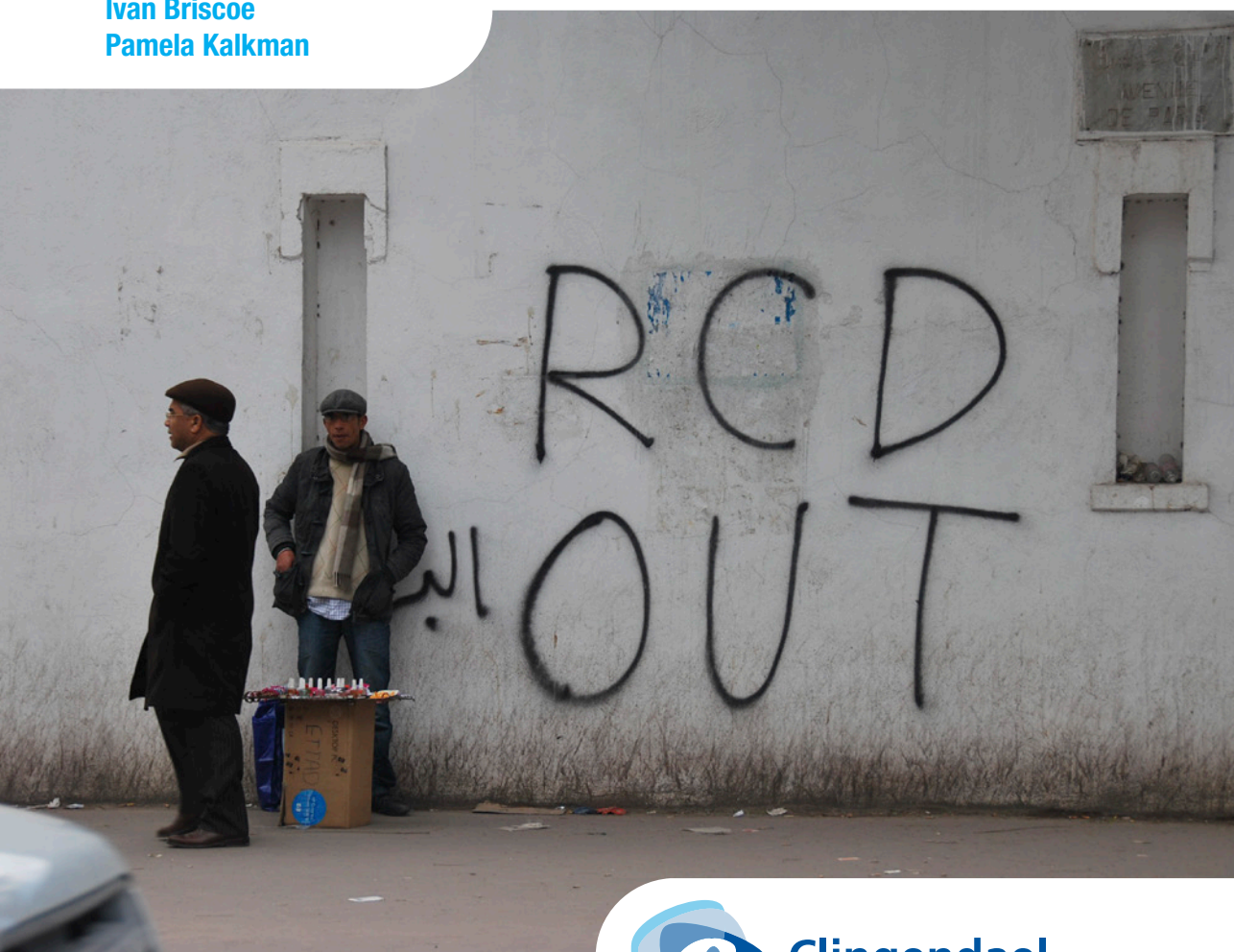


The new criminal powers

The spread of illicit links to politics across the world and how it can be tackled

CRU Report

Ivan Briscoe
Pamela Kalkman



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About CRU

The Netherlands Institute of International Relations 'Clingendael' is a think tank and diplomatic academy on international affairs. The Conflict Research Unit (CRU) is a specialized team within the Institute, conducting applied, policy-oriented research and developing practical tools that assist national and multilateral governmental and non-governmental organizations in their engagement in fragile and conflict-affected situations.

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Abstract

The most recent manifestations of organized crime in countries as diverse as Ukraine, Mali or Guatemala reveal how the phenomenon has become a systemic part of governance: a constant resource for politicians and officials, which in certain circumstances can trigger mass public discontent and even political instability. In order to understand the risks of this criminal influence, and how they might be addressed, the paper explores how illicit activity has become progressively more embedded in societies and in states, neutering efforts to coordinate international campaigns against corruption and crime. It traces the routes through which democratic politicians have sought to take advantage of crime; and vice versa, the ways in which criminal actors have captured parts of the state or targeted lucrative public sector transactions for financial gain. Through this active complicity on both sides, illicit activity has been able to merge with a fast-evolving international system of financial and legal transactions. The paper concludes by suggesting a number of strategic areas for future policy responses, including civil society engagement, firmer regulation of democratic politics, more context-ready judicial responses and broader reforms to the multilateral system.

Acknowledgement

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Executive Summary

Treating organized crime and corruption as a ‘cancer’ or a ‘virus’ has become shorthand in international policy circles, a diagnosis that is used to explain how countries as diverse as Mali, Ukraine or Mexico have fallen under the influence of criminal rackets that exercise control over certain state bodies, politicians, judges, police forces or territory. However, this paper will argue that an approach rooted in the notion of institutional capture by an external criminal force is – despite its persuasive rhetoric – gravely mistaken. For various reasons, illicit activity has become part of the living organism of many countries’ public and business affairs. It must be treated not as a foreign body, but as an integral part of governance and economic systems, and it is essential that policy responses are adapted to this reality.

Organized crime has undergone fundamental changes in size and shape over the past two to three decades. In its initial 20th-century form, organized crime was synonymous with an underworld of mafias, gangsters and racketeers. As a result, it was regarded in the West primarily as an issue for police and the courts. Since the end of the Cold War, criminal activity with its influence on state-building, human security and economic development has become a matter of acute concern in post-communist countries and, more generally, in a number of fragile and conflict-affected states. However, organized crime in its latest manifestations, for instance in Ukraine or Guatemala, appears to have taken yet another turn. In short, it has become a systemic part of governance: a constant resource for politicians and officials, which in certain circumstances can trigger mass public discontent and even political instability. Crime has moved from being a cause of prosecution to a pretext for revolution.

This paper seeks to explain how these changes in criminal patterns and effects have occurred, and what might be done to respond to them in a way that would emphasize the protection of democracy, good governance and human welfare. It establishes how crime has become central to the degradation of various ‘third wave’ democracies, particularly in countries in Central America, West Africa and the Sahel; how it has driven popular uprisings, in countries affected by the Arab Spring, as well as Ukraine and various states of Latin America; and how extremist movements, such as jihadist groups, regularly exploit public disgust with the corruption and venality of their local political systems.

Illicit activity has become progressively more embedded in societies and in states, and this presence neuters efforts to coordinate international campaigns against corruption and crime. The paper traces the routes through which democratic politicians have sought to take advantage of crime; and, vice versa, the ways in which criminal actors

have captured parts of the state or targeted lucrative public sector transactions for financial gain, above all in the area of public procurement. Through this active complicity on both sides, illicit activity has been able to merge with a fast-evolving international system of financial and legal transactions. It is in this context that a number of informal governance arrangements have become hosts to rife fraudulent activity – as the recent case of FIFA has revealed.

In response, the paper identifies strategic areas for future interventions, whether by affected states, donor governments or multilateral institutions. It stresses the need for broader civil society engagement in dealing with criminal influence, while acknowledging the dangers that are posed by communities' complicity with illicit activity, or the threat of violent criminal retribution. Stricter regulation of democratic political life is flagged as an essential part of efforts to protect democracy, although this also depends on the existence of local judicial systems that are able to act on cases of high-level criminal collusion and corruption. This judicial response in turn requires the designs of systems for investigation and prosecution that do not make impossibly burdensome demands on the limited resources and questionable political will of developing countries. So far, there has been a glaring absence of any efforts to design economical and realistic means of controlling high-level crime.

