating these stations, is included in the report labelled "Annexure MS5".²⁵
23. Allegations of police links to the taxi industry have a long history and have been made across provinces. For instance, the Commission of Inquiry into the Minibus Taxi-Type Service Violence, Fatalities and Instability in the Gauteng Province ("Shongwe Commission") recorded that state-issued rifles and pistols had been used in incidents of taxi violence and that some of those weapons had previously been confiscated from suspects.²⁶ The Commission also received testimony that persons against whom confidential complaints had been lodged acquired knowledge of those complaints, which they used to threaten or intimidate complainants. It noted numerous cases where law enforcement officials had forewarned suspects about planned raids and roadblocks, enabling them to take precautions to avoid arrest. The Commission found that law enforcement agencies lacked an adequate system for identifying officers who held prohibited financial interests in the taxi industry, including interests concealed through third parties or proxies. It concluded that the fragmentation of law enforcement in Gauteng had reduced its effectiveness, increased lawlessness, and produced a prevailing sense of impunity. This centrally concerns ownership of taxis by police, something illegal under section 13 of the National Land Transport Act. Reiterating that volume or frequency do not on their own necessarily demonstrate infiltration, the closeness of police to an industry characterised by violence and proximity to illicit economies raises profound concerns. What begins as numerous instances of isolated corruption has the potential to crystallise into networks operating systemically.

²³ Risk Bulletin #15, Poor implementation of firearms legislation and corruption in South Africa's firearms registry has put guns in the hands of gangsters, January-February 2021, <https://riskbulletins.globalinitiative.net/esa-obs-015/04-poor-implementation-of-firearms-legislation.html>

²⁴ *Adams and another v S* [2022] ZAWCHC 201

²⁵ Global Initiative against Transnational Organized Crime, Western Cape Gang Monitor, Issue no. 7, December 2025.

²⁶ Commission of Inquiry into the Minibus Taxi-Type Service Violence, Fatalities and Instability in the Gauteng Province, *Report of the Commission of Inquiry into the Minibus Taxi-Type Service Violence, Fatalities and Instability in the Gauteng Province* (2021) (Chairperson: Justice Jeremiah Buti Shongwe), see in particular:

Part E, paras 4.1–4.2, 5.2–5.3, 5.11 and 6.1–6.4, pp 46–49, available at

https://cisp.cachefly.net/assets/articles/attachments/84583_final_report_of_the_commission_of_inquiry_into_the_minibus_taxi-type_service_violence_fatalities_and_instability_in_the_gauteng_province.pdf (accessed 31 August 2026).

24. Another example is provided by the ongoing violence and extortion directed at the Intercap bus company. A GI-TOC report noted allegations of impropriety in the relationship between police and the taxi industry. In the Eastern Cape and Western Cape, for example, the ongoing saga involving the Intercap bus company and the instances of violence and extortion it has faced at the taxi industry's behest also involves profound reluctance to intervene by SAPS.²⁷ An allegation documented in a GI-TOC report of high-ranking police officers owning taxis in the Eastern Cape provides possible motivation for inaction due to vested interests.²⁸ Recent cases in the Western Cape where officers were arrested point towards a systemised pattern that involves ownership of taxis.²⁹
25. In comparative terms, I consider South Africa to have developed a serious problem of contract killings consistent with the presence of high levels of organised crime.³⁰ Examining incidents reported in open-source platforms, GI-TOC recorded 2458 assassinations, attempts, and plots from 2000 to 2025. This is only a baseline measure, as many others are unreported or lack publicly available records. This year alone, there have been close to 30 incidents of politically motivated hits – this does not include other categories, like taxi-related and organised crime-related hits.³¹ Targets include state officials, councillors, investigators, and whistleblowers, among others. It bears reiterating that a witness for this Commission was murdered in this fashion, and the accused in that case is a former elite police officer.³² What is very concerning is how police investigations seldom go beyond the hitmen. The networks behind these killings are most often not dismantled. These types of killings pose severe threats to constitutional democracy, as no criminal justice system committed to the rule of law can function when such danger is present to those people necessary for the performance of those functions.
26. Earlier official material provides a wider context of the state responses, or lack thereof, that led us here. The 2006 Khampepe Commission examined the location and mandate of the Directorate of Special Operations. It recommended adjustments to the DSO but

²⁷ Michael McLaggan, *Troubled highways: Crime and conflict in South Africa's long-distance transport industry*, July 2024, <https://globalinitiative.net/wp-content/uploads/2024/07/Michael-McLaggan-Troubled-highways-Crime-and-conflict-in-SAs-long-distance-transport-industry-GI-TOC-July-2024.v2.pdf>

²⁸ Michael McLaggan, *Troubled highways: Crime and conflict in South Africa's long-distance transport industry*, July 2024, <https://globalinitiative.net/wp-content/uploads/2024/07/Michael-McLaggan-Troubled-highways-Crime-and-conflict-in-SAs-long-distance-transport-industry-GI-TOC-July-2024.v2.pdf>

²⁹ Newsday, 20 South Africa police members criminally charged over involvement in the taxi industry, 13 June 2026, <https://newsday.co.za/south-africa/19365/20-south-africa-police-members-criminally-charged-over-involvement-in-taxi-industry/>

³⁰ Mark Shaw, *Hitmen for hire: Exposing South Africa's underworld*, Cape Town, Jonathan Ball Publishers, 2017.

³¹ Ballots and bullets: Targeted killings and the toxic politics of South Africa's 2026 local government elections, forthcoming 2026.

³² Khanyisile Ngcobo, Whistleblower murder suspect is former elite officer, South African police say, BBC, 16 March 2026, <https://www.bbc.com/news/articles/czr05nz3dp8o>

ultimately decided that it should be retained within the NPA.³³ Despite apparent acceptance at the time, political attitudes swiftly changed, favouring the Directorate's disbandment. The approach taken, against the Khampepe Commission's recommendation, had far-reaching consequences for the ability to fight organised crime and corruption - ones being felt now almost 20 years after the fact.

27. The High Level Review Panel on the State Security Agency and the Judicial Commission of Inquiry into Allegations of State Capture ("the Zondo Commission") recorded failures of intelligence governance, appointments, procurement and accountability. The judgments in *Glenister*, *Helen Suzman Foundation*, *McBride* and the litigation concerning the appointment of Lieutenant General Berning Ntlemeza examined the legal safeguards governing specialist investigators and police oversight. Reports by the Auditor General, the Public Protector and parliamentary committees have separately recorded failures of internal control, delayed consequence management and failure to comply with remedial measures.³⁴
28. The picture of organised criminality described above points to a dense network of diverse but interlocking criminal markets, protected by state-embedded actors and regulated by extreme levels of violence that coincide with the proliferation of illegal firearms and the progressive weakening of law enforcement capacity. It is a picture corroborated by evidence that has emerged over the past decade from judicial proceedings, commissions of inquiry, and the work of civil society organisations – and amplified more recently by the efforts of this Commission. In GI-TOC's view, the cumulative weight of that evidence puts it beyond doubt that organised crime in South Africa is not merely a serious external threat to the criminal justice system, but a fundamental threat to constitutional democracy emanating from within the very institutions tasked with its suppression.
29. To recall, the 2025 Index ranks South Africa seventh of 193 countries for criminality, second of 54 countries in Africa and first of 13 countries in Southern Africa. However, if you consider only those states considered democracies, albeit in some cases flawed, in the top 7 (with the DRC and Myanmar excluded), South Africa would rank fifth for criminality among the constitutional democracies covered by the Index (only Colombia, Mexico, Ecuador and Paraguay score higher on criminality). What this means is that South Africa has the highest level of criminality among non-Latin American

