SOUTH AFRICA: AN OPPORTUNISTIC NARCOSCAPE FOR INTERNATIONAL DRUG TRADING

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ABSTRACT

An inquiry based on primary source interviews and a literature study to the extent and nature of drug trading and trafficking into and out of South Africa appears to reflect the wider scope of the problem. It is apparent that South Africa is acknowledged as a supplier and receiver of as well as conduit route drugs. This paper examines the physical, social, individual, economic and political environment of the country that has attracted, facilitated and advanced the growth of the drug trade in the country. It also examines the problem of rampant corruption which aggravates these problems. The paper further acknowledges the laws that have been enacted in accordance with international best practices in this regard to address some of the issues identified, and assesses the efficacy and success of the laws. Finally, the authors reflect on the stumbling blocks to eliminating the problems identified, and put forward proposals for future action.

INTRODUCTION

The extent of South Africa’s engagement in the drug trafficking milieu is manifested in three clear activities – South Africa as a supplier of narcotics, as a receiver, and as a conduit route. The geographical position of the country places it ideally between the East and the West ie between Asia, the Americas and Europe, all countries known for engagement in the illegal drug trade. In 2001, The Citizen newspaper (8 February 2001:1) quoted the United Nations representative in the South African Office for Drug Control and Crime Prevention as identifying South Africa as one of the nerve centres of drug trafficking and abuse – both as a revolving door and a centre for consumption. Similarly, Baynham had also previously noted, ‘From the perspective of international crime syndicates, South Africa has the “right profile” for exploitation’ (Baynham 1995:3). However, South Africa has not moved onto the world map. Thus, what has changed in the narcoscape that drug traders and traffickers have, in the last ten to fifteen years, begun to find the country increasingly attractive?
Various criminological theories have been propounded to explain individual involvement in drug trading and trafficking. Two theories that are identified as being especially relevant to this research are the rational choice theory and the association theory. In terms of the former it is argued that criminals are rational thinking individuals who function by rational decisions. The theory is thus premised on the assumption that people commit crime because the benefits outweigh the costs (Lilly, Cullen & Ball 2002:221). On the other hand, the association theory posits that criminal behaviour is learned in the same way as other social behaviours from social settings and intimate social environments. Various groups and cultures in society make the learning of different types of values possible (Williams & McShane 1994:79). This paper attempts to provide an overview of the physical, social, individual, economic and political environment of South Africa that has attracted, facilitated and advanced the growth of the drug trade in the country.

RESEARCH METHOD

In order to obtain primary source information of what promotes South Africa in the eyes of drug traders would require infiltration of the organised crime syndicates operating in and out of the country. Organised crime groups are notoriously difficult and dangerous to penetrate and thus the authors accept this limitation of their study. The researchers followed a qualitative research approach to obtain an understanding of the drug trafficking phenomenon in the ‘real world’ as described by Leedy and Ormrod (2005:133). The information presented is derived from a scan of the South African research landscape – historic and current, literature studies and reports of previous studies. In addition, a non-probability, convenience sampling method as described by Leedy and Ormrod (2005:206), was used to obtain the opinions of five police detectives from the former South African Police Narcotics Bureau and Organised Crime Unit in Gauteng. The authors were also able to conduct interviews with three persons serving prison sentences for possession and dealing in drugs at a Gauteng incarceration facility. Two are Colombian nationals (a young former student and a 45 year old businessman) while the third is a South African citizen (who was an ex-member of the South African Police Service at the time of his arrest). Despite its limitations, the sampling method is considered appropriate as only the views and opinions of the participants were required for the study – no statistical conclusions were intended to be drawn. Individual open-ended, face-to-face interviews were conducted with the respondents with the use of a semi-structured interview schedule (Leedy & Ormrod 2005:184).
DISCUSSION

In speaking of the problem of drug trafficking in South Africa, the head of the U.S. Drug Enforcement Agency noted, ‘Many of the things that make this country so great are the things that give it such potential for major international drug dealing’ (Daley 2005:4). What are these issues?

The new democracy

As uncanny as this may appear at first reading, one must take note of the effect of the transition to democracy on the increasing drug trade into and out of South Africa. Up to the early 1990s, the entrenched apartheid ideologies saw South Africa being subjected to widespread trade and economic sanctions and international isolation. However, the advent of democracy and the opening up of the country’s borders, created an opportunity for the entry of what the UN Secretary General, Kofi Annan, called ‘uncivil society’ (Anon 2002:2). The end of apartheid also saw a reduction in enforced state controls and with it ‘triggered an unprecedented interstate movement of people in the subregion (Baynham 1995:2). Many of these were undesirable elements fleeing their own countries, or seeking newer and/or more lucrative bases for their criminal activities. Amongst these people were the drug traffickers.