Lastly, the paper raises the possibility of recasting the way the multilateral system addresses organized crime, above all through root-and-branch reform of the main body dedicated to the issue – the United Nations Office on Drugs and Crime (UNODC). The essential spirit of such an enterprise would be to broaden participation, allow for honest criticism of the way states behave, and extend the range of issues that this body addresses in order to encompass the modern reality of crime: not a virus, but a very real part of many governments, societies and economies.

Introduction

Anxiety over the sway exerted by organized crime has rarely been as widely or acutely felt. In a number of countries that may be considered weakly governed, or undergoing erratic transitions to democracy, the issue of organized criminal influence on public affairs is so serious and entrenched that it appears to be no longer responsive to treatment through the traditional methods: law enforcement, anti-corruption campaigns, or institutional purges and reform. Instead, in the cases of Ukraine or Mexico, as well as many of the world's more fragile states, serious organized crime has become not so much an illegal profit-making activity as an operating mode for parts of the social and political system. According to one global survey, "people in Latin America, Africa, Asia and the Middle East all see crime and corruption as the greatest problems in their countries".¹

The symptoms of this criminal presence are notorious. Extreme violence, coercive and predatory public administration, judicial impunity, economic distortions, and even a broad cultural tolerance of the coveted criminal lifestyle are among the effects that are manifested in numerous affected states.² But familiarity with the consequences of illicit activity has not always translated into sustained efforts by states and international bodies to deal with the systemic nature of crime. The diverse composition of criminal activity, its linkages with the formal economy and public authorities, or its close dependence on the evolving nature of governance remain issues that are daunting in their scale and complexity.

1 Pew Research Center, *Crime and Corruption Top Problems in Emerging and Developing Countries*, November 2014.

2 There is a copious literature detailing these effects in different regions of the world. For example, on Latin America see Briscoe, I., Perdomo, C. and Uribe Burcher, C. (eds), *Illicit Networks and Politics in Latin America*, Stockholm, International IDEA, Netherlands Institute for Multiparty Democracy, and the Clingendael Institute, 2014; on West Africa, see USAID, *The development response to drug trafficking in Africa*, Washington DC, 2013; for an analysis of economic effects, see UNODC, *Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes*, Vienna, UN, 2011; for a concise account of organized crime's relations to society, see Van der Bunt, H., Siegel, D. and Zaitch, D., 'The Social Embeddedness of Organized Crime', in Paoli, L. (ed.), *The Oxford Handbook of Organized Crime*, Oxford, Oxford University Press, 2014.

Treating organized crime and corruption as a ‘cancer’ or a ‘virus’ has instead become the shorthand in international policy circles.³ Instead, this paper will argue that this outlook, although its rhetoric might initially seem persuasive, is seriously mistaken. For various reasons, which will be explored in this report, illicit activity has become part of the living organism of many countries’ public and business affairs. It must be treated not as a foreign body, but as an integral part of governance and economic systems, and it is essential that policy responses are accordingly adapted to this reality.

Crime, development and fragile states

To start, it is essential to understand how crime has evolved even when the methods to tackle it have not. The fight against organized crime has long been the prerogative of law enforcement agencies, which were charged with combating ‘mafias’, ‘gangsters’ or ‘racketeers’, above all in Europe and North America. But the way in which modern organized crime should be characterized has substantially changed – to the extent that the term itself is at risk of becoming obsolete, and a growing obstacle to understanding illicit phenomena.

Until the end of the Cold War, the relevance of organized crime to the concerns of developing, post-colonial or transitional contexts was marginal. The relative perceptions of its threat and importance changed markedly, however, from the 1990s onwards. Countries emerging from communist rule proved fertile ground for criminal protection rackets, none more so than Russia.⁴ The development of new transnational trafficking networks – generating large mark-ups in value for their products, as well as sophisticated new divisions of labour – brought resources, recruits and weakly governed or fragile countries into an increasingly sophisticated criminal business chain.⁵ It is this development that has been synonymous with the rise in violence in Central America, or the conversion of parts of the Sahel, such as northern Mali and Niger, into hubs for illicit activity, notably the trafficking of drugs and humans. Many of the conflicts that are now

3 These words have been used by to describe criminal acts by, among others, Ban Ki-Moon, David Cameron and Pope Francis. See, for example, UN News Centre, ‘Time to fight back against “cancer” of corruption – UN chief’, 8 December, <http://www.un.org/apps/news/story.asp?NewsID=40661#.VbluQNpVQ5s>

4 For example, see Sukhareenko, A., ‘Organized Crime in Russia’, *Per Concordiam, Journal of European and Defence Studies*, Vol. 5 (4), 2014, <http://perconcordiam.com/v5n4-eng/> (accessed December 2015).

5 One way of understanding this shift is from a predominantly predatory model of organized crime (extortion and racketeering) to one anchored in market-based crime, involving the supply of illegal products. This differentiation is derived from the typology of R. T. Naylor, discussed in Picard, J., ‘Can We Estimate the Global Scale and Impact of Illicit Trade’, in Miklaucic, M. and Brewer, J. (eds), *Convergence: Illicit Networks and National Security in the Age of Globalization*, Washington DC, Center for Complex Operations, Institute for National Strategic Studies, National Defense University Press, 2013.

attracting high levels of geopolitical concern feature illicit activity and organized crime at their heart.⁶

These concerns have already been rightly noted by many governments, and across the community of development donors. Grand ambitions for peace- and state-building in developing countries, particularly those entering a post-conflict phase, have been watered down as the rise of criminal activity and armed violence continue to thwart progress. Brought into the mainstream of donor thinking by the World Bank's *World Development Report 2011*,⁷ organized crime and the supposed means to combat it are increasingly being folded into the approaches of peacekeepers, peacebuilders, development practitioners and conflict mediators.⁸ At the same time, however, the reality is that crime in fragile states has huge costs in terms of lives and human security, and this continues to produce a number of extremely thorny problems that test the resourcefulness of development and foreign policy. It has raised questions as to the future of the international regime of drug control, where prohibition seems only to have hardened the power of narco-trafficking cartels and the violence they use;⁹ it has posed new challenges for US border control as a result of the flow of unaccompanied child migrants fleeing criminal violence in Central America;¹⁰ and it has engendered a complex new front in efforts to combat Islamist terrorism due to these terrorist groups' great dependence on illicit revenues.¹¹

6 See Tabib, R., *Stealing the revolution: violence and predation in Libya*, NOREF and the Clingendael Institute, 2014; and Hallaj, O. A., *The balance-sheet of conflict: criminal revenues and warlords in Syria*, NOREF and the Clingendael Institute, 2015.

7 World Bank, *World Development Report 2011: Conflict, Security and Development*, Washington DC, World Bank, 2011.

8 For example see Banfield, J., *Crime and Conflict: The New Challenge for Peacebuilding*, London, International Alert, 2014; Cockayne, J., *State fragility, organised crime and peacebuilding: towards a more strategic approach*, NOREF Report, Norwegian Peacebuilding Resource Centre, 2011; Whitfield, T., *Mediating criminal violence: Lessons from the gang truce in El Salvador*, Oslo Forum Papers, HD Centre, 2013; Kavanagh, C. (ed.), *Getting Smart and Scaling Up: Responding to the Impact of Organized Crime on Governance in Developing Countries*, New York University, Center on International Cooperation, 2013; and Jespersen, S., 'Development engagement with organised crime: a necessary shift or further securitisation?', *Conflict, Security & Development*, 15:1, 23-50, February 2015.

9 Organization of American States (OAS), *Scenarios For the Drug Problem in the Americas 2013 - 2015*, Washington DC, OAS, 2012, and LSE Ideas, *Ending the Drug Wars: Report of the LSE Expert Group on the Economics of Drug Policy*, London School of Economics and Political Science, 2014.

