

**Exploring the Interface between Transnational Organised Crime and Political
Elites in Southern Africa: The Cases of the Democratic Republic of Congo and
the Republic of South Africa**

by

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DECLARATION

I, Pholla Samkezi Mbalane, hereby declare that *EXPLORING THE INTERFACE BETWEEN ORGANISED CRIME AND POLITICAL ELITES IN SOUTHERN AFRICA: THE CASES OF THE DEMOCRATIC REPUBLIC OF CONGO AND THE REPUBLIC OF SOUTH AFRICA* is my own original work and has not been submitted by me or any other individual at this or any other university. I also declare that all the sources that I used have been indicated and acknowledged by means of complete references. I hereby cede copyright of this product in favour of the University of the Free State.



Pholla Samkezi Mbalane

June 2021

DEDICATION

To my late father and grandmother; I hope that you are proud of the man I am becoming. Kuni ndithi *Ahh Mthimkhulu, Radebe, Nasele, Bhungane, Thole-lesilo, Ndlebentle-zombini!*

This thesis is dedicated to my fellow African youth. As we struggle against high unemployment rate, barriers to accessing Higher Institutions of Learning, and the lingering legacies of police brutality, I hope that this study helps us analyse the complexities of holding our politicians accountable. Furthermore, I hope it grants us a deeper understanding of the systemic Goliath we are facing and assists us in improving our strategies for research, policy development and practice for the betterment of our continent.

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ABSTRACT

Transnational organised crime syndicates remain increasingly interconnected across the African continent and specifically in the Southern African region. Operating in the shadow of the economy, criminal syndicates and political elites alike continue to profit from crime. The study unpacks the nature of transnational organised crime in Southern Africa by exploring the interface between organised crime and political elites in the region. The research also demonstrates the threats that the nexus between organised crime and political elites pose to good governance, development, and democracy. Moreover, the study concludes with key recommendations on how, if at all, this menacing trend could be reversed.

William Reno's shadow state is adopted as a theoretical framework in this study to evaluate and juxtapose transnational organised crime and political elites in Southern Africa. Reno establishes a concept of a shadow state that exists as a parallel system of governance that is constructed behind the façade of law and governmental institutions. From this framework, organised crime follows the structure of the war economy, in which various informal structures are established by the shadow state to create systems of power, protection, and profit. The study therefore identifies points of cooperation between political and criminal actors and provides insights into the collusive nature of criminal networks within the context of the Southern African Development Community (SADC) region. Moreover, it argues that the distinction between the licit and illicit is frequently blurred and political elites are sometimes the key participants and, to some degree, organisers of organised criminal activities. Both political and criminal actors become rulers of a shadow state with the ability to manipulate access to both the formal and clandestine markets, thereby undermining the legal institutions of government.

Comparable to other regions of the African continent, the SADC region constitutes both developing and less developed countries. Some countries in the SADC are entangled in multiple violent conflicts and wars and are in the process of economic and political transition. As a result, their state institutions are fragile. On the other hand, other countries are relatively stable with well-developed infrastructure and economy. Therefore, analysing the phenomenon of the nexus between organised crime and political elites in the region requires an account of all these different factors

and the contributions thereof to the formation of criminal opportunities within different types of states. To achieve this aim, two countries, the Democratic Republic of Congo (DRC) and the Republic of South Africa (RSA), were selected for qualitative analyses. Although these countries share similar ambitions on regional agendas, they have contrasting governance, economic, and security capacities.

As the largest country in the region, the DRC offers a compelling case study. This is not only due to its fame as the largest country in Southern Africa but also because, despite its vast endowment of natural resources, it remains one of the poorest countries in the world. The DRC has also been involved in violent conflicts over the years. By using the DRC, the study demonstrates how poverty, conflict, instability, and state fragility serve as an opportunity for the complicity of political elites with organised criminal syndicates in the commercialisation of organised criminal activities. However, this study also points out that the phenomenon of the nexus between organised crime and political elites is not only confined to the so-called “weak” or “fragile states”. It is also visible in middle-income states such as the Republic of South Africa.

South Africa is regarded as a powerhouse in the region with a relatively well-developed infrastructure and economy. It is entrusted with the responsibility to assist its neighbouring states in matters such as law enforcement initiatives, amongst others. It is also one of the countries with reasonable resources to counter organised crime effectively. Interestingly, this so-called regional powerhouse is also a regional hub for the production and trafficking of drugs and a constellation of other criminal activities. South Africa is, therefore, selected to demonstrate that the involvement of political elites in organised criminal activities is not necessarily linked to poverty, conflict, instability, and state fragility. Post-colonial state structures, the increasingly globalised private sector, as well as the connections between new governments and the colonial political and economic interests also play a role in the proliferation of political elite’s involvement in organised crime.

The study concludes that addressing organised crime in the region will require preventing and reversing the criminalisation of governments, coupled with the provision of sustainable economic alternatives for citizens. This can only be achieved through new and innovative responses that extend far beyond the crime-fighting

approach, but that activate regional strategies across a broad range of sectors and include a diverse group of stakeholders.

Key terms: transnational organised crime, criminal syndicates, interface, and political elites.

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List of Abbreviations

ACLED	Armed Conflict Location & Event Data Project
ACTSA	Action for Southern Africa
AfCFTA	African Continental Free Trade Agreement
AfDB	African Development Bank
AGR	African Gold Refinery
ANA	African News Agency
ANC	African National Congress
ANCYL	African National Congress Youth League
ARINSA	Asset Recovery Informal Network
BDF	Botswana Defence Force
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CIB	International Criminal Court Counterfeit Intelligence Bureau
CIC	Commander in Chief
ConCourt	Constitutional Court
CPI	Corruption Perception Index
CPO	Chief Procurement Officer
DC	Developing Countries
DI	Deposit Insurance
DPCI	Directorate for Priority Crime Investigation
DRC	Democratic Republic of Congo
EFF	Economic Freedom Fighters
ECOWAS	Economic Community of West African States

EITI	Extractive Industries Transparency Innovation
EU	European Union
FARDC	Armed Forces of the Democratic Republic of the Congo
FATF	Financial Action Task Force
FDI	Foreign Direct Investment
FDRL	Democratic Forces for the Liberation of Rwanda
FRELIMO	<i>Frente de Libertação de Moçambique</i>
FS	Free State
FSI	Fragility States Index
G20	Group Twenty
GDP	Gross Domestic Product
GFI	Global Financial Integrity
GIATOC	Global Initiative against Transnational Organised Crime
ICG	International Crisis Group
IEU	Southern Africa's Independent Evaluation Unit
IFFs	Illicit Financial Flows
IOs	International Organisations
ISS	Institute for Security Studies
ISS	Institute for Security Studies
KPMG	Klynveld Peat Marwick and Goerdeler
LDC	Lowest Developed Countries
M23	March 23 movement
MEC	Member of the Executive Council
MFMA	Municipal Financial Management Act

MICs	Middle Income Countries
MNCs	Multinational Corporations
NP	National Party
NPA	National Prosecuting Authority
NPSA	South African National Prosecuting Authority
OC	Organised Crime
OEC	Observatory of Economic Complexity
OECD	Organisation for Economic Co-operation and Development
PFMA	Public Finance Management Act
PIC	Public Investment Corporation
PMG	Parliamentary Monitoring Committee
PPE	Personal Protective Equipment
PPLAAF	Platform to Protect Whistleblowers in Africa
PRASA	Passenger Rail Agency of South Africa
Precca	Prevention and Combating of Corrupt Activities Act
RENAMO	<i>Resistência Nacional Moçambicana</i>
RET	Radical Economic Transformation
RSA	Republic of South Africa
SAA	South African Airways
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADCPF	Southern African Development Communities Parliamentary Forum
SAPS	South African Police Services
SAPs	Structural Adjustment Programs

SARB	South African Reserve Bank
SARPCCO	Southern African Regional Police Chiefs Co-Operation Organisation
SARS	South African Revenue Services
SDGs	Sustainable Development Goals
SIA	SOCO International PLC
SOEs	State Owned Enterprises
SSA	State Security Agency
SSA	Sub-Saharan Africa
SWI	Shadow World Investigations
TIP	Trafficking in Persons
TOC	Transnational Organised Crime
UAE	United Arab Emirates
UDI	Unilateral Declaration of Independence
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations and Economic Commission for Africa
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention on Transnational Organised Crime
USA	United States of America
VBS	Venda Building Society
WFP	United Nations World Food Programme
ZACC	Zimbabwe Anti-Corruption Commission
ZANU-PF	Zimbabwe African National Union-Patriotic Front
ZIMRA	Zimbabwe Revenue Authority

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Figure 1: Mineral reserves and their distribution in the DRC

Figure 2: Ace Magashule's web of capture

Figure 3: Illicit flow of funds from VBS Mutual Bank to EFF's leadership

1. CHAPTER ONE: INTRODUCTION

1.1. Preliminary study and rationale

Transnational organised crime (TOC) in the Southern Africa region is growing at an alarming rate and this has sparked international concern. Prominent criminal organisations, professional criminals, and political elites continue to target the region because of the significant illicit wealth that can be generated (International Criminal Police Organization 2018: 4). The complicity of political elites in organised crime in Southern Africa is nothing new; it has been present in the region before and since decolonisation (Hübschle, 2010: 5). However, its scope, scale, and effects have now increased to unprecedented levels (The Global Initiative, 2014: 1). This is because the web through which global criminality flows and organised crime operates is neither monolithic nor homogeneous but complex and multi-dimensional, with several actors serving as key facilitators.

The involvement of such facilitators varies on a spectrum, ranging from the least to the most influential criminal actors in the region. For instance, the ENACT Organised Crime Index, an innovative, analytical tool designed to measure levels of organised crime in African countries, focuses on the influence of criminal actors and the impact of specific criminal markets to assign each region a criminality score (ENACT, 2019: 22). On the spectrum, the index scores are based on a scale of 1 to 10 where a criminality score from 1 to 3 signifies the best possible scenario in which the criminal actor is either non-existent or its impacts are negligible. A criminality score from 4 to 5 signifies a moderate influence, while 6 to 7 signifies a criminal actor that has a significant influence. Lastly, a criminality score of 8 to 10 signifies the worst-case scenario in which no aspect of society goes untouched by criminality; thus, the criminal actor has severe influence (ENACT, 2019: 45).

Within the Southern African Development Community (SADC) region, foreign actors are assessed as the most prominent among the criminal groups (with an index score of 6 out of 10), followed by the second most influential actors that are state-embedded actors (with the same index score of 6 out of 10). Criminal networks are assessed as the third criminal actors, with a moderate influence (scoring 5 out of 10). On the other end of the spectrum are mafia-style actors (such as criminal gangs in the Cape Flats), assessed as the least influential criminal groups in the region (with

an index score of 3 out of 10) (ENACT, 2019: 75). Considering that state-embedded actors include individuals who occupy higher positions and wield power within the state apparatus, this index shows that state actors contribute to a variety of criminal activities in the region. Such activities range from accepting proceeds of organised crime as bribes in return for issuing licenses, permits, and tenders in trade and environmental markets, to engaging directly in criminal activities. Thus, they play an influential role in legalising the illegal and, at times, serving as kingpins in organised criminal activities.

Furthermore, state-embedded actors also include individuals who are strategically positioned in high echelons of state and enjoy high levels of impunity (ENACT, 2019: 100). Appointment of loyalists and allies into critical state institutions by the former South African president, Jacob Zuma, serves as examples of strategically positioned state-embedded actors. Examples include the appointment of Tom Moyane, Arthur Fraser, and Mosebenzi Zwane as the Commissioner of the South African Revenue Services (SARS), director of the State Security Agency (SSA), and Minister of Mineral Resources, respectively. Occupying key state positions, these actors created an enabling environment for the systematic looting of state resources, corruption, money laundering, and the abuse of state agencies and state-owned enterprises (SOEs) in the Republic of South Africa.

Regarding the criminal markets, ENACT (2019: 74) indicates that environmental crime, with illicit trade in fauna, scores the highest, followed by the heroin market as the most pervasive illegal economy. Complementary to these findings, the Global Initiative (2020: 49) has recently published a report in which it indicates a shallow flood of heroin seeping across the Southern Africa region and also identified South Africa as the largest heroin destination and consumer base country in Africa. This makes the SADC region the most extensive heroin market base. The illicit trade of non-renewable resources, flora, and the cannabis market also score relatively high in the region (ENACT, 2019: 74). The most crucial and note-worthy feature of organised crime in the regional context of Southern Africa is that the strength of states and degree of involvement of political elites and state actors in criminal activities primarily shapes the role of criminal actors.

According to Ellis and Shaw (2015: 511), organised criminal activities in many parts of Africa, including the Southern African region, are usually associated with a set of relationships involving prominent political figures, powerful local intermediaries, and professional criminals. In cases where criminal networks and political elites co-exist, a blurring of borders separating licit and illicit activities is inevitable. This is evident in Southern Africa, where political elites and organised crime are inextricably linked and state institutions are exploited by governing elites who commit crimes. In the Democratic Republic of Congo (DRC), for instance, the long tradition of the country's predatory management of natural resources has been recorded in many reports. According to Transparency International (2014), the Congolese army has direct control over the trade of minerals in partnership with several international companies.

In many cases, minerals worth millions of dollars are exploited by illegal concessions in cooperation with armed groups and corrupt officials. These resources are deliberately undervalued and funnelled to Chinese, Korean, Burundian, Ugandan, and Rwandan consortiums. In December 2017 and June 2018, the United States Treasury sanctioned more than 30 businesses owned by Israeli billionaire Dan Gertler, accusing him of using his proximity to the former Congolese President, Joseph Kabila, to secure mining deals (Reuters, 2019). Despite this, *La Générale des Carrières et des Mines* (Gécamines), a Congolese state-owned mining company, continued to transact with Dan Gertler, and, as a result, Congolese prosecutors are currently investigating a 200 million Euro (USD 222 million) line of credit issued by Dan Gertler to Gécamines (Tshiamala, 2020). These mining deals began almost a decade ago and have since cost the DRC a significant amount of revenue. For instance, the 2013 African Progress Panel report, which was headed by the former United Nations Secretary-General Kofi Annan, indicates that the DRC lost USD 1.36 billion in revenue between 2010 and 2012 in five mining deals involving Gécamines and Gertler (Africa Progress Panel, 2013).

The Congolese government's involvement in such lucrative deals is evident from comments by senior officials to independent reporting agencies. The Risk & Compliance Portal (2019) stated that "between 2008 and 2011, the Congolese government was accused of selling mining concessions for USD 5 billion under market price in return for kickbacks, while government officials pocketed USD 23 million in kickbacks from a USD 6 billion mining-for-infrastructure deal with China".

This comment signals that political elites remain the primary beneficiaries of illegal activities in the DRC. Considering that 98 per cent of the gold produced in the DRC is smuggled out of the country (United Nations, 2014 in Martin & Taylor, 2014: 1), it can be argued that there are enormous tax losses to the DRC fiscus as a result of illicit financial flows. In fact, the DRC — like the rest of Africa — loses far more money through illicit financial flows than it receives in aid and foreign direct investment (FDI) (Gatimu, 2016).

A symbiotic relationship between organised criminal syndicates and political elites does exist in SADC member states. The consequences of this relationship are clearly apparent in instances where politicians undertake unethical conduct by receiving bribes and selling concessions to unscrupulous corporations and criminal groups at the expense of the citizen's welfare. At the same time, customs officials accept kickbacks to turn a blind eye to the shipment of drugs and where soldiers and police officials, individuals sworn to serve and protect the citizens, sell their weapons to the street gangs (ENACT, 2019: 8). For instance, each year, there are reports of lost firearms from the security forces in South Africa. These firearms fall into the hands of criminal gangs, as seen from the charges that have been made by community activists in the Cape Flats against some police officers accused of diverting weapons to criminal gangs (Roelf & Tassiem, 2019).

As a result, girls, boys, women, and men become victims of violent abuse and exploitation; thousands of people lose their lives, wildlife is poached at a massive scale, and the natural environment is pillaged to the point of extinction. The deleterious impacts of transnational organised crime on human life may be overlooked and the threat it poses to the natural environment and animal life may be underestimated. However, the significant threat it poses to national and international security, with dire implications for public health, public safety, democratic institutions, development, and economic stability, is widely felt across the region and is hard to ignore.

Organised crime robs nations of revenue that could have funded sustainable development and the eradication of poverty, as the valuable resources lost to criminal gangs could have been used to build schools, hospitals, roads, and a future for the citizenry. This is especially true in Southern Africa, where the most vulnerable

continue to endure the unbearable consequences of organised crime while political elites and criminal syndicates profit. According to the World Bank (2011), organised crime and conflict have the same detrimental effects on equitable and sustainable economic development and contribute to a development underperformance of 80 per cent, resulting in the sustainable economic development of only around 20 per cent annually. Transnational organised crime simultaneously undermines democratic rule by eroding sovereignty, eroding the notion of territorial control and national sovereignty, distorting the line between legal and illegal, hampering the formulation of public policy, and severely affecting social cohesion.

Transnational organised crime has been acknowledged, since the early 20th century, as a serious problem and threat to the world order. Organised crime is a global phenomenon that leaves no jurisdiction unaffected (International Criminal Police Organization 2018: 7). It crosses national borders and erodes the principle of territorial control while destabilising the rule of law by distorting the line between that which is licit and that which is illicit and circumventing any legislation enacted for its prevention. State and non-state actors involved in these criminal activities establish networks, often referred to as criminal networks, that seek to expand the illicit market in every way possible (Shaw 2018: 16). The ability of these criminal organisations to create unique structures, systems, and adopt practices that differ from country to country and region to region make them readily adaptable to various environments with different jurisdictions; thus making it difficult to detect and, at times, impossible to intercept (International Criminal Police Organization, 2018: 7).

Apart from the role of criminal actors, state fragility itself serves as a facilitator and, in some cases, a result of organised crime. Dr. Jakkie Cilliers, the executive director of the Institute for Security Studies, and Professor Timothy Sisk of International and Comparative Politics at the University of Denver, define a fragile state as one that has a low capacity and poor performance with regard to security and development (Institute for Security Studies, 2013: V). Harpviken (2010: 224), on the other hand, argues that state fragility also emanates from incidents where political leaders deliberately weaken the independence and capacity of state institutions to sustain their patronage networks. The latter is especially true in Southern Africa where political leaders (usually presidents) centralise the operation of state institutions to

ensure that negotiation of government contracts and the appointment to key positions depend in large measure on receiving approval *via* the leader's office.

Cases of deliberate sabotage of key state institutions are easily identifiable in the Southern Africa region. In South Africa, for instance, former president Jacob Zuma deliberately undermined and weakened the independence of SARS, which was by far the country's most efficient law enforcement agency; the SSA, a body which had a unit that specialises in organised crime; the National Prosecution Authority (NPA); as well as the Directorate of Special Operations (known as the Scorpions), a crack-crime fighting unit that had a tremendous conviction rate with a reputation for bringing to justice corrupt politicians such as Richard Mdluli, Nomgcobo Jiba, Schabir Shaik, Jackie Selebi, and many others (Pauw, 2017). In summary, organised criminal syndicates exploit weaknesses within states, penetrate the population, and secure a market share in, among other things, drugs, corruption and money laundering, and sexual exploitation of women and young boys.

Additionally, human trafficking, environmental crimes, smuggling of counterfeited goods, art trafficking, maritime piracy, drug and cigarette smuggling, and motor vehicle trafficking are all various forms of criminal activities that constitute the illicit market (KwaZulu-Natal Department of Transport, 2016). On the other hand, corruption, rapid migration, weak border management systems, porous borderlines, cybercrime, and trade in small arms and light weapons are all classified as enabling crimes or contributing factors (United Nations, 2010). These enabling crimes overlap and intersect in much more sophisticated ways with the aforementioned panoply of criminal activities across the region.

The rise in the influence of criminal networks is also a result of the intraregional liberalisation of trade in services and the realignment of the international system, which includes Southern Africa. In line with global trends, the SADC signed its Trade Protocol in 1996, which came into force on 1 September 2000, intending to liberalise intraregional trade in goods and services; ensure efficient production; contribute towards the improvement of the climate for domestic, cross-border, and foreign investment; and enhance economic development, diversification, and industrialisation of the region (United Nations Conference on Trade and Development, 2009: 1). Although this regional integration agenda yielded some positives for economic growth

in the region, the agenda was not completely devoid of flaws. Such flaws include limited capabilities to regulate and check large international transfers of capital, thus facilitating money laundering in the region. For instance, according to Action for Southern Africa (ACTSA), the region lost USD 8.8 billion on trade-related illicit outflows in 2015 alone (Bagree, 2019). This illustrates how some economic reforms implemented by the SADC region — with limited regulatory capabilities — serve as avenues for TOC. Criminal syndicates monopolise on these economic opportunities as the business sector is no longer constrained within national boundaries.

Within the context of the preceding discussion, this research interrogates the relationship between TOC and political elites in Southern African states, seeking to reach an understanding of the nature of TOC in the region. South Africa and the DRC will serve as illustrative case studies. The next section provides the problem statement and focus of the study, an elaboration of the research questions, aims and objectives, purpose and significance, a discussion of the methodology adopted in the research, key limitations of the study, as well as the ethical considerations. This section is then followed by a literature review. The chapter then concludes with an outline of the discussions to follow in the coming chapters.

1.2. Problem statement and focus

The presence of TOC in the Southern Africa region has long been recognised by officials, including politicians and law enforcement bodies, and was declared a threat to national and international security (United States National Security Council, 2011). As a result, international and governmental interventions, coupled with numerous political resolutions, have been adopted in the region to address the menacing trend of TOC. However, these interventions have proven unsuccessful in ameliorating the situation. Thus, the proceeds of criminal activities are still rampant in the region with dire implications for public health and safety, economic stability, and democratic institutions.

This research contends that, when dealing with TOC, countries in the SADC region tend to design and adopt interventions that are more focused on organised criminal syndicates while disregarding the role played by political elites in the commercialisation of organised crime due to the penetration of state structures by organised crime syndicates. Therefore, the problem statement maintains that a link

between organised crime and political elites exist in the region and that political elites are sometimes the key actors in organised criminal activities.

As far as this study was concerned, the problem statement was demarcated conceptually, geographically, and temporarily.

Conceptual demarcation: The analysis focuses on the link between organised crime and political elites in Southern Africa. Interestingly, relations between various non-governmental actors and governmental actors in the commercialisation of criminal activities feed into and further perpetuate the notion of the protection economies. The analysis also included the nature and extent of TOC crime in Southern Africa and how it affects good governance and democracy, economic stability, and development.

Geographical demarcation: The research will mainly focus on the role of governmental and non-governmental actors in the proceeds of TOC in the SADC region. However, the role of state actors will also be taken into consideration in as far as government officials use the state itself as an instrument to commit organised crime.

Temporal demarcation: The analysis focuses primarily on current and recent manifestations of the nexus between organised crime and political elites in the region. Historical factors were also taken into consideration only in as far as they had a direct bearing on the concepts and the research problem. Regarding the country-specific cases, this paper focused on the development of organised crime in South Africa post-1994 to early 2021 and in the DRC from 1997 to the present day — encompassing the reign of the Kabilas (both Laurent and Joseph Kabila).

Additionally, this section of the problem statement focuses on and also provides and defines some of the key terms used in the study. At this point, it is important to note that only a few key aspects have been highlighted and a complete conceptualisation will follow later in this study. Within the context of this study, the term interface is used to describe a point in which political elites and criminal syndicates collude for the purpose of committing organised crime. A government is used to refer to a territorially based body that makes authoritative decisions (for which it possesses constitutional or legislative authority) that are binding on individuals and businesses within its boundaries (Broadway & Shah, 2009). A government is the only body with

an official authority to speak in the name of the common good and this separates it from the civil society and other groups. This term will be utilised to describe how arms of government (the legislature, executive, and judiciary) become avenues through which organised crime permeates the Southern African region. Political elites in this study refer to individuals who are elected into government and wield political power, while a state is defined as a political association that establishes sovereign jurisdiction within defined territorial borders and exercises authority through a set of permanent institutions, often referred to as state institutions (Heywood, 2019: 57). The term state is applied to show how criminal syndicates penetrate state institutions in the commercialisation of crime, and to also show how government elites use the state as a tool to commit organised crime.

1.3. Research question

The research question that this study seeks to answer is:

What is the interface between organised crime and political elites in Southern Africa?

This research question generated two subsidiary questions:

- What are the historical, social, and political factors that contributed to the development of organised crime in the Southern Africa region?
- What are the threats that the nexus between organised crime and political elites poses on good governance, development, and democracy?

1.4. Aim and objectives

This study aims to unpack the nature of TOC in Southern Africa by exploring the interface between organised crime and political elites in the region. The study will delve into organised criminal networks' collusion with political elites and their utilisation of state institutions in committing crimes. The research will also aim to demonstrate the relationship of the nexus between TOC and political elites to good governance, development, and democracy. Moreover, the paper will conclude with key recommendations on how, if at all, this menacing trend could be reversed.

1.5. Purpose and significance

Peace, security, and development have always been central to the SADC's regional integration agenda. This is recognisable from the Sustainable Development Goals

(SDGs) and Agenda 2063. Despite this, a plethora of transnational criminal activities are perpetrated in both stable and fragile SADC member states. As a result, TOC continues to be a threat to human security, peace, and development. Regardless of the growth of organised crime, particularly its interface with political elites in Southern Africa, literature regarding this subject is scarce. Scholars, planners and researchers of organised crime, as well as some policymakers have over the years, complained about the lack of reliable information regarding the nature and extent of organised crime in Southern Africa. Improper documentation of data on organised crime by individual countries in the region, a lack of resources, expansive geographical areas, borders, and coastlines, which makes coverage difficult (if not impossible), are contributing factors to the lack of reliable information. The interface between transnational organised crime and political elites is, therefore, an understudied phenomenon in the region.

The quest for more information about the nature and impact of organised crime in the SADC region is an on-going process. More information is necessary to enable policymakers to formulate and adopt relevant and pro-active strategies to combat TOC in the region. The thesis topic arose from a pragmatic interest in exploring the interface between organised crime and political elites in Southern Africa to reveal the nature of organised crime in the region and to analyse the impact thereof on good governance, democracy, and development. The study also intends to provide alternative solutions for adequate monitoring of the phenomenon of TOC in the region. Therefore, this research seeks to contribute to the much-needed information and empirical analysis of organised crime in Southern Africa. The analysis provided by this dissertation will contribute to the understanding of the nature of organised crime in Southern Africa and will offer a regional perspective on organised crime, which is essential for policymakers when formulating policies and strategies to combat organised crime both regionally and nationally.

1.6. Research methodology

This study is undertaken with the aim to explore the relationship between organised crime and political elites in Southern Africa. Arguing that this phenomenon is still understudied in the SADC region (Blum, 2016: 7), this study is classified as exploratory research, as it is undertaken to address an unexplored phenomenon.

According to Kumar (2019: 15), exploratory research is a type of research that is undertaken with the primary objective of exploring an area where little is known or to investigate the possibilities of conducting a particular research project.

Data utilised for the research was soft data collected from primary sources, including institutional documents and reports, communiqués, speeches, and press releases of multilateral organisations, organs, persons, and governments involved in combatting TOC. Secondary sources included scholarly articles, books, and previous studies on TOC in Southern Africa. Other secondary sources in the public domain, such as periodical articles, historical renditions, and other digital media and commentary, was used, albeit with cross-reference and the highest scrutiny to avoid biased reportage and factual inaccuracies.

The research method adopted in this study is a qualitative one. Denzin and Lincoln (2018) assert that a qualitative approach is used to explore the nature of a problem or phenomenon. As indicated in preceding discussions, this study seeks to reach an understanding of the nature of TOC in the SADC region. The qualitative nature of the research conducted in this study is also reflected by the processes and activities utilised to gather and analyse the information. For instance, the researcher employed the ENACT Organised Crime Index, which is designed to provide metric-based information about organised crime in the African continent (ENACT, 2019: 22). The index makes use of a scale of 1 to 10 to measure the extent to which various criminal actors have an influence in criminality in the region, as well as the significance of various criminal markets available in Southern Africa. Using primarily qualitative measurement, the present study is classified as qualitative in nature due to the fact that the information was gathered “through the use of variables measured on a nominal or ordinary scale” (Kumar, 2019: 16).

In addition to the above qualitative approach, the study made use of case studies and a literature review to collect data, which are both qualitative data collection methods (Belyh, 2017). A case study is an analysis of cases that are unique concerning the research topic (Guest, Namey, & Mitchell, 2012: 9). In a similar vein, Starman (2013: 32) asserts that case studies provide in-depth and detailed information about a subject or topic under investigation. In line with this, this study selected two countries, the DRC and South Africa, as illustrative case studies to provide a more detailed and

in-depth analysis of the nature of organised crime in the SADC region. The selection of these two countries was based on notable features they possess, such as contrasting capacities in governance, economic, and security.

The DRC is categorised under the lowest developed countries (LDCs). It is often regarded as a fragile state with weak economic and infrastructural development. In contrast, South Africa is categorised under the developing countries (DCs) with a relatively well-developed economy and infrastructure and is regarded as a powerhouse of the region. The contrasting features of these countries formed the basis upon which the selection was made. Moreover, the study also made use of a literature review to collect comprehensive information about the topic. According to Belyh (2017), a literature review or documental revision involves the use of previously existing and reliable sources of information as a source of data to be used in the new research.

The research also intends to analyse the relationship between organised crime, good governance, democracy, and development and to reach conclusions and recommendations regarding the formulation of governmental policies to combat the issue of TOC effectively. This, therefore, reveals that this study comprises of applied research because it strives to improve our understanding of a problem, with the intention to contribute to the solution of that problem. Applied research “aims at finding a solution for an immediate problem facing society” (Dudovskiy, 2016: 109).

1.7. Limitation of the study

A range of national, regional, and global reports on TOC, as well as a collection of sources in the form of policy documents and communiqués informed the study. Within the SADC region there is information paucity in terms of the interface between organised crime and political elites, which is a fundamental limitation of this study. Improper documentation of data on organised crime by individual countries in the region, lack of resources, expansive geographical areas, borders, and coastlines, making coverage difficult (if not impossible), have often been cited as challenging factors by researchers of organised crime. This has relegated this research to the scarcely available primary and secondary sources. There may be crucial data that, when made available, could significantly contribute to the findings of this research.

1.8. Ethical considerations

Ethical considerations are important when conducting research. As such, this study will be a desktop study and only use information available in the public domain. Moreover, the researcher will refrain from bias in the selection of information.

The researcher does not foresee any ethical implications for the research as it makes use of data available in the public domain, as well as non-offensive and non-discriminatory language. The researcher acknowledges works of other authors used throughout the dissertation with the use of the Harvard referencing method, thereby providing both in-text references and a bibliography.

The limitations posed by the scarcity of data and sources are bound to affect the outcomes of the study. However, the researcher appreciates that an application of standard methodological processes would mitigate this risk by taking cognisance of any possible bias caused by the meagre supply of appropriate data and literature. The researcher makes use of academic language; therefore, any offensive, discriminatory, or unacceptable language has been avoided in the formulation of this proposal and the writing of this study.

The researcher acknowledges all subjective experiences regarding the topic under investigation. Although the researcher has limited experience specifically in organised crime-related issues, his honours degree in political sciences helped shape his understanding of the illicit economy and shadow states, specifically in Africa. The researcher also engaged in a research project that focused on the South African National Defence Force, through which he gained some insights on cross-border criminal activities occurring within the South African national borders. As a result, the researcher is aware that transnational criminal activities, such as human trafficking, drug smuggling, and livestock and vehicle theft have been taking place between South Africa, Zimbabwe, and Lesotho for years.

By explaining the processes and methods for data collection and analysis, the researcher hopes to produce a credible, dependable, and verifiable study. Additionally, by incorporating subjectivity into the study, the researcher hopes to contribute unique, valid, and trustworthy results to the understanding of the nature of TOC in the Southern African region.

1.9. Literature review

The relevant literature for this study revealed four main themes that will be presented and discussed in the literature review. The first theme provides a discussion on the emergence and evolution of TOC crime in Southern Africa and the second theme deals with the conceptualisation of TOC within the context of Southern Africa. The third theme focuses more specifically on the nexus between criminal organisations and political elites. Lastly, the fourth theme provides an analysis of the relationship between organised crime and development.

1.9.1. *The emergence and evolution of TOC in Southern Africa*

Shaw and Reitano's article entitled "The evolution of organised crime in Africa: Towards a new response" (2013) presents crucial drivers behind the growth of organised crime in the African continent, which includes Southern Africa, by listing three phases through which organised crime occurred. Self-explanatory in its title, "The evolution of organised crime", the article concentrates on the development of organised crime in prevailing socio-economic and political environments in Africa.

In the article, Shaw and Reitano (2013) indicate that the first phase began in the 1970s with decolonisation. They argue that although organised criminal activity was largely concentrated in two countries (South Africa's Western Cape and south-eastern Nigeria), large scale cocaine trafficking was being introduced throughout the continent during this period. Shaw and Reitano (2013: 1) then proceed to the early 1990s, the period during which organised crime moved to the second phase in Africa. The authors argue that brutal and protracted conflicts, especially in central and west Africa, gave birth to armed groups that colluded with foreign criminal networks to fund conflicts. In line with this, a senior research fellow in the Global Risk Programme at the University of Cape Town, Annette Hübschle, adds that post-apartheid periods saw a faster expansion of organised crime in Southern Africa as border controls became more relaxed and discriminatory laws were repealed in the advent of democracy in countries such as South Africa (Hübschle, 2010: 4). The end of apartheid, unexpectedly, made Southern Africa states more vulnerable to cross-border criminal activities (Shaw & Reitano, 2013: 1). This shows how the fragility of post-apartheid states created a series of criminal networks and established a parasitic relationship between weak states and urban hubs that attracted international

criminal actors. Johannesburg in South Africa and Kinshasa in the DRC became havens for the channelling and the control of the illicit market. Other cities like Cape Town, Harare, and Lusaka also played a pivotal role in this regard. For instance, the Western Cape gangs sourced drugs from India and elsewhere and sold them in local markets while also transacting with other criminal groups regionally and internationally. This phase created a solid foundation for the rapid growth of organised crime to follow in the next phase.