This unforeseen and unfortunate consequence of democracy was confirmed in an interview with a Colombian businessman incarcerated in a South Africa prison five years ago for drug trafficking. He stated, ‘...since South Africa has emerged from its isolation it has become a major centre of attraction for international drug cartels.’ This view was again repeated by a police detective from the Organised Crime Unit in Pretoria who stated (from a policing perspective) that, ‘since the end of apartheid in 1994, South Africa opened its doors to the rest of the world. Unfortunately, we also became part of the drug problem. ...Because of our geographical position South Africa has become a very popular trading route for drug trafficking. The police suddenly had to address the problem of organised crime syndicates activities without much previous experience or training.’
Population dynamics

More currently, tracing the population and the apartheid footprint, it is evident that large numbers of the South African population remain impoverished and uneducated. The overnight entry into the urban world resulted in large numbers, especially amongst the black youth, leaving the rural areas to seek better opportunities, legal and illegal, in the urban sector where they become easy prey for the drug syndicates. Unemployed youths with apparently limited prospects of work are being sourced by crime groups – this view was reiterated in the interviews with the police. As one of the detectives from the Organised Crime Unit in Gauteng Province noted, ‘Youths cannot all be accommodated in the formal working sector and so they are drawn to the activities of the drug syndicates.’ Once in the narcotics underworld, they are drawn into performing many of the more high-risk activities for their drug bosses, such as acting as the foot soldiers and the ‘mules’ (Irish & Qhobosheane 2003:6).

Another factor that contributed to youths being vulnerable to crime syndicates was the factual reality that pre-apartheid South Africa experienced great amounts of township and gang violence, often directed at the apartheid state. In many of the black townships, gangs of youths actually ruled the townships. When apartheid ended, there was little outlet for their anger. In the wake of apartheid these youth often had no employment, no direction, and no immediate future. This was recognised by many of the infiltrating crime syndicates and the gangs were accordingly targeted and easily assimilated by the organised crime groups as working partners and to do the necessary dirty work for the syndicates (Irish & Qhobosheane 2003:6).

However, it is not just the youth who are drawn to working with the drug syndicates. In providing a specific exemple, Irish and Qhobosheane (2003:8) note that as the Nigerians’ reputation as a participant in the illegal drug trade grew, they identified the need to use non-Nigerians as couriers. Today, South Africans (especially white women), are being used by the Nigerian cartels on a more regular basis. They are paid anything between R20 000 and R40 000 per trip for their services (Mabry 1998:15). Pakistani customs officials have also identified South Africans as being amongst the main suspects arrested for smuggling drugs on their persons – generally having ingested the drugs or having the capsules inserted into their body cavities. Payment to the couriers ranges from US$500 to US$1000. Such activity is recognised by all involved as extremely dangerous. If caught, the mules will have little
defence against a conviction. Further, there is always the reality that the capsules can burst, with death as the inevitable outcome. The Customs Office in Pakistan says that their information shows that poverty generally is the dominant factor prompting ‘human mules’ (Anon 2003:4). The British police, on the other hand, found that most of the cannabis that is being carried from South Africa into the United Kingdom is being transported by mules who are unemployed white Afrikaners who receive a ticket to Europe and about US$750 to deliver 25 kilograms of marijuana (Anon 2003:6). However, it must be noted that not only poor South Africans fall prey to the drug syndicates - South Africans of all races and from all walks of life have been identified as active couriers for drug cartels. This is a deliberate recruitment strategy by the syndicates, especially the Nigerians, ‘to avoid providing the authorities with one particular category of person to look out for’ (Irish & Qhobosheane 2003:8).

Furthermore, the legacy of invasion and then colonisation (with its concomitant trends) has resulted in South Africa having a population that is remarkably heterogeneous. This has been particularly helpful to the Pakistani syndicates who have used the population diversity in the country to immerse themselves into the South African diaspora (Irish & Qhobosheane 2003:13). As a result of their close cultural and religious ties with many local groups, they are more easily merged with and absorbed into the local communities. This makes it particularly difficult to separate the transnational criminals from South African nationals.

On the other hand, the issue with the Nigerian and Chinese cartels is quite different. For instance, the closed structure of the Chinese triads creates an impenetrable barrier to arrest (see Irish & Qubosheane 2003:2). Yet the amorphous nature of the Nigerian syndicates means that there is rarely a ‘kingpin’ to identify and arrest. When entering a country, both the Chinese and Nigerians are known to set up their own neighbourhoods, thereby creating a ‘safe’ space. With the Nigerian groups, their activities are organised within the safety of the residential hotels which they occupy (Leggett 2002:4). Each hotel is run by a management committee, to whom the occupants pay a management fee. The committee is then responsible for looking out for the occupants, paying the bribes and legal fees, where necessary. This does not establish them as an entity or syndicate and, as Leggett (2002:4) notes, despite an appearance of organisation, the structures continue to remain flexible: ‘[T]he removal of any particular individual or group will have little effect on the functioning of the institutions themselves’.
A potential market source

It is trite that drug trafficking operates on the fundamental principal of economics, namely that of supply and demand. And, as with any licit enterprise operating for profit, the supply grows commensurate with the demand. Leggett (2002:4) actually describes this as the major factor in the growth of the drug trade in South Africa. He believes that the ‘market vacuum [in South Africa] was filled when Nigerian nationals arrived in central Johannesburg just as democracy was dawning.’ Prior to their arrival there was ‘a lack of a community of pushers resident in South Africa, people with the international connections to procure the drug and the experience to know how best to market it’ (Leggett 2002:4). The Nigerians moved into the Hillbrow area setting up home next to the sex market. Sex workers became addicted to crack supplied by the drug traders, and ‘many would rather smoke the drug with their clients than have sex with them’ (Leggett 2002:4). This was their incentive to spread the drug. ‘Soon crack could be found in every fair sized city in South Africa’ (Leggett 2002:4). Interviews with police detectives at the Organised Crime Unit in Johannesburg also confirm that

[s]ince democracy in the early nineties, overseas drug syndicates thrive on the fast growing drug consumer market in South Africa. Youths and unemployed adults are exposed to hard drugs such as heroin in schools and clubs. They get addicted and involved in syndicate activities as couriers and marketers. Nigerian drug syndicates are mainly to blame for this.