10 UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, Washington DC, Regional Office for the United States and the Caribbean, 2014.

11 Briscoe, I., 'The New Criminal Blitz: Mali, Iraq, and the Business of Asymmetry', International Relations and Security Network, 10 July 2014, <http://www.isn.ethz.ch/Digital-Library/Articles/Detail?id=181406> (accessed December 2015).

In these respects, a certain amount of progress has been made in understanding the issues posed by crime, the ways crime is linked to other state or non-state actors, and how these problems might in principle be addressed.¹² However, the hallmark of contemporary crime is the astonishing speed of its evolution, often outpacing the means adopted to tackle it, as well as the sheer diversity of its connections to other – legal – sectors. As a result, while efforts are underway to understand and mitigate the effect of crime in fragile states, new forms of illicit activity with an unprecedented impact on public life have emerged. Below, this report explores what these most recent shifts in criminal practice mean for international peace and security, and what sorts of innovative responses may be required.

In particular, the report argues that the terms we use to describe the phenomenon of organized crime are increasingly an obstacle to more sophisticated responses, in that they do not help to explain the way illicit activities are embedded in local communities and state structures. The report analyses how the risks and threats posed by criminal activity are not simply manifestations of disorder or challenges to statehood, but are systemic to statehood, above all in emerging democracies – where they can be deeply destabilizing as a result. Lastly, it concludes that any new approaches must recognize the need for a revolution in strategic outlook, one that focuses as much on the form of crime as on its content.

12 For example, see The Global Initiative Against Transnational Organized Crime, *Improving Development Responses to Organized Crime*, conference report, July 2014, <http://www.isn.ethz.ch/Digital-Library/Articles/Detail/?id=181406> (accessed December 2015).

1 Links between crime and governance

The seepage of organized criminal activity into the political affairs of low-income and fragile countries raises a set of issues that require urgent consideration. Until quite recently, the profit-making criminal activities carried out by governments rarely preoccupied the international community, and were treated far more leniently than the atrocities or human rights violations carried out by states and their associated militias. However, recent wars in Afghanistan and Mali, or cases of criminalized states in Guatemala and Guinea-Bissau, have pointed towards a change in this approach, and a much firmer commitment to international support for law enforcement, above all when the crises involve narco-trafficking that is linked to the actions of state officials and the recruitment strategies of non-state armed groups. Even so, the same dilemmas affect policy towards crime-affected conflicts and states that plague foreign interventions in many other settings. In short, there is no easy way to navigate the tensions between the needs of the countries themselves for broad-based, equitable development, and the demands of Western donors for quick 'wins' in a campaign to bring about 'stability'.

However, over the past five years the threat posed by organized crime has assumed a different guise. From being a matter for law enforcement in the West, or a human security and development issue in the fragile states of the South, crime has emerged as a systemic challenge to governance and a trigger of mass public discontent.

Country-wide protests following the disappearance of 43 trainee teachers in Mexico last year appeared to express public discontent not merely with criminal violence, but with defective governance as a whole. "The present movement legitimately calls into question whether Mexico is a democracy," argued law professor John Ackerman.¹³ For a number of scholars, such as Louise Shelley¹⁴ or the Carnegie Endowment's Sarah Chayes, indignation over criminal rackets in the state resonates far beyond stirrings of public unrest, particularly when it touches conflict-affected states. "Acute government corruption may in fact lie at the root of some of the world's most dangerous and

13 Ackerman, J., "We have an opening up in history": John M. Ackerman discusses Ayotzinapa and what's next', *Latin Correspondent Blog*, 17 December 2014, <http://latincorrespondent.com/mexico/opening-history/> (accessed December 2015).

14 For instance, Shelley argues that all mass terrorist attacks committed between 2001 and 2008 were facilitated or inspired by corruption. See Shelley, L., *Dirty Entanglements: Corruption, Crime, and Terrorism*, Cambridge, Cambridge University Press, 2014, pp 29-52.

disruptive security challenges,” argues Chayes, “among them the spread of violent extremism.”¹⁵

One recent example illustrates the depth of concern. Ukraine’s revolution of 2013–14 stands out for having been driven in large part by indignation at the corruption and illicit financial engineering practised by President Viktor Yanukovich and his allies: in his inaugural address as president in 2010 he embraced the fight against graft,¹⁶ but up to 100 billion dollars are alleged to have been spirited out of the country under Yanukovich’s rule.¹⁷ Despite the entrenchment of fraudulent practices, notably in state procurement,¹⁸ as well as the hardships caused by war and economic depression, the post-revolutionary government is under intense public pressure not to relent in its drive to eliminate these corrupt practices.

A number of striking similarities can be found in the ways that different publics perceived corrupt behaviour in their national institutions: surveys carried out by Transparency International in 107 countries, for instance, have found that political parties and the police force are regarded on average as the most corrupt institutions (see figure 1). Yet at the same time, the various examples of recent public anti-crime and corruption uprisings¹⁹ are distinct in a number of critical ways. Whereas general perceptions of predatory behaviour by rulers have undermined the legitimacy of a number of democratic governments in Latin America (and have even generated

15 Chayes, S., *Thieves of State: Why Corruption Threatens Global Security*, New York, W. W. Norton & Company, 2015, p. 7.

16 See OECD, *Anti-Corruption Reforms in Eastern Europe and Central Asia, Progress and Challenges 2009–2013*, Paris, 2014a, p. 24.

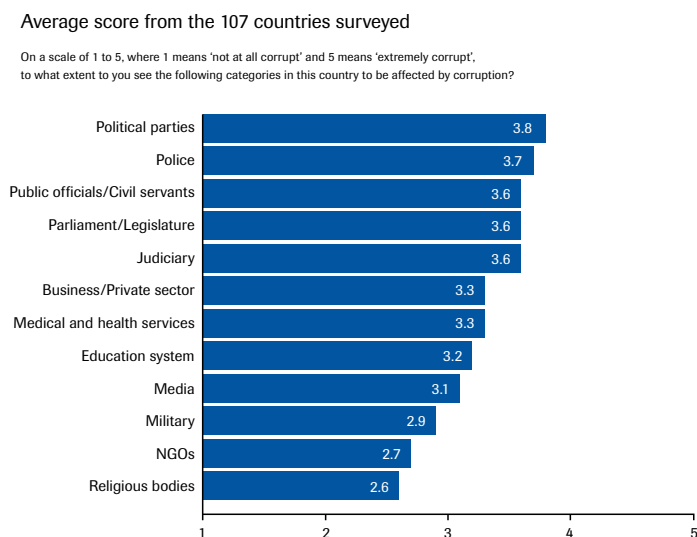
17 This figure was named by Ukraine’s chief prosecutor General Oleh Makhnitsky in April 2014 and Prime Minister Yatsenyuk in February 2014; see: Foulconbridge, G., ‘Toppled “mafia” president cost Ukraine up to \$100 billion, prosecutor says’, *Reuters*, 30 April 2014, <http://www.reuters.com/article/2014/04/30/us-ukraine-crisis-yanukovich-idUSBREA3T0K820140430> (accessed December 2015), and Walker, S. and Grytsenko, O., ‘Ukraine’s new leaders begin search for missing billions’, *The Guardian*, 27 February 2014, <http://www.theguardian.com/world/2014/feb/27/ukraine-search-missing-billions-yanukovych-russia> (accessed December 2015)

18 See Bullough, O., ‘Welcome to Ukraine, the most corrupt nation in Europe’, (‘The long read’), *The Guardian*, 6 February 2015, <http://www.theguardian.com/news/2015/feb/04/welcome-to-the-most-corrupt-nation-in-europe-ukraine> (accessed December 2015).