Lastly, Shaw and Reitano (2013: 1) point out that the third phase began around the start of the new millennium. They assert that this period saw the dramatic and devastating impact of illicit trafficking as powerful criminal networks, with strong state connections, proactively benefited from the closer integration of Africa into the licit and illicit global economy. These are times when “armed groups become driven more by profit than ideology” (Shaw & Reitano, 2013: 1).

Complementary to Shaw and Reitano’s article, Gastrow’s monograph titled “Penetrating state and business: organised crime in Southern Africa” (2003) also reveals three phases in which organised crime developed and evolved specifically in the Southern African region. Unlike Shaw and Reitano, Gastrow (2003: 6) believes organised criminal groups existed as early as the 1950s in SADC countries. Yet, he conclusively acknowledges that “the criminal markets that developed during those times were, according to today’s criteria, relatively harmless” (Gastrow, 2003: 3).

According to Gastrow (2003: 6), the first phase began in the early 1940s, during World War II. Gastrow (2003: 6) argues that the war resulted in far reaching social, political, and economic changes for Southern African countries mostly still under colonial rule. As a result, a significant degree of self-reliance was fostered and colonial governments had to establish secondary industries, as local markets could no longer be supplied with imports from colonial capitals. Gastrow (2003: 6) then highlights how this expansion of domestic markets inadvertently provided conditions for the development of criminal markets by stating that “criminal groups focused on the supply of goods, such as the cannabis and liquor, which had always been a demand but for which there were no legal supplies available” (Gastrow, 2003: 6). He indicates that this was especially the case within the large black urban population that was subject to racially discriminatory laws and remained without normal social

mobility and entrepreneurial avenues. Thus, during this period, organised criminal groups comprised of unemployed locals, primarily black Africans, who relied on illicit brewing and distribution since they were not allowed to purchase liquor lawfully.

Similar to Shaw and Reitano, Gastrow (2003: 6) also points to the 1960s and 1970s as periods during which organised crime became more evident in the Southern African region. For Gastrow, organised crime moved to its second phase during these two decades, while Shaw and Reitano (2013: 1) mark this era as a foundational period for the emergence of organised crime. Gastrow (2003: 8), however, contends that during this period political and financial adjustments established conditions for the growth of organised crime and spread of criminal networks. He further indicates how international trade sanctions, such as the Southern Rhodesia's Unilateral Declaration of Independence (UDI) in 1965, led to the establishment of a network of illicit trading channels involving, among others, the marketing of tobacco, the importation of oil, the laundering of funds, and the utilisation of existing criminal networks.

Building on Gastrow's argument, the Global Initiative (2014) contends that some economic and political adjustments, such as the global push for multi-party democracy and the conditionality for development funds following the end of the Cold War, created the need for governing parties to generate funds for political campaigns to retain public office. Additional to these political and financial adjustments, Shaw and Ellis's article, titled "Does organised crime exist in Africa?" (2015), presents challenges that the Washington consensus and the imposition of structural adjustment programs (SAPs) posed to governments and further demonstrate the increase in the establishment of regional criminal networks. Shaw (2002: 44) argues that these SAPs enabled establishment of regional networks, thus marking the second phase of the development of organised crime in Southern Africa. Goredema (2005: 2) contends that criminal networks entrenched themselves and developed illicit markets across the SADC region in the 1970s and 1980s. According to Gastrow (2003: 7), the second phase was also marked by the expansion of smuggling links between the newly independent countries and state-backed organised criminal activities in the region. This means that around the 1970s, Southern African countries witnessed a significant growth in the regional economy of crime.

Gastrow (2003: 9) further reveals that the third phase of organised crime began around the 1980s and 1990s, stating that during this phase, “a marriage of convenience was forged between foreign fortune hunters and local operators, to their mutual benefit” (Gastrow, 2003: 9). During this period, fundamental economic, structural, and political transformations that all SADC countries underwent after independence fuelled the rapid growth of organised crime. Similarly, Hübschle (2010: 4) discusses how post-apartheid periods saw a faster expansion of organised crime in Southern Africa as border controls became more relaxed. She proceeds to argue that, when discriminatory laws were repealed in the advent of democracy in countries such as South Africa, criminal organisations received yet another opportunity to expand their markets further. In line with Hübschle’s work, Shaw and Reitano’s (2013: 1) analysis reveals how the end of apartheid, unexpectedly, made Southern African states more vulnerable to cross-border criminal activities.

Literature on the emergence and evolution of organised crime in Southern Africa reveals that, although authors may differ distinctly in terms of the arrangement of stages or phases, they concur on the socio-economic and political factors that underpin the development of organised crime in Southern Africa and Africa. As a result, this study summarises the emergence and evolution of organised crime in Southern Africa into four phases that occurred against the background of tangible shifts in the prevailing social, political, and economic environments. The first phase is the foundational period, which began in the 1940s during World War II, that was characterised by a slow emergence of organised criminal groups throughout the SADC region with limited criminal market opportunities. The second phase began in the 1970s and was marked by a rapid growth of criminal networks at a regional level with instances of state-backed organised criminal activities. The third phase began around the 1980s and 1990s, as significant transformations (social, political, structural, and economical) created conditions for the establishment of international links. The fourth phase began in the early 2000s and was marked by the dramatic and devastating impact of the illicit market with strong collusions between increasingly powerful criminal networks and political elites.

The history of the emergence and evolution of organised crime in Southern Africa reveals that SADC member states become more vulnerable to infiltration by

organised crime as they transition towards a more globalised and sustainable state-building path.

1.9.2. *The concept of TOC in Southern Africa*

Formulation of a definition of TOC is the source of numerous debates. Annette Hübschle, one of the most acclaimed experts on the subject, explains that the concept of organised crime is highly contested, “and it is used indiscriminately to denote actor constellations or organised criminal activities.” Hübschle (2014: 32) further states that “Consensus on the internationally agreed definition of organised crime proved an onerous task at the 1999 and 2000 U.N. Ad-Hoc Committee meetings in Vienna”.

The academic and official literature regarding the definition of TOC therefore contains contradictory definitions in the Southern African region, as it does globally. For instance, Blum (2016: 9) points to the lack of a standard definition regarding organised crime in the SADC, stating that the majority of SADC police agencies do not have a definition of organised crime, while those who do, do not agree on a standard definition.

Highlighting difficulties in formulating an internationally agreed upon definition of organised crime, Blum (2016: 6) turns to the United Nations Convention on Transnational Organised Crime (UNTOC) of 2003, called the Palermo Convention, and views it as the critical document of reference in defining TOC. In article 2(a) of the Palermo Convention, an organised criminal group is defined as a “structured group of three or more persons, existing for a period of time and acting in concert to commit one or more serious crimes or offenses to obtain, directly or indirectly, a financial or other material benefits” (United Nations Office on Drugs and Crime, 2004: 5).

Gastrow (2001) counter-intuitively argues that the Palermo Convention does not define organised crime; instead, it defines an organised criminal group and then criminalises participation in such a group. He then states that TOC groups “are those that are made up mainly of foreign nationals (but not exclusively) of nationals from your country and that are involved mainly (but not exclusively) in criminal activities within your borders.” Gastrow’s definition seems to suffer the very defect of the

Palermo Convention, which he criticises heavily. He describes TOC groups, instead of defining TOC.

Turning to Southern Africa, the first review on organised crime in the SADC region, established by the Institute for Security Studies (ISS) in 2011, provides a distinction between the traditional, “American-influenced” approach to organised crime and TOC. The review categorises proponents of traditional definitions as those that focus their attention on the organisational aspect of the activity by emphasising certain typical traits, such as the logistical and hierarchical structure of criminal groups. In contrast, others relate TOC to a culturally homogeneous group derived from their country of origin (ISS, 2011: 9).

Ellis and Shaw (2015: 5) conclusively write on the deficiencies of traditional definitions of TOC, arguing that they are not applicable in Southern Africa since they overlook the involvement of law enforcement agencies and political elites in organised criminal activities. On a similar note, Hübschle (2010) highlights how these definitions also tend to follow a more legal approach that focuses on organised crime as an act mainly committed by non-state actors. Thus, it fails to account for the share of state-actors in the proceeds of crime. Goredema and Goga (2014: 6), on the other hand, give a similar view, arguing that organised crime in Southern Africa bears little resemblance to the mafias that had a clear hierarchical structure, which originated in the United States of America (USA).

In line with the above, this paper distances itself from the traditional definitions of TOC, arguing that their narrow focus creates a perception that a clear line between the legitimate and illegitimate actors exists, rendering organised crime an issue of the “bad guys” versus the “good guys.” Therefore, in this paper, TOC is defined as criminal acts that are conducted within and beyond borders of a state by a group of criminals acting in concert with law enforcement agencies and political elites to obtain, directly or indirectly, a financial or material benefit from a set of activities that are illicit or licit. This definition incorporates four essential factors of TOC in the Southern Africa region; first, it comprises both state and non-state-actors and political and non-political elites; secondly, it includes both the illicit and licit goods and activities; thirdly, it crosses national borders; and fourthly, the actors involved are profit-driven. Therefore, this definition serves the purpose of this study well.

1.9.3. *The nexus between criminal organisations and political elites in Southern Africa*

A report entitled “*Organised Crime in Southern Africa: Unholy Alliances*”, published by the Global Initiative against Transnational Organised Crime and Rosa Luxemburg Stiftung in 2014, highlights that the intersection of organised crime and political elites is a significant factor in Southern Africa and Africa as a whole. The report notes that organised crime groups in Southern Africa often expressly target the highest levels of the state in order to facilitate their illicit operations. It reveals how criminal groups in Southern Africa manipulate and exploit their political patrons and use their proximity to the state to consolidate their control over criminal markets and dominate other rival groups (Global Initiative Against Transnational Organized Crime, 2014).

In line with this report, Shaw (2016: 34) invokes the notion of a “protection economy” to illustrate how the various players intersect in countries where the state’s capacity is weak. In his article, he identifies three key components that comprise a protection economy: first, provision of violence or, what he calls, “the people with guns”, which can vary from elements in the security forces themselves, to militia, gangs, or private security companies, to secure the movement of contraband; secondly, corruption involving key government officials; and thirdly, criminal investment in the communities themselves to ensure legitimacy and smooth operation, such as payment to political parties or financing of local facilities (Shaw, 2016: 35).

Blum (2016: 10) comments that strong collusion between political and state elites with TOC emerged over a decade ago in Southern Africa. In addition, Ellis and Shaw (2015: 507) argue that the interlocking of crime and state politics in Southern Africa dates back almost a century. They further elaborate by stating that within at least half a century, some countries in Africa had already developed a “kleptocratic” style of rule. This was evidenced through the use of fraud, bribery, and similar illegalities as instruments of governance. The Global Initiative (2014: 4) recognises that the “kleptocratic” form of rule enabled the development of protection economies in Southern Africa, which operate in three ways — violence, corruption, and legitimacy.

The literature also carries forth the notion of the “shadow state” developed by William Reno (2000). For Reno, the end of the Cold War and the rise of economic and political liberalisation policies put traditional patterns of patronage under pressure in

Sub-Saharan Africa. In his analysis of central African states, he describes how leaders have based their power and derived individual wealth from the overt and clandestine manipulation of markets and at times, the connivance of foreign investors in natural resource enclaves.

Years before Reno's idea of the shadow state, Bayart (1993) developed the concept of the "politics of the belly" in which he revealed the predatory nature of the post-colonial state of Africa. Bayart (1993) argues that the predatory nature of the state generates incentives for leaders to "eat" from the resources of their states. In his model, the invasion of ever-wider spheres of economic activity by informal political networks leads to the "criminalisation of the state." Central to Reno and Bayart's argument is the use and creation of personalised, informal patron-client networks. Their literature remains relevant as it gives a powerful, scholarly account of the collaboration between businesses, bureaucrats, politicians, and law enforcement agencies such as the police and military in the creation of a shadow state. Their studies are more relevant now than ever, given the extent of the collusion between organised crime and political elites in the SADC region.

Writing on Reno's conception of the African State as a shadow state, Funke and Solomon (2002: 2) expand Reno's definition of a shadow state to incorporate three factors closely linked to the shadow state phenomenon. They added the involvement of external actors and the extent to which they directly support the maintenance of the shadow states, the symptoms or the actual state collapse in states where elements of a shadow state are strong through the weakening of the institutions of government, and the importance of civil society.

1.9.4. *The organised crime-development paradox*

Organised crime has been placed unequivocally on the development agenda in Africa and more particularly in the Southern African region. For instance, Target 16.4 of the SDGs aims to "significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organised crime" (United Nations, 2015). Similarly, the African Union's development Agenda 2063 identifies organised crime as a development threat (African Union Commission, 2015). This signals how organised crime has, both directly and indirectly, proven to be a cross-cutting threat to the attainment of core and essential development objectives.

An Enact Continental report titled “The crime-development paradox: Organised crime and the SDGs” acknowledges that “organised crime is decisive and destructive. It is poison in the well of global sustainable development” (Reitano & Hunter, 2018: 3). Complementary to this report, a Global Initiative against TOC recognises how organised crime could directly and significantly impact the ability to achieve 23 of the 169 SDGs targets (Reitano, Hunter, Rodriques, & Shaw, 2015), implying that TOC poses a threat to the attainment of almost 15 per cent of the SDGs.

Reitano and Hunter’s 2018 article “Mitigating the threat of organised crime to Africa’s development” presents a manifold threat posed by organised crime to development. In this article, Reitano and Hunter (2010: 3) list three main challenges that organised crime presents to the achievement of the SDGs, which are (a) the on-going and direct risk to an individual; (b) the risk that development investments are diverted, owing to a failure to account for organised crime’s influence; and (c) the risk that development investments themselves increase organised crime. The article highlights how development actors in Africa must understand not only how organised crime undermines the SDGs and Agenda 2063 objectives but also how development itself presents opportunities for organised crime to flourish.

Reitano and Hunter (2010: 4) further reveal two key factors that generally underpin organised crime. First, organised crime can be a source of livelihoods, a resilience strategy for the poor and vulnerable, and a genuine means for achieving development. Secondly, development can, counter-intuitively, facilitate organised crime. These factors point to the development paradox at play where the illicit economy presents the best possible development returns for specific individuals or communities. The latter suggests that economic growth and development exacerbate drivers of organised crime.

Additionally, the World Bank (2011) acknowledges the corroding impacts of organised crime on development, stating that organised crime and conflict have the same detrimental effects on development, amounting to less than twenty per cent development performance. On the other hand, Dininio (2015: 3) discusses how organised crime serves as both a contributor to and a result of state fragility. She argues that this ultimately impedes development.

1.10. Structure of the research

This study is arranged into the following chapters:

Chapter One provided an introduction and contextualisation of the problem under investigation. This included the identification of the research theme, problem statement and focus, research question, aims and objectives, purpose and significance, the research methodology, limitations of the study, ethical considerations, as well as a literature review.

The second chapter can be seen as a theoretical chapter that constitutes a theory of the shadow state. The third chapter begins with an exploration of the historical background of the development and evolution of TOC in Southern Africa. In this chapter, the ambiguity of the concept of “transnational organised crime” within the context of Southern Africa is also dealt with. The chapter then moves into an analysis of the nature and extent of organised crime in the present-day, with a specific focus on the nexus between political elites and criminal syndicates. This chapter sets the background for the discussion and critical analysis to follow in the next two chapters. The fourth and fifth chapters constitute South Africa and the DRC as illustrative case studies, respectively.

The last chapter entails a conclusion of the study that summarises findings of the study and ultimately proposes recommendations to ameliorate TOC in Southern Africa.

CHAPTER TWO

2. THEORETICAL AND CONCEPTUAL FRAMEWORK

2.1. Introduction

Chapter One introduced the broad research theme for this study, which is exploration of the interface between organised crime and political elites in the Southern African region. This overall research theme was then split into two sub-themes: first, investigation of the historical, social, and political factors linked to the development of organised crime in the SADC region, and secondly, delineation of the threats posed by the nexus between organised crime and political elites to good governance, democracy, and development. In the literature review, each theme was defined briefly and discussed in greater detail to show its significance to the study. Chapter One also established the idea that TOC actors operate in the shadow of the economy.

This chapter will introduce and explain the theoretical framework that will be used to analyse the research problem of this study. The chosen theoretical framework is based on Reno's (1995) theory of the shadow states. Reno presented this theoretical framework in his seminal work, *Corruption and state politics in Sierra Leone* (1995). In his book, Reno provides a detailed account of how several leaders in Sierra Leone were able to gain access to resources by manipulating the actors and institutions around them. Reno expanded on his initial theory by linking the shadow states to clandestine economies, the decline of the formal state, and the privatisation of state sovereignty.

As indicated, Reno developed his theory using Sierra Leone, which is in Africa, as his primary case study. Therefore, Reno's theory is useful as the dominant analytical tool when discussing the cases of the DRC and South Africa. This is not to suggest that other African state theories are not applicable to this study; instead, this study uses the shadow state "lens" to investigate and explore the cases of the DRC and South Africa.

Since the Southern African region is in Africa, this chapter commences with a general discussion of theories of the African state to place the subject under investigation in context. Outlining the background of the post-colonial African state is essential before

looking at the shadow state. This chapter ends with a brief discussion of the significance of shadow states in the Southern African region.

2.2. Theories of the African state

In the lexicon of African politics, there is no consensus on a definition of the “African state.” Kawabata (2006: 1) argues that it is difficult to define the concept of an African state, as there are various conceptions of the term “state” and different understandings of what makes a state “African.” Keller (1991: 135) contends that there is no clear-cut theory of the African state despite the wealth of literature. However, amongst a plethora of conceptions, the contemporary African state is perceived as an imported state, a criminal and disorderly state, a resource state, a predatory state, a neo-patrimonial and privatised state, a failed and weak state, and a shadow state. Therefore, presented in this section are general views regarding the nature of the state in Africa.

Englebert (1997) provides an interesting point of departure on the African state debate. According to Englebert (1997: 767), the contemporary state in sub-Saharan Africa is not African. He argues that, although states in Africa have been transformed, adopted, adapted, and endogenised since independence, their origins remain exogenous. This argument has its roots in Badie’s (1992) and Badie and Birnbaum’s (1979) theory of the “imported state” or the “transplanted state,” arguing that the African state is imported from Europe.

In the book “Africa Works: Disorder as Political Order,” Chabal and Daloz (1999) describe the African state as a “disorder state” to reveal the political instrumentalisation of disorder in Africa. Nyaluke (2014: 143) argues that by “political instrumentalisation” of disorder, Chabal and Daloz meant that some states in Africa have a vested interest, or some kind of economic rationale, in perpetuating the weak institutionalisation of political practices. On the other hand, Bayart, Ellis, and Hibou (1999) point out that the association between the African state and international criminal networks of organised crime is in itself the criminalisation of the state. Kawabata (2006) adds that referring to the state in Africa as a “criminal state” suggests that the state is itself the scene or the main actor in the criminal activity. In other words, states themselves are vehicles for organised crime in Africa.

Another theory relevant to the theme of this study is Lonsdale's (1981) theory of the "resource state." According to this theory, the state is seen as a material resource. Szeftel (1982) argues more particularly that states in Africa are used as a material resource for personal ends. Following this line of thinking, the post-colonial state in Africa is seen as a major source for spoils and a means to an end. Hence, Keller (1991: 139) argues that politics in Africa has become more like a business, with political power used as a vehicle for economic power, and political resources reduced to economic ones. Political power in Africa is sought not for its own sake but for the material advantage it promises. As a result, Keller (1991: 139) argues that the personalisation of rulership has become the rule in Africa.

The personalisation of rulership is a form of rule where the state becomes penetrated by personalised relationships based on communal ties and operates to satisfy personal and collective aspirations to the detriment of legitimate functions (Sandbrook, 1985, quoted from Beckman). Thomas Callaghy termed this the emergence of a "patrimonial administrative state." According to Callaghy (1987), African leaders have patrimonialised the states bequeathed to them by their colonial predecessors and corruption has become a defining feature of contemporary politics. On the other hand, Van de Walle (1994) posits that the neo-patrimonial state found in modern Africa presents a dilemma where the patrimonial logic coexists with developing a bureaucratic administration and pretences of legal-rational forms of state legitimacy.

Moreover, Bayart (1999) views pervasive corruption and disorder as two features found at the very heart of African politics that serve as instruments for the looting and exploitation of state resources for personal gain. In his book, Bayart describes the nature of African politics as the "politics of the belly" to reveal the predatory nature of the post-colonial states in Africa that generates incentives for leaders to "eat" from the resources of their own countries. As a result, Solomon and Liebenberg (2000) argue that massive embezzlement of state funds and assets by state office bearers and corruption on all levels of state employees seem to be the foundation of contemporary states in Africa.

States in Africa are usually criticised for their inability to adequately project power and prevent violent conflict and are, therefore, weak in a Weberian sense. According to

Weber (1921), an effective state is an organisation that claims a monopoly of violence within its borders to maintain order. As argued by Chabal and Daloz (1999: 77), “in most African countries, the ‘state’ not only fails to protect the population from crime but is itself responsible for a high level of violence, both through the direct abuse of power and because of its predatory nature.” Such patterns also point to the “strong-soft state” dilemma. For instance, Keller (1991: 139) argues that in terms of the monopoly over the means of coercion, the African state tends to be strong relative to other segments of the society. At the same time, Hyden (1980) suggests that states in Africa tend to be soft in terms of their ability to ensure voluntary and regular compliance to rules and policies.

The weak nature of African states has led some observers of African politics to attach descriptive monikers to highlight how African states do not adequately fulfil their duties as states — juridical states, shadow states, suspended states, collapsed states, predatory states, bed-ridden states, and vampire states. Although the use of such generalised typological categories may appear short-sighted, they point to prevalent institutional deficiencies of the contemporary state in Africa.

The extent to which the credibility of the state in Africa has reduced in the eyes of the citizens has forced large segments of the population in various African countries to withdraw from the formal economy and derive their livelihoods from informal social networks based on friendship and family ties. Interestingly, however, the rulers of the African state themselves have diverged from the legitimate functions of government and created a shadow state that operates as façades of the formal institutions of government. Hence, the shadow state theory is the most appropriate theoretical framework for this study and is discussed in greater detail below.

2.2.1. *The shadow state*

The concept of the shadow state was first introduced by William Reno (1995). In his seminal work on corruption in West Africa, *Corruption and State Politics in Sierra Leone*, Reno (2000: 434) defines the shadow state as “a form of personal rule” where an individual ruler makes decisions that do not subscribe to a set of codified laws and procedures of a state, even though these may exist. In other words, this is a system of governance where an individual ruler gains power from personal decisions rather

than by the rule of law. As revealed in Chapter One, Reno establishes the concept of a shadow state as a parallel system of governance constructed behind the façade of laws and government institutions.

In a shadow state, authority belongs to an individual or a group of individuals, such as important figures from the public and private sector institutions, whose ruler maintains the support of key actors closely linked to him through privileged access to economic assets (Hussein, 2018). As already mentioned in Chapter One, political elites and criminals become rulers of the shadow state with the ability to manipulate access to both the formal and clandestine markets, thereby undermining the legal institutions of government. In this way, political elites and criminals collude and are able to strategically enhance their power and enrich themselves (Funke & Solomon, 2002).

Rulers of the shadow state deliberately weaken institutional structures of the formal government either by paying too little attention to the needs of their population (Funke & Solomon, 2002) and or through the manipulation of the key institutions of government. Such deliberate actions and interactions create an ideal system for collusive and corruptive economic and political behaviour, rendering the formal state fragile while the shadow state persists. Thus, Reno perceives the shadow state as a system of governance imposed by public officials acting out of personal interest in conjunction with external independent actors that may possess the capability to perform public obligations. Due to state fragility and public malfeasance, these obligations remain unfulfilled in reality (Reno, 1995: 2000).

A fragile state, as defined in Chapter One, is one that displays low capacity and poor performance with respect to security and development and where leaders deliberately weaken the independence and capacity of state institutions to sustain their patronage networks. Consequently, a fragile state fails to perform as expected, with the disintegration of structures of authority, law, and order; the cessation of the guaranteed rule of law; and a significant decline in public services becoming the order of the day.

In countries where the capacity of a state is fragile or weak, Shaw (2016: 34) states that a “protection economy” develops. As mentioned in Chapter One, Shaw applies the notion of “protection economy” to illustrate the intersection of various players in countries where the shadow state rulers managed to effectively weaken the capacity

of the state. His concept is relevant to Reno's shadow state theory, especially when examining the three components comprising the protection economy: the provision of violence (to secure the movement of contraband), corruption (including the payment of key government officials), and criminal investment in communities (including the payment of political parties and or financing local facilities to ensure legitimacy and smooth operation) (Shaw, 2016: 35).

Although rulers of the shadow state deliberately weaken institutions of formal government, they, however, have an interest in maintaining the appearance of a functioning state. To accomplish this, partnering with foreign actors becomes critical to gain global recognition of sovereignty. The global recognition of sovereignty enables the rulers of a shadow state to conceal their manipulation of formal institutions of government in order to increase their personal power (Du Rand, 2010: 36). Therefore, the formal state becomes nothing other than a Potemkin state, with the façades of state institutions still standing and recognised by international actors to be genuine edifices but in fact amounting to a mere semblance of the formal state apparatus. In other words, a shadow state operates as an "informally commercially oriented network" alongside government bureaucracies that still exist (Funke & Solomon, 2002: 1). In summary, the shadow state exists as a vast structure that exists beneath the formal shell of the state with its institutions, rules, and regulations known to participants.

A shadow state consists of few individuals who control access to and benefit from the resources of a nation or country. These individuals include politicians in higher echelons of power and non-state business elites who possess considerable influence in shaping policies (Hussein, 2018). As a result, they manage to exercise political authority through the private control of resources in illicit and informal markets (Reno, 2000: 434). Hence, Reno devised the shadow state theory to analyse an informal state that operates outside of the formal system of governance but has a strong power in deciding the political direction of a formal state (Syauket, 2019: 136). Deciding the political direction of a legitimate state is as critical as deciding its economic direction. After all, central to the shadow state is the commercialisation of crime. Reno (2000) adds that in a shadow state, capital and economy is dominated by several elite businessmen who manipulate the formal political authority, weaken

the bureaucracy, and penetrate social networks. This alludes to the idea that shadow state practices are marked by conspiracies between business and political elites.

Funke and Solomon (2002: 2) expand Reno's definition of a shadow state to incorporate factors closely linked to the shadow state phenomenon. They added the following three factors: first, the involvement of external actors and the extent to which they directly support the maintenance of the shadow state; secondly, the symptoms or the actual state collapse in states where elements of a shadow state are strong, through the weakening of the institutions of government; and thirdly, the important role played by the civil society in the shadow state. The latter factor is especially relevant considering Reno's definition of the shadow state as a "matter of degree", rather than an "all or nothing" phenomenon (Reno, 2000: 442; in Funke & Solomon, 2002: 2). The role of the civil society is also relevant because it was completely disregarded by Reno in his early study.

Related to the shadow state theory is Pablo Querubin's concept of "political dynasty". Querubin (2010: 136) defines political dynasty as a particular form of elite persistence in which a single family or family groups monopolise political power. In a shadow state, political dynasty occurs when members of a certain clan "informally" gain control of the executive, judiciary, and the legislative branches of government. A family group, in the context of this paper, does not only refer to biologically related individuals but include individuals who are closely connected to a ruler, such as friends, in-laws, *et cetera*. Once established and entrenched, the domination of a political clan (dynasty) is expected to flourish from one generation to the next.

Additionally, the notion of "state inversion" by Forrest (1998) is also critical in understanding the shadow state theory. According to Forrest (1998), state inversion is a process where "government institutions become increasingly dysfunctional and end up turning inward toward themselves rather than outward toward society" (Forrest, 1998: 46). Although invented states retain their relationships with societies, Du Rand (2010: 37) explains that such relationships are often limited to illicit trade networks. This becomes visible in instances where government's focus is more on gaining access to, and sometimes expanding, profitable markets rather than creating sound economic policies that will benefit its citizenry. Furthermore, Forrest (1998: 46) asserts that inverted states "provide international actors with a relatively familiar

pretend-administrative structure and a pretend-set of bureaucratic rules and offices”. The development of invented states can be traced back to four main factors, according to Forrest (1998: 47). These are first, the transformation of the international system; secondly, the privatisation of the African state; thirdly, the decline in reliability of African armed forces; and fourthly, an increase in non-traditional challenges to the state.

Du Rand (2010) believes that Forrest’s idea of “state inversion” complements Reno’s shadow state theory for two main reasons. First, Reno’s shadow state theory presents an alternative framework to traditional understandings of the African state by recognising the sustainability of informal markets in Africa and its allure to Africa’s politicians and businessmen. Secondly, it recognises the informal market’s attraction of attention from foreign investors that ultimately motivates politicians to harness better control over informal markets, usually to the detriment of state economic interests (Reno, 1995: 9).

Traditional analyses of African economies often draw a line between the formal state-controlled economy and the state-eluding informal economy. However, in the shadow state this distinction dissolves and is replaced by a system where government officials willingly participate in the informal economy to take advantage of the entrepreneurial opportunities or evade taxation (Clapham, 1996: 251). Therefore, the line that separates the formal from informal economy becomes blurred and is defined by the relationship between actors, rather than by the actual structure of each economy. Linked to Reno’s shadow state theory is Jean-François Bayart’s identification of political authority, *la politique du ventre* (“politics of the belly”), where economic accumulation and political authority coalesce to form the basis of the shadow state (Bayart, 1989: 257).

As indicated in Chapter One, Bayart (1993) used the term *la politique du ventre* to describe the “politics of the Postcolonial State” in Africa. Bayart also employs the term “hegemonic project” to refer to a situation where the ruler or rulers of a country accommodate a chosen group of elites to create an environment that can enhance their power (Bayart, 1989: 257). In a hegemonic project, the ruler retains most control or more power through both legal and illegal means. This blurs the boundaries between the licit and illicit as the ruler or rulers spend much of their energies engaged

in transactions that they themselves labelled as illicit. Hence, the hegemonic project can be considered as both a form of economic sabotage and a ruler's survival strategy (Du Rand, 2010: 39). Bayart, in his model, asserts that the invasion of ever-wider spheres of economic activity by informal political networks leads to the "criminalisation of the state." Central to Reno and Bayart's argument is the use and creation of personalised informal patron-client networks.

Similar to the formal state, a shadow state consists of well-developed institutions that collect taxes, wield force or enforce justice, and regulate the market and distribute resources. It resembles the attributes of the Weberian modern state, including the administration of government that is based on the rule of law, where political authority binds the citizens and the area of the state and where government wields a monopoly on the use of power and violence (Syaukert, 2019: 136). This highlights the symbiotic relationship that exists between the formal, also known as the constitutional state, and the shadow state. Chipkin and Swilling (2018: xi) distinguish between the constitutional and shadow state by stating that the former refers to a formalised constitutional, legislative, and jurisprudential framework of rules governing what the government, the state, and institutions can and cannot do. On the other hand, the latter refers to a network of relationships that intersect and bind a specific group of people who need to act together in secretive ways so that they can either effectively hide, actively deny, or consciously 'not know' that which contradicts their formal roles in the constitutional state.

A shadow state is a space for illegal, sometimes referred to as extra-legal, action facilitated by criminal networks, where key security and intelligence actions are coordinated. It is a world where deniability is valued, culpability is distributed, and trust is maintained through mutually binding fear (Chipkin & Swilling, 2018: 19). Therefore, a shadow state is a carefully coordinated informal structure that relies on the use of government power for private enrichment and control over access to resources. As already mentioned in Chapter One, the shadow state establishes several informal structures that produce systems of profit, power, and protection, that ultimately enables preferential access to resources and power through an exploitative economic system (Chipkin & Swilling, 2018: 19). The foundation of these informal structures is the creation of patronage networks consisting of the patrons, the elites, and the entrepreneurs, as discussed below in 2.3.7.1.

2.2.1.1. *The patronage networks of a shadow state*

The patronage network or patronage-client culture is a system, often political in nature, based on a personal relationship between parties with uneven power relations; that is, the leader (patron) and the follower (client) (Syauket, 2019:137). As stated previously, the shadow state relies on establishing patronage networks consisting of patrons, the elites, and the entrepreneurs.

2.2.1.1.1. *The patrons*

The patrons or controllers of resources are individuals located at the apex of the exploitative economic system established by the shadow state. The patron is an individual with higher socio-economic status, who uses his influence and resources to provide protection and benefits to individuals with lower status (the client) (Scott, 1993: 53). The patron occupies a higher position in the formal government and, therefore, uses the government power to secure the central position in the shadow state. In the hierarchy or power structure, patrons are, as already stated, at the apex and are very powerful. The position of the patron often gets stronger due to the monopoly in the economic and governmental or political aspects. This individual is responsible for the predation and exploitation of resources, such as mineral resources including oil, gold, *et cetera*. (Burke, 2001: 22).