³³ Government of the Republic of South Africa, Report on the Khampepe Commission of Inquiry, 29 June 2006, <https://www.gov.za/news/report-khampepe-commission-inquiry-29-jun-2006>

³⁴ Khampepe Commission of Inquiry, Final Report (February 2006); High Level Review Panel on the State Security Agency, Report (December 2018); Judicial Commission of Inquiry into Allegations of State Capture, Reports (2022); *Glenister v President of the Republic of South Africa* 2011 (3) SA 347 (CC); *Helen Suzman Foundation v President of the Republic of South Africa* 2015 (2) SA 1 (CC); *McBride v Minister of Police* 2016 (2) SACR 585 (CC); *Ntlemeza v Helen Suzman Foundation and Another* (402/2017) [2017] ZASCA 93.

democracies in the world. The substantial criminal presence within its state institutions (a state-embedded actors score of 8.0), compounded by the inability of law enforcement to investigate and prosecute that presence (a law enforcement resilience score of 4.5), or to protect the persons whose evidence may expose it (a victim and witness support resilience score of 4.0), underscores that organised crime poses a grave and unprecedented threat to the foundation of South Africa's constitutional order.

SEVEN COMPARATIVE PRINCIPLES

30. On 13 and 14 July 2026, GI-TOC convened a two-day expert dialogue through its global network and in consultation with the Commission. The dialogue's primary purpose was to identify practical lessons and promising reforms that could inform the Commission's recommendations for strengthening integrity and accountability across South Africa's criminal justice system. The meeting brought together practitioners and experts from Italy, Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong SAR), Colombia, Guatemala, Mexico, Brazil, Argentina and Albania – all of them foreign jurisdictions in which organised criminal networks had infiltrated criminal justice institutions. While Georgia did not participate in the dialogue, it was included during the subsequent research for the Comparative Report because aspects of its interventions against organised crime were relevant to the principles discussed below. Among the experts was an ex-Secretary General of Interpol. The contributors described the nature and extent of that infiltration, the reforms adopted in response, and the factors that shaped the success or failure of those reforms.
31. The Comparative Report provides a fuller account of that material and the evidence supporting its findings. The remainder of this statement proceeds in three parts. The first sets out the seven comparative principles distilled from a review of the foreign reforms. Each principle states a recurring vulnerability that organised criminal groups have exploited to infiltrate criminal justice institutions; the paragraphs that follow contain a brief discussion of selected reforms which illustrate how particular foreign jurisdictions sought to address that vulnerability. The focus then shifts to South Africa. In the second part, I canvass a number of short-term interventions that should receive immediate priority in South Africa, both to reduce present exposure within the criminal justice system and to prepare the ground for further reform. Finally, in the third part, I consider a set of legislative and policy interventions that require more extensive design and strategic planning, and which therefore ought to be implemented over the longer term. The distinction between the second and third parts is intended to reflect both the order of priority and the practical sequence in which the proposed reforms should be adopted by the relevant functionaries and law-making bodies.

Principle 1: Criminal organisations are resilient to laws and measures that disregard their collective character and continuity

32. The United Nations Convention against Transnational Organized Crime (“UNTOC”), adopted in 2000, established the international benchmark against which the adequacy of domestic legislative responses to organised crime's transnational reach came to be measured at the turn of the century. While UNTOC sets the minimum standards required of domestic legislation against organised crime, several of the foreign jurisdictions reviewed for the Comparative Report resolved to enact laws that exceed those minimum standards on account of the heightened threats and harms posed by organised criminal groups within their borders.
33. Principle 1 responds to one such vulnerability. Laws that target wrongdoers in virtue of their individual conduct are largely ineffective against organised criminal groups. Groups have properties – including shared goals, collective knowledge, and perpetual existence – that transcend any single member. They can divide up their labour, ring-fence their functions, and arrange themselves in a hierarchical yet flexible fashion in order to ensure that the conviction of one or more members does nothing to disrupt the organisation’s capacity to pursue its criminal ends. The measures under this principle respond to that resilience by attaching legal consequences to a person’s relationship with the group itself - participation in, leadership of, or material support for a criminal organisation, and reliable indicators of continuing involvement in it, such as unexplained disproportionate wealth or criminal command maintained from custody - rather than requiring proof in every case of an individual predicate offence.³⁵
34. Italy’s mafia organisations traded violent control of territory for access to political office, public contracts and protection within the criminal justice system. The previous offence of criminal association under Article 416 of the Penal Code captured neither the specific means by which a mafia organisation exercised that authority (intimidation, subjection and the code of silence) nor the organisation’s wider system of protection in the lawful economy. To address this, Parliament enacted Article 416-bis of the Italian Penal Code which criminalises participation in a mafia-type association whose members use the intimidating force of the association, and the resulting conditions of subjection and silence, to commit offences, control economic activities or public contracts, obtain unlawful advantages or influence voting. Italian courts later extended liability to an outsider who is not a member of the association, but who consciously makes a contribution that materially preserves or strengthens it. The policy-driven extension was intended to broaden the ambit of an existing rule to encompass public officials or

³⁵ Comparative Report, section 4.1, pp 8–18, including the discussion of Italian Penal Code art 416-bis, Brazil Law No. 15.358 of 24 March 2026, Hong Kong Prevention of Bribery Ordinance, Cap. 201, s 10, and Italian Prison Administration Act, Law No. 354 of 26 July 1975, art 41-bis.

business intermediaries who provide protection or support, while dispensing with the requirement to prove membership.

35. Brazil's Law No. 15.358 of 24 March 2026 goes beyond the minimum participation offence required by Article 5 of UNTOC. It was enacted in response to the growth of police-led militias in Rio de Janeiro, territorial criminal organisations formed by serving and former police officers, that took control of transport, utilities and property markets and used that economic base to influence local elections and secure police forbearance. The statute criminalises joining, promoting or supporting an "ultra-violent organisation" that uses violence or serious threats to control a territory or economic activity, intimidate public authorities, obstruct police operations or attack essential services. The offences are classified as heinous and are ineligible for amnesty, pardon, bail and parole. The penalty increases by two-thirds to double where a public official participates and the organisation exploits that position, or where the organisation infiltrates the public sector or involves itself in the administration of public services or government contracts.
36. Hong Kong SAR's Prevention of Bribery Ordinance addresses a different aspect of the same problem: the accumulation of wealth by a corrupt official whose specific receipts cannot be traced to specific decisions. Before the 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. Section 10 of the Ordinance makes it an offence for a prescribed officer to control resources or maintain a standard of living disproportionate to official emoluments, unless the officer provides a satisfactory explanation. The prosecution must first prove the objective disparity beyond reasonable doubt; the officer then bears the burden of providing the explanation on a balance of probabilities. The offence allows the state to prosecute a corrupt officer who accumulated wealth far beyond what his salary could support, without tracing a specific bribe to a specific decision.
37. Italy's Article 41-bis prison regime is directed at the continuing exercise of criminal authority from custody. The ordinary penitentiary law of 1975 permitted prisoners to work, study, associate with other inmates and receive family visits and letters. Mafia leaders exploited those channels to resume command and control from inside prison. The assassination of Judge Giovanni Falcone by Cosa Nostra in May 1992 was widely regarded as a turning point that created the political urgency to address this vulnerability. Parliament amended the law to authorise the Minister of Justice to restrict the association, visits, correspondence and other communications of a prisoner who retains the capacity to maintain links with a mafia association. The order is subject to judicial

review, and each restriction must retain a connection to the purpose of interrupting those links. The regime has remained in force for more than three decades.