Cachalia (1997:1-2) also refers to the changing mentality of sectors of the South African public as a major contributing influence in the drug trade in South Africa. A newly emerging young generation of socially and economically privileged black South Africans and the concomitant reduction in social controls and mores has seen the increased use of designer drugs amongst the youth ‘based on false ideas about drugs and their importance as a socially acceptable practice’ (Cachalia 1997:2). This was blatantly evident in the reports in the popular presses on the recent death of the young South African singer, TK. During the interview with a Colombian businessman, he noted that ‘there was the view out there that South Africa is becoming a major drug consuming country. South African should take care not to become a next Colombia,’ he said. According to him, South Africa is regarded as a main market or target area for drug traffickers because of ‘the easy access to the South African drug markets and the need for drugs on the local South African market.’
Domestic infrastructure

South Africa has long been identified as one of the wealthier African countries with a strong, modern infrastructure. Furthermore, a competitive and stable banking system, a well-developed commodity market, and the evident growth and wealth potential of the country makes it an attractive opportunity for commercial traders. A recent drug bust in Russia highlighted another (unanticipated) feature of the domestic infrastructure that has promoted trafficking in drugs – the South African postal service. The Head of the Russian Interior Ministry, speaking after the Russian police seized two kilograms of ephedrine-hydrochloride from two Russian citizens in Tatarstan, pointed out that from their surveillance, the international mail service between South Africa and St Petersburg, Russia, had often been used to move drugs across the borders. The ‘open’ borders

According to the 2003 UNODCCP Report, ‘South Africa is a vulnerable target for drug traffickers because it is easily accessible by air, sea and road and has a good relationship with its neighbouring countries’ (Anon 2001:1). Further, as South Africa seeks to enter the global arena, establishing a presence and trade links with other countries, the number of international flights into our airports as well as ships entering our harbours has and will continue to increase exponentially. Unfortunately, despite management initiatives, security and surveillance of ports have admittedly not been able to keep up with the increasing traffic. This problem was identified by all of the police officers interviewed. They shared the concern that ‘[t]he South African borders, harbours and airports are very vulnerable because of poor policing, a lack of resources and an unwillingness to police properly.’

The land borders

Cartographers describe South Africa as a country with approximately 3500 kilometers of continuous border with other southern African states. The entire sovereign line is described as being extremely porous, with fifty-two possible entry points and border demarcation in places consisting simply of wire fencing (Irish & Qhobosheane 2003:6). Obviously, this
constitutes scant defence against any intended cross-country movement, as was noted by Irish and Qhobosheane (2003:6), who cite statistics of approximately R10 million as the value of smuggled vehicles passing between South Africa and Mozambique on a monthly basis ‘through hundreds of crossing points’ where the border fence has been cut. Obviously linked to the vehicular theft syndicates is the discovery that a significant identified route for the transportation of drugs into South Africa by the Nigerian cartels is also via Mozambique and Swaziland (Irish & Qhobosheane 2003:8).

The harbours

The South African harbours have enjoyed enormous fiscal advantage from the lifting of trade sanctions. Unfortunately, however, as the volumes of cargo passing through the ports increased, the infrastructure of the ports and staff capacity did not keep abreast. Referring specifically to container searches, Steinberg (2005:3) notes that on average, at Durban Harbour (South Africa’s busiest port) less than one percent of cargo containers are searched. Based on his research Steinberg (2005:1) notes further that ‘the modestly-resourced anti-narcotics border control function at Durban Harbour largely invests its limited capacity in monitoring imports, not exports. … [A]n export shipment will only be examined if specific information is received.’ The lack of resources and the lax approach of staff at the harbours was specifically referred to by Commissioner Gordon of the South African Revenue Services (whose function includes inter alia the policing of the entry and exit of goods from the harbours) in a national television interview (SABC 3 NEWS 3 May 2006:19h00). According to Gordon, part of the problem is the apartheid legacy when border controls were not as stringent and ‘sanction busting’ was condoned. As a result, searches of goods and containers entering the ports were cursory. However, according to Gordon, the ports authorities are aware of the problems and measures are in place to address the lacunae at these vital intersection points. Specifically, processes have been introduced to better police the harbours and later in the year it is anticipated that scanning machines would be installed that will enable port officials to examine larger numbers of containers entering the ports (Gordon SABC 3:3/6/2006).
The airports

A similar problem to policing of the ports exists in respect of the airports. Again the issue of scare resources and a lackadaisical attitude by the appointed staff emerges. Steinberg (2005:3) notes that at Johannesburg International Airport (now OR Tambo Airport), for example, the official figure for container searches is three to five percent of incoming cargo ‘but those involved at operational level believe these figures to be a little optimistic’.