The key responsibility of a patron is to secure access to and maintain control over resources (Chipkin & Swilling, 2019: 19). This individual can be seen as the kingpin of the shadow state whose position in the structure grants him the benefit of favouring one group over others, thereby resulting in the exclusion of others who are often perceived as “out of favour.” Being favoured by the patron has its benefits, such as guaranteed protection and preferential access to resources, while being “out of favour” presents a lot of challenges such as insecurities and lack of access to resources (Chipkin & Swilling, 2019: 19). Thus, this creates a competition around the patron as participants in the shadow state fear being ousted by their partners, and, in most cases, fear falling out of favour with the patron. The patron has the ultimate power of rendering favours to his loyalists and punishment to disloyal and uncooperative elites.

2.2.1.1.2. *The elites*

The elites are, in both sociological and political theory, a group of people who are leading actors in the society. They fall in the middle of the hierarchy or power structure and consist of individuals who are within the favour of the patron. Although both patrons and elites hold disproportionate amount of power, wealth and privilege in the society, elites are less powerful when compared to the patrons but more powerful than the clients. Their primary role is to establish and maintain the patronage networks, focusing primarily on the facilitation and the distribution of benefits (Chipkin & Swilling, 2019: 20).

2.2.1.1.3. *The clients*

The clients are also referred to as entrepreneurs or brokers (Chipkin & Swilling, 2019: 20). These individuals are of lower status in the hierarchy and depend on the patron for protection and benefits. Their role encompasses offering general support and assistance, including personal services to the patron (Syauket, 2019: 139). Clients have reciprocal relations with the patron. They usually have commercial ties with various clusters of communities and are able to establish networked competence and access to ports of entry. Clients are crucial in the operation of the shadow state, and when their ability to function is reduced, the patronage network collapses (Chipkin & Swilling, 2019: 20).

Scholars, including Taylor (2004), perceive clientelism in similar terms with political citizenship. This is because, similar to political citizenship that is based on the recognition that citizens are the ultimate guarantors of sovereignty, clients are also able to either grant or withhold legitimacy of the patron in the shadow state. However, contrary to citizenship, clientship is marked by unequal power relations and support in the exchange of material benefits. Rights are replaced by favours, laws by contingent provisions, procedures by customs, and professional or formal relationships by personal ties. To prevent the client from mounting a significant threat, the patron often targets a few individuals from a different nationality or ethnic group. In this way, they limit their power to overthrow the patron (Chipkin & Swilling, 2019: 20).

The fundamental responsibility of clients includes facilitating the movement of funds and goods (both domestically and internationally). As a result, transnational, recruitment, lending, and smuggling networks are central to their function. Networks of clients secure both domestic and transnational border operations to move

resources in international clearing hubs and enter legitimate trade (Chipkin & Swilling, 2018: 20). In most instances, they mask their operations through clandestine methods to avoid external scrutiny.

Chipkin and Swilling (2018: 21) identified six main functions that these networks of brokers perform that are, from an operational perspective, closely related to Ballentine and Nitzschke's (2005) distinct features of war economies. These functions include colluding with corrupt officials to create false documentation regarding the types of goods traded, their quantities and the identities of involved members; providing licenses to others who are involved to obtain illicit goods in violation of the law; laundering money obtained through illicit activities in collusion with legitimate financial institutions to establish legitimate business entities that can generate more funds; using shell companies to conceal details and move assets offshore; exchanging potentially traceable commodities with less traceable ones, through trade misinvoicing; and exporting legitimate goods with proceeds of illicit activities, then importing them back into their country of operation to generate legitimate revenues.

2.2.2. *The shadow economy*

The shadow economy, also referred to as the informal, illegal, or black-market economy, is a network of secretive dealings where state and non-state actors engage in activities outside the confines of the law. These organised crime networks have their own rules and logistics, and their success depends on key individuals strategically positioned in state-owned enterprises, state departments, and regulatory agencies (Swilling, 2019: 6). Mutually binding fear is the device through which deniability and loyalty, the very heart of shadow economy, is enforced and maintained in this clandestine world, with all basic forms of corruption (corruption for the acceleration of processes, administrative corruption, and state capture) entrenched in the spectrum thereof (Madonsela, 2019).

The shadow economy is established by actors in the shadow state to generate revenue for this system of governance and fund its operations. Therefore, understanding the motives, activities, as well as actors involved in the shadow economy remains fundamental since it is the rulers of the shadow state themselves who establish the shadow economy. The shadow economy includes a broad range of

informal economic relationships that do not fall within state-regulated frameworks. The actors of the shadow economy include mafias, criminals, drug traffickers, business elites, “downstream” actors such as truck drivers and poppy farmers, who are involved in the smuggling of high-value commodities, mass extraction of natural resources, currency order and exchange system (Hawalla), and aid manipulation (Ballentine & Nitzschke, 2005: 8). They often seek to benefit on the margins of conflict, thereby bringing in regional and international networks, as shown in Chapter Four. However, since the shadow economy may exist prior to the outbreak of a conflict, actors of a shadow economy often criminalise the formal economy, also called the peace economy. A detailed discussion of this process is provided in Chapter Five.

The shadow economy, operating parallel to, and sometimes overlapping, merging with, and distorting the formal economy of a country, falls under the broad category of war economies. Particularly relevant to this study, and closely linked to Reno’s shadow state theory, are Ballentine and Nitzschke’s (2005: 12) five features of war economies: first, they involve the circumvention of the formal economy and the growth of informal markets, thereby effectively blurring the lines between the formal, informal, and criminal sectors and activities. Secondly, they are marked by the pillage, predation, extortion, and deliberate use of violence against civilians to gain control over lucrative resources, capture trade networks and diaspora remittances, and exploit labour. Thirdly, war economies are highly decentralised and privatised, both in the means of coercion and production and exchange. Fourthly, actors increasingly rely on the legal or illegal exploitation of or trade in lucrative natural resources where these assets are available. Fifth and lastly, they thrive on cross-border trading networks, regional kin and ethnic groups, arms trafficking and mercenaries, and legally operating commercial entities, of which each may have a vested interest in the continuation of conflict and instability.

2.2.3. *The shadow state versus a constitutional state*

Although the activities undertaken by the rulers of the shadow state are beneficial to its participants, they, however, have significant implications on the formal or constitutional state. This thesis extends Reno’s theory of a shadow state by adding the implications thereof on the constitutional state. It divides these into three

categories; that is, the implications of a shadow state on ‘good governance’, democracy, and development. The thesis further adds the significant role of a shadow state on the creation, perpetuation, and maintenance of organised crime. These are explained in greater detail in the following paragraphs.

2.2.3.1. *The shadow state and ‘good governance’*

The shadow state has negative implications on good governance in the sense that it leads to an extreme centralisation of political power, unfair and unequal distribution of resources and opportunities, and poor political decisions.

Extreme centralisation of political power: the shadow state relies on the centralisation of political power around a single ruler or rulers who preside over the constitutional state (). Once the ruler effectively centralises political power, the tendency to cling to political power is induced. In most cases, the ruler wants to secure his position through illegal means, such as denying citizens their electoral right. This creates a system of personalised rule, granting the ruler power, almost nearing authoritarianism which, in turn, weakens checks and balances — thereby replacing ‘good’ governance with ‘bad’ governance. As a result, public trust in government and its organs is eroded.

Unfair and unequal distribution of resources and opportunities: the manners in which a government allocates and distributes a country’s economic and social resources tend to favour a certain group of individuals over another. This creates a narrative that the only way to gain access to resources and wealth is through political office rather than fair and equal distribution of resources and opportunities. Therefore, some individuals engage in corrupt conduct to rise to political power for personal gain or establish corrupt relations with those who uphold political power to gain favours and benefits from them.

Poor political decisions: the shadow state renders rulers of the constitutional state ineffective in making and implementing sound political decisions. The government’s will to make decisive decisions and take reasonable actions in tackling issues such as corruption and crime, among others, deteriorates considerably. This is because the extent of involvement of political elites in various aberrations, such as organised crime, reduces their willingness to implement sound political policies and constrains their political power down to almost nothing.

2.2.3.2. *The shadow state and democracy*

The effects of a shadow state on democracy encompass the absence of the social contract, the weakening of critical state institutions, a lack of protection of freedom to information and human rights, and the hindrance of participatory politics.

Absence of a social contract: a social contract between the state and its people is critical for the consolidation of democracy (Adams, 2018). However, given that democratic institutions were imposed in Africa, there has never been an organic establishment of a social contract between the state and the citizens. Instead, the African state has become a rentier state by imposing things such as paying taxes and respecting authority by citizens in exchange for protection and service delivery from the state. The shadow state has no intention to facilitate the establishment of an organic social contract since its absence helps to keep it unaccountable to the citizens and democratic institutions. Without a social contract, there is no democracy to speak of.

Weakening critical state institutions: the capacity and independence of essential institutions of state weakens, whether deliberately or unilaterally. The capacity of such state institutions becomes weakened to the point where they are nothing other than pretend state institutions. This renders organs of state ineffective in executing their constitutional mandate, that of fostering and protecting democratic values, including transparency and accountability. Without the latter, it is impossible to consolidate democracy.

Lack of protection of freedom to information and human rights: protection of freedom to information and human rights is the backbone upon which democracy is founded (The Constitution of the Republic of South Africa, 1996). However, the secretive nature of the shadow state relies on the concealment of some information from the public and the infringement of human rights. In some cases, a government imposes censorship over media or indirect pressure over matters such as the supply of newsprint. In contrast, the media is used by the government for propaganda. Also, the involvement of critical state agencies, including the police, military, and intelligence personnel, in criminal activities compromises the security of the citizens. As a result, human rights, including the right to safety and security, are compromised

as those responsible for the protection are themselves enablers and perpetrators of crime and violence.

Hindrance to participatory politics: participation of citizens in selecting leaders and the accountability thereof to the electorate is critical for the consolidation of democracy. However, as stated previously, the centralisation of political power induces a ruler's tendency to cling to political power, creating an unsafe environment for participatory politics. Also, a shadow state produces rulers who are unaccountable to both democratic state institutions and the citizens, thereby affecting the consolidation of democracy severely. As a result, the tendency of individuals, usually those with good intentions to serve their nation, to withdraw from politics intensifies.

2.2.3.3. The shadow state and development

The shadow state has dire implications on development. It leads to poor economic decisions, weakened critical financial institutions, erosion of investor confidence, low government expenditure, the diversion of state resources, and proliferation of criminality.

Poor economic decisions: the constitutional government fails to make decisive decisions and implement reasonable economic policies to benefit the citizens. Instead, the government adopts and implements economic reforms that will favour the rulers of a shadow state and not its citizens. This creates a situation whereby the interests of the rulers of a shadow state take precedence over the needs of the citizens. Lack of sound economic reforms inhibits economic development considerably.

Weakening critical economic institutions: the capacity of vital financial institutions tasked with delivering development outcomes weakens considerably. This makes it impossible for such institutions to deliver as expected and delays economic development.

Erosion of investor confidence: a shadow state creates a situation where the public mistrusts state institutions while corruption intensifies. In instances where this is the case, there is little incentive to pay tax, resulting in tax evasion and avoidance by large companies. The likelihood of foreign direct investment drops significantly. This affects a country's gross domestic product (GDP).

Low government expenditure: the government spends less on its population and mismanages national revenue. This leads to poor service delivery, which is sometimes deliberate, and poor socio-economic development as the government fails to channel sufficient funds towards tackling developmental challenges such as poverty, diseases, education, infrastructure, and many others.

Diversion of state resources: state resources that could be used for development are diverted for personal enrichment, while state institutions designed to promote socio-economic and political development are repurposed and used for personal interests. In the context of the African continent, even foreign aid, designated for development, may be used to promote government patronage and serve as a source of wealth for corrupt elites.

Proliferation in criminality: a shadow state creates opportunities for criminal syndicates and activities to occur. This replaces stability and security, which are prerequisites for development, with instability and insecurity, respectively.

2.2.3.4. *The shadow state and organised crime*

Apart from having dire implications on good governance, democracy, and development, the shadow state plays a significant role in the creation, perpetuation, and maintenance of organised crime. This is because the use of violence for mutually binding fear, development of protection economies and establishment of high-value trafficking routes, criminal investment in communities, development of state organised crime, and the criminalisation of the state is central to the shadow state.

Increase in the use of violence: the maintenance of a shadow state depends mainly on mutually binding fear which is imparted through, amongst many other means, violence. Similar to members of a constitutional state, shadow state actors have monopoly over the use of violence. Political assassinations and physical torture become tools to foster loyalty and punish those who attempt to compromise the mandate of a shadow state and its operations. As a result, violence proliferates in countries where shadow states exist.

Development of protection economies and high value trafficking routes: the existence of a shadow state leads to the erosion of state capacity, be it deliberate or indeliberate. With the formal state incapable of projecting itself into its borderlines, protection economies that operate through violence and corruption emerge and

routes for the smuggling of drugs, trafficking of humans, and counterfeited goods *et cetera* are established.

Growth of criminal investments in communities: actors of the shadow state invest in local communities by financing local facilities and even paying political parties to consolidate legitimacy and ensure smooth operation. Through such misdeeds, actors of the shadow state retain support of the society, which plays a significant role in the maintenance of the shadow state.

Development or increase in state organised crime: the phenomenon of “state organised crime” refers to all sorts of acts, which are classified as criminal by law, committed by state officials (Penn, 2018). Such crimes include illegal selling of weapons (especially those that belong to the state), smuggling of drugs, supporting of terrorism, and even supporting and participating in assassinations, turning state officials into agents of criminality.

The criminalisation of the state: the deepening of the shadow state through the penetration of state structures, blurring between the licit and illicit leading to a symbiotic balance between the underworld and upper world, the fusion of state and criminal actors, and the systematic engagement of state officials in illegitimate violence ultimately leads to the criminalisation of the state. This is when the state itself becomes the key actor in criminal activities. In such cases, terms such as the “Gangster state” or a “Mafia state” become applicable to describe a state tied with organised crime.

2.3. The significance of shadow states in the SADC region

There are two factors that must be considered in order to understand the significance of shadow states in the Southern African region: first, the invaluable illicit wealth present in the region; and secondly, the state of disorder coupled with deficient government administration. Both these factors present a vast range of opportunities for criminal entrepreneurs to conceal their illicit transactions and avoid regulations, while on the other hand, they also present an opportunity for governing elites and state actors to collude with criminal entrepreneurs for personal gain.

In the Southern African region, clandestine commerce is a critically important way for regimes, such as the Zimbabwean regime, to stay in power. Shadow states and their

clandestine economies serve not only as a tool for corrupt politicians to stay in power, but also as a strategy to destabilise the region by provoking and prolonging much of the warfare in the region, thereby creating a fertile ground for the looting of natural resources. In destabilising the region and creating chaos, cunning rulers of some countries in the SADC region invite foreign private military forces to intervene in their countries. This intervention is strategic as it enables such leaders to deliberately mortgage natural resources such as minerals and oil while using private security firms' support to suppress political competitors and to procure weapons to sustain their weak regimes. In this way, rulers use shadow states as a tool to source political power and control. On the other hand, Reno (2000) argues that rulers of shadow states recruit and arm youths to help intimidate opponents in economic markets, while aspiring political leaders also recruit youths to attack their rivals.

Moreover, a range of issues defined as challenges of armed insurgencies, crisis of governance, lack of socio-economic development, corruption, evasion of state authority, and poorly designed policies, which are actually aftermaths of shadow states, are purposeful strategies of rulers whom aim to incapacitate state institutions for self-enrichment.

2.4. Conclusion

When trying to understand organised crime, understanding the nature of the state under which such activities occur is critical. As shown in this chapter, the nature of the state is a fundamental variable in understanding the occurrence of organised crime. The contemporary state cannot be fully understood without revisiting the ancient state. Similarly, deviances occurring under the modern state cannot be resolved without understanding their roots. Thus, this chapter has shown how the nature of the state in Africa plays a significant role in the creation and perpetuation of organised crime in Africa.

In this chapter, the aim was to paint a picture of the nature of the contemporary state in Africa. This has enabled the author to contextualise the subject under investigation and to approach the study from a more unique and context-specific perspective. Throughout the rest of the study, knowledge obtained in this chapter will be used not only to analyse the phenomenon of organised crime in the Southern African region

but also to provide relevant policy recommendations that will lead to the amelioration of the organised crime threat in Southern Africa.

The next chapter provides a background on the emergence of transnational organised crime in the Southern African region by investigating the historical, social, and political factors contributing to its emergence. Chapter Three, in cooperation with this chapter, provides the necessary background for a thorough analysis of the creation of the shadow states and organised crime in the Democratic Republic of Congo and South Africa in Chapters Four and Five of this study, respectively.

CHAPTER THREE

3. TRANSNATIONAL ORGANISED CRIME IN THE SOUTHERN AFRICA REGION

3.1. Introduction

The previous chapter introduced the theoretical framework that will serve as an analytical tool in this study. It painted a picture of the nature of the post-colonial African state and emphasised the formation of the shadow state and the creation of shadow economies that operate parallel to the state's formal structures. On the other hand, it revealed the effects of the shadow state on the constitutional state. The purpose of this chapter is to provide the necessary background to the historical and structural development of transnational organised crime in the Southern African region to contextualise the in-depth analysis of the selected case studies in Chapters Four and Five. It begins by delineating the parameters of TOC to offer a better understanding of the concept within the context of this study. The chapter continues to highlight some historical, social, political and economic factors culminating in the development and evolution of TOC in Southern Africa. The chapter further offers and discusses the typologies and enablers of transnational organised crime within the context of the SADC region. Moreover, a brief discussion on the nexus between organised crime and politics is provided. Lastly, the chapter concludes with a critical discussion of the impact of TOC on sustainable development, and an interesting analysis of the paradox that exists between organised crime and development in the region.

3.2. Delineating the parameters of TOC for this study

For any decision or protocol to be considered binding in the Southern African region, two-thirds of the member states need to ratify and give formal consent to make the protocol officially valid (Southern African Development Community, 2012). In dealing with TOC, all SADC member states have either ratified or acceded the Palermo Convention that, as indicated in Chapter One, is aimed at promoting cooperation to prevent and combat TOC more effectively (United Nations Office on Drugs and Crime, 2004: 5). This Convention is, therefore, legally binding across SADC member states. The legislative requirements for this Convention oblige countries that ratify or accede it to take measures against TOC (NCOP, 2003) and to adopt national

legislation criminalising participation in an organised criminal group (UNTOC, 2004, 7). In as far as these legislative requirements are concerned, the SADC region is compliant with the Convention (SADC, 2012). At a regional level, for instance, SADC member states developed a 10-year strategic Plan of Action to Combat Trafficking in Persons, especially women and children (2009-2019) that serves as a blueprint for regional and national responses to Trafficking in Persons (TIP) (United Nations Office on Drugs and Crime, 2016: 1) In 2004, the SADC Protocol on the Control of Fire Arms came into force and the region also has a Protocol on Combatting Illicit Drug Trafficking (1996). These are just a few of the many Protocols that the region has developed and adopted against TOC. As Blum (2016: 24) states, in the SADC “legislation itself is not lacking”. Achieving SADC objectives, however, rests on the political will of political leaders (Farewett & Hurrell, 1995) — the very requirement the region lacks almost completely. This study argues, therefore, that although the region is compliant to the Palermo Convention, there is a lack of political will to implement policies both at regional and national levels. The trend of rising TOC is a direct demonstration of this lack of implementation of policies in fighting TOC in the region.

Although the Palermo Convention succeeded in providing a global reference point for identifying organised crime (Shaw, 2015), consensus on what constitutes a TOC remains as elusive in Southern Africa as it does globally. As argued in Chapter Two, the Convention defines an organised criminal group and criminalises participation in such a group; but does not offer a definition of what organised crime constitutes. Article 2 of the Palermo Convention stipulates:

Organised criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences, in order to obtain, directly or indirectly, a financial and material benefit.

The SADC region relies on the above working definition of the Palermo Convention, which is in itself problematic. The Legal Sub-Committee of the Southern African Regional Police Chiefs Co-Operation Organisation (SARPCCO) presented a definition of organised crime for the Southern African region at its 14th Annual General Meeting in 2010 that was adopted by the regional chiefs of police. In its presentation, the committee explicitly stated that “the same working definition

provided by the Palermo Convention will be employed” (Hübschle, 2011: 33). Thus, organised crime is described as follows:

It is committed by two or more perpetrators, who are aware of each other's existence and general role, and who are acting in concert. It is serious. It is committed repeatedly, and the crimes are committed by the pursuit of material and financial gain.

While both the above definitions are legally binding on SADC member states, this study argues that both have some definitional issues, especially within the context of Southern Africa. First, they treat organised crime as being synonymous to a mafia-type hierarchical criminal organisation that exists outside of the formal economy (Hübschle, 2011: 7), and secondly, they create a depiction that there exists a strict separation between the state and crime (Wannenbergh & Irish-Qhobosheane, 2007). Within the context of Southern Africa, such definitional issues can be politically convenient in some countries especially where elements within some regimes are extensively involved in organised criminal activities. In other words, these definitional issues provide avenues for the evasion of the law. Hence, this study argues that any preoccupations with the assumptions that organised criminal networks only constitutes of individuals or groups of individuals from the clandestine world, and the “state versus crime” narrative are problematic and misleading. This is because such assumptions ignore, and to a certain extent omit, the critical role, involvement, and complicity of government officials, law enforcement agencies, and business elites with organised criminal networks in facilitating illicit market operations. As a result, this study proposes and adopts the following definition for TOC in Southern Africa:

Transnational organised crime (TOC) is defined as criminal acts that are conducted within and beyond borders of the state by a group of criminals acting in concert with law enforcement agencies and political elites to obtain, directly or indirectly, a financial or material benefit from a set of activities that are illicit or licit.

Five mandatory features or factors for determining TOC in Southern Africa were identified in the literature review of this study that are useful in identifying activities that qualify to be considered as “TOC” in the region. The first factor is the type of

actors involved in transnational organised crime, which are both state and non-state actors and governmental (political) and non-governmental (apolitical) individuals. State actors constitute political elites and law enforcement agencies, while non-state actors can include business elites and organised criminal syndicates. The second factor identifies the range of traded goods within the criminal networks that are both licit and illicit such as drugs, counterfeit goods, *et cetera*. The third factor considers the scope of the crime that is committed, which could be both within and beyond national borders. The last factor assesses the motive and indicates that such activities must be profit-driven.

Additionally, given the specific focus of this dissertation on TOC, the following criteria, based on Article 3 of the UNTOC (2013), which is associated exclusively with TOC, is also crucial for an offense to qualify as transnational: first, it is committed in more than one state; secondly, it is committed in one state, but a substantial part of its preparation, planning, direction or control takes place in another state; thirdly, it is committed in one state but involves an organised criminal group that engages in criminal activities in more than one state; or fourthly, it is committed in one state but has substantial effects in another state.

Both the latter mandatory and former UNTOC's criteria are crucial for the cases selected for analysis in Chapters Four and Five.

3.3. The emergence and evolution of TOC in Southern Africa

Although the concept of TOC is relatively new in the Southern African region (Hübschle, 2011: 7), research suggests that veritable collusion between the state and organised crime began at least half a century ago in sub-Saharan Africa (Ellis & Shaw, 2015: 3). According to Blum (2016: 8), the emergence of organised crime in Africa is tightly linked with the post-independence era, where a web was spun between representatives of the young independent African nations, the former colonial power's political and economic interests, as well as the globalised private sector. This was a time when Africa was undergoing extensive political and economic changes (Ellis & Shaw, 2015: 6), and structural adjustment and contracting economies gave birth to political and business elites that later became vulnerable to, or sought out, criminal networks (Shaw & Reitano, 2013: 1).

Congruently, Gastrow (2003: 3) argues that organised criminal networks and their activities in the Southern Africa region did not suddenly appear on the map in the 1990s. Instead, they form part of the continuously changing pattern of organised crime in sub-Saharan Africa that dates back three or four decades. However, considering that Gastrow's history on the development of organised crime in Southern Africa is almost over two decades old, this study supplements that criminal groups and their activities in Southern Africa constitute part of the continuously changing pattern of organised crime that goes back almost six decades. Although little is known about the earlier manifestations and historical, social, and political factors that contributed to the development of TOC in the region, there are some patterns that, when closely assessed, reflect the emergence of organised crime in SADC from as early as the 1950s. Hence, the four phases of the emergence of organised crime in Southern Africa provided in this study's literature review are crucial in providing the background against which modern-day organised crime manifestations can be assessed and better understood. These phases are listed and discussed in greater detail in the following sections.

3.3.1. The four phases of the development of organised crime in Southern Africa

The four phases that characterised the development of organised crime in the SADC region are arranged chronologically. The first phase, during the 1950s, is a foundational period marked by a slow emergence of organised criminal networks. The second phase, during the 1970s, was marked by the rapid growth of criminal networks at regional levels. The third phase, the 1980s and 1990s, was distinguished by the establishment of international links. Finally, the fourth phase, in the early 2000s, was characterised by the dramatic and devastating impact of the illicit market. Below is a brief overview of the social, economic, and political factors that contributed to the development of organised crime in the SADC region in each of the four phases.

3.3.1.1. First phase: The 1950s — slow emergence of organised criminal networks

The 1950s mark a period where most countries in Africa and Southern Africa were still battling aftermaths of World War II. Undoubtedly, this had far-reaching social,

political, and economic ramifications for Southern African countries, which were most still colonies. The relative isolation of the countries from their colonial capitals, alongside the significant disruption on the supply of European products, resulted in the establishment of secondary industries in the region and fostered self-reliance (Gastrow, 2003). Although the primary aim of the establishment and expansion of these secondary industries was for the production and provision of goods such as soap powder, matches, beer, cigarettes, and other products which could no longer be imported from colonial capitals, it also, coincidentally, created an environment for the establishment of criminal markets.

Mass urbanisation in the region also came with prospects of better job opportunities in larger cities such as Luanda, Angola's capital (Sanghil & Santoro, 2018). However, most illiterate and destitute Africans forming part of the accelerated urbanisation process failed to find employment, leading to mass poverty in the urban areas (Lambrechts, 2013: 105). This was especially true with regard to the mostly black urban population that was part of an increasingly industrialising society, but remained settled in shantytowns on the fringes of urban areas, remained subject to racially discriminatory laws, and were without regular entrepreneurial avenues of advancement. Such unbearable circumstances compelled them to find other means to survive, increasing the demand for illicit goods. As a result, some poor, unemployed black Africans, at that time, focused on the illegal supply of products, including cannabis and beer (Gastrow, 2003). These consumer goods had always been in demand, but no legal supplies were available.

Furthermore, Africans were not allowed to sell and purchase alcohol. Therefore, illegal brewing became an obvious alternative. Organised criminal groups, mainly unemployed locals, ensured the ready supply of such commodities (Gastrow, 2003: 6). These periods marked the slow emergence of organised crime throughout the SADC region. However, the criminal opportunities and markets remained relatively restricted due to the vigorous application of discriminatory laws, particularly for black Africans whose movement, inter-racial contact, and co-operation were limited, and the effective policing by colonial authorities.

Although the criminal markets that developed during the 1950s were, according to today's standards, relatively harmless or not even criminal, they are essential and

relevant as they mark the emergence of organised criminal activities in the Southern African region.

3.3.1.2. *Second phase: The 1970s — rapid growth of criminal networks at regional levels*

The 1970s marked a period of rapid regional expansion in organised criminal networks as organised crime moved to its second development phase. Nevertheless, the shift in the development of organised crime during this period cannot be understood in isolation from the historical liberation struggles in preceding years and the subsequent socio-economic and political conditions. During the 1950s, anti-colonial independence struggles in the region gained momentum that culminated in a staggered sequence of attainment of independence by the Belgian Congo in June 1960, Zambia, Malawi, and Tanzania in 1964, Lesotho and Botswana in 1966, Swaziland in 1968 (Crush, 1981: 393), Angola and Mozambique in 1975, Zimbabwe and Namibia in 1990, up until South Africa's first democratic election in 1994 (Passemiers, 2019; Kaplan, 1974: 241; McCracken, 2012: 282).

Periods of political transition and democratisation are critical to the types of state and the nature of political elites that replaced colonial masters. This is especially important when considering Bratton and Van de Walle's argument that "contemporary political changes are conditioned by the mechanism of rule embedded in the ancient regime" (Bratton & Van de Walle, 1994, 454). In the wake of independence, post-colonial African leaders inherited the artificially created nation-states and imperial state structures developed through coercive mechanisms and centralised political and economic controls such as the army, policy, and the bureaucracy (Davidson, 1992). After the DRC gained independence in 1960, for instance, President Mobutu S. Seko ruled the state as if it were his personal property (Young, 1986) in the same manner King Leopold did under colonialism (Shillington, 1989; Meredith, 2005: 95). These periods marked the extensive personalisation of power and politics in Africa that birthed corrupt leaders like Jean-Bédél Bokassa, Francisco Macías Nguema, Joseph-Désiré Mobutu, Félix Houphouët-Boigny, Gnassingbé Eyadéma, and many others who captured political power and projected themselves as "fathers" of their respective nations through holding positions of heads of state, heads of government, commanders in chief of their national armies and security forces, and also serving as a repository of the judiciary (Ikome, 2008).

This alludes to the “imported” nature of the state institutions in Africa that, as indicated in Chapter Two, descended from the arbitrary colonial administrative units designed as instruments of domination, oppression, and exploitation. According to Austin (2010) the importation of the colonial institutions into the African state and the choice of African leaders to retain these structures at the end of colonialism have had far-reaching consequences on political and economic development in Africa. One of the consequences include a structural disconnect between formal institutions imported from Europe and indigenous institutions born of traditional African societies (Englebert, 1997). The consequent lack of “moral legitimacy” or “legitimacy deficit” deriving from the institutional disconnect embodied in the African state has led to patterns of predation, rent-seeking, neo-patrimonialism, and clientelistic rule (Englebert, 1997: 768). These structures are, therefore, conducive to opportunism, and, as a result, the design of the African state has enabled the integration of crime into politics. For instance, Ellis and Shaw (2015) argue that contemporary African politics is marked by the reformulation of politics and crime into networks that transcend the state and non-state boundary in ways that are hardly subsumed in standard concepts of organised crime.

As early as late 1960s and early 1970s, some African countries had already developed a characteristic style of rule that the sociologist Stanislaw Andreski in 1968 dubbed “kleptocracy”, referring the systematic use of bribery and fraud and similar illegalities as instruments of governance (Ellis & Shaw, 2015). The distinctive institutional hallmark of neo-patrimonialism in Southern African states was established and corruption on a grand scale became a defining feature of the African state. Thus, the use of public office for private enrichment evolved into the norm, as explicitly reflected in former DRC's (also known as Zaire) President Mobutu's remarkably frank portrait of the Zairan public administration system in a speech delivered on 25 November 1977:

In a word, everything is for sale, and anything can be bought in our country. And in this flow, he who holds the slightest cover of public authority uses it illegally to acquire money, goods, prestige, or to avoid all kinds of obligations. The right to be received by a public servant, to have one's children enrolled in

school, to obtain medical care, a diploma etc...are all subject to this tax, which though invisible, is known and expected by all.

The above statement reflects not only pervasive corruption but also the normalisation and tolerance thereof as a way for a regime to maintain corrupt official's loyalty and allegiance, resulting in a new mode of governance — the shadow state. This was the case across the SADC region. In short, shadow states in Southern Africa developed at the same time as post-independent states, mostly democratic, were being installed. Bratton and Van de Walle (1994: 457) argue that, in Africa, political institutions have, as a whole, evolved within neo-patrimonial rather than corporatist regimes. This is important because such developments and processes did not only shape the political landscape in the region but also affected and shaped the way organised crime developed.

Grand corruption, coupled with the rapid withdrawal of expertise and capital, conflicts, and instability, which resulted in lawlessness and economic decline in some countries across the region, created a fertile environment for the penetration and further expansion of organised criminal networks. This environment further laid a foundation for the juncture between professional criminals and government officials. In South Africa, some African National Congress (ANC) leaders, including Mama Winnie Mandela, Joe Modise, Alfred Nzo, and Thomas Nkobi (all now passed away), established the ANC criminal-funding operation with the then prominent Indian Mafia, Dawood Ibrahim, who assisted in establishing ANC's drug-smuggling operations *via* Lusaka and Maputo to South Africa, and also supplied the ANC with Mandrax tablets from India (Pretorius, 2019). Part of this covert operation was Dawood's top criminal enterprise's lieutenant, Vicky Goswami, Alex Kouvaris, and the then Zambian President Kenneth Kaunda's son, who formed part of the ANC's illegal drug-smuggling operations in Zambia (Pretorius, 2019). Such complicity between government officials and professional smugglers caused various government departments in the region to participate in organised criminal activities such as the smuggling of major goods and commodities, including oil and weapons, thereby enabling the creation of a shadow state with the intersection of criminal syndicates and government officials.

In the attainment of independence, new governments focused on the fundamental transformation of their institutions and society, while state structures such as policing weakened significantly (Vanheukelom & Bertelsmann-Scott, 2016). Lawlessness, coupled with weakened state structures, enabled criminals to identify criminal markets at cross-border levels. On the other hand, structural adjustments, including Ian Smith's Southern Rhodesia's Unilateral Declaration of Independence (UDI) (Watts, 2012), and many other international trade sanctions followed by contracting economies, birthed political and business elites who were vulnerable to criminal networks (Shaw & Reitano, 2013). Thus, both political and business elites established legitimate and illegitimate trading and smuggling links for profits. Furthermore, the porous borders contributed (and still contribute) to the smuggling of goods across borders and the procurement of illegal documentation such as passports and identity documents (Lambrechts, 2013: 106). This was amplified by corrupt state officials, according to the South African Institute of International Affairs (2003). As a result, organised criminal activity changed from low-scale domestic to cross-border criminal activity (Lambrechts, 2013).