Principle 2: Infiltration may leave a public institution formally intact but incapable of self-correcting and restoring integrity

38. 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 confer a measure of structural independence on a body with a clearly defined mandate does not entail that its operational independence is similarly protected and secured. The measures examined under this principle address the question of operational independence or autonomy: whether the institution controls the staff, funds, information and cases on which the fulfilment of its mandate depends.³⁶
39. Hong Kong established the Independent Commission Against Corruption (“ICAC”) in 1974, after syndicated police corruption had made the police’s own anti-corruption branch incapable of investigating the force it belonged to. Triad societies controlled the colony’s gambling, vice and drug markets. Police officers collected regular protection payments from those markets and distributed the proceeds upward through district hierarchies, with senior officers protecting the system. The ICAC was placed outside the police command structure. The Commissioner controls the Commission’s personnel, discipline, administration and investigations, and its expenses are charged directly to general revenue. Its Operations Department conducts investigations; a separate Corruption Prevention Department examines administrative systems for weaknesses that invite corruption; and a Community Relations Department receives information from the public. The Department of Justice retains the decision to prosecute. The ICAC is structurally independent of the police, although section 5 of the ICAC Ordinance subjects the Commissioner to the orders and control of the Chief Executive - a limitation discussed under Principle 6 below.
40. 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. Parliament amended the Constitution in July 2016 to establish the Special Structure against Corruption and

³⁶ Comparative Report, section 4.2, pp 19–26, including the discussion of Hong Kong Independent Commission Against Corruption Ordinance, Cap. 204, and Albania Constitution arts 148 and 148/dh and Law No. 95/2016.

Organised Crime (“SPAK”), comprising a Special Prosecution Office and a National Bureau of Investigation. Articles 148 and 148/dh of the Constitution separate the Special Prosecution Office from the Prosecutor General and provide protected terms for its prosecutors. Law No. 95/2016 vests the Office with exclusive jurisdiction over specified corruption and organised crime offences, assigns the Bureau’s investigators to work under the direction of the special prosecutor responsible for the case, and provides for SPAK’s appropriation in a separate chapter of the state budget. The Chief Special Prosecutor controls administration and case allocation but has no power to take over or redirect an individual prosecutor's case. Despite successes, the constitutional design has not prevented shortages of staff, specialist skills and infrastructure that the European Commission has recorded in successive reports.

Principle 3: Criminal infiltration may consolidate separate instances of institutional misconduct into a pattern organised around the advancement of common criminal interests

41. Criminal infiltration produces a pattern of institutional misconduct that is distinct from opportunistic corruption. Where a 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 nature of the resulting pattern is characterised not merely by the recurrence of misconduct but by its direction and purpose: officials, who need not be aware of each other, may perform discrete acts of wrongdoing that solidify into a collective practice because each act protects or advances the same criminal interests. Where the pattern is confined to identifiable individuals, ordinary disciplinary and criminal proceedings may suffice. But where the pattern extends across leadership, ranks or functions, and the persons responsible for consequence management are part of the same compromised arrangement, a wider intervention may be required. The measures examined under this principle range from a one-off reassessment of incumbents to the abolition and replacement of the institution itself.³⁷
42. Albania’s 2016 justice reform mandated the transitional reassessment of every serving judge and prosecutor, in response to a specific problem: the new anti-corruption institutions created by the reform could not operate effectively if their cases remained subject to judges and prosecutors whose assets, professional records and criminal associations had never been credibly scrutinised. Law No. 84/2016 required all serving judges and prosecutors - including members of the Constitutional Court, the High Court and the Prosecutor General - to undergo a one-off assessment by an Independent Qualification Commission. The Commission examined three concerns: the legality of the office-holder’s assets; whether the person had inappropriate contact with persons

³⁷ Comparative Report, section 4.3, pp 27–34, including Albania Law No. 84/2016 and Colombia Decree Law No. 4057 of 31 October 2011.

involved in organised crime; and whether the functionary possessed the requisite professional competence.

43. The Commission could confirm the incumbent in office, dismiss them, or impose one year of remedial training. Each person received notice of adverse material, an opportunity to adduce evidence, a hearing and a reasoned decision, along with a right of appeal to the Appeal Chamber. 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. Albania later attempted to extend the same model to the State Police, but narrowed the programme from the whole service to specified senior and high-risk posts after implementation difficulties. The European Commission reported in 2025 that both transitional and periodic police vetting were continuing but that their impact remained limited.
44. In 2025, Mexico adopted a unified integrity framework to disrupt cartel infiltration and strengthen vetting across fragmented agencies within the criminal justice system. The new General Law³⁸ applies a common national certification framework to police officers, prosecutors, forensic staff, and prison officials at all three levels of government. To obtain certification, officials must pass a competence assessment and a separate confidence-control evaluation. The latter screens for risk factors that could compromise police, prosecutorial, forensic, or penitentiary work, including substance abuse, unexplained wealth, links with a criminal organisation, pending criminal proceedings, and previous dismissal from public office. Candidates must pass the confidence-control evaluation as a prerequisite for joining a security agency. Active personnel must undergo periodic integrity reassessment to renew their certification, which is a requirement to remain in service, secure promotions, or access specialist training. Officers who fail the confidence-control test are liable to “separation from service” (i.e. non-disciplinary termination) and may not thereafter be reinstated by a court, even if the separation is subsequently found to have been unjustified. Finally, each official’s certification and periodic integrity-reassessment status must be entered in a national register, thereby preventing the re-employment of dismissed personnel across institutions and jurisdictions, while any person who appoints or registers an uncertified official incurs criminal liability.
45. Colombia’s response to the infiltration of its Administrative Department of Security (“DAS”) illustrates the most disruptive of the interventions under this principle. The DAS was a civilian agency that reported directly to the President and combined functions that most jurisdictions distribute across separate bodies: intelligence,

³⁸ Mexico, *Ley General del Sistema Nacional de Seguridad Pública*, published in the *Diario Oficial de la Federación*, 16 July 2025, arts 78–82, 86–94, 100–105 and 145.

counterintelligence, criminal investigation, immigration control, criminal-records management and protective security. However, its powers were abused by its leadership and subverted for political purposes, including spying on journalists, activists and members of the opposition. The systemic nature of the infiltration meant that replacing its leaders would not suffice. A complete reordering was necessary, with the body's powers being distributed across different agencies.