19 For an overview of all corruption-related crises, see map ‘Corruption Related Security Incidents Since 2008’ in: Carnegie Endowment, *Corruption: The Unrecognized Threat to International Security*, Working Group on Corruption and Security, June 2014, p. 13, http://carnegieendowment.org/files/corruption_and_security.pdf (accessed December 2015).

demands for a return to military rule in some cases),²⁰ the same collective, public discontent at high-level graft – and above all, the ostentatious excesses practised within presidential families – reinforced the demand for greater civic freedoms in Egypt and Tunisia in 2011. It is of course significant that the incident that sparked the wave of Arab uprisings involved the self-immolation of a young street vendor, Mohamed Bouazizi, who had suffered repeated humiliation at the hands of local police and municipal officials demanding bribes.

Figure 1 Perceptions of the extent of corruption in different institutions



Source: Transparency International, *Global Corruption Barometer 2013*

In other contexts, public indignation has been directed at national governments, and generated calls for deeper international intervention in national affairs. Upon its creation in 2007, the International Commission Against Impunity in Guatemala (CICIG), a UN body, assumed certain entitlements to initiate prosecutions; its most recent investigations have led to a succession of prosecutions against senior political officials, and caused the resignation and imprisonment of the serving vice-president

20 Certain protesters against corruption in Brazil have called for military rule: see Pitts, B., 'Who's Protesting in Brazil and Why?', NACLA, 9 April 2015, <https://nacla.org/print/10950> (accessed December 2015). One recent survey in Latin America shows that "levels of trust in political and social institutions are generally falling, with the Catholic Church and the Army the most trusted, and political parties the least. Of all institutions, trust in elections suffered the greatest decline between 2012 and 2014." See: Latin American Public Opinion Project (LAPOP), *Americas Barometer 2014*, Vanderbilt University, 2014, pp 194-198, http://www.vanderbilt.edu/lapop/ab2014/AB2014_Comparative_Report_English_V3_revised_011315_W.pdf (accessed December 2015).

and president. Regular EU assessments of Bulgaria, Kosovo and Romania likewise aim to encourage national progress against entrenched corruption and crime in those countries.²¹

On the other hand, there are also well-publicized accusations against international bodies for aiding and abetting local fraud. The target of mass Brazilian protests in 2013 was a perceived pillage of national resources mediated by an international organization: the World Cup organizer, FIFA. Meanwhile, in southern Europe and elsewhere, new left-wing forces, such as Podemos in Spain and Syriza in Greece, tend to regard international finance, the European Union's economic policies and the corrupt behaviour of national governments and business as part of an indivisible continuum, not a series of contending forces.²²

A common thread of perceptions

The array of suspected criminal rackets, and the divergent ways in which public discontent with crime and corruption has been expressed – whether as a pretext for armed insurgency, or a cause for international intervention, public protest movements or a new political party – would suggest that there is no single explanation for such different manifestations of illicit activity, or for the radically different reactions to them.

Understanding the local political economy of crime and corruption is obviously a *sine qua non* for knowing exactly who is involved in which illicit activity, and for what purpose. Yet although it is important to acknowledge that criminal activities have many local particularities, this should not obscure the evidence that illicit phenomena have become central to the way the public perceives the actions of their government across much of the developing world: 83 per cent regard crime as a very big problem in their country, and 76 per cent think this of corruption, according to a survey carried out by Pew Research Center in 2014 (see figure 2).²³ Even in Europe, where personal experience of corruption is far less common, 76 per cent of people believe that corruption is widespread in their country.²⁴

21 European Commission, *Mechanism for cooperation and verification for Bulgaria and Romania*, <http://ec.europa.eu/cvm/> (accessed December 2015).

22 For example, in a speech before the European Parliament on 1 July 2014, Podemos leader Pablo Iglesias said: "It's scandalous how easy lobbies of huge corporations move around here; how revolving doors convert public representatives into millionaire bosses of big companies... We have to acknowledge that this type of functioning undermines democracy." See Iglesias, Pablo, 'Discurso de Pablo Iglesias como candidato a la Presidencia de la eurocámara', speech, Podemos, 1 July 2014, <https://www.youtube.com/watch?v=QuehOJnHZQg> (accessed December 2015).

23 23 Pew Research Center, op. cit.

24 European Commission, *EU Anti-Corruption Report 2014*, Brussels, European Commission, February 2014, pp 6-7.

Figure 2 Issues of major concern in developing countries

Many Worry about Crime, Corruption, Health Care, Poor Schools and Pollution

Saying ___ is a "very big problem" for their country

	Crime	Corruption	Health care	Poor schools	Water pollution	Air pollution	Food safety	Electricity shortages	Traffic
	%	%	%	%	%	%	%	%	%
Middle East									
Tunisia	93	89	62	85	87	81	80	68	54
Palest. ter.	76	79	68	56	65	57	64	57	36
Turkey	68	62	50	53	55	53	57	46	50
Lebanon	66	82	89	42	80	60	87	75	58
Egypt	45	39	40	35	38	44	37	42	39
Jordan	32	23	33	31	34	35	37	16	29
MEDIAN	67	71	56	48	60	55	61	52	45
Asia									
Pakistan	87	59	62	57	39	40	52	90	51
Philippines	86	81	43	49	60	63	48	56	47
India	85	72	53	57	51	52	46	58	46
Bangladesh	75	65	40	35	38	35	34	63	37
Thailand	72	83	56	56	51	59	50	55	48
Malaysia	71	63	34	35	37	42	34	27	29
Vietnam	68	75	60	59	70	71	62	46	59
Indonesia	53	82	46	41	31	31	37	30	18
China	27	54	17	27	32	38	40	9	13
MEDIAN	72	72	46	49	39	42	46	55	46
Latin America									
Colombia	90	87	91	85	91	90	81	58	69
El Salvador	90	80	65	54	78	72	65	24	45
Argentina	89	85	50	59	66	64	50	36	44
Nicaragua	87	77	79	73	88	86	74	52	51
Chile	86	68	80	78	66	77	59	44	64
Venezuela	86	69	59	57	69	65	68	57	38
Peru	84	77	63	64	73	72	53	23	56
Brazil	83	78	83	64	50	50	43	35	47
Mexico	79	72	54	52	70	69	58	31	33
MEDIAN	86	77	65	64	70	72	59	36	47
Africa									
Nigeria	88	86	60	67	53	51	49	81	44
Ghana	85	85	64	69	62	54	52	82	44
Uganda	85	87	69	76	59	54	58	64	35
Tanzania	84	90	58	74	64	59	51	73	59
Kenya	83	77	53	49	35	34	45	27	26
Senegal	82	66	70	60	40	38	45	51	47
South Africa	72	70	41	44	41	35	33	42	28
MEDIAN	84	85	60	67	53	51	49	64	44
Eastern Europe									
Russia	47	65	51	38	43	40	49	16	38
Ukraine	37	73	54	19	36	32	40	14	12
Poland	31	46	59	15	27	27	29	14	27
MEDIAN ALL COUNTRIES	83	76	59	56	54	54	50	46	44

Note: Numbers in bold and green indicate the characteristic with the highest percentage for each country. Numbers in bold and orange indicate the characteristic with the lowest percentage for each country.

Source: Spring 2014 Global Attitudes survey, Q21a-c, e-j.

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Such widespread perceptions of criminalized governance, whether accurate or not, demand a robust explanation. In many cases, it would appear that democratic or quasi-democratic environments have become affected by the exacerbated contrast between political expectations and reality. Expectations of transparency, accountability

and responsiveness in government, as well as equality between citizens, stand in stark contrast to politicians' unscrupulous efforts to acquire resources, legal impunity, support from powerful vested interests and armed protection. In other words, the formal trappings of the democratic system and all the ethical values connected with it are proving agonizingly irreconcilable with the informal requirements for electoral success and the achievement of political or economic stability – the resources needed to keep power in an intrinsically shallow form of democracy.²⁵ This contradiction is visible in numerous popular uprisings, such as the recent Honduran protests against political misuse of social security funds.²⁶

The near-universal discontent over political and state complicity with crime, whether this relationship is regarded as direct, indirect, overt, tacit or passive, can thus be understood as the expression of broader and diverse crises of state legitimacy in conditions of flawed democracy or unpopular autocracy. Protests in the Arab world (notably in Tunisia), or Mexico, Brazil and Ukraine, are indicative of the dissimilar, context-specific conditions that have given rise to strikingly similar outcries against state-level criminal collusion. In other cases, notably in sub-Saharan Africa, perceptions of criminal activity in the state likewise exist, yet without always entailing any collective public response owing to low expectations of state performance, or to the fact that political competition tends to be dominated by the contest between ethnic factions.