A further particular problem for customs officers at the airports has been identified with the ‘shotgunning’ technique adopted by Nigerian cartels. Vesley (2000:9) cites a US Drug Enforcement Agency Report which noted the modus operandi of many of the Nigerian drug cartels as being to use multiple couriers on the same flight in an effort to almost guarantee that, at least, some of their supply will get through the customs point in the confusion of a busy entry point terminal. ‘It is a technique which has long overwhelmed customs officers in Britain’s Heathrow airport’ (Vesely 2000:9).

Making the observation that there is a real perception within the South American drug environment that it is easy to enter via the South African airports, a Colombian student stated that he had been working in a club when he was approached by a member of a Colombian drug cartel asking if he would be interested in carrying cocaine into South Africa. It was explained to him that ‘it should be fairly easy to enter South Africa without being caught’ and he would be met by a South African upon arrival at Johannesburg International Airport and assisted by the South African once he had entered the country. He notes that ‘as I needed the money, I decided to take a chance. I was assured that the risk was very low.’ He further stated that he was aware of the fact that ‘South Africa was high on the agenda of drug traffickers because some of his friends from Colombia were previously involved in drug trafficking to South Africa.’ Also, ‘because of the relatively easy access through the airports, American drug traffickers are using South Africa as a distribution hub to Africa, Europe and other countries.’ The respondent thought that he was ‘just unfortunate’ to have been caught at the airport. ‘Most other people have managed to get through,’ he said. He further indicated that the person who was waiting for him at the airport had also been arrested. He later learned that his ‘contact’ was, in fact, a former police officer who had become a member of a local drug syndicate after leaving the police service.\textsuperscript{x}
Also informative was the interview with the Colombian businessman. He admitted that he had had close personal connections with a Colombian drug cartel and had been a regular courier bringing cocaine into South Africa through the Johannesburg International Airport. During the interview he stated that as far as he knew the Colombian cartel with which he had been associated had links with a Nigerian syndicate operating in South Africa. ‘The Nigerians were involved in the import of drugs to South Africa as well as the export thereof to other countries in Europe. It is a well-known fact that the Nigerians obtain their consignments of cocaine mainly from Colombia.’ He too noted that in general the South American traders ‘regard South Africa as a safe transit route for drug trafficking. Factors that play an important role are the good air connections to countries such as Asia, Europe and America, poorly controlled borders, airports and harbours, weak detection controls, corruption in South African state departments and a modern banking system.’

Irish and Qhobosheane (2003:8) specifically looked at the drug trade from the East to South Africa. They found that with the Asian connection, where the drug involved was heroin, there is no single modus operandi. According to them, the heroin is brought into the country either via the international airports or by land in private cars, buses and taxis. A more favoured approach into South Africa appears to be directly from Mozambique or through Swaziland where the border controls are weak and alternate access routes possible. Once in the country, a part of the consignment remains for local sale, whilst the remainder is moved on to further international destinations. A similar pattern emerges with the transport of cocaine. However, during their research, Irish and Qhobosheane (2003:11) found that with cocaine specifically, increasingly the land route appears to be favoured. They also noted that when the Chinese triads are involved, the harbours are more extensively used. ‘Some cells own their own shipping lines and clearing houses and the Triads appear to make extensive use of ships, ports and harbours to smuggle goods into the country’ (Irish & Qhobosheane 2003:11). This finding was supported by Steinberg (Steinberg 2005:2). The Russians, on the other hand, appear to prefer using the airspace. In contextualising the Russian engagement, Irish and Qhobosheane (2003:12) point out that many of the Russian crime syndicates have close links to the former KGB and have based their establishment and assets on post-Cold War military stockpiles with access to larger quantities of weaponry and planes. ‘When they entered South Africa, they brought these assets with them. Planes have been registered in South Africa [and neighbouring countries] …Aircraft piloted by Russians …are known to land under cover of
darkness to offload goods at some of the many small and unguarded airstrips around the country’ (2003:12).