Principle 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

46. Criminal organisations operate across the boundaries that divide state agencies - territorial, functional and jurisdictional. A single trafficking network may run drugs through one province, launder the proceeds through companies in another, and corrupt officials in a third. The police, prosecution, and intelligence agencies that hold pieces of that picture are separated by statute, geography and institutional culture. None see the totality. Since concentrating intelligence in a single body would solve that fragmentation, it gives rise to a different vulnerability: a compromised official in a central agency could suppress, alter or leak information across multiple investigations at once. The measures examined under this principle seek to overcome fragmentation without recreating that vulnerability.³⁹
47. Before 1991, Italy's prosecutors were generalist magistrates assigned to local tribunal offices whose jurisdiction covered a single town or small district. Consequently, a single mafia organisation could conduct different criminal activities in separate towns to ensure that each activity fell within the jurisdiction of a different local prosecutor. There was no system for connecting such criminal cases. Decree-Law No. 367 of 20 November 1991 restructured the system in two respects. First, it assigned investigations of listed mafia offences to the prosecutor's office at the tribunal in the capital city of each court-of-appeal district (26 offices in total) rather than to the hundreds of local tribunal prosecutors. Second, it required each of those offices to constitute a District Anti-Mafia Directorate ("DDA"), staffed by prosecutors selected for aptitude and experience in mafia cases.
48. The same decree established a national coordinating body: the National Anti-Mafia Directorate, headed by a National Anti-Mafia Prosecutor. The National Prosecutor is not the hierarchical superior of the district prosecutors. Her function is to coordinate. She may obtain and analyse information from any district office, convene district prosecutors, issue directions to secure effective coordination, and regulate the

³⁹ Comparative Report, section 4.4, pp 35–41, including Italian Code of Criminal Procedure arts 51(3-bis) and 371-bis, Colombia Decrees No. 4057 and 4179 of 2011, and Statutory Law 1621 of 2013.

investigative use of the Anti-Mafia Investigation Directorate (“DIA”) in tandem with the police services. Each district prosecutor retains control over the docket, the prosecutorial decisions and the conduct of proceedings in court. The National Prosecutor may assume an investigation only through a defined statutory procedure and only where a district prosecutor is inactive or has repeatedly failed to perform coordination duties. The coordination system rests on two linked databases, SIDNA and SIDDA, which consolidate case material from all 26 districts into a shared record accessible directly to the National Prosecutor. The visibility of related material across districts makes it harder for a local official to isolate or suppress a case without the connection being noticed.

49. The DIA is a separate, multi-force body that collects preventive intelligence on the structure, connections and operational methods of criminal organisations, and conducts criminal investigations of mafia-type association offences. When DIA officers conduct a criminal investigation, they act under the direction of the district prosecutor who leads that case. The investigative body and the prosecuting authority remain legally distinct: the executive appoints and administers the DIA, but independent magistrates control the investigation and the use of its investigative powers in any given case. The DIA cannot open, close, redirect or suppress a criminal investigation on its own authority. The design reduces the risk that a compromised investigative body can obstruct a criminal proceeding, although it does not eliminate the risk of a compromised DIA official accessing or leaking intelligence, since the DIA retains both intelligence and investigative functions within a single institution.
50. Colombia separated strategic intelligence from criminal investigation after the abolition of the DAS, as mentioned above under Principle 3. Decree No. 4179 of 3 November 2011 created the National Intelligence Directorate (“DNI”) as a civilian body authorised to produce strategic intelligence and counterintelligence concerning threats which include organised crime, drug trafficking, money laundering and attacks on public administration. The DNI has no judicial police (i.e. criminal investigative) powers. Criminal investigation falls under the Office of the Attorney General. Statutory Law 1621 of 2013 also requires internal data protection controls and establishes a congressional commission to receive classified reports from intelligence agencies. The arrangement limits the concentration of intelligence and investigation in one body, though its integrity still depends on lawful information sharing between institutions.

Principle 5: Infiltration may make compliance with law and public duty privately irrational

51. A criminal organisation that has infiltrated an institution can inflict serious harm on witnesses, investigators, prosecutors and other criminal justice officials, through dismissal, violence, or retaliation against them or their families. If the state cannot adequately protect the people on whom successful investigations and prosecutions

depend, the personal cost of cooperating with law enforcement may become so high that silence or complicity is the more rational choice. The measures examined under this principle seek to correct that imbalance, so that upholding the law and protecting the administration of justice becomes the rational choice for those at risk, not merely their legal and moral duty.⁴⁰

52. Italy enacted its statutory protection programme for collaborators of justice in 1991, in response to the experience of protecting mafia informants on an ad hoc basis during the previous decade. A central commission determines admission after considering whether cooperation exposes the applicant to grave and current danger, whether ordinary police measures are inadequate to meet it, and the value and credibility of the evidence offered. Admitted collaborators may receive guards, secure accommodation, relocation, financial assistance and support for social reintegration. Law No. 6 of 11 January 2018 created a separate programme for witnesses of justice: persons who are not members of the criminal organisation, have not been convicted of intentional offences connected to the matters on which they testify, and have not profited from their relationship with the criminal context. A witness of justice admitted to the programme may receive physical protection and an allowance calculated to preserve the financial position they held before testifying.
53. Brazil's Law No. 12.694 of 24 July 2012 was enacted one year after the murder of Judge Patrícia Acioli, which was masterminded by a military police lieutenant-colonel who was under investigation by Acioli for executions and corruption. The law authorises a judge presiding over a proceeding involving organised crime to convene a panel of three judges for the purposes of granting specific orders. Every judge's signature appears on the published version of the decision, although the identity of any dissenting opinion is not disclosed. The law also permits protective measures for judges and prosecutors whose functions expose them to risk. Subsequent legislation created an offence that criminalises making or ordering threats of violence against public officials, lawyers, jurors, witnesses, collaborators or experts, with the intent of impeding or retaliating against proceedings or investigations involving organised crime.

Principle 6: An anti-organised crime institution that lacks structural independence is liable to future dissolution or disbandment through the exercise of lawful powers by corrupt or compromised officials

54. The existence and operational independence of an anti-organised crime body depend on the degree of its structural independence from other branches of government. Criminal

⁴⁰ Comparative Report, section 4.5, pp 42–47, including Italy Decree Law No. 8 of 15 January 1991 and Brazil Law No. 12.694 of 24 July 2012.

organisations may induce political officials to use ordinary legislative or executive powers to dissolve or disable such a body without acting unlawfully.⁴¹

55. Albania entrenched the structural independence of SPAK in its Constitution. Article 148 establishes the Special Prosecution Office as independent from the Prosecutor General, excluding the Office's administration and budget from the Prosecutor General's authority. The High Prosecutorial Council elects the Chief Special Prosecutor from the ranks of special prosecutors for a non-renewable term of three years. Special prosecutors serve single nine-year terms and may be removed only on the grounds of criminal or serious disciplinary misconduct by a two-thirds majority of the Council. Accordingly, the abolition of SPAK, or the alteration of the conditions of its independence, would require a constitutional amendment – a process that itself requires a two-thirds majority of all members of the Assembly, together with a public hearing before the Albanian Constitutional Court.⁴²
56. Guatemala's International Commission against Impunity ("CICIG") illustrates the opposite outcome. CICIG was established by an agreement between Guatemala and the United Nations, ratified by Congress in 2007, to investigate and support the dismantling of illegal security groups and clandestine security organisations linked to public officials. Article 14 of the agreement provided for an initial two-year term, which was renewable only by written agreement between Guatemala and the United Nations. The Commission's mandate was renewed five times. During each agreed term, CICIG possessed functional independence: among others, the United Nations Secretary-General appointed its Commissioner, and domestic authorities were prohibited from dismissing or interfering with its investigators or files. However, in August 2018, President Jimmy Morales announced that the government would not seek a further renewal of the CICIG agreement. CICIG closed on 3 September 2019, when the existing mandate expired.⁴³

Principle 7: Infiltration may remain concealed where no independent oversight body examines the state's response as a whole

57. Where no institution has a mandate to review the formulation and implementation of organised crime and anti-corruption policy across the full range of criminal justice institutions, gaps, failures, and criminal influence over operations are identified late, in fragments, or not at all. Bodies that address this vulnerability are those with an independent mandate to advise on high-level operational and strategic policy, monitor

⁴¹ Comparative Report, section 4.6, pp 48–52, including Albania Constitution arts 148 and 148/dh and the Agreement between the United Nations and Guatemala establishing CICIG, art 14.