As more countries gained their independence, more smuggling routes became identified and developed (Hübschle, 2011). When Angola gained independence in 1975, it became an essential commodity for the illicit market due to its large endowment of alluvial diamonds, leading to the establishment of new smuggling routes between Namibia and Angola and between South Africa and Angola (Gastrow, 2003). Although during these periods, organised criminal activities were not yet carried out in large-scale smuggling operations and did not involve international syndicates, the SADC region experienced the expansion of state-backed organised criminal activities and significant growth in the regional economy of crime.

3.3.1.3. *Third Phase: The 1980s and 1990s — the establishment of international links*

During the 1980s and 1990s, Southern Africa witnessed a rapid expansion of organised crime. Standing (2003: 46-47) argues that criminal groups matured from generally small-scale local operations to international syndicates. This period followed the end of the Cold War when brutal, protracted conflicts in west and central Africa created armed groups that sought alliances with foreign criminal networks to fund conflict (Shaw & Reitano, 2013). The Southern African region achieved closer

economic integration and greater openness in cross-border linkages, which, ironically, made the region more susceptible to cross-border organised criminal activities (Hübschle, 2011). Seemingly closer economic integration of the region, greater openness in cross-border linkages, and an introduction of more sophisticated financial systems complemented by more liberalised trade agreements increasingly exposed the region to organised crime. Despite this, the SADC region is party to the push for the African Continental Free Trade Agreement (AfCFTA), the world's largest free trade area aimed at deepening economic integration in Africa, liberalising intra-African trade and contributing to the movement of capital and natural persons and facilitating investment, among its seven objectives (Abrego, Amado, Gursoy, Nicholls & Perez-Saiz, 2019). Although this free trade agreement (FTA) has potential for sustainable development, it is fraught with significant challenges, including lack of commitment from member states, availability of technical capacity and infrastructure, and transparency and accountability (Ajibo, 2019). In light of these formidable challenges, it is inevitable that the AfCFTA will present a fertile ground for the expansion of organised criminal networks both at regional and continental levels.

Porous borders, neo-patrimonialism, grand corruption, and post-independence criminal-state relationships, which had already started in the early 1970s, are all features attributed to post-independent African states, enabling the penetration of the SADC region by organised criminal syndicates. For instance, Bayart, Ellis and Hibou (1999) state that whether the trajectory of African states has been largely democratic or autocratic, rent-seeking from local populations by networks of foreign and local criminal entrepreneurs has been grafted onto the continental tendency toward clientelist social and political governance. This indicates the crucial role played by the nature of the African state in shaping the manifestation of organised crime, its structure, fundraising, and application of violence (Shaw & Reitano, 2019).

Apart from the political and economic changes and the nature of the post-colonial African state, the arrival of fortune hunters from former colonial powers in Southern African countries, including Zimbabwe, Zambia, and Zaire, further fuelled the expansion of organised crime. Upon arrival, these fortune hunters established small import/export businesses to use as a guise for both legal and illegal business opportunities and established relations with local African entrepreneurs, smugglers, and criminals who gave them access to illicitly obtained goods such as cobalt, drugs

(such as mandrax), ivory, and diamonds (Gastrow, 2003). As a result, a marriage of convenience, driven by the principle of mutual benefit, was forged between foreign fortune hunters and local African criminals.

Moreover, due to ongoing conflicts and civil wars across the region, the ready availability of firearms is amongst the significant factors that influenced the expansion of organised crime (McMullin, 2009). Regional networks of arms smugglers culminating from the armed conflicts in Angola and Mozambique in the 1980s exacerbated crimes throughout the SADC region (Blum, 2016). Another factor worth noting is the political and economic environment's direct impact on the expansion of organised crime in the region. Since the end of the 1970s, the substantial decline in agricultural and industrial production, per capita income, trade, and a considerable increase in debt in countries such as Tanzania and Mozambique led to the black-market expansion activities and illicit smuggling (Gastrow, 2003).

As the discriminatory laws were becoming more relaxed across the region, regional mobility improved and, as a result, increased numbers of Asians and Africans from neighbouring countries entered the region legally to link up with more lucrative criminal markets (Hübschle, 2011). Stolen motor vehicles from the region, especially from South Africa, became essential items of the barter trade as they were used to pay for illegal goods from the north, and were also shipped along the African coast and beyond. Moreover, state-backed organised criminal activities became prominent (Miraglia, Ochoa, & Briscoe, 2012). SADC countries also accepted loans with conditions aimed at the fundamental restructuring of their economies and were also required to adopt structural adjustment programs by the World Bank.

While these SAPs were ineffective on macro-economic levels, except for Botswana, some political leaders skilfully managed such reforms in a way to suit themselves (Gastrow, 2003). Therefore, the SAPs, loans, and foreign aid enabled the political leadership and bureaucracies to engage in practices of "accumulation" for themselves. Public office positions became positions of accumulation, inevitably engaging in corrupt practices. This reflects how post-independence African rulers already began engaging in manipulating foreign aid and other forms of financial assistance for personal benefit. As shown in Chapter Two, aid manipulation is one of the key activities involved in the shadow economy (Ballentine & Nitzschke, 2005).

Post-colonial African states became a tool used to generate incentives for leaders. This resonates with Bayart's argument that the state's predatory nature generates incentives for leaders to "eat" from the resources of their states. On the other hand, it shows how the African state itself serves as a resource for spoils and a means to an end with political power being used as vehicle for economic power.

The corrupt practices of accumulators in higher public positions brought the post-colonial African leaders in contact with intermediaries, increasingly foreigners, and other entrepreneurs operating in criminal markets (Gastrow, 2003). A parasitic relationship between new independent, weak states and professional criminals in urban hubs was forged with organised criminal syndicates using illicit funds to buy unprecedented collusion at the highest levels in these fragile states. State fragility, whether deliberate or not, served as an opportunity for criminal syndicates to penetrate state institutions in the region, and the complicity of political elites resulted in the establishment of a shadow state.

3.3.1.4. *Fourth Phase: The early 2000s — the dramatic and devastating impact of the illicit market*

The fourth phase of organised crime development started with the beginning of the new millennium and continues to the present. According to Shaw and Reitano (2013), this phase flourished alongside globalisation and is characterised by the consolidation of the power and influence of illicit trafficking by foreign criminal networks into and across the Southern Africa region, exacerbating new fragility zones and increasing levels of state penetration by these networks. The key driver behind organised crime growth is globalisation that brought with it developments in communications technology, greater sophistication in financial systems, and closer integration of the region to the global licit and illicit economy.

Powerful criminal networks with strong state connections exploit the opportunities of globalisation and continue to benefit from such connections. In fact, Patrick (2012) states that "transnational criminals have been one of the biggest beneficiaries of globalisation". With globalisation comes the compression of time and space, facilitating the exchange of goods, people, and finances across borders faster than usual, simultaneously facilitating illicit exchanges (Harvey, 1990; quoted from Goga, 2012). For instance, from 1980-2018, six of the top ten African emitters of illicit

financial flows were from the SADC region, according to the African Growth Initiative Report (Signé, Sow, & Madden, 2020: 7). Cumulatively, the SADC region lost about USD 314 billion to illicit financial flows (IFFs) from 2003 to 2013 (Mafigo, 2018), and an additional USD 1.4 billion worth of proceeds of crime have been confiscated by members of the Asset Recovery Informal Network (ARINSA) between 2009 and 2019 (United Nations Office on Drugs and Crime, 2019). ARINSA members also reported 1 126 money laundering investigations and 407 cases across the region in which assets were seized or frozen from 2009 to 2019 (United Nations Office on Drugs and Crime, 2019). These cases and financial losses reflect how the era of globalisation has multiplied opportunities to embed illicit goods in licit transactions, while problems surrounding inspections and monitoring have become more formidable.

Furthermore, Shaw and Reitano (2013) argue that this period was marked by armed groups that are driven more by profits than ideology. Arguably, this is a phase where political elites are profit-driven and highly involved in drug trafficking and new forms of organised crime. Miraglia *et al.* (2012) state that the formation of a close nexus between political and criminal elites and the generation of new forms of criminal activity are all phenomena that are now visible in Southern African states affected by transnational crime — even the influence of chasing financial and material gain appears to be on the wane. Moreover, the line between legal and illegal is blurred and public office positions are nothing more than doors to the private accumulation of national resources and public funds. As a result, Southern Africa is experiencing the dramatic and devastating impact of various types of TOC, enabled by the neo-patrimonial, clientelist, and predatory nature of the African shadow state.

3.4. Typologies and enablers of TOC in the SADC region

Organised criminal syndicates are present and increasingly connected throughout the SADC region, from Angola to Botswana, Comoros to Congo, Eswatini to Lesotho, Madagascar to Malawi, Mauritius to Mozambique, Namibia to Seychelles, South Africa to Tanzania, and Zambia to Zimbabwe. As indicated in Chapter One, the web through which global illicit flows and organised crime operate is not monolithic and homogeneous but complex and multidimensional. Therefore, these criminal syndicates are connected locally, regionally, and internationally. They participate in a panoply of organised illicit markets found in the region ranging mainly from the illicit

financial flows and illegal importation of goods and counterfeit commodities, drug trafficking, smuggling of stolen motor vehicles, livestock theft, smuggling of wildlife (endangered species) and rare resources, human trafficking, and financial crimes. On the other hand, cybercrime, porous borders, limited policing capabilities, corruption, trade in small arms and light weapons, and violence serve as significant enablers of organised crime and converge with each other in complex ways. This section explicitly highlights various types of organised criminal activities present in the region and identifies facilitators or enablers of each of these.

3.4.1. *Illicit financial flows and importation of counterfeited commodities*

The Global Financial Integrity (GFI) (2019) defines illicit financial flows (IFFs) as the illegal movements of capital from one country to another. It occurs when funds are “illegally earned, transferred, and utilised beyond national borders” (Chowla & Falcao, 2016). According to Signé, Sow, and Madden (2020: 2), the illicit financial flow includes hiding the proceeds of crime, channelling funds towards criminal destinations, and evading tariffs and taxes through misreporting of transactions. A drug cartel using trade-based money laundering techniques to mix legal money from the sale of used cars with illegal money from drug sales, an importer using trade misinvoicing to evade customs duties, value-added tax or income taxes, a corrupt public official using an anonymous shell company to transfer dirty money to a bank, or a member of a terrorist organisation wiring money from one region to an operative in another, are all examples of IFFs (Global Financial Integrity, 2019).

Trade-related illicit outflows, also called trade misinvoicing, are the most prominent forms of illicit financial flows in Southern Africa (Bagree, 2019), which occurs when importers or exporters deliberately misreport the value, quantity, and nature of goods and services to evade taxes, take advantage of tax incentives, avoid capital controls, or launder money (Forstater, 2018). According to the High-Level Panel report on Illicit Financial Flows from Africa, chaired by former South African President Thabo Mbeki, Africa loses more than USD 50 billion annually in IFFs (United Nations & Economic Commission for Africa, 2015: 13). Besides, of that USD 50 billion, the Southern African region losses constitute USD 8.8 billion annually from trade-related illicit outflows, according to estimates by Action for Southern Africa (ACTSA) (2019). As a

result, Meinzer *et al.* (2018) indicate that two thirds of the African countries that are most exposed to trade-related illicit flows are SADC countries.

Research shows that the region contains two countries, Seychelles and Mauritius, that serve as tax havens and secrecy jurisdictions playing a crucial role in exposing the rest of Southern Africa to illicit financial flows (Bagree, 2019: 5). Tax havens are jurisdictions whose legal regimes are exploited by non-residents to evade taxes, mainly due to their low or zero tax rates on accounts that belong to foreign corporations (United Nations & Economic Commission for Africa, 2015: 10). A secrecy jurisdiction is a state, country, or a city that provides facilities that enable people or entities to escape or undermine the laws, rules, and regulations of other jurisdictions elsewhere, using secrecy as a prime tool (Tax Justice Network, 2020). For instance, Mauritius's tax system has no foreign exchange controls, which means free repatriation of funds is allowed, no authority consent is required for the repatriation of funds received in Mauritius, and foreign investors do not have to seek an authority consent for the movement of funds within and beyond the country (Collappen & Chung Sam Wan, 2020). Canadian corporations use Mauritius as a tax haven for their operations in Africa, with one of the world's largest engineering companies, SNC-Lavalin Group Incorporated, managing to avoid up to USD 8.9 million in taxes through establishing a shell company in Mauritius during its USD 50 million deal to build a processing plant in one of the world's poorest countries, Senegal (Fitzgibbon, 2018). Both Senegal and Mauritius serve as gateways for tax avoidance and a conduit to divert money from poor developing nations into the hands of a few wealthy elites and multinational corporations (Othim, 2020).

The smuggling and illegal importation of goods and counterfeit commodities are listed as one of the most prevalent organised crime activities in the region (Hübschle, 2016: 13). The counterfeiting of identification documents, audio-visual materials (CDs and DVDs), pharmaceutical and cosmetic products, weapons, food products, clothing, cigarettes and tobacco products, alcohol, and fuel account for the most prevalent goods smuggled in the region. The smuggling of commodities also involves the illegal transportation of goods across borders to avoid taxation. Organised criminal groups in the region exploit differential tax regimes of alcohol, petroleum, and cigarettes. Haysom, a senior analyst at the Global Initiative against Transnational Crime, states that the region contains two countries that are critical to the illicit trade of cigarettes,

namely South Africa, which provides the largest, most profitable, and therefore most significant consumer market and cigarette production hub, and Zimbabwe, which is the largest tobacco producer in the region and on the continent (Haysom, 2019: 2). The tobacco institute of Southern Africa has revealed that 60 per cent of all counterfeit cigarettes in Southern Africa originate from Zimbabwe (Legge, 2014). However, according to the Directorate for Priority Crime Investigation (Hawks), about 80 per cent of illegal tobacco products found in South Africa between April 2017 and March 2018 were produced domestically (Chelin & Nyoni, 2020).

Whether domestically produced or imported, South Africa remains the target market of cigarette smugglers interested in large profits (Haysom, 2019: 2), and loses USD 408 billion annually to the illicit tobacco trade, according to the 2018 National Tobacco Market Study (Mongoi, 2018). In an interview to track the illegal tobacco trade in Zimbabwe and South Africa, conducted by Haysom, a smuggler claimed that one of the cigarette-smuggling cartels involves politicians in the highest levels of government (whose names he did not divulge for safety) from both Zimbabwe and South Africa (Haysom, 2019: 3). Hence, corruption has been seen as the key feature in the illicit economy. On the other hand, it must be noted that it is not only companies producing illicit cigarettes that constitute the political economy of the illegal tobacco trade in Southern Africa; companies that produce licit tobacco are also part of this illicit economy. For instance, in 2018, British and European Authorities were investigating top management at the South African and Zimbabwean branches of the world's largest tobacco producer, British American Tobacco, for alleged industrial espionage, money laundering, and bribing government officials and state agencies (Times Live, 2018). This could be seen as an intersection of government officials and large corporates in criminal practices to make profits sustaining the shadow economy.

The illicit trade is regionalised, as illegal cigarettes are also sold in and trafficked through the neighbouring countries of Botswana, Namibia, and Mozambique, although these countries, including Zimbabwe, present smaller populations and lower rates of disposable incomes. On the other hand, the illicit fuel trade is a growing challenge in Southern Africa. According to Chelin (2020), countries along the Maputo Corridor (South Africa, Swaziland, and Mozambique) have become primary targets of this phenomenon driven by organised criminal networks. At the most basic level, the

smuggling of commodities in the region encompasses individuals and companies not declaring imports and exports, bribing officials, especially in customs, and the ingenious transportation of goods through official or illegal entry points. The extent to which customs officials accept and sometimes demand bribes signal the complicity of powerful political elites (Hübschle, 2016).

3.4.2. Drug trafficking

The region is emerging as a global hub for international drug smuggling, distribution, and trafficking (ENACT, 2018: 14). Criminal syndicates across the region are trading in various drug commodities, including cocaine, narcotics, cannabis, heroin, and synthetic drugs. The ENACT (2019) report reveals the heroin market as the most pervasive illegal economy in the region. This is because the SADC region is one of the two leading regions for the trade and consumption of heroin globally, and three of the five port cities central to the heroin market are located in the region (Haysom, 2020). These cities are Dar es Salaam in Tanzania and Durban and Cape Town in South Africa. Additional to these three major cities, a new report reveals that Johannesburg in South Africa has also become the logistical epicentre for the heroin trade, both for domestic and transit (Mabuza, 2020), thereby making the region even more central to the heroin market.

One of the significant cities central to the regional heroin market, Cape Town, maintains shipping container-based links to Europe (Haysom, Gastrow, & Shaw, 2018). Simultaneously, along with Nairobi in Kenya, Johannesburg serves as a critical area where major criminal syndicates or big players negotiate illicit deals (Haysom, 2020). These cities serve as economic hubs that present a fertile environment for the illicit economy (Karuga, 2019). Thus, the World Atlas lists them amongst the most dangerous cities worldwide in terms of crime, homicide, robberies, burglaries, carjacks, and street crimes (Karuga, 2019). It is unsurprising though that the major cities central to the heroin market's regional economy are found in the Southern Africa region, given the intertwining of illicit and legal trade, strong connections between political authorities and criminal syndicates, and the ability of criminals to connect to the regional and global economies. As argued in Chapter Two, the distinction between the licit and illicit in Southern Africa is frequently blurred and political elites are sometimes the key participants in organised criminal activities.

For instance, the most recent research report by the Global Initiative reveals that heroin marketed in Bulawayo in Zimbabwe is transported overland from Gauteng, either through public transport or the porous Beitbridge border gate along the Limpopo River, or through Gaborone or Francistown in Botswana. Corrupt border, law-enforcement and immigration officials are the key transportation facilitators in such criminal activity (Eligh, 2020: 66). This shows how corruption and state officials' complicity remain instrumental in keeping the illicit drug market alive in the region. This indicates how both political and criminal actors become rulers of a shadow state to manipulate access to both the formal and clandestine markets. Thereby, blurring the line that separates the formal from the informal economy.

Additionally, Haysom (2020), in the report "From the maskani to the mayor: The political economy of heroin markets in East and Southern Africa," wherein he conducted 300 interviews with drug dealers, traffickers, middlemen, law enforcement officials, business owners, fisherman, religious leaders, taxi drivers, local politicians, and civic organizations across Tanzania, Zambia, Mozambique, and South Africa, states that heroin is accelerating corruption of the police in the region. This is because the heroin market is facilitated mainly through corruption, especially of police officials (ISS, 2020). Notably, corruption can also be seen as a catalyst in the heroin market increase. The Institute for Security Studies (ISS) (2020) similarly highlights widespread corruption among police and politicians in Mozambique, Tanzania, South Africa, and across the region to be among the causes of growth of the heroin market.

While a significant increase in heroin use is reported in Zimbabwe, Zambia, Malawi, Eswatini, Namibia, the DRC, Lesotho, Tanzania, South Africa, and throughout the region (Eligh, 2020), Mauritius is ranked as number one in the synthetic drug trade in Southern Africa and top ten on the continent by the ENACT Organised Crime Index for Africa (Chelin, 2020). This signals how pervasive the illicit heroin and synthetic drug trade has become in the region. Beyond heroin and synthetic drugs, cocaine sourced from South America is also one of the fastest-growing drug markets. The region also constitutes the primary producer of cannabis and is also one of the largest markets of Mandrax worldwide (Eligh, 2020: 18).

3.4.3. *Smuggling of vehicles*

According to SARPCCO (2019), vehicle crime is a major concern in the region, with criminal syndicates motivated by high-profit margins. Criminal syndicates involved in car theft use direct and indirect methods to steal cars from owners and companies. Direct methods include intimidation, violence, and threats (ENACT, 2018), while indirect methods include security system vandalism, immobilisation, and jamming devices (SARPCCO, 2019). Once vehicles are smuggled, they are re-sold to other countries in the region and continent, as well as globally. However, in moving stolen vehicles across borders, high ranking officials' complicity in key state institutions plays a fundamental role. Corrupt customs officials, for instance, issue a new registration and other necessary documentation, after which the stolen car is then sold legally on the open market (Hübschle, 2011:35). On the other hand, police officials and military members turn a blind eye and even provide protection to the drivers of stolen vehicles in return for kickbacks.

In December 2019, for example, the Zimbabwe Anti-Corruption Commission (ZACC) arrested Zimbabwe Revenue Authority (ZIMRA) officers and agents stationed at Beitbridge border post on allegations of smuggling vehicles into the country (Maphosa, 2019). This case implicated four ZIMRA supervisors and three companies, whose agents were also arrested, contracted by ZIMRA to clear vehicles and goods. While in South Africa, Constable Matome Herman Mafa was sentenced to seven years in jail for smuggling stolen cars through the Groblersbrug border post. According to the investigations by Hawks, a Directorate for Priority Crime Investigation responsible for the combatting, investigation, and prevention of national crimes such as organised crime, serious commercial crime, and severe corruption (South African Police Services, 2014), Mafa and his co-accused, including a Department of Home Affairs official and three others, arranged fraudulent documents for stolen vehicles and facilitated their movement through the Groblersbrug port of entry into Botswana without being subjected to mandatory examination in return for kickbacks (Matlala, 2020). This report is only one of many reports regarding involvement of government officials working in cahoots with criminals to smuggle vehicles across borders in the region.

3.4.4. Stock theft

Stock theft, also known as cattle rustling (Gumba, Alusala, & Kimani, 2019), only occurs in some parts of the Southern Africa region (Hübschle, 2010). According to the first Southern African Regional Conference on Stock Theft for SARPCCO countries in Pretoria, stock theft is mainly transnational because it happens across borders between different countries. Gumba (2020) also argues that cattle rustling is no longer a cultural practice, but a form of organised crime committed by international criminal networks. Traditionally, livestock was associated with wealth and power (Meltzer, 1995), small-scale theft was a way of balancing community wealth and power. However, the erosion of cultural practices and the increased economic value of cattle rustling are some of the factors that contributed to the changes in this practice. In other words, crime and capitalism have commercialised the practice of livestock theft (Gumba, 2020).

The economic value of cattle rustling is significant in the urban meat supply chain controlled by businesspeople and not necessarily pastoralists (Gumba *et al.*, 2019). Such people are often well-connected politically. As a result, this type of organised crime is embedded in the broader cattle trade business enabled by government corruption, with state officials turning a blind eye or collaborating with criminals (ISS, 2020). Although stock theft has been commercialised, some vulnerable citizens engage in animal theft for survival. For instance, Willie Clack, a penologist at the University of South Africa, told the ENACT organised crime project that in South Africa, 13 per cent of livestock theft is for survival (ISS, 2019). Despite this, a large segment, the remaining 87 per cent, engage in stock theft for commercial purposes. Therefore, stock theft can no longer be perceived in a traditional sense due to its evolution in method and extent. According to ISS (2020), cattle rustling is now being practiced for commercial reasons and through criminal networks that cross communal and international borders. This renders cattle rustling a transnational criminal act.

Lesotho, South Africa, Zambia, Swaziland, and Botswana are some countries where stock theft is rife in the region. In these countries, stock theft and cattle rustling is facilitated by the increasing proliferation of weapons, with criminal syndicates using advanced logistics and market information to continue their illicit activities. According to the ENACT study, some politicians use bribery to induce rural communities to join cattle rustling networks (Alusala, Gumba, & Kimani, 2019). In South Africa, USD 183 000 worth of livestock has gone missing since the beginning of the lockdown, as part

of an alleged inside job, with politicians from the Department of Agriculture Mara Research Centre in Limpopo believed to be responsible (Head, 2020), while a Zimbabwean former cabinet minister, Nicholas Goche, has recently been arrested for stealing an undisclosed number of cattle (Chronicle, 2020).

Swaziland's rural communities that reside close to the Mozambican border are affected by stock theft, with criminal syndicates from Mozambique raiding these communities by night. In Botswana, stock theft is escalating, and stock theft incidents indicate that organised crime syndicates smuggle live animals and their produce into cities and towns for slaughter and illegal sales (Botswana Police Service, 2014). In Zambia, criminals armed with rifles ambush villages and drive away large herds of animals between Angola and Namibia (Hübschle, 2010). Moreover, South Africa recorded 29 672 stock theft cases in the 2018/19 financial year, a 2.9 per cent increase from the previous year, and a 7.2 per cent increase from 2016/17 (Chelin, 2019). Animals stolen in South Africa are often moved across the border to Lesotho, where the livestock is rebranded and sold through stock auctions. In South Africa alone, losses in 2014/15 amounted to goats to the value of USD 4 million, sheep to the value of USD 8 million, and cattle to the value of USD 36 million, according to reports by the National Stock Theft Prevention Forum (Kalakul, 2020). On the other hand, livestock from Lesotho is also stolen and moved into South Africa and fed into the sale-of-stock system (Chelin, 2019).

3.4.5. *Wildlife smuggling and rare resources*

Wildlife crimes are a priority for most countries in the Southern African region, as these crimes pose a significant risk to various species and the diverse ecosystems in the region. Wildlife crimes continue across the region, with reported incidents occurring almost every month and some jurisdictions reporting more routine occurrences (ENACT, 2018). Although poachers and poaching syndicates target several species, systemic poaching of rhinos for their horns and elephants for their ivory tusks and hides are most notable. Botswana, Namibia, Zimbabwe, and South Africa have about 256 000 elephants, constituting more than half of the total estimate for Africa (Torchia, 2019). This makes the region a target to poaching syndicates. In Tanzania, for example, the elephant population shrank from 110 000 in 2009 to little more than 43 000 in 2014 due to rampant poaching (Xinhua, 2020). Since the South

African ban on the rhino-horn trade in 2009, Zimbabwe, Namibia, and South Africa experienced massive and sustained growth in poaching, and between 2013 and 2017, rhino poaching spiralled out of control across the Southern African region, following the rising demand and prices in China and Vietnam (Somerville, 2020).

All forms of wildlife trafficking collectively constitute one of the most lucrative forms of illicit trade in the region. These crimes yield large profits for the region's criminal syndicates and are typically transnational — most countries in the region are linked and the region is linked to the world. Systemic corruption and violence are facilitators of wildlife crimes, with some government officials accepting kickbacks and becoming illegal traders of confiscated horns from poachers. In Botswana, commissioned and non-commissioned members, along with junior officers of the Botswana Defence Force, are involved in the illicit ivory trade. According to a report by The Patriot, this well-organised syndicate of officials is engaged in unscrupulous anti-poaching, where they eliminate (kill) poachers, bury their bodies inside the parks, cut the ivory tusks into pieces for easy packaging (the ivory trophy is said to fetch around USD 200 000 (P2.4million), and transport it to South Africa through ungazetted points or Ramoswa or Platjaan borders using government vehicles to evade other law enforcers and checkpoints (Mmeso, 2017).

On the other hand, illegal exports of timber, oil, and illegal mining are on the rise in Southern Africa. Corrupt politicians are also involved in these lucrative illicit markets in countries across the region. In Zambia, President Edgar Lungu and other senior government officials have been accused, for years, of facilitating rosewood trafficking into China's booming furniture industry (News24, 2019). This illegal trade has generated around USD 7.5 million in bribes and "informal fees" per year. While in Congo, a British oil company Soco International paid over USD 40 000 in just two weeks to Major Burimba Feruzi, a Congolese military officer, to gain access to the DRC's Virunga National Park for oil. Feruzi and his officers were later accused of brutally silencing Soco's exploration opponents in the park (Global Witness, 2015). On the other hand, according to a 2020 report by the International Crisis Group (ICG), USD 1.5 billion worth of gold is illegally smuggled out of Zimbabwe per year (ICG, 2020), and president Emmerson Mnangagwa has been identified in "A study of Cartel Dynamics" report as one of the cartel bosses whose patronage and protection maintains the operation of cartels (Heywood, 2021).

3.4.6. Human trafficking

Human trafficking or Trafficking in Persons (TIP) is a relatively contentious concept and its definition differs from scholar to scholar and country to country (Bello, Adewale, & Olutola, 2020: 2). Bello *et al.* (2020) further assert that part of the controversy revolves around the various activities involved and the conflicting understanding between traditional practices and modernisation. Portrayals of human trafficking in Western democracies may differ from those found in Africa (Bello, 2015). For example, while a child hawking goods in public could be construed as a form of exploitation in some Western democracies, it could be part of the routines of a child assisting her/his parents in some African societies (Oluwaniyi, 2009). Therefore, discussing human trafficking requires some conceptual clarification first.

Article 3(a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (TIP Protocol) defines TIP as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The TIP Protocol further stipulates that "exploitation" constitutes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs. Given that the SADC blog has adopted this definition in its 2016 Policy Brief in TIP, any action that includes recruitment, transportation, transfer, harbouring, or receipt of persons which is done through coercive or deceptive means of exploitation therefore constitutes TIP in Southern Africa.

From those mentioned above, the Southern Africa's Independent Evaluation Unit (IEU) of the United Nations Office on Drugs and Crime recognised the trafficking of women, men, and children to be a pervasive problem in Southern Africa (United Nations Office on Drugs and Crime, 2017: v). According to this report, all member states of the SADC are affected as the source, transit, and destination countries of TIP, which occurs within countries and intra-regional, inter-regional, and inter-continental. As early as 2010, a research report by the South African NPA revealed

that human trafficking is prevalent in Southern Africa with countries such as South Africa, Mozambique, Zambia, and Lesotho as the source, transit, and destination countries for human trafficking (National Prosecution Authority of South Africa, 2010). Contrary to other regions like west Africa, where the flow of human trafficking is multidimensional (one country could serve as a source, another as a transit and destination), human trafficking in Southern Africa is relatively complicated as it involves complex trafficking flows from diverse countries of origin from Africa and the rest of the world (Mollema, 2013).

A report by the Southern Africa Research and Documentation Centre indicates that human trafficking is enabled by several factors, including poverty, conflicts, gender inequalities, post-conflict instabilities, unemployment, economic instability, and a general lack of opportunities (Kampilipili, 2020). According to Transparency International (2011), corruption is a global issue that enables human trafficking and concomitant impunity. Corruption and official complicity occur in Southern Africa at every phase of the trafficking process — from recruitment to victim exploitation (Van & Watt, 2019). All these factors are present in the region and create a fertile environment for human trafficking practices. Approximately half of the population lives in extreme poverty in the region (Southern African Development Community, 2012) and is vulnerable to human trafficking. This is mainly because this crime-type is more prevalent in areas where persons are susceptible to schemes devised around economic opportunity where limited job prospects are available, which is prevalent in the Southern African region (ENACT, 2018). For instance, the youth unemployment rate is over 50 per cent (Pharatlhathe & Byiers, 2019: 3) in Southern Africa, and as a result, illegal migration is inevitable, with citizens moving across countries in the region to seek better opportunities. Human traffickers capitalise on this, trafficking and abusing vulnerable illegal migrants, knowing that they will not report as they are at risk of being prosecuted for violating immigration laws. As a result, men, women, and children are bought and sold as commodities and exploited for various purposes, including labour and sexual exploitation (Kampilipili, 2020).

Sexual and labour exploitation are the most common human trafficking cases in the region (Policy Brief, 2016). The key actors of these criminal activities routinely remain removed from any direct and detectable involvement in the offense, thus obscuring their participation to law enforcement agencies. Hence, measuring human trafficking

remains a global issue. Professor Beatri Kruger from the Free State Centre for Human Rights at the University of the Free State adds that the exact statistics on human trafficking are not available anywhere in the world (Qwabe, 2020). She further states that human trafficking often goes unreported, mainly because victims fear retaliation. At times, victims fear being excluded in societies, especially when traffickers are highly esteemed society members. This is especially true in cases where pastors and other leaders of community-based institutions become the perpetrators of human trafficking.

In most of these cases, victims are vulnerable children and young adults (Ajiambo, 2020). Women, girls, and young boys across countries in the region, such as in Zimbabwe, South Africa, Mozambique, and Zambia, are trafficked and subjected to forced labour and prostitution while criminal syndicates generate large profits.

3.4.7. *Financial crimes*

Financial crime is the most prolific transnational crime in the SADC region, accounting for 43 per cent of all organised crimes when looking at the number of incidents, rates of detection, number of persons involved, and illicit profits generated (ENACT, 2018: 13). Although financial crime mainly involves money laundering, it is much more complex and encompasses various financial schemes, including fraud, corruption, bribery, and many others. Particularly relevant to this study is the public-sector organised fraud (also known as procurement fraud), which occurs through the collusion between private businesses and the government to loot public funds (Buscaglia & van Dijk, 2003). This act of pillaging public funds through public-private sector collusions has become the norm carried out by well-syndicated political connections. Buying protection from the state is a necessary condition for the growth of this form of organised crime.

Across the region, high-profile senior government officials facilitate the inclusion of service providers with whom they have longstanding relations with the intention to defraud the government by collecting money paid for contracts without the delivery of services. Public-sector organised fraud has become visible as countries across sub-Saharan Africa battle against the Covid-19 pandemic. Contracts to distribute personal protective equipment (PPE) have been and continue to be abused by companies connected with people in power through the partisan distribution of pandemic-related

assistance, bribes in law enforcement, and kickbacks for tenders (Amnesty International, 2020). As a result, “covidpreneurs” (a term used to refer to those who unlawfully and unethically manipulate tenders linked to Covid-19) siphon billions of Rand to generate profits at the expense of saving lives.