However, Mali's crisis in 2012 also provided a telling case from sub-Saharan Africa, and one that is emblematic of the shift in the nature of organized crime, and its broader implications for international security. The role of criminal activity in fuelling the armed insurgency of the north was emblematic of the consequences of illicit activity in poor, fragmented and weakly governed environments, of the sort that has preoccupied the development community for several years, and will continue to do so.²⁷ But it was the central government's own perceived complicity with corruption that prompted an eventual coup by junior military officers in Bamako, converting a separatist threat in the north of the country into an existential challenge to the nation-state.²⁸

25 For example, see OECD, *Financing Democracy: Framework for Support Better Public Policies and Averting Policy Capture*, Paris, 2014b, pp 3-7.

26 Mejia, T., 'Hondurans lead unprecedented anti-corruption movement', Inter-Press Service, 21 July, 2015. <http://www.ipsnews.net/2015/07/young-hondurans-head-unprecedented-anti-corruption-movement/> (accessed December 2015)

27 See Strazzari, F., *Azawad and the rights of passage: the role of illicit trade in the logic of armed group formation in northern Mali*, NOREF and the Clingendael Institute, 2014.

28 Briscoe, I., *Crime after Jihad: armed groups, the state and illicit business in post-conflict Mali*, The Clingendael Institute, 2014

2 The embeddedness of crime

Even as serious state-level crime and the perceptions of it endanger the stability of imperfect democratic regimes or failing autocracies, the means to address this predicament with national resources or international support appear more elusive than ever.

As mentioned above, the concept of organized crime, which is itself a contested term with multiple rival definitions, is ill-suited to capturing the mercurial, opportunistic arrangements that bring together high-level officials, private sector actors and low-level operatives in criminal endeavours.²⁹ On many occasions, as in the case of former Ukrainian President Yanukovich's manipulation of the judicial system, the levers through which criminal activity was facilitated were in certain cases legal, if not wholly legitimate: the rotation of dissident judges and the use of disciplinary proceedings against them were common techniques.³⁰ At the other extreme, an analysis of the network that made possible the disappearance of trainee teachers in Mexico last year would seem to extend culpability into numerous branches of the state, as well as two national political parties. Here the concern is different: so prevalent is complicity or tolerance that binary notions of law-abiding officials who are opposed to violent criminal actors may no longer apply. "Articulating the problem of organized crime and its entrenchment in the Tierra Caliente³¹ as a matter of good people versus bad people was one of the errors of [former President] Felipe Calderón's government," the Mexican journalist Denise Marker has argued. "Seen from outside, without any knowledge of the area and its history, all the region's inhabitants might be defined as bad."³²

29 These characteristics of contemporary 'organized crime' are widely noted in recent academic and policy literature. Examples include Miklaucic, M. and Brewer, J. (eds), Miklaucic, M. and Brewer, J. (eds), *Convergence: Illicit Networks and National Security in the Age of Globalization*, Center for Complex Operations, Institute for National Strategic Studies, National Defense University Press, 2013; Paoli, L. (ed.), *The Oxford Handbook of Organized Crime*, Oxford: Oxford University Press, 2014; Europol, 'EU Serious and Organised Crime Threat Assessment (SOCTA)', The Hague, Europol, 2013.

30 Other abuses of power were of course also deployed. See Bullough, Oliver, *Looting Ukraine: How East and West Teamed up to Steal a Country*, London, Legatum Institute, 2014.

31 Literally 'Hot Land'. This refers to the low-lying regions of the Michoacán, Guerrero and the State of Mexico, considered to be an epicentre of criminal activity.

32 Marker, D., as quoted in Aguilar Camín, H., 'La captura criminal del Estado', *Nexos*, January 2015, <http://www.nexos.com.mx/?p=23798> (accessed December 2015).

Any assessment of national and international policies towards organized crime, and their shortcomings in practice, must begin by recognizing the ways in which crime is deeply embedded in society and politics.³³ The process of criminal entrenchment depends greatly on time and place: the examples offered by the Colombian city of Medellín in the 1970s (source of Pablo Escobar's infamous cocaine-trafficking cartel) and northern Mali three decades later suggest that a structural change in people's livelihoods alongside pragmatic political collusion in this shift are prerequisites for a generalized shift in public attitudes to crime.³⁴ For instance, Escobar's huge economic influence was predicated on the collapse of the city's cotton industry. Mali's shift to illicit trafficking in drugs and arms came about after substantial investments were made in coastal trade facilities across North and West Africa, starving the trans-Saharan route of conventional commercial opportunities.³⁵

Once embedded in everyday social and economic practice, complicity with crime can become de facto inescapable: in the northern Honduran town of La Ceiba, the fourth most violent city in the country in 2014,³⁶ "many customers, who are perhaps not always involved in narco-trafficking, strike up conversations in the clinic, the beauty salon, or the workshop. And the storekeeper, unable to escape... ends up loaded with secrets that he or she never asked to hear."³⁷ In West Africa and the Sahel, according to the lapidary analysis of one recent report based on fieldwork, "illicit trafficking and organised crime are not considered criminal behaviour in the communities interviewed: they are merely *modes de vie* – ways of life."³⁸

This embedding of criminal practice at the community level has signalled a need to consider policy responses beyond traditional law enforcement and imprisonment. Mass incarceration, as the examples of El Salvador and Honduras show, has simply led to stronger and far more violent forms of criminal organization, raising the question

33 Van de Bunt, H. et al, op. cit.

34 See Scheele, J., *Smugglers and Saints of the Sahara. Regional Connectivity in the Twentieth Century*, Cambridge, Cambridge University Press, 2012; Strazzari, F., op. cit.; Thoumi, F., 'Necessary, sufficient and contributory factors generating illegal economic activity and specially drug related activity, in Colombia', *Iberoamericana* 35, 105-126, 2009; and Adams, T., *Chronic Violence and Its Reproduction: Perverse Trends in Social Relations, Citizenship and Democracy in Latin America*, Woodrow Wilson Center, 2011.

35 Reitano, T. and Shaw, M., *Fixing a fractured state? Breaking the cycles of crime, conflict and corruption in Mali and Sahel*, Global Initiative against Transnational Organized Crime, 2015, p. 8.

36 Vargas, Y., 'Tasa de homicidios de la Ceiba es mas alta que la de paises en guerra', *Presencia Universitaria*, 13 March 2014, <https://presencia.unah.edu.hn/seguridad/articulo/tasa-de-homicidios-de-la-ceiba-es-mas-alta-que-la-de-paises-en-guerra> (accessed December 2015).

37 López, J., 'El sombrío panorama de Honduras', *Plaza Pública*, 2012, <http://www.plazapublica.com.gt/content/el-sombrio-panorama-de-honduras> (accessed December 2015).

38 Shaw, M. and Reitano, T., *People's perspectives of organized crime in West Africa and the Sahel*, ISS Paper 254, Institute for Security Studies, 2014.

as to whether some negotiated accommodation or mediation with criminal groups – however undesirable this might at first appear – could not be a preferable alternative.³⁹ At the same time, the failure of the attempted truce with gangs in El Salvador has provided a sobering reminder of how difficult a more developmental or humanitarian approach to these issues can be.

It is not within the scope of this paper to explore in depth the issue of mediation with criminal groups, nor the emerging policy agenda as to how development and humanitarian actors rather than security forces may deal with highly criminalized, violent environments.⁴⁰ However, it is essential to note that the possibilities for innovative policy responses to criminalized territories – involving broader institutional or judicial reform, or even efforts at cultural change – are themselves circumscribed by the embedding of criminal influence in national elites, and particularly in central governments.