⁴² Albania, Constitution, arts 148, 148/dh; Comparative Report, section 4.6.1, pp 48–49.

⁴³ Agreement between the United Nations and Guatemala establishing CICIG, art 14; Congress of Guatemala, Decree No. 35-2007; Comparative Report, section 4.6.2, pp 49–50.

the implementation thereof, and exercise oversight over all police, prosecution, intelligence, and correctional institutions on behalf of civil society and the wider public.⁴⁴

58. Italy's Parliamentary Anti-Mafia Commission, established by Law No. 22 of 2 March 2023 for the duration of the current legislature, is a bicameral body of 50 members drawn equally from the Senate and the Chamber of Deputies. It reviews and monitors the implementation of anti-mafia laws, witness and collaborator protection programmes, special prison regimes, investigative resources, intelligence systems, and the dissolution of municipalities infiltrated by mafia groups, and investigates links between mafia organisations and politicians, public servants, and electoral activity. Subject to certain conditions, the Commission is vested with the same powers as a judicial authority: it may order the production of confidential documents, compel witnesses, and conduct its own inquiries. It does not direct criminal investigations or prosecutions, and its proposals for legislative or administrative reform do not bind the executive. Its value lies in its capacity to assemble evidence held separately across institutions and test whether legislation and policy are actually working. It is constrained mainly by its parliamentary character, since a new Commission must be reconstituted for each successive legislature, and its processes are exposed to party politics.⁴⁵
59. Brazil's National Council for Public Security and Social Defence⁴⁶ combines policy advice and institutional monitoring in a single standing body. Its membership spans federal, state and municipal security bodies, the judiciary, the prosecution, the Public Defender's Office, the Bar Association, and civil society. It has both advisory and oversight functions, reviewing national security policy, institutional performance, and progress against interstate and transnational organised crime. The Council's oversight capacity over the executive is nonetheless limited by the fact that its chair is the Minister of Justice and Public Security, and its vice-chair is the Ministry's own Secretary-Executive who also runs the Council's administrative support.⁴⁷

IMPLICATIONS FOR SOUTH AFRICA

60. The largest South African lacuna concerns the independence of specialist anti-corruption and organised crime capacity. The Hawks are located within SAPS, and their personnel, administration and appropriation remain subject to the rules governing the police service. IDAC has permanent statutory status and its own investigators, but forms

⁴⁴ Comparative Report, section 4.7, pp 53–56, including Italy Law No. 22 of 2023 and the legislation governing Brazil's National Council for Public Security and Social Defence.

⁴⁵ Italy, Law No. 22 of 2 March 2023; Constitution of Italy, art 82; Comparative Report, section 4.7.1, pp 53–54.

⁴⁶ Established by Law No. 13.675 of 11 June 2018.

⁴⁷ Brazil, Law No. 13.675 of 11 June 2018, arts 18–21, 26–32; Decree No. 9.489 of 30 August 2018, arts 35–41; Comparative Report, section 4.7.2, pp 54–55.

part of the NPA and remains severely under-capacitated, particularly in relation to investigators, having experienced significant difficulty recruiting the permanent investigative and technical capacity required by its mandate. IPID is institutionally separate from SAPS, receives a separate parliamentary appropriation and is now expressly required by statute to act with institutional and operational independence. The Minister nevertheless appoints the panel that identifies candidates for Executive Director, and selects the nominee submitted to the relevant parliamentary committee. IPID also depends on the NPA and the relevant police authority to enforce the prosecutorial and disciplinary consequences of its findings. Not only do the mandates of these bodies arguably overlap without a binding inter-agency rule or directive to resolve the allocation of sensitive cases, but none is entrenched in the Constitution – each therefore remains reversible, or liable to encumbrance, by the same ordinary Parliamentary majority that established it through legislation.

61. South Africa also lacks an extraordinary procedure for reassessing all incumbents in an institution where there is evidence that its personnel have been compromised on a large scale. The current SAPS and NPA programmes apply to selected senior or high-risk officials; neither requires that all incumbents in a compromised unit or task team should be assessed on integrity criteria to qualify afresh. The South African Police Service Amendment Bill, now before Parliament's Portfolio Committee on Police, would insert a new section 28A into the SAPS Act to strengthen screening for new appointees and introduce lifestyle audits for serving officers 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. Their long-term utility 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.
62. A further concern lies in the fragmentation of intelligence functions across the criminal justice institutions. The Fusion Centre, established in May 2020 by the Anti-Corruption Task Team and the National Priority Committee on Organised Crime, and hosted at the FIC, brings together the NPA, the Hawks, the SAPS Detective Service, IPID, the SIU, SARS, and the SSA. Initially set up to address COVID-19-related procurement corruption, its mandate was expanded in 2023 to cover organised crime, money laundering, fraud, maladministration and other serious financial crimes. It functions as a collaborative hub to pool information and fast-track investigations. However, it operates on a model of voluntary inter-agency cooperation and has no independent statutory powers to override individual agency mandates, force participation, or legally reallocate a case from one entity to another.

63. In terms of performance oversight and policy monitoring, the Civilian Secretariat for Police Service (“CSPS”) is empowered to access police records and monitor the SAPS, though its oversight mandate is strictly confined to the national and provincial police services, excluding municipal or metro police forces. The Portfolio Committee on Police oversees SAPS and the CSPS; the Portfolio Committee on Justice and Constitutional Development oversees the NPA, while the separate Portfolio Committee on Correctional Services oversees prisons; the Joint Standing Committee on Intelligence (“JSCI”) oversees state intelligence. There is no single, unified, standing body tasked with monitoring the macro-level implementation of organised crime policy end-to-end, from the gathering of intelligence, through policing and prosecution, to ultimate incarceration.
64. South Africa’s substantive law and correctional framework contain narrower but noteworthy gaps. POCA criminalises participation in and management of a racketeering enterprise, as well as certain conduct associated with a criminal gang that promotes or contributes to “a pattern of gang activity”. In practice, these provisions have proved so difficult to establish as freestanding, umbrella offences that their prosecutorial utility has been limited. Unlike the Latin American countries, whose organised crime laws have been shaped by a brutal and protracted continental campaign against ruthless drug cartels, POCA does not contain an aggravated offence targeting the infiltration of the public sector by an ultra-violent or harmful criminal organisation.
65. South Africa also lacks legal mechanisms in respect of unexplained wealth. There is currently no law that provides for the civil forfeiture or confiscation of property owned or controlled by a public official where its value is disproportionate to the lawful income disclosed by that official under a mandatory vetting or integrity programme. There is also no statutory provision that establishes a substantive criminal offence for unexplained wealth more generally, enforceable against public officials and leaders of organised crime syndicates alike. In the absence of either, South Africa appears to lag behind several other democratic countries that have already legislated for unexplained wealth orders of this kind.
66. Under the current correctional laws, enhanced security classification and restrictions on communication are permitted, but there is no dedicated procedure for identifying and severing the continuing command relationship between an imprisoned leader and their criminal organisation outside custody.
67. The capacity of the criminal justice system to obtain and retain cooperation also depends upon the protection it provides. The Office for Witness Protection has reported a strong record in respect of persons admitted to its programme. Its effectiveness is constrained by staffing shortages, prolonged prosecutions and the financial burden of extended

protection. The wider legal framework remains divided among section 204 of the Criminal Procedure Act, plea and sentence agreements, the Witness Protection Act and the Protected Disclosures Act. Each provision serves a different purpose and no single statutory procedure links cooperation by a member of a criminal organisation with an ascertainable legal benefit and associated physical protection.