Financial crimes also constitute the movement of money offshore through shell companies into international economic systems to be laundered, recycled, and deployed for political influence (Freedberg, Alecci, Fitzgibbon, Dalby, & Reuter, 2020). Freedberg *et al.* (2020) also state that criminal syndicates and government officials usually use the ill-gotten money moved offshore to secrecy jurisdictions to buy properties, business, and valuable assets, or to ensure that funds are hidden away from tax authorities and criminal investigations. For instance, in 2016 a leak exposed the secretive world of Swiss banking, where crooks, tax dodgers, arms dealers, shady diamond dealers, politicians and celebrities hide their cash. According to the reports, about 585 South Africans held approximately USD 2.09 billion in 2221 Swiss accounts, and several of those belonged to Fana Hlongwane, former special adviser to the late Minister of Defence Joe Modise who was accused of being a bagman for bribes paid in the arms deal (Hamana, 2016).

Another example is Isabel dos Santos, the daughter of the former Angolan president José Eduardo dos Santos who ruled the poverty-stricken yet oil-rich country, Angola, from 1979 to 2017 and allowed her daughter to garner significant stakes in Angola’s strategic industries — banking, cement, diamonds, and telecommunications. As a result, Isabel was once Africa’s richest woman with an estimated worth of over USD 2 billion, and is reported to have exploited her father’s position for her own private gain (Duri, 2020: 10). Luanda Leaks revealed how Isabel dos Santos built a business empire with more than 400 companies and subsidiaries in 41 countries including 94 jurisdictions such as Malta, Mauritius, and Hong Kong with the help of financial institutions, law firms, accountants, and Western advisers (International Consortium of Investigative Journalists, 2020). However, in 2019 Angolan courts froze assets worth at least USD 300 million and charged her with embezzlement and money laundering. Immediately thereafter, three different other countries including Portugal froze her assets (Sone, 2021). To date, Isabel dos Santos is likely to be legally bankrupt (Sone, 2021). This shows how thieving rulers, often referred to as kleptocrats, and their family members and associates move ill-gotten public money to

offshore secrecy jurisdictions to buy properties, businesses and valuable assets, or simply to conceal such funds from tax authorities and criminal investigations. As a result of such illicit financial flows, Africa loses over USD 1 trillion annually, according to South Africa's former President Thabo Mbeki (Hamana, 2016).

Financial crime ramifications extend far beyond pure economics as its proceeds are used to finance other forms of organised crime such as human rights abuses, including slavery and child labour, environmental crime, and terrorism. Hence, there is a link between financial crimes and other criminal markets and an increase in other forms of criminal activities signal an increase in financial crimes.

3.5. Criminal-Political Nexus in the SADC region

The above examples have illustrated that, instead of organised crime flourishing due to weak state institutions, the state plays a relatively active and significant role in tolerating and facilitating criminal activities in the Southern African region. Therefore, organised criminal activities in the region, as in many parts of Africa, are often associated with a set of relationships involving senior political figures, powerful local intermediaries, and professional criminals (Ellis & Shaw, 2015). However, the collusion between state and organised crime is complex and diverse (Blum, 2016). Hence, there are various ways to conceptualise the nexus between the state and organised crime in Southern Africa.

In light of the typologies and enablers of organised crime discussed in preceding paragraphs, it is apparent that a wide variety of illicit activities are present in the region, and criminal activities vary on a spectrum from purely private to state legitimated activities. An example of the latter — which is the focus of this study — would be the involvement of political, military, and police elites in Zimbabwe's Marange diamonds fields. The Marange diamonds are reputed to be the richest diamond mines worldwide with an estimated value of up to USD 800 billion and a potential source of wealth for the next 80 years (Nichols, 2012: 665). Between March 2008 and March 2009, Zimbabwe was without an official government, and this state of anarchy provided an opportunity for the creation of a shadow economy (Ntlhakana, 2014). Political, military, and police officials became key actors in this informal economy, using their access to authority as a tool for access to diamonds aggrandisement.

Consequently, the Marange diamond fields became heavily militarised, culminating in over 200 deaths of locals through the “Hakudzokwe kumunda” (meaning “you will not return”) operation (Nyota & Sibanda, 2012). Therefore, violence — which is one of the features critical in creating and maintaining a shadow economy, was used by state security forces who were heavily involved in smuggling diamonds to secure their movement over the country’s borders. Notably, proceeds from these illegal activities were then used as a mainstay of the patronage system that ensured that the ruling party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF), remained in power for 37 years under the late former president Mugabe (Kasipo, 2018). This example shows the creation and presence of shadow economies in the region and the predatory nature of the post-colonial African state where the state is used as an apparatus to generate incentives for leaders to benefit from the resources of their own countries.

The SADC region is home to weak or fragile and failed states such as Zimbabwe, the DRC, Angola, Lesotho, and Mozambique, often marked by protracted civil wars and political instability (Fragile States Index, 2020). As described in Chapters One and Two, a weak state has a low capacity and poor performance concerning security and development. While state fragility in Africa is often ascribed to the institutional weaknesses inherited from colonialism, Solomon and Funke (2002) have pointed out that rulers of the shadow state deliberately weaken institutional structures of the state either by paying too little attention to the needs of the population or through manipulating the critical institutions of the formal government. Therefore, whether deliberate or not, state fragility provides criminal groups with an opportunity to penetrate critical state institutions in facilitating their illicit activities. This is because fragile states are marked by, amongst others, high levels of corruption, insecurity, and weak law enforcement (Osaghae, 2007). These factors serve as enablers for organised criminal syndicates to conceal their illicit activities with law enforcement agencies' assistance, as seen with motor vehicle theft, where customs officials become critical in the movement of stolen vehicles across borders.

On the other hand, civil conflicts and political instability prevalent in these weak states result in the proliferation of organised criminal activities. Both these incidents create a state of disorder in the region that is instrumental for the looting and exploitation of natural resources for personal benefit. The Mozambican civil war is an example of

how disorder serves as an instrument for the shadow state rulers to loot their country's natural resources. During the civil war, a conflict of 15 years between *Resistência Nacional Moçambicana* (RENAMO) and *Frente de Libertação de Moçambique* (FRELIMO), which began in May 1977 and lasted until October 1992 (BlackPast, 2018), both warring parties engaged in organised crime to meet wartime needs (Blum, 2016). For example, RENAMO was involved in smuggling timber and other goods to finance its operations (Haysom, 2018). The state of disorder during the civil war provided warring parties with an opportunity to loot Mozambique's natural resources and bolstered the establishment of organised crime. At the end of the civil conflict, FRELIMO, the ruling party, consolidated the patronage systems, which were established during the era of institutionalised rule to maintain its dominance over the multi-party system (Goredema, 2016). Goredema (2016) also states that, to date, there are persistent indications of the usage of illicit monies to bankroll political contestation.

Moreover, indications of a political dynasty, commonly known as state capture, are common in the SADC region and point to the interlocking of organised crime and politics. Political dynasty or state capture, according to Sutch (2015: 2 quoted from Martin & Solomon, 2016: 22), can be defined as the actions of individuals or groups both in public and private sectors influencing the formations of laws, regulations, decrees, and other government policies to their advantage. In other words, an individual or groups of individuals gain informal control over the arms of government. This phenomenon has been witnessed in South African politics, where members of the former president's family and the Guptas went to great lengths to influence the South African state. Members of the Gupta family directly instructed public officials from various state bodies to make decisions to advance their business interests (Arun, 2019). As a result, they enjoyed lucrative contracts with South African government departments and state-owned conglomerates — all under the protection of Zuma (Chipkin & Swilling, 2018).

The above brief discussion shows the connection between organised crime and politics in the Southern African region. Some public sector members work with some private sector members and criminal syndicates to generate incentives through illicit activities, thereby blurring the lines that separate crime and politics and the legal and illegal.

3.6. Impacts of TOC on sustainable development

From the previous discussion on typologies and facilitators of organised crime, it becomes apparent that organised crime has devastating impacts on sustainable development. ENACT (2020) argues that organised crime affects each of the five core priorities of the SDGs agenda: people, planet, prosperity, peace, and partnership. The consequences of organised crime are severe and threaten every aspect of sustainable development. As stated in the literature review, organised crime poses three central challenges to attaining the region's SDGs. These are direct risks to an individual, diversion of development investments and public funds, and the risk that development investments themselves increase organised crime. According to the Global Initiative Report (2018), organised crime presents a manifold of sustainable development threats. The presence of organised crime in the region undermines the main foundations of the SADC blog, which are:

...to achieve economic development, peace and security, growth, alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa, and support the socially disadvantaged.

Goal 3 (health), goal 14 (environment), goal 15 (terrestrial environment), and goal 16 (peace and governance) have been red-flagged as the primary SDGs that are directly impacted by organised crime (Global Initiative, 2015). As mentioned in the literature review, organised crime could directly and significantly impact the ability to achieve 23 of the 169 SDG targets (Reitano, Hunter, Rodriques, & Shaw, 2015). However, given that the SDGs are interdependent, failing to make progress in one area will undoubtedly constrain potential in another (Global Initiative, 2015). For instance, target 8.7 of the SDGs calls for effective measures to end forced labour, modern slavery, human trafficking, and child labour in all forms. Failure to attain this target would result in failure to achieve all other related SDGs such as target 5.2, aimed at limiting all forms of violence against all women and girls in public and private spheres, including trafficking and sexual and other types of exploitation; target 5.3, focused on eliminating all harmful practices, such as child and forced marriage and female genital mutilations; target 16.2, aimed at ending abuse, exploitation, and trafficking of children; and target 10.7 focused on facilitating orderly, safe, and responsible migration and mobility of people.

Moreover, organised crime poses a direct risk to individual citizens because it creates an unsafe environment as it replaces security with insecurity. Also, organised criminal syndicates permeate communities with counterfeit goods, of which some pose a threat to public health. For instance, while the smuggling of counterfeited goods such as cigarettes and narcotics costs the region billions of Rand, it also poses a greater health risk as standard manufacturing guidelines are not always observed, and dangerous chemical additives are frequently added during its production (Legge, 2014). Although all cigarettes are harmful, counterfeit cigarettes are more damaging to a person's health than an ordinary cigarette, according to a report by the International Criminal Court Counterfeit Intelligence Bureau (CIB) (International Chamber of Commerce, 2011). Therefore, when considering that high morbidity and mortality rates, low nutrition status, poor healthcare infrastructure and services, poor living conditions, and the HIV and AIDS pandemic present major challenges to development in Southern Africa (Southern African Development Community, 2012), it is inarguable that this poses a significant threat to the health of the region's vulnerable population, most of whose immune systems are already compromised. Consequently, achievement of SDG 3's aim of "ensuring healthy lives and promoting well-being for all at all stages" is hindered.

Agriculture is one of the cornerstones in any country's economy (Clark, 2013: 77). Therefore, livestock theft and other crimes committed within the agricultural sector have a devastating impact on both the economy and food security in countries across the SADC region. Organised syndicates involved in livestock theft and other agricultural crimes regionally cost farmers and governments billions, and simultaneously deny citizens adequate access to healthy food. Chelin (2019) argues that livestock theft costs countries billions each year, damages the local agricultural economy, and negatively impacts food security. This, if not addressed, will worsen the double burden of malnutrition and undernourishment in the region, which has increased significantly between 2010 and 2016 (Onyango, Jean-Baptiste, Samburu, & Mahlangu, 2019). As a result, achieving SDG 2, which seeks to "end hunger, achieve food security and improved nutrition and promote sustainable agriculture," remains far from a reality in the region.

Well-planned and sustainable development takes into account the effective conservation of biodiversity (Africa Wildlife Foundation, 2020). With organised crime

causing significant environmental damage through the pillaging of natural resources and wildlife poaching, this avenue of sustainable development is less likely to materialise. In the SADC, wildlife tourism is an increasingly important industry that yields benefits to private sector tourism businesses and local people (Southern African Development Community, 2012). Therefore, an attack on wildlife and the environment is an attack on the hope of much-needed economic growth for Southern Africa.

On the other hand, financial crimes have corrosive effects on the region's economy, government, and social well-being. Because of financial crimes, public funds are looted by government officials working with business elites, and development investment funds are diverted from economic development programs for personal gain. This affects development severely, as funds that could be used to build schools (for the delivery of access to free and quality education), hospitals (for access to adequate healthcare), houses (for access to adequate housing), and roads (for infrastructural development) are shared amongst well-organised political syndicates. Through financial crimes, drug dealers, organised criminals, terrorists, and arms traffickers disguise the origin of illicit money to avoid detection and the risk of prosecution, thereby evading tax, which robs governments of billions in revenue.

The consequences of financial crime are not limited to the economy, but also extend to security and social consequences. Through financial crimes, drug dealers, terrorists, illegal arms dealers, corrupt politicians, and many others can fund their operations and expand their criminal enterprises. This poses risks to human life since an increase in financial crimes translates to a rise in human trafficking, with women, girls, and young boys being trafficked and abused through sexual exploitation. Indeed, organised crime and safety and security cannot coexist. Perhaps, this explains why the world's third most dangerous country, South Africa, is found in the Southern African region.

3.6.1. *The organised crime-development paradox*

Although organised crime is seen as an inhibitor and a threat to development in the region, Reitano and Hunter (2010) argue that it also presents financial opportunities for the poor and vulnerable citizens and serves as a livelihood source. Vulnerable citizens can engage in animal theft for survival. As indicated previously, in South

Africa, 13 per cent of livestock theft is for survival (ISS, 2019). Additionally, according to ISS (2020), illicit markets such as illegal mining, smuggling, poaching, and other activities can serve as resilience strategies to support basic needs in Africa. Hence, a large segment of the population in Southern Africa, mostly young, unemployed youth, is actively involved in the illicit trade market as a means of survival. In this way, organised crime becomes a genuine means for achieving some development level for certain individuals or communities.

On the other hand, development creates an environment for organised crime to flourish (ENACT, 2020). Advanced technology and improved infrastructure can encourage and enable growth in cybercrime, illicit trade, human trafficking, and many other forms of organised crime. For instance, through social media, women are lured into human trafficking through fake online companies, especially those pretending to be modelling agencies and offering promising jobs.

This paradox challenges conventional criminal justice approaches that often assumed that increased development would automatically reduce organised crime (Global Initiative, 2015). Hence, when dealing with organised crime, development actors need to understand not only how organised crime undermines their objectives, but also need to understand that development itself presents opportunities for organised crime to flourish (Reitano & Hunter, 2018).

3.7. Conclusion

Organised crime has penetrated every level of society in the Southern African region and the lives of both vulnerable citizens and the wildlife are in danger. Particularly disturbing is the fact that a region rich in resources and sustainable development opportunities fails to feed nearly 88 million of its people (45 per cent of its population). Indeed, as shown in this chapter, organised crime is divisive and poisonous to the well of sustainable development. It penetrates all levels of the state and the society and corrodes every opportunity for a better life. This chapter aimed to provide a background to the historical and structural development of organised crime in the Southern Africa region, which was necessary for contextualising the case studies in the next two chapters. This chapter also sought to conceptualise the term "TOC" within Southern Africa's context to offer an improved regionally-based understanding of this phenomenon. Additionally, some light was shed on the extent of organised

criminal activities in the region to provide a clear picture of the types of organised crime present in Southern Africa. This chapter also provided a brief analysis of the nexus between crime and politics in the region to show the extent to which the line between crime and politics, and legal and illegal has been blurred in the region.

This chapter concluded with a discussion on the impact of organised crime on development and revealed an interesting paradox between organised crime and sustainable development. The discussion in this chapter has enabled the author to gain some historical background and a deeper understanding of organised crime within the context of Southern Africa. The "organised crime-development paradox" examined in this chapter expanded the author's worldview on the impacts of organised crime on development, which will help the author focus on addressing organised crime and devise sustainable legal and economical alternatives for citizens.

The next chapter presents a case study of organised crime in the DRC with a specific focus on mineral resources smuggling. By analysing organised crime and the development of shadow economies in the DRC, the study demonstrates how poverty, conflict, instability, and state fragility serve as opportunities to penetrate states by organised criminal syndicates.

CHAPTER FOUR

4. CASE STUDY: MINERAL RESOURCE SMUGGLING IN THE DRC

4.1. Introduction

The preceding chapter provided the background to the social, political, and economic factors that culminated in the development and evolution of TOC in the SADC region. As INTERPOL (2018: 4) argues that the region is still targeted by organised criminal syndicates due to the significant illicit wealth that could be generated, the chapter shed some light on the typologies and enablers of TOC that are currently present in the region, while simultaneously revealing the extent to which political and state officials are themselves involved in such criminal activities. Thus, the chapter has established that in Africa, and Southern Africa in particular, there has been an increased blurring of the lines between criminal and non-criminal behaviour (Lambrechts, 2013), with politics becoming markedly interconnected with crime (Bayart *et al.*, 1999). There are several reasons for this interlocking of politics and crime, one being the institutional weaknesses of states that have for decades provided and continue to provide perfect conditions for the rise and expansion of organised criminal groups and their activities (Lambrechts, 2013). This argument begs the point established in Chapter One that some socio-political and economic environments create countless opportunities for TOC actors to penetrate and exploit the structures of the state.

This chapter aims to provide an in-depth analysis of transnational organised crime in the DRC, particularly the looting and exploitation of mineral resources. The case under investigation meets the mandatory factors for determining TOC in Southern Africa, as per the definition of TOC provided in this study, as well as the Palermo Convention's criteria for determining TOC in Southern African countries. In terms of the former, actors involved in the smuggling of Congo's mineral resources are the ruling elites and state agencies such as presidents and armed forces, the commercial associates with multinational corporations (MNCs), rebels and foreign actors. Therefore, they constitute both the state and non-state actors. Secondly, the traded goods, which are mineral resource extractives, are either illegally extracted and traded, or legally extracted but traded illegally, or illegally extracted but legally traded. Thirdly, the smuggling of mineral resources occurs both within and beyond Congolese borders in the sense that they are locally extracted but mostly traded

internationally. This is true, especially when considering that 98 per cent of the gold produced in Congo is smuggled out of the country. Lastly, actors involved in looting and smuggling DRC's mineral resources seek a material and financial gain.

As already indicated at the beginning of this study, transnational organised crime is facilitated by and through various factors, also referred to as enablers. By using the DRC as an example, this study illustrates how political instability and conflict, state fragility, and poverty create ideal conditions for the penetration of state structures by organised criminal groups and the facilitation of organised criminal activities. More particularly, the chapter reveals how the aforementioned factors enable the establishment of parallel state structures and clandestine economies in the DRC. To achieve this aim, the chapter commences with a socio-historic background of the DRC, and then continues with a brief overview of the size of Congo's mining industry to contextualise the case study. The Congolese mining industry's geopolitical environment is critical in so far as its centrality to the socio-political issues and its role as a fertile and competitive field for organised criminal syndicates. Then, the third section reveals the establishment of parallel state structures and clandestine economies by TOC actors.

4.2. The socio-historic background of the DRC

The DRC, home to 100 816 million people and over 200 African ethnic groups (IMF, 2020), is the second largest country in Africa and the largest country in Sub-Saharan Africa (The World Bank, 2021). Congo's large endowment of mineral resource reserves (as seen in table 1) makes it the major mining sector in the SADC region. The richness of the Congolese soil is, however, not reflected in the country's GDP — with its real GDP contracting by from 4.4. per cent to 1.7 per cent in 2020 as reported by the African Development Bank Group (AfDB) in its 2020 economic outlook (African Development Bank Group, 2020). This dwindling economic performance could be partly associated with poor management of the country's precious mineral and natural resources by the government and decades of protracted conflicts fought largely over the resources that should have been a force for economic development and progress. As a result, the DRC remains one of the poorest countries in the world, as stated in Chapter One, with 77 per cent of the population living on less than USD 1.90 a day (African Development Bank Group, 2020), about 21.8 million people

acutely food insecure, and 3.4 million acutely malnourished children (United Nations World Food Programme (WFP), 2020).

Additionally, the country maintains one of the lowest Freedom House scores in both political and civil liberties (Freedom House, 2020). For instance, the Armed Conflict Location & Event Data Project (ACLED), recorded nearly 790 organised political violence events in more than 420 locations since January 2019 (Lederer, 2019). While over 1 300 civilians have been killed in separate conflicts involving armed groups and government forces in eastern DRC between November 2019 and June 2020, with violence forcing over half a million people to flee the country (Al Jazeera, 2020). Such devastating conditions are nothing new as the DRC (and its previous incarnations as the Republic of Congo and the former Zaire) has been marked by continuous crises before and since its independence in 1960. These disturbing conditions combined with abysmal statistics on infant mortality, life expectancy, and pervasive state corruption (Englebert & Mungongo, 2016) have led some scholars to argue that the DRC is a failed state. Thus, regional instability, armed conflict, ethnic or tribal or religious clashes, indebtedness, hunger, poverty, re-emerging diseases, environmental degradation, and underdevelopment are just a few factors shaping the state of affairs in the DRC, as in many other Sub-Saharan countries.

To date, the international community, dominated by the Weberian school of thought, has classified the DRC as a failed or fragile state. Although there is a great deal of debate regarding the actual genesis of the DRC's state of failure, most scholars including Hussein Solomon and Cornelian Cone (2004), William Reno (2006), Adam Zachariah Trautman (2013), Monapo Tebello Mokose and Hussein Solomon (2016), and Jeffrey Herbst and Greg Mills (2009; quoted from Titeca & Herdt, 2019), seem to perceive the present-day Congo as a paradigmatic case of state failure. Additionally, the Fragility States Index's recent report has ranked the DRC number five of the world's fragile states (The New Humanitarian, 2020), and in 2019, the World Economic Forum listed Congo amongst the five most fragile countries comprising the Index's Very High Alert category (Broom, 2019). State failure, these authors and international actors argue, is defined by a situation where the government no longer exists within the form of a functional Weberian legal-rational bureaucratic apparatus, exerting effective monopoly over the means of violence or is unable to perform its crucial functions necessary to meet the basic needs of its people. Thus, the long-

accepted consensus among experts is that the Congolese state is a corrupt and predatory version of the Weberian state. To this end, interrogating the notion of “state failure” within the context of the DRC is critical.

4.3. A strategic classification

In discussing the phenomenon of state failure in the DRC, Perazzone (2018) makes an interesting observation by stating that the concept of state failure itself stems from the belief that international threats emerged from those states incapable of containing refugee flows, defend their borders, and halt and prosecute those involved in transnational criminal networks and armed groups, and not necessarily from international threats. From this observation, the notion of state failure in the DRC is seen as a “natural”, “internal” and even an “inherent” characteristic of the country. This narrative is often portrayed from statements that describe the state in the DRC as “inherently” weak. The following statement by N’Kolomona (2002: 42) clearly demonstrates this narrative:

Faced by several challenges to the legitimacy of its institutions, the inherently weak DRC state has relied on strategies based on the threat or use of force, rather than co-option and penetration of civil society, thereby further increasing the gap between the state and civil society.

Since the 1990s, a vast literature on the subject of “failed states” emerged producing different categories of polities about the state in the DRC. These include labelling Congo as a “weak state”, a “criminal and disordered state”, “rogue state”, “disintegrating state”, “captured state”, “quasi-state”, *et cetera*. Such general categorical representations depart from the Weberian conception of an ideal state. The definitions about the failed states in Sub-Saharan countries are made with reference to their “successful counterparts” existing in the West (Dolek, 2008). Various academics and Western policy makers have used these descriptive monikers to attribute all those “internal” characteristics to a broader problem of state failure in the DRC. These perceptions tend to make a descriptive account of “state failure” without referring to the historical and social conditions through which the DRC has failed. In other words, three questions are never asked; that is “who failed the failed state in the DRC?”, “when exactly did the Congolese state fail?” and “who decides which state has failed?”

The absence of such questions reflects the acceptance of the “New Barbarism” thesis that concludes that there is no need for complex analysis of Africa as a “failed continent” because the continent is already brutish, irrational, uncivilised, and backward (Tuastad, 2003). That is, the DRC is a failed state because it is brutish, irrational, uncivilised, backward, and mostly because it is African. This, in turn, has allowed and justified the emergence of extensive international interventions in the form of exogenous state building in the DRC, encompassing the deployment of transnational and international actors such as the International Organisations (IOs), donor governments, development programs, peace building, and state building (Perazzone, 2018). Therefore, the Western classification of the DRC as a “failed state” serves as a rationale to impose the European interests on African resource-rich and less developed countries — since the Fragility States Index (FSI) is in itself a Western invention. While this is the case, the deployment of foreign private military forces to the DRC aids a government that is corrupt and preys on its citizens. This is because the “U.N. peacekeeping mission is mandated to partner with the government” (Nichols, 2017). As stated in Chapter Two, shadow states and their clandestine economies in Southern Africa also serve as a strategy to destabilise the region by provoking and prolonging much of the warfare in the region, thereby creating a fertile ground for the looting of natural resources.

Apart from the strategic utilisation of the state failure phenomenon by the European states and US agencies, the Weberian approach tends to describe the state of failure in the DRC as an African aberration. Thus, it treats it as an ahistorical and asocial African phenomenon. On the contrary, Matthews and Solomon (2001) argue that the problems faced by African states, such as the DRC, today are by no means different from those that plagued the evolution of the early Western states. Of course, the development of the African states cannot be expected to be identical to that of the states in the West, but understanding that the Western system of government developed from being personal to being a forerunner of the modern state (Van Creveld, 1999: 126-128), and that its development involved a lengthy of wars and protracted conflicts — yet was never classified as a failed state, allows for an understanding of problems of statehood in the DRC to be analysed as an unsurprising phenomenon. Hence, Perazzone (2018) argues that the state in the DRC continues to be reproduced, reconstructed, and re-legitimised even through

seemingly contradictory dynamics in both ideational and performative dimensions, and through a set of diffuse yet pervasive socio-material practises, systems of significance, and historical traces. As a result, Perazzone describes the state in the DRC as an ecosystem that comprises multiple transactions, interactions, and relationships of different actors at different levels in society each with their own interests and objectives. This line of thought provokes Charles Tilly's (1985) idea that the emerging state (in Europe) established itself by acting, essentially, as a racketeer in terms of interrelated activities of war-making, state-making, protection, and resource extraction through plunder, taxes, *et cetera*. Furthermore, as Tilly (1985) argues that the perpetration of war and its necessary corollary of resource extraction had the unforeseen effect of creating the modern nation-state, state-endorsed organised crime may well be an integral part of state formation in the DRC as it was in Europe.

To overcome the temptation of treating the contemporary conditions faced by the DRC as ahistorical, this study examines the legacy of colonialism in the DRC; "its history provides an explanation for its current situation" (Matthews & Solomon, 2001).

4.4. From Congo Free State to DRC: The legacy of colonialism

Since the 1880s, systemic corruption and violence have been central to the system that elites both inside and outside the DRC used to plunder the country's mineral resources, abuse citizens, and misuse state institutions. Various elites from Belgian colonial times to the present have exploited mineral resources, often illicitly, through the use of paramilitary units, armed militias, rebel groups, and violent repression to maintain power over Congolese resources (Sanders, 2017). In 1885, Leopold II, King of Belgium, managed to seize Congo and become sovereign of a territory whose borders have been defined by political negotiations rather than regional logistics (Banona & Sépulchre, 2020). In the following years, the Congo Free State was established alongside its infrastructure projects to promote the ruthless extraction of goods and a political architecture that included coercion and violence as means of rule. During King Leopold's II reign, violence was used as a tool to achieve the goal of maximum private wealth and the personal enrichment of his inner clique (Morel, 1990). About 5 to 10 million Congolese died, as the Force Publique, Leopold's army, waged war numerous times, implemented slave labor regimes, and starved the

population repeatedly (Hochschild, 1998). The Belgian regimes sowed the seeds and cemented the tradition of unchecked personal power, use of national resources for personal enrichment, brutal repression of the demands of the people for political freedom, and social divisions along ethnic and regional lines (Kinsangani, 2012; Lemarchand, 1964; Young, 1965; Young & Tuner, 1985). Partly due to this tragic history, the DRC experiences a difficult and unstable post-independence era, marked by rebellions and secessionist wars (Coquery-Vidrovitch. Forest & Weiss, 1987; Kisangani, 2012; Lemarchand, 1964; Nzongola-Ntalala, 2002; Young, 1965; Young & Turner, 1985). The instrumentalisation of violence in the DRC began during this time to achieve the regime's primary goal, that of generating wealth by establishing control over the trade in mineral resources such as ivory, rubber, gold, copper, and many other minerals available in Congo (as shown in figure 1).

According to Hochschild (1998), the brutality by which King Leopold acquired control of the DRC, and the nature of plunder and its close connection to the military force highlight Tilly's argument that "...since the repressive and extractive activities of governments often constitute the largest current threats to the livelihoods of their citizens, many governments operate essentially as racketeers" (Tilly, 1985: 171). Thus, Leopold's regime acted as a racketeer that relied on the perpetuation of violence to gain access to capital to finance the war efforts. In this way, Leopold's regime developed a durable interest in promoting the accumulation of capital, sometimes in the guise of direct return to their own enterprises (Tilly, 1985: 172). Critical to Leopold's regime was the establishment of a shadow state and economies in the DRC that the country continues to grapple with presently. Furthermore, the exploitation of mineral resource extractions generated massive profits for Leopold and his inner circle, referred to as a political dynasty in this study, with conservative estimates showing that he personally accrued USD 1. 1 billion in present currency from the Congo (Englebert, 2014). His luxurious spending, secretive companies, and external investment allegedly totalled to about USD 19 million annually (Lezhnev, 2016). Indeed, Leopold not only privatised the state in the DRC, but also turned it into a predatory, criminal, and resource state. The state in the DRC was used to generate incentives for "his belly" and those of his political dynasty, became the main actor in criminal activities including pillaging DRC's mineral resources, and served as a source or means to an end, with political power turned into economic power.

The 1960s and 1970s regimes are critically important for understanding the genesis of the modern day instrumentalisation of violence and the forging of the alliance between crime and politics in the DRC. These periods mark the criminalisation of politics in the context of the DRC. Perazzone (2018) asserts that the mundane and routinised forms of state violence in Congo are inherited from the colonial era. As stated in Chapter Two, in the wake of independence, post-colonial African leaders inherited the artificially created nation-states and imperial state structures developed through coercive mechanisms and centralised political and economic controls such as the army, policy, and the bureaucracy. Therefore, when Mobutu Sese Seko took over from Leopold in 1965, he continued the system of repressive kleptocracy and violent exploitation until 1997, when he was finally succeeded by Kabila — and since then the systemic corruption, violence, and predation have been a constant foundation of the Congolese regimes. As scholars Dominic and Christiane Kayser note:

The so-called “war economy” of the Congo...has been a constitutive part of Congo’s political economy since the country came to existence. From the moment the first traders set foot in the area, the Congo has been regarded from outside as a reservoir of precious resources whose conditions of exploitation were more important than the living conditions of its inhabitants. Congo’s natural resources have always been in the hands of private interests, even when these cloaked themselves as public ones.

This reflects the Congo’s deterioration into a place of conflict, brutality, and exploitation due to its large endowment of mineral resources used for the ruler’s personal enrichment while the majority of the Congolese population live in extreme poverty.

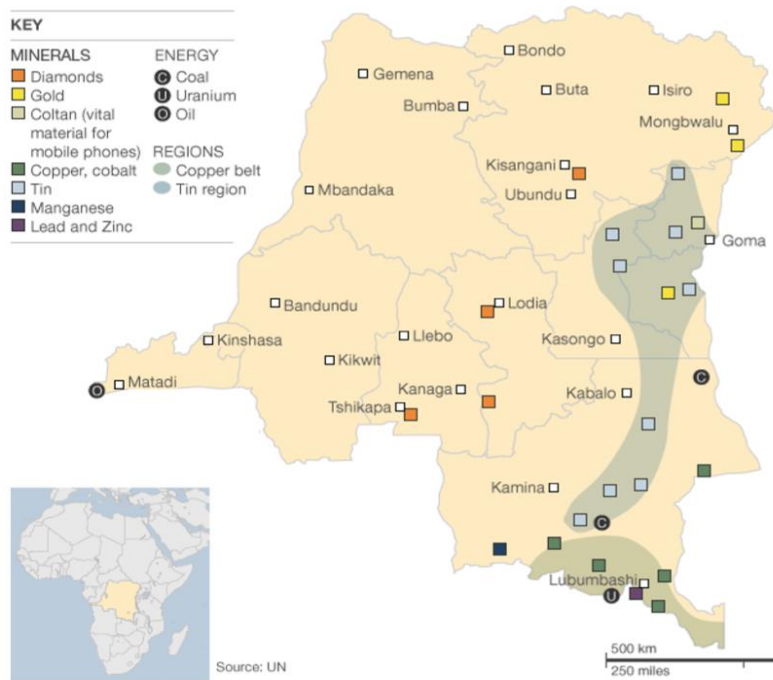
4.4.1. Congo's mining industry

The DRC is a major mining country in Africa (Mining in Africa, 2017) and features amongst the world's richest countries in terms of natural resources (Lezhnev, 2016). The country contains about 1 100 minerals (World Bank, 2020) and plays a significant role in the global production of copper, diamonds, gold, tin, coltan, tantalum, and cobalt (Mining in Africa, 2017). According to the International Monetary Fund’s African Department (2019), the DRC is the world's fifth-largest copper

producer. Copper and cobalt account for more than 70 per cent of the value of the Congolese extractive outputs (IMF, 2019). Indeed, Congo has a rich and diverse endowment of mineral resources. In 2014, half of the world's cobalt was produced in Congo, and according to estimates, the country has about 47 per cent of the world's reserves (Chambre des Mines, 2015; quoted from Lezhev, 2016: 14). Moreover, the country produces over one-quarter of the world's industrial diamonds, and exports over 20 per cent annually (United States Geological Survey, 2015).