The links to the state

Criminal linkages to the state are far from being a novel concern. The very rise of Western states is considered by Charles Tilly and others to have depended on the establishment of larger and better-resourced protection rackets.⁴¹ More radical authors have regarded illicit activity as part of the very fibre and functioning of modern capitalism,⁴² while the criminalization of states in recent decades has received abundant attention from a number of different perspectives, encompassing in the process almost every region in the world.⁴³ The influence of neo-liberal market reforms on this process, whether by dismantling state oversight bodies or encouraging the outsourcing of public works and services (and thus corruption in procurement), has been widely noted.⁴⁴

39 Van der Borgh, C. and Savenije, W., 'De-securitising and Re-securitising Gang Policies: The Funes Government and Gangs in El Salvador', *Journal of Latin American Studies*, 2015, Vol. 47, No. 1, pp 149-176; and Banfield, J., op. cit., 2014.

40 For this latter issue, see Internal Displacement Monitoring Centre (IDCM), *New Humanitarian Frontiers: Addressing Criminal Violence in Mexico and Central America*, Geneva, IDMC, 2015.

41 Tilly, C., 'War Making and State Making as Organised Crime', in Evans, P., Rueschemeyer, D. and Skocpol, T. (eds), *Bringing the State Back*, Cambridge University Press, 1985.

42 Block, A. A. and Chambliss, W. J., *Organizing Crime*, New York, Elsevier Press, 1981.

43 See, for example, Bayart, J-F., Ellis, S. and Hibou, B., *The Criminalization of the State in Africa*, Indiana University Press, 1999; Miklaucic, M. and Brewer, J., op. cit.; Karstedt, S., 'Organizing Crime: The State as Agent', in Paoli, L. (ed.), op. cit.; Bridenthal, R. (ed.), *The Hidden History of Crime, Corruption and States*, Oxford, Berghahn Books, 2013.

44 See, for instance, Chayes, S., op. cit.

Naturally, the illicit predisposition of national political elites, most notably nowadays in Central America and in West Africa,⁴⁵ points to another fundamental impediment to tackling the systemic presence of crime and corruption in governance. For now, the international legal and regulatory apparatus to combat serious crimes that do not break humanitarian or human rights law remains extremely weak: criminal law and prosecution is predominantly national, international police co-operation is voluntary and restricted, while the main conventions on organized criminal matters are not binding on member states in any meaningful sense. As a result, the United Nations Office on Drugs and Crime (UNODC) suffers a number of structural weaknesses, not least in terms of its core funding.

According to anti-corruption expert Edgardo Buscaglia, of a sample of 108 countries that have ratified UN conventions against crime and corruption, 86 per cent have introduced legal mechanisms to fight corruption and organized crime on the basis of international standards. However, only 14 per cent of the sample countries actually comply in practice with these legal requirements.⁴⁶ Moreover, the risks arising from non-compliance are relatively low. A 2012 assessment revealed that the most important multilateral anti-corruption agreements – the United Nations Convention Against Corruption (UNCAC), the Financial Action Task Force (FATF), the Extractive Industries Transparency Initiative (EITI), and StAR (Stolen Asset Recovery Initiative) – all have a limited impact on state compliance.⁴⁷ The main reasons for the weakness of these instruments are the lack of any sanctions or real reputational cost when norms are violated, and the essentially voluntary nature of the transparency requirements. Meanwhile, in the case of money laundering, it has been argued that the lack of coordination between global anti-corruption and anti-money laundering bodies leads to missed opportunities for controls in developing countries.⁴⁸

45 See Briscoe, I. et al., op. cit., 2014; and Shaw, M. and Reitano, T., *The evolution of organised crime in Africa. Towards a new response*, Institute for Security Studies, 2013. For a deep analysis of illicit activity in the African state, see Bayart et al., op. cit.

46 Buscaglia, E., 'Judicial and Social Conditions for the Containment of Organized Crime: A Best Practice Account', in Schöenberg, R. (ed.), *Transnational Organized Crime: Analyses of a Global Challenge to Democracy*, Berlin, Heinrich-Böll Stiftung, 2013. See also Søreide, T., *Democracy's Shortcomings in Anti-Corruption*, CMI Working Paper, 2012.

47 Johnsen J., Taxell, N. and Zaum, D., *Mapping evidence gaps in anti-corruption: Assessing the state of the operationally relevant evidence on donors' actions and approaches to reducing corruption*, Bergen, CMI Institute, U4 Issue 7, 2012; Brunelle-Quraishi, O., 'Assessing the Relevancy and Efficacy of the United Nation Convention Against Corruption: A Comparative Analysis', *Notre Dame Journal of International & Comparative Law*, pp 101-166, 2011.

48 Levi, M., 'How Well Do Anti-Money Laundering Controls Work in Developing Countries?', in Paoli, L. (ed.), op. cit., p. 399.

International agreements and supervisory organizations that are non-binding may even be counterproductive, serving as a ‘fig leaf’ for governments to hide behind while continuing their illicit practices.⁴⁹ In the worst cases, nominal compliance with these agreements can even open the door to increased financial support from donors, which is then captured by predatory elites. According to one recent report, “the emergence of states where organized criminal groups have overwhelming influence over political and state institutions completely undermines the very concept of international law enforcement cooperation”.⁵⁰

This absence of a strong international framework to tackle serious and organized crime nonetheless does not mean that international responses are wholly absent. Counter-narcotic interventions and judicial extraditions have long been used by the United States in numerous countries, while robust policing and prosecution as part of UN or other peacekeeping missions (notably in Haiti under MINUSTAH, or through EULEX in Kosovo) are by now well-established features of international anti-crime policy. Likewise, active pursuit by the US government of money laundering and sanctions evasion in international circles of high finance has proved critical to judicial actions taken against HSBC, BNP Paribas and the Banca Privada d’Andorra.⁵¹ As is well known, the most recent action of this sort by the US Department of Justice has involved a full-fledged judicial offensive against corruption in world football’s governing body, FIFA.⁵²

However, these somewhat informal, and very often unilateral forms of engagement – many of them geared towards disrupting drug trafficking and now increasingly human trafficking – tend to answer primarily to the needs and concerns of powerful countries. Most importantly, in the case of many of the measures taken against drug and human trafficking, they simply divert the trade to areas where national political authorities are even more hospitable to collusion, or where violent armed groups can ensure uninterrupted supply.⁵³

49 Chayes, S., op. cit.

50 Kemp, W. and Shaw, M., *From the Margins to the Mainstream: Toward an Integrated Multilateral Response to Organized Crime*, International Peace Institute, 2014, p. 22.

51 Minder, R., ‘Andorra cracks down on Bank after U.S. Accusations of Money Laundering’, *The New York Times*, April 10, 2015, http://www.nytimes.com/2015/04/11/business/international/andorra-follows-up-on-us-inquiry-by-cracking-down-on-bpa.html?_r=0 (accessed December 2015).

52 For full details of the initial indictments of May 2015, see <http://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and> (accessed December 2015).

53 Also see Briscoe, I. and Dari, E., *Crime and error: why we urgently need a new approach to illicit trafficking in fragile states*, Policy Brief, Clingendael Conflict Research Unit, 2012.

3 Disentangling the political–criminal nexus

For the moment, the fight against organized crime would appear to be at an impasse, hemmed in by the embedded nature of illicit activity in communities and states. In order to begin sketching a more effective and comprehensive set of policies to address the global presence of crime and corruption, and its impact within nations and regions, we must begin by understanding why organized criminal activity has evolved in such a way that it has become entrenched in communities and state systems, particularly in fragile and conflict-affected states; and, on this basis, explain its evolution into a recurrent feature of popular discontent with governments, above all in flawed democracies. In short, it is essential to recognize and account for the systemic presence, real and perceived, of crime and corruption.

At the risk of excessive brevity, the account given below focuses on three processes that complement one another, and to a great extent account for this systemic entrenchment. The first looks to the emerging nature of money in politics, above all in the developing world; the second turns to the evolution in criminal practice, above all within the state; lastly, the third part considers the current global implications.