68. These vulnerabilities are not separate. They compound one another. Responsibility for intelligence, investigation, prosecution, discipline and oversight is divided among bodies with distinct mandates and different degrees of independence. Each institution performs an indispensable function, yet several depend upon another potentially affected institution to initiate proceedings, enforce findings, or provide the evidence required to act. A criminal group that infiltrates the law enforcement chain at one of those points can obstruct the work of several bodies at once. The measures that follow address these weaknesses in two phases. The short-term interventions would work within existing institutions and current mandates to correct the immediate vulnerabilities I have identified. The long-term reforms would then create new legislation and establish permanent institutions, including a constitutionally entrenched agency, to make those corrections durable. The measures we propose represent significant legal and institutional changes, and we do not underestimate how difficult some of them will be to implement. But the scale of the response must reflect the scale of the problem. On the available evidence, organised crime has achieved a depth and breadth of penetration across parts of the criminal justice system that can no longer be addressed through piecemeal reform. Meaningful change requires reforms that are substantial, coordinated and, in some cases, difficult. But they are necessary if the integrity and resilience of the system are to be restored.

SHORT TERM INTERVENTIONS

69. The Commission's final report is currently due on 16 November 2026. The first phase of reform that commences immediately thereafter should preserve the mandates and current operations of SAPS, the Hawks, the NPA, IDAC, IPID, the intelligence services and Correctional Services, while correcting defects in strategy, personnel integrity, technical capacity, reporting, and witness protections.⁴⁸ This phase should also address the instability affecting the leadership of several of these institutions. As at the date of this statement, the offices of National Commissioner of SAPS, National Head of the Hawks and Director General of the State Security Agency are occupied in an acting capacity, while the office of Head of IDAC is vacant. The Inspector General of Intelligence has a substantive incumbent who is presently suspended. The Commission should recommend the prompt and lawful appointment of suitably qualified persons to

⁴⁸ Reforms by Counsel, presentation dated 24 August 2026, slide 2; Comparative Report, pp 27–34, 35–47 and 57–60.

fill every vacant leadership post pursuant to a transparent and properly vetted appointment process, and further recommend that any unresolved acting arrangements receive a specified period within which they must be regularised.

Organised Crime Council

70. The Minister of Police should establish an Organised Crime Council, in the exercise of the Minister's power under section 206(1) of the Constitution to determine national policing policy in respect of the state's response to organised crime and criminal infiltration. The Council, as a body established by ministerial directive, would be funded by the ministry's existing budget and would bring together voices from across society. This includes civil society organisations working on policing and governance, academia and independent research institutions, business and organised labour, and representatives of communities that experience the effects of organised crime most directly in their daily lives.
71. The Council would have five main functions. First, it would mobilise political will, across government and civil society, to drive the state's response to organised crime and oversee the progress of that response. Second, it would provide a forum through which diverse stakeholders outside of government - civil society organisations, business, academia, and affected communities - may be drawn into broader policy debates concerning organised crime and contribute tangibly to the practical, grassroots measures required to resist it. Third, the Council would advise the Minister on the implementation of the National Organised Crime Strategy (discussed below), as well as on broader policy questions bearing on the evolving threat and scale of organised crime in the country, relying on strategic research and analysis furnished by independent experts on the subject at hand. Fourth, it would monitor the police and prosecutorial response to organised criminal infiltration of public institutions, and report back to the Minister on its findings. And lastly, the Council would support the implementation of the recommendations of this Commission, in the period between the Commission's final report and the enactment of remedial legislation.

National Organised Crime Strategy

72. Cabinet should adopt a National Organised Crime Strategy as the immediate foundation for the reforms that follow. The Strategy would provide a common definition of the organised crime and infiltration problem; identify the institutions responsible for each component of the state's response; establish priorities, responsibilities and specified implementation periods; provide common measures by which institutional performance and the disruption of criminal organisations can be assessed; govern the preparation of institutional implementation plans and the agreements concerning responsibility and information described below; and provide a basis for parliamentary and public

assessment of implementation. The reassessment, integrity, coordination, capacity, reporting and protection measures that follow require a coherent national direction within which each institution can determine its contribution and against which its performance can be measured. The Strategy should further make provision for the resourcing required to implement it: if the state's response to organised crime infiltration is to be treated as a genuine national priority, it must be backed by a budget commensurate with that priority.

Criminal justice personnel reset

73. This Commission is advised to recommend a time-limited reassessment of incumbents in institutions within the criminal justice system. The scope would include the NPA, SAPS, Crime Intelligence, the Hawks, IDAC, IPID, the intelligence services and Correctional Services. Its first stage would reassess heads of institutions, members of senior management, and posts which involve sensitive intelligence, evidence, firearms, procurement, appointments or disciplinary powers. Later phases could extend to units in which a pattern of misconduct linked to organised criminal interests has been identified.
74. An independent panel or temporary statutory body would conduct the reassessment in terms of prescribed criteria. While this Commission should hear specialist evidence on the detailed design of the reassessment process, I am of the view that the prescribed criteria applied by the panel should, at a minimum, include: an asset and income disclosure requirement significantly more rigorous than the Public Service Commission's existing Financial Disclosure Framework, extending to the incumbent's spouse, dependants, and any trust, company or other vehicle in which the incumbent holds a beneficial interest; independent verification of the accuracy and completeness of each disclosure, rather than mere receipt of the form; a requirement that the incumbent explain any material discrepancy between the assets and income disclosed and what could reasonably be expected given the salary and benefits attached to the relevant post; and an integrity check informed by independent research into the incumbent's disciplinary record, and by any complaints against the incumbent, whether previously lodged or arising during the reassessment itself.
75. Each affected person would be entitled to adequate notice, a right of reply, a hearing where the material facts are determined, written reasons for a decision, and a right of appeal or review. In any particular case, the panel could confirm the incumbent in the post, direct further training, transfer or suspend the incumbent, dismiss the incumbent, or refer the matter for criminal or disciplinary proceedings. Whichever determination the panel makes, its finding goes only to the incumbent's suitability for continued service. An incumbent identified for reassessment should be afforded the option to

resign, with effect from a specified date, in lieu of undergoing it. This preserves a dignified exit for an incumbent unwilling to submit to scrutiny, while sparing the process the delay and cost of contested proceedings.

Integrity management

76. Each criminal justice institution should adopt an Integrity Management Framework in line with the National Organised Crime Strategy. The framework would require the implementation of measures dealing with financial disclosures, lifestyle reviews, lifestyle investigations, specialist financial audits, and personnel integrity assessments. It would prescribe the information required for each category of post, the official authorised to examine it, and the circumstances in which a material discrepancy in wealth must be referred for investigation. Senior leadership and management posts would be subject to periodic assessment, regardless of whether any complaint has been received after appointment. A material disparity between lawful income and property would be referred to the FIC and SARS for further verification – and thereafter to IDAC, the Hawks or another competent body depending on the outcome thereof.