The Extractive Industries Transparency Innovation (EITI), a global standard to promote the open and accountable management of oil, gas, and mineral resources, states that the extractive industry of mining and oil dominates Congo's economic system, contributing 98 per cent to exports, 18 per cent to GDP, 18 per cent to government revenue, and 11 per cent to employment annually (EITI, 2020). Refined copper, cobalt, copper ore, cobalt ore, and crude petroleum are the top exports accounting for an annual turnover of about USD 3.63 billion, USD 3.38 billion, USD 1.18 billion, USD 853 million, and USD 386 million, respectively. The recent data by the Observatory of Economic Complexity (OEC) (2020), an online data visualisation and distribution platform focused on the geography and dynamics of economic activities, shows that the DRC mostly exports to China (USD 5.51 billion), Zambia (USD 1.36 billion), United Arab Emirates (UAE) (USD 1.41 billion), South Korea (USD 612 million), and Saudi Arabia (USD 386 million). According to the Africa report, the value of Congo's natural resources is estimated at USD 24 trillion, greater than the United States' GDP of USD 20 trillion (Baraza, 2020). The DRC's landscape is mostly covered with mineral resources (as shown in figure 1).

Figure 1: Mineral reserves and their distribution in the DRC



Source: UN (BBC News, 2013).

4.5. Establishment of parallel structures and clandestine economies

The DRC still grapples with the permeability of territorial frontiers, weak state institutions that are limited in their aims and vision, and a vastly heterogeneous population — a condition that has enabled the development of parallel state structures in the country. Hence, there exists two forms of states in the DRC — a constitutional and a shadow state, with the earlier form of state used by rulers of the latter as a front cover to gain legitimacy and maintain the appearance of a functioning state. Elements of a shadow state, which is a parallel system of governance where an individual ruler gains power from personal decisions rather than by the rule of law, have been consistently present throughout the regimes of the DRC. From the past to the present, political power in Congo has been in the hands of a personal ruler: from the Belgian King Leopold II who “captured” power in 1885 (Hochschild, 1998), Mobutu Sese Seko who “seized” power in 1965 (Chiwanza, 2017), Laurent Kabila who “declared” himself the president in 1997 (Ngolet, 2011), Joseph Kabila who “clunged” into power beyond his constitutional presidential terms (Katulondi, 2019), to the current President Felix Tshisekedi who gained political power through a “coalition deal”, known as the Kabila-Tshisekedi deal, with former President Joseph Kabila, in 2019 (Bisoka & Vlassenroot, 2019). This system of personal rule has resulted in the personalisation of authority that has, in turn, enabled Congolese rulers to establish

and cement a shadow state that serves their personal interests and advance their political power. As a result, billions of US dollars in public funds, mostly associated with the mining industry, are thought to be diverted by state agents for private gain — a large proportion of domestic government revenue.

Lezhnev (2016: 2) points out that Congolese leaders have redirected billions of dollars from the Congolese state and people and have used violence at times to gain and maintain the ultimate prize: control of the state and its vast natural resource base. The creation of this shadow state has also been enabled by the weak capacity of the Congolese state. As Mokose and Solomon (2016: 139) argue, the Congolese government's ineptitude for the performance of crucial state functions including the provision of public goods has created a shadow state, predominantly controlled by external forces. This weakened capacity, which has been caused deliberately at times through the systemic diversion of public funds and the weakening of critical state institutions, has provided sites of competitive advantage for militant organisations, criminal networks, and political leaders alike. In other words, it has brought together both state and non-state actors with the ability to manipulate access to both formal and clandestine markets and has subsequently facilitated transnational organised crime, particularly the smuggling of mineral resources in the country. The weakened capacity of the state in the DRC has become instrumental to these actors. Consequently, the weakened capacity of the state in the DRC is severely problematic for the vast majority of the population who suffer from abysmal security, healthcare and education services, but is an efficient state for ruling elites and their commercial partners who seek to extract resources at the expense of Congolese citizens. To vulnerable Congolese citizens, state failure is not just an index, a transnational discourse, or even a matter of academic debate — it is a real-life experience.

The creation of shadow economies and informal cross-border trade networks by TOC actors and their integration into the global criminal economy allows political elites and criminal syndicates to continue profiting from crime. Rulers of the shadow state have established the shadow economy, which is a network of secretive dealings where the state and non-state actors engage in activities outside the confines of the constitution, and support is traded through preferential access to mineral resources. As a result, political power and economic power have become intertwined in the

DRC. The establishment of these parallel systems of governance has made the Congolese state an institutional façade for an enterprise of theft and predation; thereby creating fertile conditions for the facilitation of the smuggling of mineral resources.

4.5.1. *Smuggling of mineral resources*

The smuggling of mineral resources, often in complicity with armed groups and corrupt officials, is common practise in the DRC. Since the late 1800s, the Congolese people have suffered at the hands of foreign and local businessmen and political leaders' intent on exploiting resources such as rubber, ivory, diamonds, gold, copper, cobalt, and timber (Gatimu, 2016). The UN affirms that armed groups, criminal networks, and some law enforcement authorities in Congo are receiving vast sums of money from illegally exploiting gold and other mineral resources and smuggling them to Uganda, Burundi, Rwanda, Tanzania, and the UAE (Lederer, 2019). The TOC networks constitute state, non-state, and foreign actors in the DRC. These criminal networks operate through, among others, corporate networks and refineries such as the African Gold Refinery (AGR) in Uganda, which serve as brokers to conceal the origins of smuggled mineral resources (Smith, 2020). Since global regulations prevent the illegal trade of conflict minerals, such as the Organisation for Economic Cooperation and Development and the U.S. Dodd-Frank Act, (Jamasmie, 2013), TOC networks in the DRC make use of the conflict-free neighbouring countries such as Uganda and Rwanda to turn “conflict minerals” into “conflict-free minerals” and then trade them into international markets. Therefore, mineral resources exit the DRC as illegal conflict minerals into Uganda and Rwanda, with the mineral supply chain often facilitated by corrupt customs officials, but exit these countries as legal conflict free minerals destined for international buyers. As IMPACT (2020) indicates, customs authorities in Rwanda and Uganda either do not complete due diligence on gold imports and exports, or ignore suspect documentation in return for kickbacks. Rwanda has become a major transit hub for illegal Congolese gold, with nearly 13, 000 kg of gold entering the UAE through Rwanda (Klein, 2020). On the other hand, moving profits generated through smuggling of mineral resources to offshore accounts and companies is common in the DRC. There are various complex ways through which TOC actors smuggle the Congolese mineral resources, including but

not limited to establishing patronage networks, the militarisation of the mining industry, war, and protection economies.

4.5.1.1. Patronage networks

The DRC has a long tradition of political patronage, a legacy of the previous regime (Chene, 2013: 3). In 1997, when Laurent Kabila ascended to power, he did nothing to fundamentally change the patronage system bestowed by Mobutu; instead, he replaced it with his own. To date, this system of patronage networks still persists, granting the rulers control over the distribution of resources to loyal associates. Through the shadow state, the Congolese rulers have created a system of patronage networks. This parallel system is largely predicated upon the circulation of mineral resources, official positions, and political loyalty and influence (Jené & Englebert, 2019: 5). The patronage network system has been central in the illicit smuggling of the DRC's mineral resources.

A report released by the Global Witness (2016), for instance, revealed that Gécamines, a state-owned mining company, signed the royalties on its most lucrative mine over to an offshore company, linked to Dan Gertler, former President Joseph Kabila's close friend. This 25-year lifespan USD 880 million secretive deal was concluded in 2015 (Allison, 2016). Dan Gertler has been repeatedly linked to corruption in the DRC, and has been found to have paid USD 100 million in bribes to DRC officials, including Kabila, in exchange for access to some of the nation's best natural resources (Patterson, 2016). In return, Kabila, the then president of one of the poorest countries in the world, gave nearly USD 1,36 billion worth of mining royalties to Gertler, in secret (Tshiamala, 2020). According to Allison (2016), Kabila was not the only one benefiting from this deal, but his patronage network of officials at all levels of government and businesses. This reflects the argument presented by Chipkin and Swilling in Chapter Two of this study, contending that a shadow state constitutes of relationships that cross-cut and bind a group of people together who need to act together in secretive ways so that they can effectively hide, effectively deny, or consciously "not know" that which contradicts their formal roles in the constitutional state. The strategic positioning of loyalists over the strategic mineral resource industry has also been critical in facilitating the smooth operation of the smuggling of mineral resources in the DRC. Kabila's ally, Albert Yuma Mulimbi, for

instance, has constantly been re-appointed as Gécamines' president since 2010, despite allegations by local and international watchdogs that the company's mineral resource profits have been used to fund Kabila's personal and political interests (Reuters, 2020).

Moreover, the Kabila family also established a family patronage system through which they own over 80 companies and businesses, all of which are partially or wholly linked to the former president Laurent Kabila (Kavanagh & McCarey, 2017). Although family members of a president or parliamentarians owning companies is not illegal *per se*, there are several laws and regulations in the Congo that, when assessed critically, have been violated for the Kabila's family to benefit from Congolese mineral resources. First, article 98 of the Congolese constitution prohibits the President and government officials or their intermediaries from acquiring any assets that belong to the state and prohibits them from participating, either directly or indirectly, in public tenders (The Constitution of the DRC, 2005). Reports show that the Kabila companies have benefited largely from Congolese government contracts and subcontracts, including Sicominex, part of the Congo's USD 6.2 billion minerals for infrastructure deal with China, as well as from contracts with the World Bank, the US Overseas Private Investment Corporation, and the UN (Kavanagh & McCarey, 2017). Secondly, the country's Mining Code Article 53 states that a person and his or her affiliate company cannot obtain more than fifty Exploration Permits (The Constitution of the DRC, 2005). However, the Congo's Ministry of Mines has granted companies controlled by the former president's sister, Jayne Kabila, and his brother, Zoe Kabila, who were members of the parliament at that time, more mining permits than allowed under the country's mining codes due to their positions and proximity to the president. For instance, in 2017, Zoe Kabila's Kwango Mines had 53 diamond mining permits (Kavanagh & McCarey, 2017). Thirdly, some of the family assets including mining companies are protected or overseen by members of the Republican Guard (Kavanagh & McCarey, 2017), which, according to the 11 August 2011 law on the organisation and functioning of the Republican Guard, can only be used to protect the president and distinguished guests of the republic, presidential installations, and to carry out the honour guard and escorts at the level of the presidency. The Kabila family has entrenched its patronage system, with Laurent Kabila as the ruler or kingpin, to an extent that USD billions generated from the mining sector are

redirected towards the family businesses, while 77 per cent Congolese live on less than USD 1 per day.

4.5.1.2. *The militarisation of the mining industry*

Most mining areas in the DRC are controlled by armed groups, with mineral resources extracted from such areas sold through armed group networks (Zalan, 2017). This has subsequently led to the militarisation of the mining sector in the DRC, with the army having a direct control over the trade of mineral resources, as stated in Chapter One. This conduct of the army, which others may see as a misconduct, has been largely enabled by the failure of the Congolese state to directly exercise control over the means of violence, and Mobutu's famous declaration: "You have guns, you don't need a salary". This statement corresponds with Article 15 of the Congolese Constitution: "débrouillez-vous" ("fend for yourselves") (Fontana, 2012). To date, the Congolese army is allowed by the political rulers to engage in lucrative economic activities, such as smuggling the country's mineral resources from which they generate significant sums of money. The arrest of Colonel Balumbisa Chuma, a high-ranking officer, and several other low-ranking soldiers, for the smuggling of 10 tonnes of tin ore from South Kivu serves as an example of the army's involvement in the smuggling of Congolese mineral resources (Modern Ghana, 2011). On the other hand, several reports reveal commercial deals made by the Armed Forces of the Democratic Republic of the Congo (FARDC) officers with the rebel groups that they are tasked to combat. General Jean-Claude Kifwa, former President Kabila's cousin, supplied the Mai Mai rebellion, a group guilty of horrendous violence in the region, with arms, ammunition, uniform, and communication equipment in exchange for illicitly smuggled ivory (Jones, 2013), while some reports have documented collaboration between the Democratic Forces for the Liberation of Rwanda (FDRL) and the FARDC in the illicit smuggling of tin, tantalum, gold, and charcoal (Schouten, 2015). This results in the blurring between the licit and illicit, with state actors becoming increasingly involved in illegal activities. It is evident that both armed forces and rebellions such as the Mai-Mai and the March 23 movement (M23) rebellions invest in the de-securitisation of the people and the control of territories, often rich in minerals, for personal enrichment. The UN Group of Experts for Congo has recorded a smuggling of USD 19 million worth of gold and titanium from the North Kivu into Uganda by the M23 rebels (Global Policy Forum, 2013). In total, the 2015 UN study

found that about USD 72 to USD 426 million of the Congo's mineral resources trade flows to organised criminal networks encompassing both state, non-state, and foreign actors. It must be noted that the DRC army and rebellions are not the only entrepreneurs of insecurity. The illicit mineral resource trade in the DRC is in part fuelled by several years of civil wars involving external actors, such as Uganda and Rwanda, who maintain those wars for a financial benefit.

4.5.1.3. *Turning disorder into profits: The war economy*

As previously stated, the illicit smuggling of mineral resources in the DRC is also fuelled by conflicts and the state of chaos and disorder they produce. For instance, between 1996 until 2003 Congo was marked by two wars, the First Congo War (October 1996 – May 1997) and the Great War of Africa (August 1998 – July 2003), which included the involvement of external actors such as Rwanda and Uganda (Zapata, 2011), subsequently creating a state of chaos and instability. Such conditions produced a fertile environment for the looting and exploitation of mineral resources in the DRC. Once conflict began, warring parties, both domestic and international, engaged in the lucrative enterprise of looting of the resources of the country. In this way, organised crime followed the structure of war economies. According to Broodryk and Solomon (2010: 4), a war economy entails circumstances in which specific actors make "money out of a war system rather than a peaceful situation". While the war might be instigated by other factors far removed from the revenue generation, the commercial profitability arising from its existence would see the profiting parties necessarily contributing to its continuation (Mokose & Solomon, 2016: 131). Actors involved in the Congolese war economy manipulated the war system and accessed the country's productions and distribution capabilities for their own private gain. In this way, they undermined the legal institutions of government to gain access to both the formal and clandestine markets (Reno, 2000), and thereby established a shadow state.

The material and financial gain from the war motivated and fuelled the continuation of the conflicts, and economic and politico-military interests were blurred with economically rationale coalitions formed for lucrative purposes (Mokose & Solomon, 2016: 133). As Mitchell (1981: 190; quoted from Solomon & Swart, 2003: 19) points out, individuals and factions may receive both material and psychological rewards

(political power, status, and wealth) from their part in the conflict, which may be lost when peace comes. Indeed, this marked a period where armed groups became more profit-driven than ideologically driven. During the wars, the state in the DRC became complicit in criminal activities. The instrumentalisation of conflict and instability laid central to the politics of the DRC and enabled organised crime to ensue. As Reyntjens (2001: 312) wrote, "entrepreneurs of insecurity are engaged in extractive activities that would be impossible in a stable environment". According to a UN panel of experts investigating the exploitation of DRC's natural resources, Rwanda and Uganda occupied the city of Kisangani during wartime — an important site in the lucrative diamond trade (as shown in figure 1) — engaging in "mass-looting" and securing sizeable benefits from the pillage of the DRC's resources (Mokose & Solomon, 2016: 134). While mineral resources such as diamonds cannot be found in the soil of either of these two countries, they both proceeded to export these minerals worth millions of US dollars. From 1997 to 1998, Uganda's exports multiplied by 12, and remained high in 1999 and 2000. The growth of Rwanda increased exponentially and reached a level of 90 times higher than that of the entire year of 1998 (Samset, 2002: 471). Therefore, it is clear that the involvement of foreign forces in the DRC conflict was motivated and sustained by powerful interests, which include financial gain. Today, a significant territory of the DRC is controlled by more than 100 armed groups (Burke, 2020) who constantly plunge the country into instability that serves as a tool for the smuggling of mineral resources.

According to the Enough Project (2016), insurgents and elements of government forces in the DRC control some 65 per cent of the country's gold mines, which are the foundation for an international smuggling network worth an estimated USD 400 million annually. In 2014, the UN Security Council Group of Experts on the DRC estimated that 98 per cent of the gold produced in the DRC is smuggled out of the country.

4.5.1.4. *Protection economy: The Virunga National Park*

Another way of conceptualising the various forms of collusion between the state and organised crime in the DRC is Mark Shaw's model of "protection economies". This model allows various and diverse interactions between criminals, business people, citizens, and the state around illicit activities to be taken into account, thereby

allowing for an analysis of the complex relations between actors where state capacity is compromised and state actors are involved in the complex web of TOC (Blum, 2016). According to Shaw (2015), this system of protection economies operates through three different elements — legitimacy, violence and corruption.

To illustrate the establishment and existence of protection economies in the context of Congo, this case study uses a British registered oil and gas exploration and production company, formerly known as SOCO International Plc (SIA) until October 2019 when it changed to Pharos Energy Plc. In 2015, the Congolese government, under Joseph Kabila's leadership, granted oil concession for SOCO/Pharos to explore for oil in the eastern DRC (Global Witness, 2019). Half of the concession (50 per cent) was Africa's oldest national park and a UNESCO World Heritage Site, the Virunga National Park (Environmental Justice Atlas, 2019). The Congolese government entered into this production-sharing agreement in contravention with Congolese and international law, prohibiting and in fact declaring any oil-related activities in the park as illegal. State actors, including the President's office, the ministry of mineral resources, and local authorities such as the army, circumvented and undermined the Congolese rule of law and colluded with foreign business actors to exploit the Congolese oil reserves. Years following the agreement, corruption and violence became pervasive. Leaked documents by Global Witness show that the company paid USD 42 000 to Major Burimbi Feruzi, a Congolese military officer, who then bribed opponents of its oil exploration, including offering a USD 3 000 bribe to a senior park ranger (Vidal, 2015). According to Global Witness, the company made up to USD 42 250 million over two weeks in 2014 — an amount equivalent to over 30 year's salary for a Congolese army Major (Global Witness, 2015). SOCO used the Congolese army soldiers to secure its staff and infrastructure in the volatile region (BBC News, 2015). In addition, the company paid salaries of the soldiers near the company's base (Global Witness, 2015) to gain some form of legitimacy and to protect their business. According to a report by the Global Witness (2014), soldiers are not the only ones on the SOCO's bankroll; rebels and a member of parliament also agreed to receive monthly instalments for lobbying in favour of the company. As Shaw asserts, in protection economies corruption can ensure the safe passage of goods and the protection of actors by paying off key officials. Shaw further points out that protection can be provided by militias, security sector employees, and sometimes

by state officials, who effectively turn security into a privatised service. On the other hand, park rangers and activists who opposed SOCO's operations were arbitrarily detained, shot and seriously wounded, and threatened by the authorities (Human Rights Watch, 2014). Violence is also one of the measures used by actors involved in protection economies. This presents the symbiosis between the state and organised crime in the DRC, where political elites and state officials entered into an illicit profit-sharing deal with business elites at the expense of the Congolese wildlife conservation and its people's development.

4.6. Conclusion

In spite of the DRC being a natural resource rich country, it has proven that it is failing to translate its abundant natural resources into meaningful economic growth for the benefit of its people. As a result, the vast majority of the Congolese population suffer from extreme poverty. The DRC's colonial past illustrates how the perpetual exploitation of Congolese natural resources for personal advantage spurred violent conflicts, instability and poverty. As shown in this chapter, natural resources account for the continuation of violent conflicts and instability even in cases where natural resources are not the main source of conflict. These conditions serve as enablers for TOC, particularly the smuggling of natural resources in the DRC. Considering the consequences of TOC activities, it becomes apparent that violent conflicts, instability, and poverty are not only causes but also effects of TOC.

This chapter has highlighted an important factor common in discussions about African states — the colonial legacy. While the Congolese weakened state capacity can be attributed to its colonial past, the role of post-colonial rulers in furthering the weakening of the Congolese state is crucial and can never be overlooked. This chapter revealed that Congolese rulers deliberately weaken the capacity of their state for the purpose of profiting from the state resources. Another important factor that this chapter has highlighted, is the defaulting of the social contract between the Congolese state and its citizens through political aberrations such as the “Kabila-Tshisekedi coalition deal”, where a government rules not out of the choice of the Congolese people but from the will of patrons. Therefore, since Congolese people have never had a chance to elect their own government, there is no social contract to speak of. This deliberate act by state actors often in complicity with non-state actors

produces two contrasting outcomes, referred to as a “development paradox” in Chapter One of this study: for organised criminal syndicates, it yields significant financial benefits, while for the vast majority faced with abysmal security, healthcare and education, it yields nothing but misery.

Moreover, understanding different socio-economic and political conditions under which TOC networks function is critical, especially in a region which constitutes both developing and less developed countries like SADC. When classifying the DRC along a continuum of strong to failed states, this chapter made an interesting connection between the classification of the DRC as a failed state and organised crime by revealing that shadow state actors deliberately destabilise the country, request international intervention, and then use these foreign actors to protect and aid them to sustain their criminal networks. More significantly, this chapter criticised this classification not only because it serves the interests of the corrupt political leadership whose interest lies more with profit-generation at the expense of the poor, but also because it undermines the idea that the DRC continues to be reproduced, reconstructed, and re-legitimised even through seemingly contradictory dynamics in both ideational and performative dimensions which then dismisses the fact state-endorsed organised crime may well be an integral part of state formation in the DRC as it were in Europe. This suggests a visible connection between the emergence of European states and African states.

When applying the theoretical framework of shadow state, keeping perspective is crucial to a case study. Therefore, this chapter provided the key *modus operandi* — the establishment of parallel state structures and clandestine markets — through which TOC networks exploit and smuggle the DRC’s mineral resources. This has enabled the author to extrapolate and demonstrate how mineral resources are being smuggled out of the DRC through patronage networks, the militarisation of mines, war economies, and protection economies. The underlying factors enabling such methods and systems have been and continue to be the fragility of the state, the persistence of violent conflicts and instability. However, since the complicity and state involvement in TOC is not only confined to the so-called weak or fragile states —it occurs in middle-income states such as South Africa. The following case study provides a critical analysis of illicit financial flows in the Republic of South Africa to

demonstrate how the connections between new governments and the colonial political and economic interests also play a role in state involvement in TOC.

CHAPTER FIVE

5. CASE STUDY: FINANCIAL CRIMES IN THE REPUBLIC OF SOUTH AFRICA

5.1. Introduction

The intersection between political elites and organised crime in Southern Africa is growing substantially, and organised criminal syndicates and political elites continue to generate significant illicit wealth from criminal market opportunities by exploiting various social and political vulnerabilities present in the region. The nexus between organised crime and political elites is a very complex phenomenon that, as indicated in the beginning of this study, involves networks that are neither monolithic nor homogeneous but complex and multidimensional with several actors serving as key facilitators. Hence, it is necessary to recall one of the most important factors for determining TOC in the SADC region — the type of actors — that was established in Chapter One, to provide some conceptual context and clarification to the case study.

The type of actors involved in TOC are both state and non-state actors, and state actors, as highlighted in Chapter One, are individuals who represent a government whether through electoral means (political elites) or appointments into public offices (civil servants) such as law enforcement agencies. Non-state actors are those not affiliated with a government and include business elites. Furthermore, it is also crucial to re-establish that the most crucial feature of organised crime in the SADC region is the extent to which political elites and state actors are themselves involved in organised criminal activities that primarily shape the role of criminal actors. Political elites use their political power, positions in government, and their influence and control over key state institutions to create an enabling environment for organised criminal activities (Chipkin & Swilling, 2018). On the other hand, criminal syndicates, particularly unethical business elites, and other non-state actors use their economic power and proximity to government officials to profit from organised criminal activities. In this way, a symbiotic relationship between state and non-state actors is established for the purpose of generating illicit wealth through licit and illicit means while using the state as an instrument. This, essentially, result in the criminalisation of the state — an ecosystem where multiple transitions, interactions, and relationships between different actors at different levels of society work together to commit

organised crime for a material or financial benefit (Perazzone, 2018), as shown throughout this study.

Transcending cultural, social, linguistic and national boundaries, TOC actors know no rules and leave no jurisdiction unaffected. With this in mind, it is important to highlight that countries do not necessarily experience the nexus between organised crime and political elites in the same way due to varying socio-economic and political vulnerabilities. This is especially true in Africa and the Southern Africa, where the region constitutes of least developed and developing countries with varying governance, economic, and security capacities. Therefore, to fully understand the intersection between organised crime and political elites in the region, and to combat it more effectively, a thorough understanding of how different vulnerabilities fuel the manoeuvring and penetration of state structures by organised criminal syndicates and political elites who are involved in the commercialisation of crime is crucial. The previous case study demonstrated the link between organised crime and political elites with conflict, instability, poverty, and state fragility by using the DRC as an example. Such perennial vulnerabilities are not only limited to the DRC but are also present in most of the least developed countries in the region, such as in Zimbabwe, Angola, Mozambique, *et cetera*.

As pointed out in the introductory chapter, the interface between organised crime and political elites is not only limited to least developed countries, but is also present in relatively stable countries with well-developed infrastructure and economy. As a result, this case study is aimed at demonstrating the formation of criminal opportunities for and by political and apolitical elites in a country with relatively well-developed infrastructure and economy — South Africa. This case study focuses primarily on providing an in-depth analysis of the interface between organised crime and political elites in South Africa for the purpose of committing a financial crime, known as procurement fraud. Over the years, it has become apparent that some South African politicians and state officials accept kickbacks, fix contracts, and establish unethical relations with some private sector corporations so that they can generate illicit profits from state resources that were intended to improve the development opportunities of South African citizens. To reveal this unethical conduct of prominent business elites aligned with corrupt, criminal, and complicit public office bearers, the case study will reveal how both these state and non-state actors

establish a shadow state for the massive embezzlement of state funds and asserts — a habitual tendency that, as shown in Chapter Two, is the foundation of contemporary states in Africa. After all, the historical background to the development of organised crime and its link with political elites shows that as early as 1960s and late 1970s, some African countries had already developed a kleptocratic style of rule embroiled in the systemic use of fraud and similar illegalities as instruments of governance. In fact, the phenomenon of organised crime is nothing new in Southern Africa as it has been a feature of statehood in the region before and since decolonisation. As Tilly puts it, “organised crime and criminal networks have been an integral part of the formation of independent and post-colonial states within the African continent.” Hence, the ENACT Organised Crime Index employed in Chapter One revealed that state-embedded actors are the second most influential actors in organised criminal activities in sub-Saharan Africa.

To contextualise the case study further, the chapter begins with a brief description of South Africa’s position within the African continent, as well as some relevant historical factors that provide background to the development of enablers or vulnerabilities that enable the manoeuvring and perpetuation of procurement fraud in the country. This historical background is necessary to show how post-colonial state structures, the increasingly globalised private sector, and the connections between new governments and the colonial political and economic interests play a role in state involvement in organised crime, as highlighted in the introductory chapter. The second section provides a discussion on the nexus between the public and private sectors. The third section deals more specifically with the culture of patrimonialism in South Africa that serves as a vehicle for procurement fraud through the repurposing of state institutions. Moreover, the third section investigates procurement fraud at municipal levels to illustrate the extent to which organised criminal networks permeated the structures of the South African state. The chapter concludes by painting a picture of South Africa’s illicit financial flows at the global level.

5.2. Understanding the South African context

South Africa’s position in Africa is widely perceived to be one of dominance, principal conflict manager, and chief international interlocutor on security and economic development (Adelphi Series, 2018). This general depiction of South Africa is largely

reflected by the high-profile leadership positions in intergovernmental and multilateral organisations, such as BRICS, Group Twenty (G20), UN Security Council, and the African Union (AU) (Germanos & van Lennep, 2019), that the Pretoria government keeps occupying at sub-regional, continental, and global levels. The country's leadership profile and agenda-setting capabilities within the Southern African Customs Union (SACU) and SADC attest to its influence at the sub-regional level. As a result, South Africa is entrusted with the responsibility to assist its neighbouring states in matters such as law enforcement initiatives, as it is amongst the countries with reasonable resources to counter organised crime effectively (ENACT, 2019). However, since the nexus between organised crime and political elites is just as present in so called middle-income countries with relatively well-developed infrastructure and economy, as it is in low-income countries such as the DRC, South Africa is no exception. This is largely due to the fact that post-colonial state structures, the increasingly globalised private sector, as well as the connections between new governments and the colonial political and economic interests also play a role in the use of state and its institutions by political elites for organised criminal activities and profit accumulation for personal enrichment.

Within the context of South Africa, some scholars may argue that the contemporary South African dispensation is not strictly a post-colonial one; it is a post-apartheid one (Fulela, 2012). For instance, Grettranth (2016: 161) states that the notion of post-apartheid signals a unique South African social and political trajectory that differed from the conventional African colonial and post-colonial experience. However, Lalu (2008) argues that the apartheid state was post-colonial to a larger degree and, undoubtedly, inherited colonial features. Therefore, the South African state is as post-colonial as it is post-apartheid, both conceptually and empirically. Arguably, Southall (2016) indicates that in 1994, the incoming ANC government inherited some of the hallmarks of both the colonial and apartheid states. Such hallmarks included the tradition of unaccountable decision-making, secrecy, and a highly skewed economy where systemic inequalities meant that the majority of the country's citizens were grossly underprovided for by the state (Foley, 2019). For instance, just as the rise of the security state under PW Botha had been shrouded in secrecy, the post-apartheid South African government, used what is known as the Special Defence Account to facilitate the 1999 multi-billion dollar arms deal through which the then ANC president

Zuma allegedly received up to USD 87 thousand in bribes. The Special Defence Account was set up during apartheid with the explicit intention of creating a budgetary black hole that could be used to disguise the extent of the country's illegal international sanctions-busting (Holden, 2020). This points to the connections between apartheid and post-apartheid state structures in South Africa and their role in creating a fertile ground for the looting of state resources by political elites.

However, it is neither necessary nor practical (given the limitations of time for this study) to provide a detailed history of the colonial and apartheid South African state. Similarly, it is beyond the realm of this case study to point out all the various actors and activities reflecting the intersection of organised crime and political elite pre-1994. It is sufficient for this study to highlight that a comparison can be drawn between the types of predatory neo-patrimonialism phenomena that is occurring under the post-apartheid state and those of the apartheid regime. While drawing such comparison is challenging since the apartheid government operated under a distinctly legal- "ration" form (Foley, 2019), acknowledging that the apartheid state possessed strong shadow state characteristics as state resources were only provided to a limited part of the population — a white elite — which benefitted from its extractive character (Funke and Solomon, 2002) is fundamental. This is because, similar to the apartheid state, the contemporary state in South Africa operates under neo-patrimonial dominance where the resources of the country are extracted for the benefit of a few power-elite, masked by ideological and economic policies such as black economic empowerment (BEE) and radical economic transformation (RET) (Foley, 2019). It must be noted that this study is not against the real need for RET in the country; in fact, it supports the legitimate concerns of addressing the systemic injustices, issues of high inequality, poverty, and unemployment. However, as the academics of the State Capacity Research Project (SCRIP) argue, it has become more apparent over time that this legitimate call for action has been misappropriated and used to mask the looting of state resources by a select few politically connected elite to the detriment of the rest of the country. This description is in essence what the shadow state entails, as indicated in the Betrayal of the Promise report (Bhorat *et al.*, 2017: 4):

It is now clear that the ideological focus of the ANC is 'radical economic transformation', in practise Jacob Zuma's presidency is aimed at repurposing

state institutions to consolidate the Zuma-centred power elite. Whereas the former is a legitimate long-term vision to structurally transform South Africa's economy to eradicate poverty and reduce inequality and unemployment, the latter — popularly referred to as 'state capture' — threatens the viability of the state institutions that need to deliver on this long-term vision.

The importance of drawing the thread between the apartheid and post-apartheid regime in South Africa is to indicate that the nexus between organised crime and political elites through the misuse of the state and its resources is nothing new in Africa and has been a recurring feature in the South African body of politics.

One of the main factors that has enabled the above phenomenon to flourish within the South African politics is neo-patrimonialism — a tradition deeply embedded within the ANC and fundamentally rooted in the party's long history. As Lodge (2014) states, “historically, the development of the ANC was infused with personalistic politics”, and Friedman (2020) adds that “patrimonial tendencies are nothing new in South Africa, they have been a major feature of the country's political life for much of the past 350 years.” Consequently, Ellis (2013, in Southall, 2016: 81) reveals that patrimonial and neo-patrimonial tendencies were reinforced and entrenched under the apartheid regime, where “during its time in exile”, the ANC became not only a dispenser of employment, welfare, education, and scholarships to many who had fled South Africa, but was to become deeply entangled with criminal networks. According to Pretorius (2019), this was largely due to the party's desperation for survival that drew it into organised crime pre-1969.

This operation by the ANC, utilising organised criminal networks to assist in funding the struggle against apartheid, led to the establishment of a highly effective intelligence structure utilising criminal networks to provide intelligence on the ANC, the Civil Cooperation Bureau (CCB) (Pretorius, 2019). Furthermore, according to the Truth and Reconciliation Commission of South Africa Report (1998), the CCB was a specific operation to infiltrate the criminal operations within the ANC. Hence, this study showed that prior to 1990, the ANC was comprehensively funded by drug money through operations such as the ANC criminal-funding operation mentioned in Chapter One. Academic research shows that international terrorist organisations cannot survive financially without the involvement and utilisation of TOC as a funding

mechanism. Numerous studies on the relationship between TOC and international terrorism — known as ‘organised crime-terror nexus’ — have been published. Despite this, very little has been written about the ANC using criminal networks to assist in funding the struggle against apartheid. However, this is one of the critical features of the ANC that has come to rule South Africa.