**Policing the problem**

Underpinning all of the above and aggravating the problem of the drug trade into and out of the country is an inadequate criminal justice system. Democracy and the concomitant order for rapid (read ‘immediate’) transformation saw the demand for a reconfiguration and repopulation of many state and administrative departments, as well as of the criminal justice enterprise. The introduction of many young, often inexperienced professionals and employees into the various sectors of the criminal justice system, has left South Africa vulnerable and provided criminals with a relatively low-risk environment in which to carry out their enterprise (Irish & Qhobosheane 2003:6). In speaking on the issue of policing specifically, a former police officer convicted of drug dealing, stated categorically that from his experience in the drug world, ‘...the South Police Service is not geared to effectively police the drug problem in South Africa. The problem is aggravated by the fact that many experienced members have left the police and corruption is rife.’ This opinion was repeated by all the members of the police service interviewed during the research. The factors contributing to this negative perception included firstly, the closure of the former specialised narcotic bureau within the South African Police Service (SAPS). The sole function of the specialised unit had been to detect, investigate, and arrest drug offenders, which meant that the police officers staffing the units had been specifically skilled and trained to deal with such crimes. With the closure of the unit, the staff have been integrated into the general detective units and ‘many have left the police because of unhappiness with the restructuring process or taken early retirement packages because they were dissatisfied with their prospects in the police.’ Secondly, as one of the interviewees noted that ‘whilst drug trafficking was being covered by the newly established Organised Crime Units within the SAPS their main concentration was on the investigation of crime syndicates.’ Thus, offences involving the production and abuse of drugs – of whatever kind – are policed by the ordinary detectives and crime prevention units. This divided approach by SAPS is a further indication of the lack of understanding of the environmental structure of the problem of drug trading in South Africa. In this regard, the research shows that in many cases the visible production and distribution minions are merely a front for the international and local organised crime syndicates. Their arrest and conviction, thus, do little to eliminate the real problem. Thirdly, the crime
prevention units that are responsible for policing are not properly trained to deal with drug related cases: ‘[T]he police does not have the necessary experience and skills to conduct a proper follow-up investigation when an arrest is made. …The daily arrests of drug peddlers without concomitant conviction are evidence of this fact.’ \textsuperscript{xiv} Further, the general detective unit does not have the luxury to focus on a specific crime. ‘The high crime rate in South Africa means that the police are very busy attending to reported crimes such as murders, robberies, rape and housebreaking to keep the public satisfied.’ \textsuperscript{ xv} The problems of the investigating units are exacerbated by the fact that ‘the police are experiencing a backlog in the training of their detectives and no specific training is available on drug investigations.’ \textsuperscript{ xvi} It would also appear that the problem is not limited to poor skills and capacity, but that resource constraints also contribute to the crisis.\textsuperscript{xvii}

The limited ability of the law enforcement agents in South Africa to deal with drug trade and the cartels has been acknowledged at various fora. In referring to the dilemma, the Head of Interpol’s sub-regional bureau in Harare noted openly, ‘It is not a secret to law enforcement agencies of the region that the criminals in the region have better co-operation links than the police officers. They seem to know who to contact at all times and budgetary constraints, foreign currency shortages, visa problems or governmental authority to travel do not control their movements’ (Anon 2001:13).

**Corruption**

A public service sector that is open to bribery and corrupt practices has proved to be a further enabler for organised crime and drug traders to gain a foothold in South Africa. The US Department of Justice Report (2000) specifically highlighted the problem of corrupt officials in tackling the problem of drug smuggling: ‘In countries where corruption is rampant, it is extremely difficult to plan counter-measures without them being compromised at an early stage due to the involvement of high political officials’ (Vesely 2000:9). A further specific example of corruption is noted in the following: the Nigerians have been recognised as being intrinsically involved in the transport of drugs at an international level and specifically in South Africa. Yet, Irish and Qhobosheane (2003:6) estimate that there are between 40 000 and 100 000 Nigerians currently in South Africa, of whom just over 4 000 live in the country legally. Research proves that many of the dealers, suppliers and mules move about the country freely with forged identity papers. This has, to no small extent, been attributable to
complicit conduct from staff in the Department of Home Affairs and Immigration and the police service. For example, Irish and Qhobosheane (2003:11) record again that the Triad gangs prefer using Taiwanese, Korean and Chinese people to run their day-to-day illegal operations. In order to secure the necessary permanent residence permits for their people, large sums of money exchange hands between them and officials from the Department of Home Affairs.

All of the police officials interviewed cited corruption in state departments such as the SAPS, Home Affairs, and Immigration Services as being a major contributor to South Africa being a preferred country from which traffickers can ply their trade. The respondents referred to ‘corruption within the police and government departments’ noting that ‘[d]rug syndicates target police and government officials to get involved in their activities by offering them huge amounts of money.’ Consequently, this infiltration of the law enforcement activities by corrupt officials makes it especially difficult to plan undercover operations and investigations into drug-related cases. In this regard there was general consensus amongst the respondents that ‘corruption of state officials that get involved in the activities of drug syndicates for the sake of money makes drug trafficking very difficult to police effectively.’

The former police officer who was interviewed, explained his lure into the drug trade. He stated that as a police detective on early retirement he was in need of money. He had worked in Vice and Narcotics and so knew where to go. He claims that he ‘got involved in a local syndicate with strong Nigerian connections. [He] was familiar with the operational methods of the South African Police with regard to the policing of drug trafficking on airports as well as at the harbours and border check points.’ He also pointed out that it was ‘fairly easy to access corrupt state officials within state departments to assist with the issuing of false documents such as false identity documents, permits and passports.’ As alarming, was his statement that ‘drug dealers have already infiltrated government and police departments to a great extent. …Some corrupt police officials are on the payroll of drug syndicates. Money talks!’ He also stated without further explanation that ‘high political officials are also involved in the drug business in South Africa.’
SOUTH AFRICAN LAWS TO COMBAT DRUG TRAFFICKING