Institutional implementation plans

77. Key institutions should be required to prepare an organised crime implementation plan under the National Organised Crime Strategy. The plan would identify the statutory function through which the institution contributes to the detection or prevention of criminal infiltration, and the enabling measures to be adopted during a specified period. Procedures adopted under the plan would govern the treatment of intelligence, dockets, evidence and personnel information indicating a connection with an organised criminal group. The institution's report to Parliament would record completed measures, outstanding obligations and reasons for material delay, subject to the protection of current investigations and uncharged persons.

Agreements concerning responsibility and information

78. Pending legislation, a written agreement should be concluded among the principal criminal justice and financial intelligence institutions to regulate responsibility for investigations that engage more than one mandate. The agreement would designate the agency responsible for such investigations, prescribe the circumstances in which that institution would be obliged to refer the matter to another body, and establish a procedure for resolving disputes concerning inter-agency jurisdiction. A joint working committee could administer the agreement and maintain a register of referrals and disputes over responsibility. The committee's function would be to identify delays and escalate unresolved disputes to the office holder designated in the agreement.

Personnel and technical capacity

79. The existing specialist bodies require personnel able to investigate financial transactions, digital communications, banking records, and links between cases. IDAC and the Hawks should receive a ring-fenced budget to recruit forensic accountants, digital investigators, data analysts and experienced criminal investigators. IPID should similarly be provided with funds to recruit additional investigators and independent forensic services where reliance on SAPS is likely to result in delays or a conflict of interest. The NPA and the Office for Witness Protection could fill posts required to reduce the period during which witnesses and prosecutors are most vulnerable to threats from organised criminal groups. This will entail the creation of specialist posts dedicated exclusively to organised crime prosecutions and related matters. To recapacitate the NPA, these posts should have attractive remuneration packages attached and be open to applicants from outside the NPA who are appropriately qualified.

Public reporting and enforcement of corrective action

80. Pursuant to the National Strategy, any agency with powers to conduct criminal investigations should be required to report the number of matters involving alleged infiltration which it commenced, finalised, referred on, and had under investigation at the reporting date. The report would record the reasons for lengthy ongoing investigations. The purpose of publication would be to enable Parliament and the public to distinguish between active and finalised investigations.

Protection of witnesses, whistleblowers and justice officials

81. A common referral procedure should be introduced by the Minister of Justice to connect the existing mechanisms for protecting witnesses, whistleblowers, investigators, prosecutors and judicial officers. On receipt of credible information concerning a threat, the responsible official would refer the matter promptly to the authority legally empowered to conduct a standardised threat assessment to determine eligibility for different forms of protection, including admission to witness protection, employee protection, secure transportation, police protection, and relocation.

LONG TERM LEGISLATIVE, POLICY AND STRUCTURAL REFORM

82. The long-term reforms would codify new offences, obligations and arrangements whose operation cannot be left to depend on continued executive endorsement. The purpose of the new statutory frameworks is to prevent and weaken the relationships and

mechanisms through which a criminal group obtains protection, resources, or access to public powers.⁴⁹

Organisation based offences and public sector infiltration

83. Parliament should amend POCA to define an organised criminal group consistently with Article 2 of UNTOC and to create an offence concerning organised criminal infiltration of the criminal justice system. The offence would apply where a person knowingly forms, directs, participates in or materially supports such a group and uses public office, or access to a criminal justice institution, for the group's benefit. A related provision could apply to a public official who knowingly supplies protected information, suppresses enforcement, diverts state resources or exercises an official power for that purpose.
84. Parliament should enact an aggravated form of the offence where the organisation uses violence or serious threats to control a territory or economic activity, intimidate executive, legislative or judicial authorities, obstruct police operations or attack essential services. The Brazilian statute provides a model for identifying the organisational conduct, although its penalty and bail consequences require separate assessment under the Constitution and South African sentencing law. Any offence concerning outside assistance would require a material contribution and knowledge of the group's criminal character or purpose, and the connection between that assistance and the advancement of its activities. Association, professional contact or political proximity alone would not establish liability.

Corruption offences, disclosure and unexplained wealth

85. The Prevention and Combating of Corrupt Activities Act 12 of 2004 should prescribe offences directed specifically at an offer made to, or gratification accepted by, a person exercising a criminal justice function. Chapter 6 of POCA should separately be amended to establish a civil, non-conviction-based asset recovery mechanism for unexplained wealth where the material disparity triggering the mechanism would already be established through mandatory disclosures made pursuant to the enhanced vetting and integrity regime detailed above - rather than requiring an independent investigation. On the basis of such disclosures, the state could apply for and obtain an order to preserve specified property upon establishing an objective disparity between an official's lawful income and the property under their control. Once such a disparity is shown, the onus would shift to the official to provide a satisfactory explanation for its lawful origin. Final forfeiture would follow only where no such explanation is provided, or the explanation given is found by the court, after notice and an opportunity to be heard, to be

⁴⁹ Reforms by Counsel, presentation dated 24 August 2026, slide 1; Comparative Report, pp 8–60.

unsatisfactory. The legislation would protect a *bona fide* third party whose property is not controlled for the official's benefit. Further, Parliament should create a substantive criminal offence targeting the unexplained wealth of public officials, akin to that established under section 10 of Hong Kong SAR's Prevention of Bribery Ordinance.

Intelligence functions and oversight

86. Intelligence legislation should designate organised crime and infiltration of the criminal justice system as national intelligence priorities and assign the respective functions of Crime Intelligence, the civilian intelligence services, and the National Intelligence Co-ordinating Committee. The statute would prescribe when intelligence concerning a criminal offence must be provided to an investigator or prosecutor, who may authorise access and what record must be retained. The Inspector General of Intelligence could receive express jurisdiction to review the adequacy and legality of organised crime intelligence gathering and sharing across the relevant agencies. Constitutional amendment may be considered if Parliament concludes that Chapter 9 status is required to protect that office's appointment, funding and access to information.

Institution specific duties and custodial control

87. Amendments to the South African Police Service Act, the National Prosecuting Authority Act, the IPID Act, the Correctional Services Act and the legislation governing civilian and intelligence oversight should define each institution's duties concerning organised criminal infiltration. The provisions would set out the circumstances requiring external referral and the information which the institution must provide to the proposed Organised Crime Infiltration Agency. The Correctional Services Act could create a judicially reviewable regime for a prisoner proved, on current information, to retain the capacity to direct an organised criminal group. A court or other independent authority would determine the restrictions on association and communication, their duration and any renewal.

Written political and executive directions

88. Legislation should provide that no political or executive direction concerning organised crime policy, institutional protocol, appointments or resources may be given effect to unless it is issued in writing and retained in an official register. This would ensure that law enforcement and prosecutorial leadership cannot be compelled to act - nor exposed to sanction for declining to act - on an instruction that has not been reduced to writing. The responsible institution would report each direction's existence and legal basis to its oversight body; where the direction's text is withheld from the public, a court or authorised inspector may nonetheless obtain it if disclosure would prejudice national security or a pending proceeding.

Internal governance of existing institutions

89. Legislation governing an existing criminal justice institution could provide for an internal governance board, combining internal and external stakeholders, to advise on and oversee its administration — on the model of bodies such as the board of the United Kingdom's National Crime Agency. Internal members could include the institution's deputy national commissioners or equivalent senior office-holders; external members would be outside advisors, appointed in consultation with the Minister responsible for the institution, drawn from persons with experience in law, public administration, finance, organised crime research and civil society. The board's mandate would address institutional strategy, expenditure, senior appointments, integrity controls and implementation of remedial measures. The official designated by the Constitution or governing statute would retain authority over individual investigations and prosecutions. Public appointment procedures, fixed terms and prescribed grounds for removal would reduce dependence on the head of the institution or the responsible Minister.