Politics, money and crime

Official estimates suggest that the income of organized criminal groups has grown exponentially over the past two to three decades. Criminal syndicates participate in activities whose income streams have been greatly enhanced by global trade, transport and communications: these include drug trafficking, human trafficking, wildlife trade and illicit extraction of natural resources. While rarely operating at the transnational scale, extortion and kidnapping have also reportedly grown in magnitude.

According to the United Nations Office on Drugs and Crime (UNODC), in 2009 the total income of transnational organised crime amounted to \$870 billion – an amount equal to 1.5 per cent of global GDP.⁵⁴ Although this figure is contested by a number of experts, some of whom argue that that crime as a *proportion* of global GDP may in fact have fallen,⁵⁵ the rise of high-value criminal activities and the diversification of markets

54 UNODC, op. cit., 2011.

55 See Picard, J., op. cit., 2013

– particularly cocaine, amphetamine-type substances and human trafficking – suggests that global criminal revenue has increased significantly, both in gross terms and as a share of the world economy. For instance, in 2014, Giovanni Brauzzi, security policy director of the Italian Ministry of Foreign Affairs, declared that, with an annual income in excess of €200 billion, the combined turnover of all the country's mafia groups had exceeded that of the entire yearly EU budget.⁵⁶

At the same time as criminal revenues have risen, particularly in certain countries and regions that have been heavily exposed to illicit trafficking, the role of private money in public life has assumed greater prominence across the globe. This development is driven by, on the one hand, the increasing competitiveness of elections and, on the other, the weak enforcement, or lack of, campaign finance rules.⁵⁷ Particularly in Latin American countries, elections are more fiercely contested than ever: opposition candidates won more than half the presidential elections in 18 Latin American countries between 2000 and 2010.⁵⁸ While trying to win votes in these tight races, often without traditional party structures or popular loyalties to rely on, candidates are liable to spend increasing amounts of money on their campaigns. For instance, in Panama the 2009 campaign of former president Ricardo Martinelli amounted to more than US\$18 million, an extraordinary amount for a country with just over two million voters.⁵⁹ Furthermore, an inspection of political finance legislation in Latin American countries shows that, owing to weak checks and balances, campaign and party finance rules are rarely enforced.⁶⁰

It is important to note that the influence of private money in politics is not merely a feature of developing countries. In fact, the United States is currently one of the

56 Day, M., '200bn euro Mafia income soars past entire budget of the EU,' *The Independent*, 27 March 2014, <http://www.independent.ie/world-news/europe/200bn-mafia-income-soars-past-entire-budget-of-the-eu-30130051.html> (accessed December 2015).

57 For example, see Ferguson, T., *Golden Rule: The Investment Theory of Party Competition and the Logic of Money-Driven Political Systems*, Chicago, The University of Chicago Press, 1995; and Casas-Zamora, K. (ed.), *Dangerous Liaisons*, Washington DC, Brookings Institution Press, 2013.

58 Casas-Zamora, K., 'Dirty Money: How to break the link between organized crime and politics,' *Americas Quarterly*, Issue Trafficking and Transnational Crime, Spring 2010, <http://www.americasquarterly.org/casas-zamora> (accessed December 2015).

59 In comparison: in Uruguay, a country with more than 3.5 million voters, winning presidential candidate Tabaré Vázquez recently spent US\$6.7 million during the 2015 election campaign. See: *El País* (Uruguay), 'Partidos Gastaron US\$9 en la campaña electoral', 15 April 2015, <http://www.elpais.com.uy/informacion/partidos-politicos-gastaron-campana-electoral.html> (accessed December 2015). On Martinelli case see: Rodríguez, I., 'Gasto en campañas similar al costo de las elecciones', *PanamaAmerica*, 19 March 2014, <http://www.panamaamerica.com.pa/content/gasto-en-campa%C3%B1a-es-similar-al-costo-de-las-elecciones> (accessed December 2015).

60 Perdomo, C., 'Análisis regional comparado sobre la legislación contra el crimen organizado y su relación con la política', in Briscoe, I. et al., op. cit., 2014. See also Casas-Zamora, K., op. cit, 2013.

countries with the fewest restrictions on private donations to political parties or candidates.⁶¹ A recent report by the intergovernmental organization International IDEA found that most of the world's countries apply no quantitative limits at all to private donations to political actors.⁶² In these settings, the risk that both corporate and criminal revenues find their way into political life is considerable – above all in fragile state. According to one recent multi-country study, investing in politics is a logical step for a criminal industry that, to thrive economically and take advantage of global facilities for trade and finance, requires pliable law enforcement and a measure of selective control over public institutions.⁶³

Lastly, while criminal revenues and private influence over politics have simultaneously grown, traditional structures of political and social authority have undergone a sustained loss in legitimacy. The mass public protests of recent years reflect precisely this uncertainty as to the nature of state legitimacy and authentic democratic representation in an era marked by financial crisis, subsequent austerity measures, the evident failures of the neoliberal model in numerous countries and a rise in global inequality.

At the same time, the revolution in technology and rise of social media have generated increased transparency in public affairs, and a public constituency that is far better informed as to elite wrongdoing, and to the possibilities for creating horizontal networks of protest and activism in response.⁶⁴ These circumstances have generated greater possibilities for collective action, at the same time as economic reality dictates that prospects for a more prosperous, mobile future are grim (especially for unemployed

61 In the late 1970s, the Supreme Court upheld contribution limits and ruled that “corruption is inherent in a system permitting unlimited financial contributions”. However, this approach was overruled in 2010 when the Court decided to abolish caps on individual contributions to independent Political Action Committees (PACs), while at the same time ruling that companies and unions should be treated the same as individual donors. See: Wertheimer, F., ‘Democracy drowning in sea of dark money’, *Reuters*, 28 January 2015, <http://blogs.reuters.com/great-debate/2015/01/16/democracy-is-drowning-in-a-sea-of-dark-money/> (accessed December 2015).

62 Ohman, M., *Political Financial Regulations Around the World: An Overview of the International IDEA Database*, Stockholm, International Institute for Democracy and Electoral Assistance, Stockholm, 2012.

63 Casas-Zamora, K., op. cit., 2013 See also Buscaglia, E. and van Dijk, J. ‘Controlling Organized Crime and Corruption in the Public Sector’, *Forum on Crime and Society*, Vol. 3:1 & 2, December 2003, pp 3-34.

64 See Mason, P., *Why it's Kicking Off Everywhere: The New Global Revolutions*, London, Verso Books, 2012; and Mason, P., ‘Why it's still kicking off everywhere: are we witnessing a global revolt against neoliberalism?’, *New Left Project*, 26 April 2013, http://www.newleftproject.org/index.php/site/article_comments/why_its_still_kicking_off_everywhere (accessed December 2015).

youth in the Global South).⁶⁵ The combination has contributed to a general erosion of public trust in traditional institutions.

These various dynamics have had two contrasting yet complementary effects on criminal activity connected to states. On the one hand, criminal organizations have come to occupy the interstices of states that have suffered acute institutional fragmentation, tolerate high levels of social exclusion and are largely bereft of popular consent. This appears to have been the case in countries as diverse as Guinea-Bissau, Guatemala and post-conflict Libya. On the other hand, and above all in middle-income democracies, the widespread perception of criminal collusion with actors in the state has become a very effective, highly tangible means to account for and mobilize against what is perceived to be the exploitative use of public authority by private actors. Even in Europe, one recent survey shows that citizens have low levels of trust in government, and even lower levels of trust in political parties; they fear that some parties and candidates, once in office, will use corruption to place the interests of particular groups of donors before that of the public.⁶⁶ According to the analyst Moisés Naím, the threat to the old 'mega powers' posed by smaller groups of disaffected and alienated social actors can lead to a generalized breakdown of state authority.⁶⁷

In short, while illicit activity is playing a greater role in shaping political life by taking advantage of weak controls on private financing of politics or by stepping into the institutional fragmentation and vacuums generated in certain weak state environments, this criminal presence also serves as a source of collective discontent and mass mobilization. While such mobilization could bring about far-reaching benefits to the probity and integrity of public life, as may occur in Latin America,⁶⁸ it is also able to endanger basic political stability; or in the case of Ukraine or Mali, international security as a whole.⁶⁹

65 For example see: *The Economist*, 'Youth Unemployment: Generation jobless', 27 April 2013, <http://www.economist.com/news/international/21576657-around-world-almost-300m-15-24-year-olds-are-not-working-what-has-caused> (accessed December 2015).