As a demonstration of its commitment to combating organised crime and drug trafficking specifically, South Africa has not only signed all the UN Conventions against drug trading but has taken the further step of addressing her obligation by means of domestic legislation in the form of the Drugs and Drug Trafficking Act (the Drugs Act), the Prevention of Organised Crime Act, 1998 (POCA), and the Prevention and Combating of Corrupt Activities Act, 2004 (the Corruption Act). Between the three Acts, trading and trafficking in drugs has been effectively proscribed with concomitant penalties provided upon conviction. Further, the allied activities such as money laundering have also been criminalised and the mechanisms for dealing with the problem clearly stated (POCA ss 4 and 5).xx The legislation also makes effective provision for the confiscation of the proceeds of crime by the established Asset Forfeiture Unit (POCA, Chapter 5).xxi Corrupt activities and practices have been specifically defined (the Corruption Act s3) and the obligation to report any known or suspected corruption, or fraud, theft, extortion, forgery and uttering involving more than R100 000 (the Corruption Act s34) is also made completely clear.xxii Section 10 of the Drugs Act further explicitly circumvents the banker-client privacy rule in that it mandates bankers, stockbrokers and dealers in financial instruments to be vigilant, and to report contact with property which they have reason to suspect to be the proceeds of crime. Further reinforcing this obligation, the Financial Intelligence Centre Act, 2001 imposes strict obligations on banking and other ‘accountable institutions’ (as defined by the Act) regarding the recording and verification of the personal details of all account holders (s21 and Regulations 2-18), xiii the keeping of records of all financial transactions (s22) and the duty to report all suspicious and unusual transactions, as defined by the Act (s29). The overarching purpose of the legislation is to create greater controls and a more regulated banking environment that will provide measures to control money laundering (vide ss21-45).

PROPOSALS/RECOMMENDATIONS

One of the most attractive features of South Africa insofar as the drug syndicates are concerned, is her geographic location and accessibility. Cognisant of this fact, authorities have commenced various initiatives at points of entry and exit. For example, the number of official land border posts has been reduced from fifty-two to nineteen and the number of international airports limited to eight. However, the practical efficacy of these activities
remains open to question, given that the land borders are notoriously porous and that small, private airfields are available and commonly used across South Africa on a habitual basis. Further, initiatives at points of entry include increased policing at the airports and seven harbour ports. With specific reference to port security, the general manager of the National Ports Authority accepted that ‘[t]here is a realisation of the potential threat South Africa faces from crime syndicates’ (Enslin 2006:1). Further, acknowledging that the SAPS are under-resourced to deal with the problem, he referred to an investigation which might see the ports security being replaced under the control of the military. In addition, he anticipated that R200 million will be spent over the next two years on ensuring that container terminals are fully compliant with all international container security initiatives. With regard to the airports, however, Steinberg (2005:3) notes that a greater problem at the international airports is created by the fragmented approach of the various law enforcement agencies (about 14 in total) that operate from the airports, all purportedly dealing with the same problem - the detection of couriers with contraband. However, with the perceptions of high levels of corruption believed to exist in the different law enforcement agencies, there is understandably little trust between individuals and ‘other’ departments and, consequently, little sharing of information. A more co-ordinated policing approach, which integrates the specialised expertise from the different units would certainly go a long way to mitigating the problem at the airports through harnessing the requisite skills and dealing with resource constraints. It would also effectively capitalise on the benefits of pooled resources and the advantages of specialisation. The current position, however, requires individual members of each branch of law enforcement ‘to be responsible for the entire work chain, from profiling, to detecting, to investigating, to managing the investigation chain, to seeing cases through trial’ (Steinberg 2005: 5).

From the foregoing and taking note specifically of the structure of many of the organised crime syndicates, it is clear that an arrest here or confiscation there will not eliminate the problem. Reports indicate that traffickers and traders emerge like the serpents of Medusa – as soon as one is destroyed another grows in its place. Also, without a doubt, there is an intricately woven symbiotic relationship between organised crime and corrupt government officials and administrators, with each party living off the other. As a start, given the number of fingers that have been repeatedly pointed at the Department of Home Affairs, surely the time is ripe for an independent, comprehensive investigation to be launched into the activities of the Department at national, provincial and local levels. Further, the (unholy) alliance
between members of the South African Police Service and the drug traders has been repeatedly indicated and demands urgent remedial attention. Unfortunately, statistics on the number of police officers indicted or facing indictment for corruption related to drug syndicate activity is not available. When the researchers sought to establish from the South African Police Service statistics of the numbers of officers suspected, charged or convicted of corruption and involvement with drug syndicates they were informed that such information was not available.