Anti-Organised Crime Agency

90. In my opinion, there is an urgent need to establish an independent agency vested with powers to investigate and institute criminal proceedings in respect of offences relating to organised crime and criminal infiltration of state institutions. In light of the damning body of evidence that has emerged over the last decade, the breadth and gravity of which has been laid bare in the testimony heard before this Commission, it is time to depoliticise the question of where to locate such a specialised agency to satisfy the minimum conditions required by law to secure its independence. History has rendered the debate about these “minimum” or “necessary” conditions moot, not least in the court of (reasonable and informed) public opinion. The bar has long since been raised. And, I submit, there is only one viable way - as a constitutional democracy - for us to clear it: any prospective anti-organised crime agency must have its independence - structural, operational, and otherwise - constitutionally entrenched. This is essential to insulate the agency, not only from the reach of senior politicians or public functionaries who may one day become the subject of its investigations, but also from the pernicious criminal organisations that imperil the integrity of South Africa's criminal justice institutions, and therefore also the wider constitutional project. The Constitution should accordingly be amended to establish an Anti-Organised Crime Agency as an additional body under Chapter 9. In addition to the appointment and oversight provisions of Chapter 9, this Agency should also have an internal Governance Board to provide advice to the director and oversight of its functions. This should comprise serving or retired state officials and independent civilians. Enabling legislation would define the Agency's jurisdiction, powers, governance and relationship with existing institutions.

91. Section 179 of the Constitution presently establishes a single national prosecuting authority, structured in terms of an Act of Parliament, with the power to institute criminal proceedings on behalf of the state. If the Agency is to prosecute offences independently or jointly with the NPA, the constitutional amendment described above must also amend section 179 to provide expressly for that concurrent prosecutorial jurisdiction, and must regulate the resulting relationship between the Agency and the NPA.
92. The Agency's jurisdiction would, in the main, concern the continuing relationships or communications between organised criminal groups and persons exercising public powers in the police, prosecution, intelligence, correctional services, court administration, and related oversight institutions. The Agency would be authorised to receive complaints regarding criminal infiltration, commence investigations on its own motion, and assume control over any inquiry pertaining to a criminal justice institution whose leadership is unwilling or unable to investigate an organised crime matter independently. It would also be mandated to review and identify any vulnerabilities inherent in the coordinating relations between institutions within the criminal justice system. In the course of conducting criminal investigations, the Agency may require the production of documents, summon persons to give evidence, and obtain classified information held by another organ of state. Its investigators would be empowered – alongside the Asset Forfeiture Unit – to trace assets and conduct forensic examinations, and the Agency could establish, or coordinate the establishment of, joint investigative teams with existing bodies.
93. Within the Agency, investigation and prosecution would be functionally separated under distinct leadership, with defined procedures governing the handover of a completed investigation to a prosecution. The Agency could investigate offences within its jurisdiction and prosecute those charged with them, alone or jointly with the NPA; offences outside its jurisdiction would be referred, with the evidence, to the NPA. The constitutional amendment and enabling legislation would regulate concurrent jurisdiction, case allocation, prosecutorial policy and the resolution of disagreements between the Agency and the NPA. The Agency could also recommend changes to legislation or policy, and could prescribe the scope of an integrity assessment to be conducted by an affected institution, or arrange for an external assessment where that institution cannot conduct one independently, and issue binding remedial orders concerning administrative defects arising from such an assessment. A person directly affected by an adverse order would receive notice, an opportunity to respond and written reasons, and the order would be subject to judicial review. Criminal guilt and civil liability would remain matters for determination by the courts.

Relations with existing bodies and case allocation

94. The enabling legislation would prescribe the Agency's relationship with SAPS, the Hawks, IDAC, IPID, the NPA, the intelligence services, the Financial Intelligence Centre and Correctional Services. Each institution would continue to perform in terms of its existing mandate, subject to the Agency's exclusive jurisdiction in respect of matters concerning organised crime and criminal infiltration. The Agency would be empowered to consolidate information from related matters, and establish and coordinate responsibility for joint investigations pursuant to a determination which identifies the nature, scope and purpose of the undertaking, the participating institutions, and the arrangements and conditions governing the sharing of intelligence. Where the Agency prosecutes an offence within its jurisdiction, it would do so in the courts under the same procedural law that governs NPA prosecutions.

CONCLUSION

95. The comparative principles surveyed above provide the policy direction, and the foreign reforms consolidated under them the empirical context, for the short and long-term interventions that GI-TOC urges this Commission to consider for inclusion in its final recommendations to the President. The foreign cases are not ready-made answers. They show that organised criminal infiltration depends on systemic, symbiotic relationships that exploit one of a number of institutional weaknesses – whether in statutory design, jurisdiction, recruitment, personnel integrity or inter-agency coordination – to progressively weaken the checks and balances on which the machinery of the state depends to detect and eliminate their very presence. The effectiveness of any response ultimately turns on whether it changes those relationships in practice.
96. An institution whose personnel are compromised cannot correct itself through internal discipline. But replacing those personnel without changing the procedures that enabled the misconduct risks reproducing the same pattern in a different guise. 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 handling the case can be removed or reassigned by an official whose interests the investigation threatens. A specialist agency can plough its forensic resources into the investigation of complex offences, far exceeding what the ordinary police service can achieve, but if the agency depends on *de facto* political sponsorship, or an appropriation determined by the executive, its legal and operational existence is endangered the moment its work threatens the powers that be. The point is that no single measure can address 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.

97. It is now beyond serious dispute that legislative and policy interventions are urgently needed to counter the organised criminal networks that have infiltrated state institutions indispensable to the survival of South Africa's constitutional democracy. Insofar as these institutions are left to shield those whom they should pursue, the state will necessarily fail to discharge its constitutional obligation to “*respect, protect, promote and fulfil the rights in the Bill of Rights.*” The Constitutional Court in *Glenister II* clearly articulated the threat that corruption and organised crime pose to the Constitutional order. Those threats were evident at the time of that judgment, and they have developed since. These are threats to the safety and security of South Africa's people in both social and economic terms, and it is imperative that there be independent mechanisms designed to fight these threats and that these be shielded from political interference. This is in line with the South African state fulfilling its duties under the Bill of Rights.
98. The short-term interventions are intended to preserve investigative capacity and institutional mandates while the government adopts a coherent National Organised Crime Strategy, prioritises the reassessment of officials who occupy sensitive positions, and introduces measures to govern the interim sharing of intelligence and the allocation of high-risk cases. The evidence and operational experience accrued during this period should then inform the longer-term reform programme. That programme would, *inter alia*, codify new offences and intelligence duties, strengthen internal governance and oversight functions, establish the Anti-Organised Crime Agency as a Chapter 9 institution, and constitute the Organised Crime Council charged with monitoring the Agency's performance.
99. It is my expert opinion that, taken together, these interventions constitute a lawful, rational, and effective response to the infiltration of the criminal justice system by organised crime - a threat of the first order to constitutional democracy. GI-TOC stands ready to place its expertise, and that of its global network of practitioners, at the government's disposal in developing and implementing the legislative, institutional and policy reforms ultimately adopted.



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ABOUT THE GLOBAL INITIATIVE

The Global Initiative Against Transnational Organized Crime is a global network with over 800 Network Experts around the world. The Global Initiative provides a platform to promote greater debate and innovative approaches as the building blocks to an inclusive global strategy against organized crime.

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