Such patrimonial and neo-patrimonial tendencies became increasingly apparent when the ANC was elected to power, due to the following factors: the imbalanced nature of the political economy that the ANC inherited, the gain of control over the extensive resources that the parastatals wielded, the political deployment of people (big men) to posts who locate political goods to followers in return for their support and political connectivity that became a critical element to access employment, opportunities, and state resources. Additionally, a comprehensive blurring between party and state, the extensive penetration of party factionalism into state institutions — which paralyse their efficient functioning — and the burgeoning of cronyism, nepotism, and corruption also became prevalent (Southall, 2016). All these tendencies developed pre-1994 and proliferated since 1994, rising to a crescendo during Zuma years, when key state organs became the site of vicious looting and commercialisation of crime culminating to what today is known as a “state capture”.

Although it is true that the political and economic problems that plague South Africa today can be directly attributed to its historical past, some of the current problems are of its own design. Apart from the inherent historical and structural factors, the South African economy and its corrupt political leadership account for the nexus between crime and politics and the increase in financial crimes for two reasons. South Africa is an emerging market in the global economy and is Africa’s most advanced economy with sophisticated financial systems (Business Insider SA, 2021). It holds the second spot in sub-Saharan Africa, due to its well-developed financial system (18th place) and market size (35th) (World Economic Forum, 2021). Research shows that the proportion of total illicit financial flows is higher in developing countries with larger economies, and South Africa is amongst the top four emitters of illicit financial flows (Madden, 2020). A 2020 Economic Development in Africa Report reveals that South Africa has the largest outlier with a positive trade gap of USD 10 billion annually (UNCTAD, 2020: 59). In simple terms, South Africa loses about USD 10 billion per year in illicit financial flows. This figure is alarming, as it shows that 11,3 per cent of

the USD 88.6 billion leaking out of Africa illegally comes from South Africa, while over 60 per cent of South Africans live in abject poverty and 63 per cent of the youth remains unemployed (The World Bank, 2021). In fact, South Africa has the highest poverty rate of 26.6 per cent among the Organisation for Economic Co-operation and Development (OECD) countries (World Population Review, 2021), and worst youth unemployment rate, which is the highest of any G20 country (Szmigiera, 2021).

Secondly, for the second consecutive year, South Africa is placed 44th out of 180 countries on the Corruption Perceptions Index (CPI) published in January 2021 (Transparency International, 2021), while minnows such as Ivory Coast, Angola, Ethiopia, Senegal, and Tanzania improved their ratings significantly (Sibanda, 2021). This lack of improvement in dealing with corruption is linked to bribery, embezzlement, and favouritism that have featured throughout post-apartheid South Africa. According to the Mbeki report (2015), corruption is a cross-cutting issue that drives and fuels illicit financial flows at every stage. This corruption includes payments made and job opportunities offered to custom officers, judges, police, and other civil servants and also includes the use of political influence to stop officials from executing their responsibilities such as cutting of political deals to frustrate prosecution of crimes relating to illicit financial flows (Goga, 2015). Perhaps the most recent example reflecting judges cutting political deals to frustrate prosecution of crimes relating to illicit financial flows is the case of the Western Cape Judge President John Hlophe and his attempts to influence the Constitutional Court (ConCourt) in a multi-billion dollar arms deal case linked to former president Zuma. Judge John Hlophe has been found guilty of gross misconduct for trying to sway two Constitutional Court justices, Chris Jafta and Bess Nkabinde, to violate their oaths of office and rule in favour of Zuma. Zuma allegedly received up to 783 suspicious payments of approximately USD 87 thousand from his then financial advisor, and now convicted fraudster, Schabir Shaik through an allegedly illegitimate relationship between Zuma, Shaik and his company Nkobi Holdings, and the French company Thint Holdings and their associates Thomson-CSF/Thales (Baloyi, 2021). This shows the extent to which some individuals in arms of the South Africa government, that is, the legislature, executive, and even the judiciary, have become complicit in organised criminal activities.

5.3. Public-private sector nexus

Organised crime in the context of South Africa is mostly driven by the collusion between the private and the public sectors. Within the wide variety of financial crimes, this public-private sector collusion is referred to as a public sector organised crime or procurement fraud — a financial crime-type that occurs through the interconnectedness, and sometimes interdependence, between government officials and private businesses for the purpose of manipulating government tender systems and loot public funds, as defined in Chapter Three of this study. By definition, this type of financial crime is no different to the concept of “state capture” that recently gained topicality in the South African economic and political discourse. State capture was coined and used in referring to the existence of three grand corruption aspects among political and business elites in the former communist countries of Eastern Europe that involved payment of bribes to gain contracts but also the purchase of political influence (Hall, 2012: 4). Similarly, procurement fraud encompasses a problematic, profit-driven relationship between politics and business rooted in the market for influence. In South Africa, procurement fraud emerged as some politicians and a several businessmen and women exercise significant political authority through the manipulation of procedures and processes to facilitate private control of public resources. These actors “captured” the institutions of government for the purpose of obtaining a financial gain.

As a result, over the years, South Africa has become an epicentre of procurement fraud and a place where politicians and presidents, together with their families, enjoy corrupt relationships with business elites. President Cyril Ramaphosa’s relationship with the Bosasa family, a tie that culminated in a dubious USD 36 thousand “donation” towards his ANC Presidential campaign (Daniel, 2019), former president Zuma’s tie with the infamous international criminal syndicates, the Gupta family, whose corrupt activities cost the South African economy billions of dollars, and Ace Magashule’s murky dealings with tender moguls like Edward Zondi are testament to this. Such elements, according to Chapter Two of this study, constitute what Querubin terms a political dynasty in which a family or groups of families or individuals purchase political control that is a very crucial aspect of the functioning of the formal state. In this way, they are capable of determining the political and economic direction of the formal state. Consequently, these corrupt relationships

have led an award-winning investigative journalist, Pieter-Louis Myburgh, to describe South Africa as “The Republic of Gupta” (Myburgh, 2017) and a “Gangster State” (Myburgh, 2019) and some renowned scholars like Ivor Chipkin and Mark Swilling to classify South Africa as a “Shadow State” (Chipkin & Swilling, 2018). When considering the complexities of a shadow state, such relationships have been critical for the functioning of a shadow state in South Africa since, as indicated in Chapter Two, it does not only consist of individuals who are employed in government, but fundamentally includes external actors outside of the government and a wide array of other actors, especially individuals with companies in the private sector through which the intended benefits (financial, political, or both) for the elite can be derived. This convergence of business interests and politicians through family ties, friendship, and ownership of economic assets is crucial because it has provided a fertile ground for procurement fraud in South Africa.

Fakude (2016) states that the modern economy of South Africa is based on undue influence of business over politics and vice versa. For example, in his book, Mcebisi Jonas, the former finance minister, reveals attempts by the Gupta family to influence him through a USD 43 million worth bribe to follow their orders regarding the procurement of a USD 72 billion nuclear deal (Jonas, 2019). He further reveals that the Guptas wanted him to pave a way for this deal by firing some National Treasury officials who were against the programme. In this way, the Guptas wanted to gain undue influence over the political and economic direction of a legitimate state. As stated in Chapter Two, deciding the political direction of a legitimate state is as critical as deciding its economic direction.

More poignantly, Chipkin (2016) argues that in Africa, and South Africa in particular, the state is becoming a vehicle for politicians and their cronies to seize the instruments and resources of the state and use them for their own purposes. Therefore, when discussing procurement fraud in South Africa, the state and economy cannot be conceived as two separate entities, since economic and political power is fused. Thus, Martin and Solomon (2016: 21) are of the view that in the South African situation, as in many other African countries, political power is seen as a mechanism that can be used to extract financial benefits from the state, and not necessarily to foster an environment where the needs of ordinary citizens are met. This study adds that:

In the context of South Africa, procurement fraud has been enabled by a network of patrimonialism deeply embedded in the South African political economy and operating in the shadow of the formal institutions of government.

5.4. Culture of patrimonialism in South Africa: a vehicle for procurement fraud

Although patrimonialism has been a constant feature of the South African politics, Lodge (2014), Beresford (2015), and Southhall (2016) highlight that, since being elected to power, the extent of these patrimonial and neo-patrimonial tendencies within the ANC has become increasingly apparent. While this is the case, Foley (2019) acknowledges that under the Zuma administration, South Africa has witnessed a significant shift from a regulated to a predatory form of neo-patrimonialism — a shift from neo-patrimonialism within the state to patterns of neo-patrimonialism permeating the state in its entirety (Sardan, 2014). While regulated patrimonialism is nothing but a recognition of patrimonial practises among other, the legal-rational logic still being dominant, predatory patrimonialism refers to systems where personal rule and resource control reach a paroxysmic level (Médard, 2000: 279) In simple terms, although patrimonialism dates far back in the South African history, it escalated into a new phase under the Zuma administration (2009–2018) as tendencies of centralisation of political power and the inappropriate control of state institutions through a power-elite that pivoted around the then president, aimed at systematically siphoning the assets of the state came to the fore. This reflects a point mentioned in earlier Chapters One and Two that political leaders, especially presidents, who are essentially rulers of the shadow state, centralise the operation of state institutions to ensure that negotiation of government contracts and appointment to key positions depend in large measure on receiving approval from their offices. The centralisation of political power is crucial for the effective functioning of the shadow state as it grants the ruler power, almost nearing authoritarianism that, in turn, makes him unaccountable.

A “power-elite” is a relatively well-structured network of people located in government, state institutions, SOEs, private businesses, security agencies, traditional leaders, family networks, and the governing party (Bhorat *et al.*, 2017). This has been accomplished through the establishment of a shadow state

constituting of a complicated network of patrons, elites, and entrepreneurs deeply entrenched in the South African state to engineer vast enrichment schemes that transmogrified into large money laundering operations. Some authors refer to this as a “controller-elite-broker” network (Foley, 2019). A shadow state has been described as a form of personal rule; an authority that is based upon the decisions and interests of an individual, not a set of written laws and procedures, even though these formal aspects of government may exist — like in South Africa. For instance, the High Level Panel Review into State Security Agency, supplemented by evidence revealed in the Zondo Commission of inquiry into State Capture, shows that the former president Zuma relied on an unconstitutional, criminal, and unaccountable parallel intelligence structure to serve his personal and political interests. According to the Daily Maverick (2019), these rogue spooks, who worked and continue to work off the books, were Zuma’s eyes and ears in SARS, Transnet, Passenger Rail Agency of South Africa (PRASA), Eskom, South African Airways, and the media. The manipulation of these formal institutions of government enabled Zuma to increase his personal power.

Based on the patronage network system unpacked in Chapter Two, the structure of the patronage network or power elite in South Africa can be described as follows: at the apex are controllers or patrons who secure access, maintain control over resources, and dispense favours for competing elites. These include the former premier of the Free State and now Secretary General of the ANC, Ace Magashule, ministers positioned in strategic positions such as Public Service minister Faith Muthambi, former finance minister Malusi Gigaba, former Free State MEC Mosebenzi Zwane, and State Owned Enterprises’ (SOEs) Board of Directors — former Eskom and Transnet financial officer Anoj Singh and former Eskom Chief Executive Officer (CEO) Brian Molefe, amongst many others. At the second level are business elites responsible for establishing and maintaining patronage networks that facilitate the distribution of benefits (Bhorat *et al.*, 2017: 57) such as the transfer of funds both domestically and internationally. Comprising this node are Transnet’s Iqbal Sharma, CEO of Gupta Company Trillian Partners Eric Wood, Gupta associate Salim Essa, and Ashok Narayan, former managing director of the Gupta’s Sahara Computers (Chipkin & Swilling, 2018: 20). Then, at the third level are the clients, such as Lunga Ncwana and Brian Mosehla, directors of Global Retriever, whose role is to provide general support and assistance to the patrons. As stated in Chapter One, these are

state-embedded individuals strategically placed in high echelons of power, both in the public and private sector, who enjoy high levels of impunity.

The invasion of formal economic activity by informal political networks, which are essentially criminal, has led to the criminalisation of the South African state and, ultimately, turned the South African politics into the “politics of the belly”. As Bayart was cited in Chapter Two, the invasion of ever-wider spheres of economic activity by informal political networks leads to the criminalisation of the state. Within the broader context of Africa, this is nothing new since the continent has been marked by this kind of politics since decolonisation. In fact, Bayart uses the “politics of the belly” as a metaphor to refer to the predatory nature of the post-colonial African state, which, as already indicated at the beginning of this chapter, South Africa is part of. As stated in Chapter Two, “politics of the belly” is a metaphor for a form of governance characterised by a controlling government and the interdependence of the elite in control of the private and public spheres, with actors on both sides using their status to strengthen their political and economic power. Furthermore, this collaboration between businesses, bureaucrats, politicians, and law enforcement agencies in South Africa reflects the extent to which political authority and economic accumulation intersect and form the basis of the shadow state whose aim is to reduce the formal state into machinery for the distribution of illicit financial gains to its actors. This has been accomplished through the repurposing of state-owned institutions. This study’s theoretical framework proposed the repurposing of state institutions as one of the mechanisms whereby actors of the shadow state use the state for personal interests, promote government patronage, and generate wealth for corrupt elites. In this way, the South African state has been used as a resource state that, as stated in Chapter Two, was and continue to be used to generate incentives for the bellies of shadow state actors. Another critical factor established by the adopted theoretical framework is that shadow state actors operate effectively in the absence of a social contract and, therefore, have no intention to facilitate the establishment of an organic social contract since its absence aids their evasion of accountability. To demonstrate these theoretical inferences, the following paragraphs detail empirical cases of how state institutions have been used for the purposes of shadow states in South Africa.

5.4.1. Repurposing of state-owned institutions

Repurposing of state institutions, as one of the modalities of procurement fraud, refers to the “organised process of reconfiguring the way in which a given state institution is structured, governed, managed and funded so that it serves a purpose different to its formal mandate” (Bhorat *et al.*, 2017: 5). This process prepares target institutions for the looting and plundering of state resources, particularly public funds. In the context of South Africa, SOEs including Eskom, PRASA, Transnet, the National Treasury, SARS, Chief Procurement Office (CPO), and Public Investment Corporation (PIC) remain targets of procurement fraud committed by both state and non-state actors. These state institutions have been repurposed, especially during the Zuma years, to serve private interests, while private businesses have been turned into money laundering schemes. This was done to use their procurement systems as the “primary mechanism for rent-seeking at the interface between the constitutional and shadow state” (Bhorat *et al.*, 2017) in the name of RET (Dassah, 2018). Even as a legitimate call for action, RET was misappropriated and used to mask the corrupt exploitation of the state by a select few politically connected elite to the detriment of the rest of the country (Foley, 2019, 34). This reflects the concept of “hegemonic project” introduced in Chapter Two where a ruler, Zuma and the ANC in this case, sought to accommodate a chosen group of elites to create an environment that will enhance their power. As a result, the 2017 “Unburdening Panel Process Report” echoes that from 2009 to 2018 South Africa witnessed deliberately organised chaos to enable the power elite, allegedly centred around former president Zuma’s control over state systems, to systematically siphon state assets. This was accomplished through the capture of state-owned companies by chronically weakening their governance and operational structures and securing control over state wealth; securing control over the public service by weeding out skilled professionals; securing access to rent-seeking opportunities; securing control over the country’s fiscal sovereignty; securing control over strategic procurement opportunities; securing a loyal intelligence apparatus; and securing parallel governance and decision-making structures that undermine the executive. These deliberate actions enabled the perpetration of organised crime linked to procurement fraud and many other forms of illicit financial flows.

5.4.1.1. Looting at Eskom

In 2016, about USD 116 million was looted from Eskom by a US-based consultancy McKinsey & Company and a South African financial services firm Trillian Capital Partners — which has, since 2016, fielded with allegations of profiting from state-owned enterprises because of its ties to the Gupta family (Nicolson, 2021). In 2019, the North Gauteng High Court declared these payments “unlawful and invalid”, further stating that “a corrupt relationship existed between former business partner of Guptas, Eric Wood and the Gupta kingpin Salim Essa with former Eskom senior officials including former Chief Finance Officer, Anoj Singh and Matshela Koko, the former Eskom Executive” (*Eskom Holdings SOC Limited v McKinsey and Company Africa (Pty) Ltd and Others*). In this case, Singh and Koko acted as elites, fast-tracking and facilitating the payment of illicit funds to both McKinsey and Trillian that, according to the NPA, were consistent with criminal activities including fraud, theft, corruption, and money laundering and amounted to a deliberate and fraudulent circumvention of Eskom’s supply management processes (Selisho, 2019). Furthermore, it is worth noting that such illicit activities began in mid-2015 after Brian Molefe and Anoj Singh were seconded from Transnet to Eskom as CEO and Chief Financial Officer (CFO) respectively by former minister of Public Enterprises, Lynne Brown, who was appointed by former president Jacob Zuma in 2014 (Cronje, 2020). Such appointments should not be seen as coincidences as they in fact reflect the strategic positioning of loyalists into key state institutions, and the deliberate circumvention of the rule of law for the purposes of enabling shadow state activities. As already stated in Chapter Two, the modus operandi of the rulers of the shadow state includes consolidating political power and influence, while systemically weakening the independence and capacity of key state institutions to sustain their patronage networks. This was almost identical across all spheres as Zuma shifted acolytes into key positions across SOEs, the law enforcement cluster, the judiciary, and SARS, to name only a few institutions, which was done by promoting loyalty — the very heart of the shadow state and economy — over competency. Rulers of the shadow state were thereby enabled to act with utmost impunity and generate billions of dollars for personal benefit.

5.4.1.2. Informal parallel structures at SSA

In recent revelations at the Zondo Commission of Inquiry, the acting director general of the SSA, Loyiso Jafta, stated that between 2008 and early 2018, Zuma ensured

that state security ministers including former state security ministers Siyabonga Cwele, David Mahlobo, and Bongani Bongo, who were his loyalists, became unaccountable to anyone but himself and managed projects directly — an “inherently unlawful” act since according to the South African Constitution, the executive may not involve itself in intelligence operations (Balfour, 2021). This unlawful act was executed primarily, though not exclusively, by Maruti Noosi, former ambassador and director of SSA special operations Thulani Dhlomo, SAA boss, Arthur Fraser, and former spy boss Sonto Kudjoe, who helped set up a parallel structure to not only protect but generate incentives for former president Zuma and his political dynasty. Indeed, procurement fraud is so endemic and systemic in South Africa that even the State Security Agency — meant to provide the government with intelligence on domestic and foreign threats (Friedman, 2021) — was used as a tool to generate incentives for former president Zuma and his political dynasty. Consequently, during Zuma’s term, about USD 659 million was lost in assets without a record from the agency (Balfour, 2021). However, a report by the High-Level Review Panel into the SSA chaired by Dr. Sydney Mufamadi revealed that hundreds of millions were “unlawfully” funnelled to Zuma, the ANC, family members, and many other loyalists through the establishment of parallel and illegal structures such as “Project Commitment.” Such parallel illegal structures yielded Zuma about USD 181 thousand in cash per month during the 2015/2016 financial year, and increased to USD 327 thousand per month during 2016/2017 (High Level Review Panel Report, 2018), totalling an estimate of USD 582 thousand in about two years. Such significant amounts were funnelled to Zuma through former Minister of State Security David Mahlobo (Barnard, 2021). In this case, Mahlobo acted as a middleman between SSA and Zuma, facilitating the illicit movement of public funds from SSA to Zuma. This reflects how Zuma used his office and position to extend his direct influence over the functioning of key state institutions to enrich himself and those around him, thereby turning the South African state into a resource state. As Szeftel was cited in Chapter Two, states in Africa are used as a material resource for personal ends, as has been the case in South Africa. In other words, the South African state became a means to an end.

A further USD 378 thousand was siphoned from the SSA and monthly withdrawals of R800 000 were made for the personal benefit of Zuma’s excommunicated wife, Mrs.

Zuma known as MaNtuli, and their children through “Project Tin Roof” (Thamm, 2021). Interestingly, however, is to note that while Zuma and his criminal network were looting from SSA coffers, they still had an interest to maintain the appearance of a fully functional state. To do this, they established “Project Wave” to protect Zuma and the then South African government from negative local and international perception (AmaShabalala, 2021). To conceal the manipulation of SSA and, ultimately, gain global recognition that, as stated in Chapter Two, enables rulers of the shadow state to conceal their manipulation of formal institutions of government in order to increase their personal power, a further USD 1 million was paid to Zuma’s close ally, Dr. Iqbal Survé, to establish African News Agency (ANA) as a front for the SSA (Ngalwa, 2021).

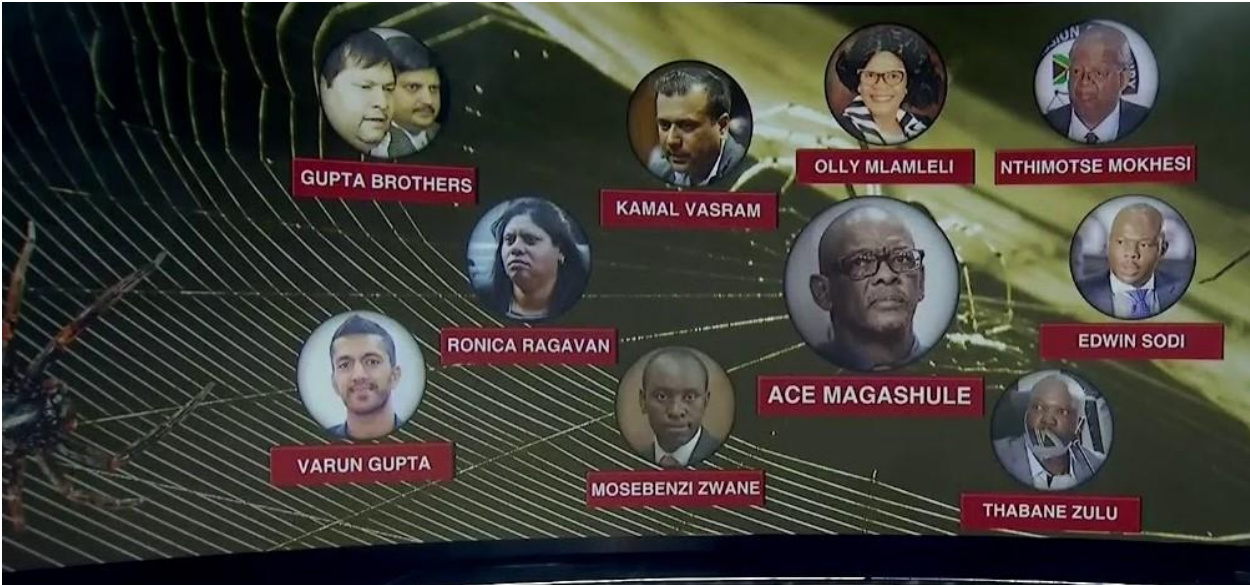
Organised crime, particularly its connections to state institutions in South Africa, is also enabled by the use of violence against those who attempt to compromise the mandate of the shadow state. The death of the Anti-gang unit section commander Charl Kinnear, a top investigator working on high-profile investigations involving under-world figures (Hoyman, 2020), and an increase in political assassinations between 2009-2018 serve as examples. For instance, Thamm (2021) reveals that under Zuma’s reign individuals, some of them with criminal records, were provided with new identities and given fast-tracked security clearance personally by Dlomo before being issued with firearms and ammunition and being infiltrated into society to physically protect the mandate of the shadow state. In a book “War Party — How the ANC’s political killings are breaking South Africa,” Arde (2020) reveals that about 90 municipal councillors, political party officials, and senior municipal officials who had sought to expose illegal activities over tenders, kickbacks, budgets, and fund allocation — the very basis of procurement fraud — have been murdered in KwaZulu-Natal alone since 2015. As stated in Chapter Two, shadow state actors punish non-cooperating individuals and reward loyalists. For instance, Mahlobo now serves as the Deputy Minister of Human Settlements, Kudjoe is the Secretary for Defense, and Fraser is National Commissioner of Correctional Services, all who were Zuma’s allies and enabled the creation of parallel state structures at the SSA for the siphoning of billions of dollars from the South African state.

5.4.2. Procurement fraud at municipalities

Procurement fraud has not only been limited to SOEs in South Africa but also infiltrated the different levels of government. For instance, in 2016 Martin and Solomon argued that “patronage networks and illegal dealings infiltrated the local government so much that it becomes difficult not to believe that Zuma intentionally appoints people with criminal knowledge and expertise to perform his illicit dealings and run patronage networks” (Martin & Solomon, 2016). ANC Secretary-General, Ace Magashule’s web of criminal syndicates (shown in figure 2 below) during his term as the premier of the Free State servers as an illustration in this regard. Examples of multi-million dollars criminal operations that took place through this criminal network include the asbestos and Estina Vrede Dairy Farm projects in the Free State (FS) province.

5.4.2.1. The Asbestos and the Estina Vrede Dairy Farm Projects

Figure 2: Ace Magashule’s web of capture



Source: eNCA (2020).

In 2014, a group of political elites at the department of human settlements in the Free State province including Nthimotse Mokhetsi, former head of department, Mahlomola John Matlakala, a supply chain management director, Thabane Zulu, a director general, and Sarah Ollly Mlamleli, former Mangaung Mayor and MEC of human settlements, colluded with several business elites; Edwin Sodi, the owner of the Blackhead Consulting (Pty), late Ignatius “Igo” Mpambani, former owner of Diamond

Hill Trading, Sello Joseph Radebe, a businessman from Mastertrade, and Kgotso Abel Manyeke, director of ORIC Group, to steal about USD 18 million meant to improve the housing conditions of thousands of residents still sheltered under the poisonous asbestos sheeting that can cause lung cancer (Shange, 2021). This corrupt corporate-political relation, government-endorsed, and well-organised criminal network was facilitated by corruption, with politicians paid to act in favour of these business elites: Nthimotse Mokhetsi and Thabane Zulu allegedly received R650 000 and R1 million plus USD 43 thousand respectively to unlawfully and intentionally manipulate the government tender processes (Zuzile, 2020). Proceeds from these criminal activities, which included “corruption, fraud, money laundering, contravention of the *Prevention and Combating of Corrupt Activities Act* (Precca) as well as contravention of the *Public Finance Management Act* (PFMA)” according to the state indictment (Bhengu, 2020), are said to have benefitted several politically-connected individuals. These include the kingpin himself, Ace Magashule, who allegedly received 10 per cent of the USD 18 million (Du Toit, 2019), and prominent ANC leaders, including health minister Zweli Mkhize, employment and labour minister Thulas Nxesi, ANC treasure-general Paul Mashatile, and deputy ministers Pinky Kekana and Zizi Kodwa (Zuzile, 2020).

In the Free State, five agriculture and rural development officials were arrested last year (2020) in relation to corruption and money laundering worth USD 17 million (Mahlati, 2020). According to Paul Holden, researcher at London-based forensic investigation company, Shadow World Investigations (SWI), companies including Estina Limited paid billions of dollars to Gupta offshore companies from the Free State provincial government (Ngatane, 2021) through a very complex system. The Estina Vrede Dairy Project was allocated USD 16 million that never found its way to the intended beneficiaries but instead landed in the pockets of the infamous Gupta family (Daniel, 2019). This project, with many others, turned the Free State province into a corruption crime scene and caused about USD 13 million to be siphoned through a complex web of local and international companies, all controlled one way or the other by the Gupta family (Maimane, 2019).

5.4.2.2. *The Great Bank Heist: Looting VBS*

The theory of shadow state puts emphasis on the manipulation of access to formal and clandestine markets, the strategic collusion of political and business elites, and the undermining of the legal institutions of government by state and non-state actors in the commercialisation of crime. To demonstrate how these factors interact, this case study provides an analysis of one of the world's greatest bank heists, the VBS Great Heist. According to a report titled "The Great Bank Heist" regarding fraud and corruption at one of the South African financial institutions, the Venda Building Society (VBS, also known as VBS Mutual Bank), South African citizens and municipalities were defrauded about USD 146 million through an organised criminal network that benefitted over 50 people from the public and private sector. A chronological chain of events is important when analysing this criminal incident. In 2016, VBS granted Zuma a loan of about USD 512 thousand (Wilken, 2020) to pay back the USD 534 thousand he stole from state coffers for the upgrades on his personal Nkandla home (Grootes, 2020). Immediately thereafter, Wilken (2020) reveals that Zuma became one of the bank's major shareholders, a move that changed this bank from a local to a national bank overnight. In this way, VBS officials gained themselves leverage — proximity to the then South African president, a leader of the ANC, and kingpin of the shadow state. As highlighted in Chapters One and Two, organised criminal groups in SADC often target the highest level of the state to facilitate their illicit operations and manipulate and exploit their political patrons and use their proximity to the state to consolidate their control over criminal markets.

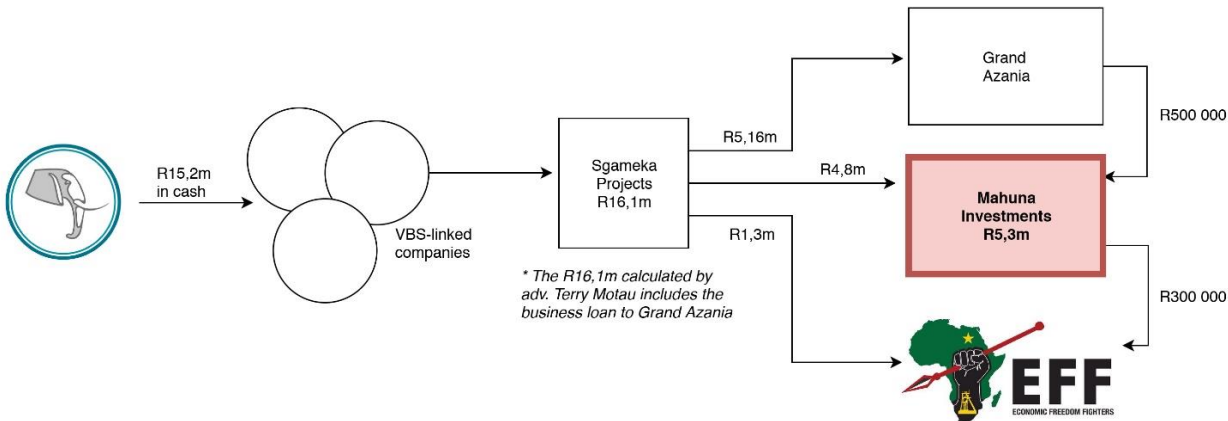
Following this, VBS became a site for the looting of state and public funds as ANC-controlled councils in Limpopo and one in Gauteng started depositing billions into VBS Mutual Bank. Between 2015 and 2018 alone, about 20 municipalities deposited USD 256 million at VBS and withdrew USD thousand (Van Rensburg, 2020). These deposits comprised almost 75 per cent of all VBS's deposits. According to a report by the Parliamentary Monitoring Group (PMG) (2018), was done in contravention of the *Municipal Finance Management Act* that prohibits any municipality funds to be deposited with a mutual bank. The VBS municipality bribery network, made up of politicians, fixers, bank managers, auditors, chartered accountants, and attorneys (Van Wyk, 2020), allegedly generated up to USD 2 million worth of bribes paid directly to commission agents and municipal officials (Van Rensburg, 2020). Under the guise of a legitimate business, these individuals participated in a pattern of

racketeering activity. After all, the shadow state theory states that actors of the shadow state use legitimate businesses as a guise for both legal and illegal business activities to generate profits.

Chief actors in the VBS scandal further include Tshifhiwa Matodzi, chairman of VBS and Vele Investments, who orchestrated the flow of over USD 23 million in VBS money to companies and people associated with him, and Philip Truter, former VBS CFO, who received USD 425 thousand for his participation in manipulating VBS banking systems, made fraudulent misrepresentations in the bank's financial statements, and presented the South African Reserve Bank (SARB) with falsified information by providing it with fraudulent deposit returns (DI). On the other hand, Siphso Malaba, KPMG auditor, received USD 2 million for assisting Truter in the falsification of annual statements and the submission of fraudulent DI returns to the SARB. PIC attorneys, Ernest Nesane and Paul Magula, were paid USD 1 million and USD 945 thousand respectively (Van Wyk, 2020). This shows that shadow state actors are willing to purchase silence at a high price to protect their criminal operations. The long list of actors in the VBS criminal network also included the ANC treasurer, Danny Msiza, who used his political influence and persuaded mayors and treasury officials from ten municipalities in Limpopo to deposit municipal monies into VBS Mutual Bank, and Kabelo Matsepe, former ANC Youth League (ANCYL) provincial leader, who allegedly earned USD 2 million for his participation in VBS crimes (Tandwa, Ferreira, and Koko, 2021). As stated in Chapter Two of this study, office bearers in Africa spend much of their energies on transactions that they themselves labelled illicit. Matsepe's and Msiza's participation attests to this.

Lastly, Phopi Mukhodobwane, former VBS treasurer, whose central role was to manipulate the banking system and fraudulently misrepresent the bank's financial position, allowed over USD 2 million in cash and banking facilities to be channelled towards front companies, including that of Julius Malema, Commander in Chief (CIC) of the Economic Freedom Fighters (EFF), the second largest opposition party in South Africa, who is said to have received USD 388 thousand from the USD 1 million which flowed from VBS Mutual Bank to his deputy Floyd Shivambu (Grootes, 2020) through two front companies, Sgameka Projects and Mahuna Investments (Van Wyk, 2020), as shown in figure 3.