Irish and Qhobosheane (2003:14) argue that drug laws and prison facilities in countries like Nigeria are far harsher than South Africa. Thus, when identified, the criminals should be immediately deported to their home countries – this could serve as a further deterrent and also alleviate some of the strain under which the criminal justice system is currently operating, with the police complaining that they are under-resourced, the courts proving to be incapable of coping with current case loads passing through the system, and the correctional services facilities overflowing. However, a contrary argument is the fear that if deported, the suspects will use networks and contacts in their home countries to avoid prosecution and in no time, will be back in South Africa. It should be noted that in considering the proposal by Irish and Qhobosheane, South Africa does have an Illegal Immigrants Act, which enables the South African authorities in respect of illegal immigrants to either try the accused in the country or deport him/her. However, in cases of offenders legally in the country, their crimes are always justiciable in the South African courts and the issue of deportation does not arise. However, in such cases, co-operation between countries can be especially useful as it may well be that the offender is an identified fugitive from the justice system in his country of birth. Consequently, rather than South Africa bearing the costs of criminal proceedings, the two countries can come to an agreement regarding the extradition of the offender. This is currently a matter of discussion between South Africa and Russia. The case in question culminated early in 2006 when the Russian police arrested two citizens involved in a racket smuggling ephedrine-hydrochloride from South Africa. It was established that the ring leader and source was a former USSR citizen currently residing in South Africa who was later arrested by the police and South African special services (Anon 2006:1).

Given the nature of the international drug trade and the disposing factors that appear to be prevalent in South Africa, it is apparent that South African law enforcement is not in a position to attack the problem independently. What is needed is a sharing of information and
resources and country-to-country co-operation. This was clearly evident in the further arrest of seven members of a Hong Kong triad in Johannesburg after close liaison between the Directorate of Special Operations working with the Hong Kong Organised Crime and Triad Bureau (Anon 2003:1-2). In this regard, the South African International Co-operation in Criminal Matters Act, 1996 would be extremely helpful if properly utilised as it specifically enables and facilitates international mutual legal assistance between countries by developing the framework for the processes to be followed when South Africa requires the assistance of a foreign law enforcement authority for the purpose of an investigation and vice versa.

At another level, the Drugs Act and Prevention of Organised Crime Act make it possible for identified criminals to be prosecuted and the proceeds of their crime to be attached by the state. It is difficult to understand why many of the Nigerian ‘flats’ have not been subjected to such provisions. Whilst some proponents argue that this will not eliminate the problem as the traders will keep coming back, the counter argument is that if the circumstances are made sufficiently uncomfortable and the pressure maintained, the masterminds may be inclined to find less conducive pastures to ply their trade. Currently, there is little doubt that one of the reasons that South Africa has been identified as a base is because of her geographic position, sound infrastructure and the less than optimal functioning of the criminal justice system.

CONCLUSION

‘With its porous borders, impoverished citizenry and overmatched police, South Africa has become a magnet for the international criminals’ (Mabry 1998:14). To this list, one needs to add the problem of corruption. In 2000, Vesely noted ‘South Africa … can only hope that the corruption that protects such drug cartels is tackled by their own police and criminal investigation divisions’ (Vesely 2000:9). We are now in 2006 and this has not happened. The comment of one of the police officers interviewed stresses the desperateness of the situation. He noted, ‘It is scary to see how local and international syndicates thrive on the drug-friendly environment in South Africa.’

Drug cartels do not recognise laws, rules or state boundaries and one would suggest that South Africa is unable, on her own, to eradicate the scourge of drug trafficking. At most, she may be in a position to treat the symptoms of the problem but she will never eliminate the cause of the problem. What is required is a regional and international commitment of zero-
tolerance to drug trading and an integrated, choreographed plan of action (with national and international roleplayers) vested with the task of eliminating drug trading on the continent. Such a programme will, obviously, demand large sums of money, as well as skilled resources. However, countries in the region need to take action to effectuate their commitment to combat drug trafficking for this is a crime with the real potential to destabilise not just a country, but the entire region.

BIBLIOGRAPHY


Endnotes


ii Similar opinion was expressed in a U.N. Report reported in the Chinese Press in the same year (see Anon 2001(b), at 1).

iii The description by Griffith of the causes why drug trafficking becoming entrenched in Colombia is particularly interesting for the remarkable similarities with South Africa. (See the discussion on South Africa in the main text of the article.) Griffiths notes in this regard, ‘[I]t is the corrupting nature of this business that is perhaps the most frightening. This is a business that preys upon weakness, upon greed. Poor people are drawn into carrying drugs, demeaning themselves, physically and morally in the process. … Youth gangs are drawn into trafficking in their neighbourhoods, earning previously unseen amounts of money, becoming warlords dangerous to society, indeed so heavily armed as to be almost beyond the power of police or government’ (Griffith 1993: 84).

iv An example of the increased trafficking is indicated by the fact that in 1992, about 24 pounds of cocaine were confiscated by the police: However, in 1995, this figure was up to 400 pounds: S Daley. 1996. Apartheid’s fall opens door to scourge of cocaine. *New York Times*. 4. Leggett notes that the first arrest for crack cocaine was made in South Africa in 1995 – ‘a full decade after crack’s peak in the United States (2002: 4).

v Interview with a police detective at the Organised Crime Unit, Gauteng.

vi The US Drug Enforcement Agency notes that the Nigerian cartels also use ‘swallowers’ who ‘ingest as many as 150 egg-sized condoms filled with pure heroin which is then smuggled through coastal towns in eastern India to Africa and on to the United States and Europe (Vesely 2000: 8).
The Customs Office in Pakistan describes the process: A capsule is about 10cm long, with a 9cm circumference and a weight of 20 grams. Each capsule contains about 17-18 grams of heroin. The capsules are inserted into the body cavity using a pressure pump that lodges the capsule inside the anal canal and/or abdomen. The carriers are then ordered not to consume anything for hours to avoid excreting the capsules. Given the nature of the process, Pakistan customs notes that the South African locals are ‘recruiting their countrymen, especially heavy women, to conceal heroin in their body cavities to smuggle them from Pakistan’: Anon 2004: 4) Ephedrine-hydrochloride is used as a raw material for the production of drugs.