Figure 3: Illicit flow of funds from VBS Mutual Bank to the EFF's leadership



Source: Daily Maverick (Van Wyk, 2020).

VBS illicit riches were later transformed into luxurious cars, school-related expenses, renovations and properties, and designer clothes at the expense of life savings of VBS-depositors and municipalities. Indeed, the VBS financial crime led the country to embody the typical shadow state in Southern Africa, where political elites become key actors and beneficiaries of organised criminal activities at the expense of the poor and marginalised citizens whom they claim to represent.

5.4.2.3. Profiting from misery (death and pandemic)

Procurement fraud actors have permeated the structures of the South African state to an extent that even funerals and pandemics present opportunities to loot state funds. For instance, 12 government officials including axed MEC of Health in the Eastern Cape, a province frequently measured as the poorest in the country, Sindiswa Gomba, ANC's regional chairman in the Buffalo City Region Phumlani Mkolo, former Buffalo City Metro council speaker Luleka Simon-Ndzele, former Mayor Zukisa Ncitha, and her former deputy Themba Tinta with three private companies Vazi, Mati, and Fanoë's Forty Wings Lodge, Mpindos Emergence and Training, and Mantella Trading, have been charged for using the funeral of late former president Nelson Mandela to plunder USD 732 thousand from the Buffalo City Metro municipality (The Citizen, 2021). Reports reveal that this group of criminal syndicates mislead the municipality to believing that it was obliged to avail funds for Mandela's funeral, after which they acted in common purpose to defraud and manipulate municipal procurement processes through illegal deviation and deliberately engaging in fraud, corruption, money laundering, and the contravention of the *Municipal Finance Management Act* (Fisher, 2021). On the other hand, funds meant for Covid-19 have

been siphoned at the expense of vulnerable citizens while politically-connected companies such as Phathilizwe Training Institution received USD 351 thousand for door-to-door awareness that never materialised (Meyer, 2020) simply because they have connections with corrupt politicians like Owen Hlatzo, suspended OR Tambo District municipality manager (Meyer, 2020).

5.5. South Africa's illicit financial flows at the global level.

Financial crimes represent approximately 43 per cent of organised crimes committed in Southern Africa, and among these are illicit financial flows, countering, fraud, money laundering, bribery, corruption, and trade misinvoicing (Chelin, 2019). In November 2018, Global Financial Integrity published an analysis of South Africa's potential revenue losses associated with trade misinvoicing, finding that losses of approximately US 37 billion in revenue, or on average US 7.4 billion between 2010-2014 (the most recent years for which sufficient data is available) (Global Financial Integrity, 2018).

As stated in Chapter Two, trade misinvoicing is enabled by various actions performed by shadow state actors positioned in strategic areas. These factors include laundering money obtained through illicit activities in collusion with legitimate financial institutions to establish legitimate business entities that can generate more funds; using shell companies to conceal details and move assets offshore. For instance, in July 2020, Shadow World Investigations (SWI), a London-based forensic investigation made a detailed submission to the Zondo Commission showing that the Guptas established a money-laundering network; one system used a range of Hong Kong-registered front companies and another one used shell companies in China, in complacency with a legitimate global financial institution, the Hongkong and Shanghai Banking Corporation Limited, to clear about US 140 million illicitly obtained monies from the South African SOEs like Eskom, Transnet, and SAA (Shadow World Investigations, 2020). Moreover, investigator Paul Holden, who runs the NGO Shadow World Investigations together with former ANC Member of Parliament Andrew Feinstein, revealed that USD 3 billion flew from the government entities to the Guptas' money laundering apparatus. These are significant amounts of money generated by the shadow economy (Davis, 2021).

5.6. The South African state: A criminal or gangster state?

The above acts of crime attest to Myburgh's description of the South African state as a gangster or mafia state — an invented system of democracy whereby top government leaders collaborate secretly with notorious mafia corporates and syndicates. Chronic symptoms of a mafia state encompass instances where mafias customarily fund and sponsor the lifestyle of politicians in exchange for illicit systemic financial favours. Controversial businessman, Edwin Sodi's, payments to several high-ranking ANC leaders and the political party itself serve as an example of a mafia funding and donating large sums of money to politicians for financial favours. Appearing in the Commission of Inquiry into State Capture, Sodi admitted to have made generous donations of about USD 476 thousand to the ANC through former ANC-treasure general and now health minister Zweli Mkhize, USD 27 thousand through ANC-treasure general Paul Mashatile, USD 3 thousand to labour and employment minister Thulas Nxesi, USD 12 thousand to deputy minister Zizi Kodwa, and about USD 256 thousand to the ANC directly (AmaShabalala, 2020). In return of these donations, Sodi was allegedly awarded a USD 18 million contract for the eradication of asbestos roofs in the Free State. Secondly, mafias extend financial favours to designated politicians for political protection. A mafia state is synonymous to a criminal state both conceptually and methodologically in a sense that the objectives of a mafia state are, similar to those of a criminal state, to subvert and exploit the rule of law solely to create financial and material advantages for both the political elites and mafias or business elite, exempt the criminal politicians and mafias and their criminal associates from the reach of the law enforcement agencies, and to severely paralyse the efficacy and credibility of governance structures. The presence of these chronic symptoms in South Africa not only reveal the criminal nature but also the existence of a protection economy embodied within the shadow state that, as described by Shaw in Chapter Two, comprises of three components: provision of violence (the killing of Charl Kinnear and the increase in political assassinations in South Africa), corruption (the systemic and endemic corruption that plagues South Africa since 1994), and criminal investment (Edwin Sodi and many other business moguls' payments to prominent politicians and the ANC).

5.7. Conclusion

Procurement fraud, essentially the parasitic plundering of public funds, poses serious threats to the nascent South African democracy. The cases of illicit financial activities discussed in this chapter show that, while South Africa is perceived as one of the most democratic countries in the world, it does not present the cleanest democracy. In fact, South Africa presents the best case for the blurring of the line that separates the licit from illicit. This chapter drew an interesting connection between the pre-colonial and post-colonial South Africa, showing that the illicit financial flows taking place today began in the pre-democratic South African state and intensified at independence. This connection is critical as it provides the necessary background to the nexus between organised crime and political elites in South Africa, which is crucial for the development of solutions that will uproot the roots instead of treating the symptoms of organised crime and its connection to government officials in South Africa.

The case study has shown that South Africa, being the epicentre of procurement fraud, has lost billions of dollars to organised criminal syndicates operating both within and beyond the country. By revealing the significant role played by politicians in enabling organised criminal activities through their complicity with criminal business elites, the case study has shown that organised crime in South Africa, and Southern Africa in general, is largely shaped to the extent to which political elites are themselves involved. For instance, the case study documented the systemic repurposing of state institutions by a power elite centred around prominent politicians such as Jacob Zuma and Ace Magashule. Such premeditated and coordinated activities are designed to consolidate political power, ensure the long-term survival of the rent-seeking system, and enrich a core group. These activities have been routinely carried out through the use of the South African state and, in turn, fostered a symbiotic relationship between the constitutional state and the shadow state. As this case study demonstrated, at the centre of this symbiotic relationship is a handful of private companies and individuals connected one way or the other to a patronage network where decisions and policies were executed by strategically placed individuals in critical centres of state power. This led to the criminalisation of the South African state, where the legitimate state became a tool used by actors of the shadow state to generate profits from organised criminal activities. Since understanding context is crucial in dealing with shadow state activities, this case

study also demonstrated that shadow state actors in South Africa have had to operate in a more stable and civil war-free country since 1994. Therefore, they relied by far on the willingness of some office bearers from the public sector to cooperate with some individuals from the private sector to loot public funds. In this way, the development of parallel structures and criminalisation of the state occurred in a more organised fashion in South Africa compared to other SADC member states such the DRC and Zimbabwe, for instance, where the key factor of organised criminal syndicates has been turning disorder into profits.

CHAPTER SIX

6. SUMMARY, CONCLUSION, AND RECOMMENDATIONS

6.1. Introduction

The Southern Africa region is endowed with abundance of mineral resources. Despite this, economic growth and equal opportunity remain alien concepts for too many people as the region fails to translate its abundant natural resources into meaningful economic growth and opportunities for the benefit of its people. As a result, the region is characterised by widespread spatial disparities and poverty, amongst others. Ironically, while over half of the population battle against poverty and unacceptable levels of unemployment, political elites and organised criminal syndicates continue to accumulate significant amounts of illicit wealth from the resources of the region, at the expense of the poor and marginalised citizens. Hence, the aim of this study has been to explore the interface between organised crime and political elites in the Southern African region using two countries, the DRC and RSA, as case studies. This has been accomplished over the course of five chapters that have, respectively, introduced the research theme, presented the theoretical framework that informs the study, provided an overview of the historical background of the study, and presented an illustrative analysis of two cases studies; the smuggling of mineral resource extractives in the DRC, and financial crimes in the RSA. To this end, it is important to recall the premise upon which these cases studies were undertaken. Specifically, the primary goal of using the case studies was to develop a greater understanding of the phenomenon being investigated — the nexus between organised crime and political elites.

The paragraphs that follow summarise some of the main insights attained by this study, with only some of the significant aspects being outlined.

6.2. Overall Findings of the Research

This study was premised upon one main research question that generated two subsidiary questions. Therefore, this summary of findings will be arranged according to the three research questions posed in this study.

What is the interface between organised crime and political elites in Southern Africa?

This research question was posed to examine the connection between organised crime and political elites, and to, simultaneously, reveal the nature of transnational organised crime in the SADC region. The first step to addressing this question required an understanding of what organised crime is first before examining its connection to political elites. In doing so, it was found that not only is there a lack of a universally agreed upon definition for transnational organised crime, but also that some definitional flaws in existing definitions exist. Since such definitional flaws were deemed detrimental for this study, they prompted the construction of a new definition for transnational organised crime that was applied throughout the study. Thus, according to this study, transnational organised crime is defined as a:

form of criminal acts that are conducted within and beyond borders of the state by a group of criminals acting in concert with law enforcement agencies and political elites to obtain, directly or indirectly, a financial or material benefit from a set of activities that are illicit or licit.

The construction of this broad definition enabled the identification of four factors, called four mandatory factors, to consider when determining whether criminal activities equate to transnational organised crime. The first factor is the *type of actors* (state and non-state and political and non-political actors), the second factor is the *nature of goods and activities* (licit and illicit), the third factor is the *scope* (within and beyond national borders), and the fourth and the last factor is the *motive* (which is profit-driven). This development not only broadened the scope of the study but also provided a criteria through which cases that qualify as TOC were identified and selected. As a result, the study provided new insight into the nature of transnational organised crime in Southern Africa. More specifically, the study revealed that, when it comes to activities associated with organised crime in sub-Saharan Africa, there is a blurring of the lines that separate that which is licit from illicit, due to the active participation of political elites and even state officials in organised criminal activities.

This finding has been demonstrated in detail through the use of practical cases wherein both political and non-political elites and state and non-state actors work together, and legal and illegal means are simultaneously employed to generate profits from activities labelled as criminal. As was shown in Chapter Three, organised criminal syndicates are not only able to move drugs, stolen vehicles, wildlife, and

livestock, mineral resources, *et cetera* across borders through the complicity of state officials at border ports, but state officials and politicians themselves actively organise and participate in and benefit from (directly or indirectly) such acts of criminality. For instance, examples of political elites, military officials, and police officials in the smuggling of diamonds in Zimbabwe, with proceeds from such illicit activities used to fund ZANU-PF; the exploitation of Angola's state resources by former president José Eduardo dos Santos' daughter, Isabel dos Santos, for private gain; and the involvement of Zambian president, Edgar Lungu, in the trafficking of rosewood to China, are just a few of the practical examples that were used to demonstrate the extent to which political elites and state officials are deeply involved in organised criminal activities. This finding challenged conventional criminal justice approaches that treat organised crime as a matter of "bad" (criminals) *versus* "good" (politicians and state officials) guys, and introduced a more integrated approach taking into account all actors involved in organised criminal activities.

Moreover, to comprehensively examine the intersection between political elites and organised crime, William Reno's theory of the shadow state was adopted and its theoretical concepts were consistently incorporated in analysing empirical cases. In other words, a comparison between theory and reality was conducted. However, before delving into the findings of the theory, it is necessary to highlight some of the crucial insights. The study, in its theoretical chapter, provided a few conceptions regarding the African state that laid a solid foundation for the theoretical framework and, simultaneously, presented some of the challenges of the study. It highlighted that the African state is perceived as an imported state, a disordered state, a resource state, a predatory state, a neo-patrimonial and privatised state, and a weak and failed state. All these conceptions were used in support of the theory of the shadow state.

In summary, the shadow state theory is about the existence of a parallel system of governance that is constructed behind the façade of laws and government institutions through the personalisation of authority, centralisation of political power, manipulation of formal institutions of the formal government and the deliberate weakening thereof, and the creation of patronage networks. This system of governance, once installed, generates its revenue through a shadow economy. This theory was then applied in two case studies — the smuggling of mineral resources in the DRC and financial

fraud in South Africa. In both case studies, the application of the theory showed a strong link between organised crime and political elites, and further revealed that the perpetration of organised crime by political elites is not accidental but a deliberate act to undermine the formal laws and weaken the formal government to feed off its carcass. Additionally, it became clear that for the shadow state, whose elements are present across the SADC region and Africa, to generate revenue through its shadow economy, it has to use the state and its institutions as an instrument to engage in organised criminal activities such as committing financial crimes and smuggling mineral resources. In this way, state institutions are repurposed as they are forced to perform functions different from their formal mandate and the state becomes criminalised. This study, therefore, established that there is a symbiotic relationship between organised crime and political elites, with the state and government used as instruments by organised criminal syndicates not only for looting but for a purpose beyond that — consolidating the shadow state and ensure its long-term survival, and its validation by an ideology that masks private enrichment by reference to public benefit. It has also revealed shadow state actors' unwillingness to facilitate the establishment of an organic social compact between the state and the citizens since its absence facilitates avoidance of accountability by destroying checks and balances. Consequently, the lack of a social compact enables the shadow state to operate effectively. While this is beneficial to shadow state actors, it has corrosive impacts on the African society since without a social contract states cannot exist, in legitimate terms.

While the above theoretical conceptions and models were with no doubt valuable and fitted the subject of the study, they were, however, not without limits. These conceptions were tested by fitting the events that have occurred in both the DRC and South Africa within the state, government, state owned entities, and the main networks of actors that have been responsible for them (that is, those constituting organised criminal networks). First, the classification of some of the African states as weak or failed states presented a challenge when it was applied in the DRC that is classified as a failed state. The study revealed that the classification of African states as either failed or weak is done with reference to their counterparts in the West and through the use of Eurocentric models — a problematic approach that suggests that African states cannot, by and for themselves, determine their standards of failure and

success. Also, the study revealed that the classification of states as “failed or weak” is in itself strategic since it is used by some European countries to justify their intervention in resource-rich African countries for the purpose of looting and smuggling African resources out of the continent. The second challenge was the application of the shadow state theory in the South African context. The shadow state model was formulated in a study of the war-torn and fragile state of Sierra-Leone. Therefore, conceptually transposing the model of shadow operations within such a context onto South Africa, which is far from being a war-torn post-colonial African state, presented a challenge.

These challenges showed that although African states are all in Africa, their politics and political systems differ from one another, and therefore, the “to know one is to know them all” approach is misleading. There is more than one Africa, and the African continent is vast and diverse. When discussing states in Africa, individual African polities must always be taken into account. Specifically, to address the challenges of theoretical conceptions, this study proposes that, instead of using the “strong/weak” states model, researchers should employ a deconstructive and relational approach to studying state-society relations in Africa, the state ecosystem device. While the strong/weak states model relies on a one-size-fits-all ranking system where a state is either strong or weak based on authority, legitimacy, or capacity, the deconstructive/relational model acknowledges that states continue to be reproduced and re-legitimised through systems of significance, a set of pervasive socio-material practices, and historical traces. Therefore, instead of relying solely on ‘western-centric’ concepts of what the state ‘should be’, this conceptual framework lays out what the state is, in one particular context, and provides a framework applicable to multiple other contexts. To address the challenge of applying the theory of a shadow state in a context different from its original context, particularly in South Africa, exploring other conceptualisations, specifically the theory of the “deep state”, is proposed.

What are the historical, social, and political factors that contributed to the development of organised crime in the Southern Africa region?

This research question was posed to provide the necessary background into the development and evolution of the phenomenon of transnational organised crime in the SADC region and identify its points of intersection with political elites. To

ascertain this, the study provided a periodised sequence of events that culminated into the development of TOC in sub-Saharan Africa. The study found that transnational organised crime developed across four phases, each fuelled with different social, economic, and political factors. The most important factor, particularly relevant to the subject of this study, is that, while organised crime began as early as the 1950s, enablers of the intersection between political elites and organised crime such as pervasive corruption became visible in as early as the 1970s. Another important finding is that as countries in sub-Saharan Africa move towards a more independent, liberalised, developmental, and globalised path, they became more open to organised criminal networks. Lastly, the historical information provided in the study clearly showed that the phenomenon of TOC is nothing new in SADC, instead it has been embedded in the development of statehood in the region.

What is the relationship between organised crime, good governance, democracy, and development?

This research question was posed to examine the relationship between organised crime, good governance, democracy, and development, and to also reveal the effects of organised crime. To address this research question, the study began by extending the theory of shadow state to incorporate the implications of the shadow state on the constitutional state. This section arranged the implications of a shadow state into three categories: good governance, democracy, and sustainable development. It was then found that the shadow state has negative implications on all three. The shadow state leads to the centralisation of political power, unfair and unequal distribution of resources and opportunities, and poor political decisions. It destroys the social compact, weakens critical state institutions, leads to lack of protection of individual freedoms and human rights, and hinders participatory politics. Additionally, it leads to poor economic decisions, weakened critical financial institutions, erosion of investor confidence, low government spending on the population, the diversion of state resources, and the proliferation of criminality. This is fundamental since, according to this study, a shadow state is a device through which aspirations of the formal state are undermined, with its resources repurposed to serve the interests of organised criminal networks, increasing organised criminal activities. Interestingly, the study found that organised crime and the shadow state pose similar threats to national and international security with dire implications for public health, public safety, democratic

institutions, development, and economic stability. Moreover, the study revealed two other critical findings. First, that organised crime poses (directly and indirectly) a cross-cutting threat to the attainment of the core objectives of sustainable development, particularly the attainment of 23 of the 129 SDG targets, and secondly, that organised crime has the same detrimental effects as conflict on development and contribute to a development underperformance of 80 per cent, resulting in the sustainable development performance of only 20 per cent in the region.

An interesting phenomenon revealed while addressing this question is the “organised crime-development paradox”. This paradox shows that, while organised crime is seen as an inhibitor to sustainable development at a regional level, it presents financial opportunities for those involved therein and can serve as a source for livelihoods and a resilience strategy. Secondly, this paradox showed that development itself creates an environment for organised crime to flourish.

It can be concluded that the major threats to governance, peace, and security in the SADC region culminate from activities of organised criminal groups, ranging from human trafficking to financial illicit flows. Therefore, if the region is serious about achieving its sustainable development aspirations, and save its people from abysmal security, healthcare, and education services, the following recommendations are put forth to assist states and all relevant stakeholders in addressing the relationship between organised crime and political elites in the region.

6.3. Recommendations

As already indicated, TOC threatens governance, peace, and security in the SADC region. It affects every section of society, fuels corruption and conflict, and results in the dwindling of resources needed for development. Responses to organised crime in Africa traditionally focused on criminal justice and security measures, rather than tackling the problem holistically (DefenceWeb, 2017). This is a call for new strategies. Based on the knowledge produced in this study, it has become clear that dealing with TOC in Southern Africa will be a daunting task, as it will be globally. This is because actors of transnational organised crime are by their very nature secretive, which makes it difficult to detect their activities and accurately measure their illicit wealth. However, the following recommendations may ameliorate this menacing trend and address its corrosive implications effectively.

At national level:

Combatting the shadow state from inside out: Transnational organised crime syndicates, as shown in this study, operate effectively through the shadow states and economies. It enables the use of the state as an instrument for organised criminal activities and the generation of significant illicit wealth. Therefore, tackling state capture and clandestine markets must remain central to reversing transnational organised activities. Martin's and Solomon's (2016) *inside out approach* to combat state capture needs to be implemented by all SADC member states urgently. This approach calls for a collective action from the internal structures of governing political parties in countries across the region to act decisively against politicians and leaders who indulge in corrupt behaviour and unashamedly steal from the poor. This will, in turn, prevent or reverse the criminalisation of the state where politicians run a criminal syndicate with state resources. However, since the implementation of this approach depends in large part on the willingness of political elites, who, as shown in this study, are the key founders of shadow states, external independent institutions must be capacitated to follow up and pressure political parties to act against corrupt party candidates.

Integrating a merit-based appointment system into the political system:

Research has shown that the current system of electing politicians and appointing state officials into the public sector serves as a window of opportunity for the patronage system. Therefore, a merit-based appointment system to employment in the public sector and in politics will go a long way to reverse the tradition of appointing people based on "who they know" instead of "what they know" and reduce the patronage system that fosters corruption and enables organised crime to flourish. This will translate into the professionalisation of the public sector in countries across the region, where professionals who are educated and understand how systems (be it financial, education, security) work have the responsibility of holding politicians accountable. Additionally, those who are politically appointed must have the necessary qualifications, skills, and experience, and, once appointed, their curriculum vitae, along with those of shortlisted candidates, must be made publicly available for public scrutiny. Incorporating this system in the political systems will help combat patronage appointments and the exclusion and marginalisation of competent but critical voices to crucial public positions.

Tackling corruption in business: As shown in the case of financial fraud in South Africa, organised crime depends in large on the complicity of business elites as it does on political elites. However, whether locally or globally, corruption is often not taken seriously by business leaders. For instances, collusion practices where prices are fixed between companies, and inflated enormously to the detriment of poor consumers, and instances where large corporates rig foreign exchange transactions and manipulate financial systems, are rarely seen by companies to comprise corruption or even elements of organised crime. At local level, business figures critical of corruption in government circles abet corruption by colluding in corrupt practices, whether by giving a kickback for securing a contract or by appointing a politician to a board or a senior position in order to secure access to government contracts. This study has shown how private companies scramble to get the ‘right’ people with suitable connections to political leaders on their boards. Therefore, tackling corruption in business would mean combatting the phenomenon of “tenderpreneurship” that has come to the fore. To combat this phenomenon, companies trading on government contracts must be compelled to adhere to a set of integrity standards and government tenders must be made publicly available.

Developing and implementing integrated approach to performance management: Most states in SADC have more than one distinct spheres of government, such as South Africa that has three distinct spheres of government. Although this mechanism is designed to ensure checks and balances and promote accountability, the lack of an integrated approach to performance management across these spheres of government, as they tend to operate in traditional silos, each fighting for its own and the wounded fending for themselves, hampers accountability severely. Therefore, governments must develop an intergovernmental relations framework to enhance monitoring and evaluation and foster accountability. The success of this system depends on the implementation of the merit-based appointment system since it requires educated and skilled individuals to monitor and evaluate intergovernmental relations.

Transparency in political financing: Research shows that illicit political finance is one of the mechanisms often used by large companies and criminal syndicates to influence policies, laws, and regulations. As Advocate Jacob Mudenda, executive member of the SADC Parliamentary Forum (SADCPF) and Zimbabwe’s speaker of

the National Assembly, states, “in a bid to mobilise funds, political actors sometimes resort to imprudent and illicit ways of self-financing. These include trade in illicit drugs, illegal mining of natural resources, poaching and other forms of political malpractices.” (Charema, 2019). While international evidence shows that there is no blueprint for ensuring the effectiveness of political finance regimes, transparency is essential to curb opportunities for corruption and undue influence. In this context, to enhance transparency and accountability, countries should seek to first reduce the costs of election campaigns (by introducing limits on advertisements, public events, amount spend on staff, public opinion surveys, *et cetera*), since high campaign costs increase the politician’s reliance on private funds and wealthy individuals as a tool for manipulating policy-making or buying political favours. Secondly, restricting private donations (by regulating the maximum permissible donation amount or introducing restrictions on funding sources including banning anonymous contributions) may help reduce excessive influence of private money in politics. Thirdly, implementing a transparent and proper public funding of political parties may prevent the dependence of political parties and candidates on private donors. However, successful public funding of political parties will depend on how political parties and candidates report on how funds are used and a compulsory declaration of other sources of income or contributions. Lastly, the establishment of an efficient disclosure and reporting mechanism of donations, compelling political parties and candidates to disclose information on all the donations received (including the name and address of donors and amounts), is suggested. This system must be capacitated with tools to verify the authenticity of the declared information and, in cases where deception is detected, immediate seizure of funds, followed by effective investigations and prosecutions must be performed.

Provision of sustainable economic alternatives for citizens: As this study has shown, organised crime activities also serve as a tool for livelihood to the poor and marginalised citizens. Therefore, provision of real and legal economic opportunities for citizens is essential in order for segments of the population to stop relying on organised crime to save livelihoods. Governments must focus on creating sustainable jobs for their citizens, empower them with entrepreneurial skills, and provide them with resources to, for instance, start businesses, formalise informal business, and improve the welfare of the citizens. This would be an attempt to change the incentive

structures for engaging in criminal activities but also the transaction costs that make TOC entrenchment possible in the first place.

Articulation and implementation of effective laws to protect whistle-blowers:

Whistle-blowers such as Rui Pinto, the investigative journalist who exposed 715 000 documents related to illicit business activities of Angolan Isabel dos Santos (was once Africa's richest woman), Navy Malela and Gradi Koko, two Congolese whistle blowers who revealed Dan Gertler's money laundering network linked to mining assets in the DRC, and many others have played a pivotal role in exposing most of the organised criminal activities known today. However, they have done so at a great risk of their lives and families. Therefore, effective prioritisation of the protection of whistle blowers through programs, such as the Platform to Protect Whistle-blowers in Africa (PPLAAF), remains fundamental since it will encourage more individuals to report acts of organised crime. Additionally, cultivating a value system that rewards honesty, whereby leaders lend practical support to and encourage those who behave with integrity, on the other hand reporting and shaming corrupt and greedy businessmen and women and politicians is crucial. President Cyril Ramaphosa's public support in praising whistle-blowers and the media on exposing corruption in South Africa must be viewed as a step towards such a value system.

Lifestyle audits of all civil servants and political office bearers: Lifestyle audits of all party leaders and public servants are absolutely crucial and would also serve to boost public confidence. Lifestyle audits should be compulsory for elected and public appointments and should be open to public scrutiny.

However, since the destinies of all African countries are inextricably linked, all being victims of colonialism, of the arbitrary drawing of borders, and now of predatory post-colonial elites, national strategies alone are not sufficient and need to be supported by regional strategies.

At regional and continental levels:

Revisiting the distinction between crime and the state. It is important for researchers and policy makers to revise the traditional division between the criminal and the state. This division is usually intrinsic in national strategies to combat crime in the sub-Saharan context and needs to be overcome to increase the efficiency and adequacy of national, as well as regional, security policies. Instead, it is essential to

take into account all stakes in the complex matter of organised crime and state entanglement and to be aware of all conflicting interests of the various actors. The adoption of this study's definition of TOC that takes into account the complexity of actors and factors involved in TOC activities is essential in this regard. Additionally, this definition can provide law enforcement agencies with clear criteria to detect crimes that equate to TOC, which would then enable the activation of regional responses.

The Africans-to-Africans external civil support: Given that most of the theft by economic cartels, business people, and politicians occur alongside the snuffing out civic space (the suppression of the media and individual freedoms, as seen in Zimbabwe where ZANU-PF deepened the *rule by law rather than rule of law* principle), solidarity among SADC citizens is required by applying external pressure on politicians, companies, and individual businessmen that are profiteering from shadow state activities, and demand the implementation of responsible business legislation and policies developed by the United Nations. The media, revenue services, civil society, business and government from different parts of Africa can all play a role in reversing shadow state, clandestine market activities, and the immiseration of millions of people.

Additionally, with regard to instances where governments subject their citizens to torture thereby violating their human rights and freedoms, the SADC needs to take decisive actions against such governments. This must be applied in many other areas such as in cases of electoral fraud, malfeasance, and political violence that have become commonplace in the region. History shows that SADC has, continuously, failed to enforce the letter and spirit of its own principles and guidelines regarding crimes against humanity and governing democratic elections. Such principles and guidelines alone are not sufficient to instil good behaviour on the part of member states. Therefore, action is required. The region must learn from other regional blocs like the Economic Community of West African States (ECOWAS) whose heads of states agreed to sanction the former errant Gambian president, Yahya Jammeh, when he refused to transfer power after losing elections in 2016. Due to regional pressure exerted by the bloc, he accepted defeat and President Adama Barrow was inaugurated as per election results. This example must set the precedent for the SADC region.

Supplementing regional trade agreements with effective regulatory capabilities:

This study has shown that intra-SADC and intercontinental trade agreements, such as the SADC Trade Protocol, at regional level, and the AfCFTA, at continental level, have the potential to fuel illicit financial flows due to the lack of regulatory capabilities. Therefore, while these trade agreements may have substantial contributions to sustainable and equitable development, they must be implemented alongside effective principles of sound financial management at regional and continental levels. For instance, while SADC member states are party to three initiatives — the Financial Action Task Force (FATF) (created in 1998), the Global Transparency and Exchange of Information for Tax Purposes (created in 2009), and the Inclusive Framework on Base Erosion and Profit Sharing (BEPS) (created in 2016) — that have provided strong recommendations and standards for reducing illicit financial flows, implementation has been challenging. This is because many African countries lack the resources and capabilities to dedicate to curbing illicit financial flows. Therefore, capacitating relevant institutions and structures to deal with financial crimes is critical for the successful implementation of these initiatives, by enhancing their technical capabilities, and strengthening the SARPCCO's policing, security and intelligence responsiveness, for instance.

Fostering inclusive collaboration efforts at regional levels: More collaborative efforts, such as the SADC's Secretariat endorsed collaboration between ENACT in association with the Institute for Security Studies and INTERPOL (established in 2018), and the European Union's (EU's) Pan African Programme endorsed joint initiative launched by the Institute for Security Studies, INTERPOL, and the Global Initiative against Transnational Organised Crime (GIATOC), are critical for the development of comprehensive, real-data driven strategies to confront TOC. Such collaborations, with advanced and skilled research capabilities, can offer a significant contribution to providing expert technical support and evidence-based and up to date information, especially in SADC where lack of information on the nature and extent of TOC has been highlighted as the greatest limitation in dealing with TOC effectively. This will enable law enforcement agencies and other affected departments at regional and national levels to approach organised crime from a wider perspective.

While preventing illicit outflows of capital before they happen is essential, repatriating funds that have been smuggled out is also a critical tool to solidify the domestic

resource base of African countries. Over the years, there has been a lack of judicial capacities necessary to produce legitimate requests for asset recovery, and differences in legislation between the country of origin where money is laundered and the destination where it is hidden are a hindrance to asset recovery. Therefore, cooperation among countries in dealing with the repatriation of both funds and the prosecution of criminal syndicates is critical. Without cooperation and a political will, such initiatives prove useless, as can be seen with challenges the South African government faces to extradite fugitive Bushiri and his wife, a couple that defaulted South African bail conditions and fled to Malawi after being charged for fraud, money laundering, and theft amounting to R102 million.

6.4. Areas of possible further research

While this study has undoubtedly attained its set objectives, there is still much room for future research. First, the concept of TOC itself still needs to be explored further, especially within the context of the SADC region. Such an exploration has a potential of revealing even many other types of organised crime that countries in the region do not necessarily perceive as TOC due to their preoccupation with conventional criminal justice approaches. Secondly, although the focus of this study was primarily on exploring the nexus between political elites and organised crime, the study did not necessarily limit itself thereto. It went further to evaluate the historical development of TOC, and also analysed its impacts on good governance, democracy, and development. However, research focusing specifically on the development of the nexus between crime and politics within the SADC region in general is necessary. In other words, tracing the phenomenon of the organised crime-politics nexus backwards could contribute significantly to our understanding of this phenomenon. In terms of the effects of organised crime on development, a study focusing on quantifying the cost of TOC activities in economic terms could assist in painting a clearer picture of the extent of TOC in the region. Quantifying all costs related to organised criminal activities, not just financial illicit outflows, in real economic terms and equating them to, for instance, the number of schools, clinics, houses *et cetera*, that could have been built would have an incredible impact in understanding the implications of this phenomenon better. The proposed research could be titled: “The quantification of transnational organised crime related costs in the SADC region.”

The SADC region's expansive geographical areas, borders, and coastlines makes data collection with regard to organised criminal networks and their connection with political elites difficult. Therefore, country by country research projects on this subject would provide a more in-depth analysis and contribute to more context specific results.

The concept of a social contract on the African continent is an interesting area that needs to be explored. Since the study has established that in Africa, there is no social contract to speak of, how can we speak of governments?

Moreover, for theoretical developments, a study either on a similar or a completely different subject using Stéphanie Perazzone's conceptual alternative to post-colonial African states is recommended. Perazzone challenges the conventional conceptions of state failure and fragility within International Relations by introducing an alternative narrative — a state ecosystem. This conceptual framework, which essentially argues that a state is an ecosystem that comprises multiple transactions, interactions, and relationships of different actors at different levels in society each with their own interests and objectives — is fairly new and worth exploring. Perhaps it can usher us to the development of more Afro-centric theoretical frameworks and models of analysis for the betterment of research strategies and policies in the African continent.

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