This view was expressed by a police detective from the Organised Crime Unit in Limpopo Province.

He notes that one of the ironies of his incarceration is that whilst he is serving a long term of imprisonment for drug trafficking, ‘drugs are freely traded by prison officials at the jail.’ He further noted that his arrest has had a negative impact on his entire family, ‘not only because they are separated and he has not seen his family for many years, but [because his family] were also forced to move out of Colombia to another country.’ He is also aware that upon his release he will also not be able to return to his home country, Colombia ‘because of the danger associated with the drug business.’

Again, he noted the consequences of his incarceration on his family. In his case, after his arrest, a close member of his family was also killed in South Africa when the latter came to the country to settle an outstanding amount of money for drugs. As far as he knows, no-one has been charged with the murder.

Comment of a police detective from the Pretoria area previously attached to the former Narcotics Bureau of SAPS.

This means that there is no specialisation of the members to deal with drug trafficking – the members of the Unit deal with all possible syndicate activities including stolen vehicles, fraud, and theft: Comment of a police detective from the Organised Crime Unit in Limpopo Province.

Comment of a police detective from the Pretoria area previously attached to the former Narcotics Bureau of SAPS.

Comment of a police detective from the Pretoria area previously attached to the former Narcotics Bureau of SAPS.

He, too, notes he consequences of his arrest on his family. Not only are they now separated but he also had a close member of his family killed after his arrest.

Section 4. Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and –

(a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or

(b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person, which has or is likely to have the effect-

(i) of concealing or disguising the nature, source, location, disposition, or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof;

(ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere-

(aa) to avoid prosecution; or

(bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,

shall be guilty of an offence.

Section 5. Any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby-

a. the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or

b. the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way,

shall be guilty of an offence.

Asset forfeiture under POCA has been described as specifically visionary for the fact that it provides for a civil forfeiture action to be employed in criminal proceedings (Goredema: 2001:10). What this means is that whereas in criminal forfeiture, the order is restricted to assets owned or possessed by the convicted person at the time of the conviction and operates only against the specific individual (in personam), civil forfeiture is an action in rem and is aimed at the asset/s as a distinct object and goes back to the illegal act. This makes it ‘enforceable
against third parties, regardless of their involvement in or knowledge of the underlying criminal conduct’ (Goredema 2001:10) subject to the provisions of section 52. (Section 52 provides that a person who has acquired property legally and for value ‘not significantly less than the value of that interest’ and who had no knowledge or could not reasonably have known that the interest was or could have been acquired through illegal activities, may have such property excluded from any forfeiture order.) Furthermore, whilst a conviction on the criminal charge will require proof ‘beyond a reasonable doubt’, the standard of proof required for an order of forfeiture is a ‘balance of probabilities’, with the state having only to prove that the asset/s were probably used in the commission of an illegal activity.

With regard to the particular obligation to report suspicious behaviour and transactions, Prins (interview with Adv TJ Prins, partner at Deloitte Forensic and Consulting Services) provides certain pointers to identifying such transactions which include inter alia (i) insufficient or suspicious information presented by a prospective account holder when opening a bank account; and (ii) the banking transactions through the account appear inconsistent with the customer’s stated business for example high traffic flow into and out of the account, unusually large sums of money deposited into the account and immediately removed to other accounts, and unusual/inconsistent settlement characteristics or activities which include high level cash transactions, many small incoming transfers of funds or deposits of cheques and money orders, then large outgoing transfers, and regularly depositing or withdrawing large amounts to, from or through countries that are known source of narcotics. Also interesting is the impact of the Bill of Rights in ensuring even-handed justice. Prior to its amendment, the Drugs Act specified a series of presumptions in respect of drug trading which effectively placed the onus of combating the presumptions on the accused for instance once the state had established possession of a specified quantity of a dependence-producing substance, the accused would have been presumed to have been dealing in the substance. However, in light of the fundamental right of ‘innocent until proven guilty’ entrenched in the South African Constitutional, these presumptions have now been removed from the law.

FICA Section 21 states:

(1) An accountable institution may not establish a business relationship or conclude a single transaction with a client unless the accountable institution has taken the prescribed steps to identify and verify the account holder or such person who may be acting on behalf of the account holder.

The recent case of Senior Superintendent Piet Meyer and his colleagues bears testimony to this: Business Day. 2 February 2001. SARS raid touched the tip of the iceberg. 3.

Email correspondence between researcher Van Zyl and the Heads of Research and Strategic Management, SAPS dated 9/05/06 and 10/05/06.

It is trite that extradition can take place both under or in the absence of a treaty.

Comment of a police detective from the Pretoria area previously attached to the former Narcotics Bureau of SAPS.