66 Key factors cited to explain distrust were "wrong incentives driving policies" and "corruption/fraud". See OECD, op. cit., 2014(b).

67 Naím, M., *The End of Power: From Boardrooms to Battlefields and Churches to States, Why Being In Charge Isn't What It Used to Be*, New York, Basic Books, 2014.

68 See *The Economist*, 'Corruption in Latin America: Democracy to the Rescue?', 12 March 2015, <http://www.economist.com/news/americas/21646272-despite-epidemic-scandal-region-making-progress-against-plague-democracy> (accessed December 2015).

69 A recent report likewise states that "highly corrupt states are more likely to be fragile states, and, over the long term, it appears popular perceptions of high level corruption are likely to exacerbate conflict dynamics". See Department for International Development, *Why corruption matters: understanding causes, effects and how to address them*, Evidence paper on corruption, London, 2015, p. 52.

Evolution of criminal practice

Not only has the income of organized crime undergone a major boost over the past two decades; the make-up of criminal organization has also been transformed. Organized crime is no longer a sphere of nationally confined mafia groups and gangs. The post-1990 boom of transnational trafficking networks has instead led to an expansion of criminal networks across borders, and to a mutation in criminal practice.

Corruption has been the necessary condition for the expansion of criminal networks within states and across state borders, ensuring a permissive or even cooperative response from law enforcement, judicial and political actors to illicit activity. Blocs of corrupt elites are especially powerful in many developing countries because, as Mushtaq Khan has argued, processes of economic transformation involve the creation and entrenchment of new elite groups. As the state often plays an important role in the economy in such countries, it will tend to support this process and assuage the prospective losers through the use of increased distribution of rents and material privileges.⁷⁰ Because corruption is seen as 'smoothing' political and economic transitions in fragile political orders, some authors argue that it can actually be an instrument to assure peaceful economic growth.⁷¹

Yet the human costs of such arrangements in an era of advanced globalization may outweigh the apparent benefits of what is, in fact, a very fragile peace.⁷² For instance, earlier this year the UN Secretary-General underlined the negative effects of corruption on development through misuse of public funds, reduction in public trust, and the weakening of the rule of law.⁷³ Furthermore, corruption has become the main portal through which organized criminal groups have associated with an array of state and security officials in the construction of illicit networks. By engaging numerous different sectors and officials on an opportunistic basis, these networks tend to avoid the sort of exposure to law enforcement that permanent, organized criminal activity entails. As a result, they have become the outstanding vehicle for criminal activity attached to the state, ready to emerge and dissolve as circumstance dictates.

70 Department for International Development, *op. cit.*, p. 20.

71 See: Johnston, M., *Syndromes of Corruption: Wealth, Power and Democracy*, Cambridge, Cambridge University Press, 2006; North, D., Wallis, J., Webb, S. and Weingast, B. (eds), 'Limited Access Orders: An Introduction to the Conceptual Framework', in *In The Shadow Of Violence: Politics, Economics, and the Problems of Development*, Cambridge, Cambridge University Press, 2013; and Kang, D., *Crony Capitalism: Corruption and Development in South Korea and the Philippines*, Cambridge, Cambridge University Press, 2002.

72 Department for International Development, *op. cit.*, pp 51-52.

73 UN Secretary-General, 'State of crime and criminal justice worldwide. Report of the Secretary General', Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, 19 January 2015, pp 8-9.

The range of officials that can be involved, as well as the public powers which they may cede or sell for illicit purposes, offers huge possibilities for innovation, expansion and diversification, while dampening the risk that the entire criminal enterprise be dismantled. “Starting at the lower levels, police exchange their powers against bribes, and low-level bureaucrats offer services only in exchange for payment and favors,” argues Susanne Karstedt. “At the highest level, government officials abuse their positions of power in issuing government contracts, and they are in a position to influence prosecutions and courts thus curbing the independence of the judiciary.”⁷⁴

Fragile and conflict-affected states are places where the variable geometries of illicit networks flourish. In Libya, alliances between armed groups, backed by political coalitions, and criminal networks are undermining efforts to establish a national unity government.⁷⁵ Likewise, in Guinea-Bissau, state and military officials have become heavily involved in corrupt and criminal activities.⁷⁶ While conflict-affected states are usually connected to the global economy in multiple ways, their governments and institutions are often too weak to control the entire national territory or the numerous branches of the state and its security forces. Owing to the limited openings for legitimate commercial activities, “criminal groups can make use of these opportunities to make money... usually those who already have money and power and who are in a good position to spot the opportunities”.⁷⁷ In this context, it is not simply that organized crime ‘infiltrates’ or ‘infects’ politics, but rather that corrupt private sector and political actors are themselves willing accomplices in the facilitation of illicit activity for profit-making.

To understand how such illicit networks now operate and have expanded, it is instructive to take the example of Paulo Maluf, a Brazilian congressman and former governor and mayor of São Paulo. Maluf is a key political figure in the country, and has the dubious reputation of having a verb named after him: *malufar*, meaning ‘to steal public money’. He is known for inflating the price of construction contracts, thereby making a fortune in bribes and kickbacks. In one notorious case, a highway went over budget by US\$400 million, of which US\$11.6 million was reportedly garnered by Maluf, according

74 Karstedt, S., op. cit., p. 313. According to the same author, “states that rank highest in the Failed States Index equally top the rankings of organized crime”. See Karstedt, S., ‘Organised Crime, Democracy and Democratization: How Vulnerable are Democracies?’, in Robertson-von Trotha, C. (ed.), *Organised Crime. Dark Side of Globalization*, Baden, Nomos, 2012, pp 102-104.

75 See El Kamouni-Janssen, F. and Abdo, I., ‘Understanding Instability in Libya: will peace talks end the chaos?’, Clingendael Conflict Research Unit, Clingendael Institute 2015, <http://www.clingendael.nl/publication/understanding-instability-libya-will-peace-talks-end-chaos> (accessed December 2015).

76 For example, see Strazzari, F., ‘Captured or Capturing? Narcotics and Political Instability along the “African route” to Europe’, *European Review of Organized Crime*, 1(2), 2014, pp 5-34.

77 Shaw, M. and Kemp, W., *Spotting the Spoilers: A Guide to Analyzing Organized Crime in Fragile States*, 2012, International Peace Institute, p. 4.

to documents published by the World Bank and the United Nations Office on Drugs and Crime.⁷⁸

He was able to carry out his schemes by controlling a bank account in New York, opened by a shadow intermediary, which processed US\$140 million dollars in two years. The cash moved from Manhattan's 5th Avenue to the British Channel Island of Jersey while registered under secret shell companies owned by Maluf and his son. At least some of this money was then repatriated back to Brazil through the black market to fund Maluf's political campaigns.⁷⁹ Even though Interpol has issued an international warrant for his arrest,⁸⁰ he continues to serve in Congress. The recent indictment of 22 members of his Partida Progresista (PP) party⁸¹ in the Petrobras scandal – the biggest corruption scandal in Brazilian history⁸² – indicates that Maluf's criminal behaviour has become part of a larger practice of graft.

A new era of transnational crime

The case of Maluf also sheds lights on the way criminal practice has evolved to the detriment of legitimate public governance. Many recent cases of mass public discontent have hinged not on everyday corruption and bribery, but on high-level or 'new corruption',⁸³ involving both legal and illegal actors. Crime in these cases manifests itself as a fusion of state and private actors in complex, opaque financial arrangements, where the apparatus of law and state power both disguises and facilitates a joint criminal

78 See Stolen Asset Recovery Initiatives Database, 'Paolo Maluf', World Bank and UNODC, <http://star.worldbank.org/corruption-cases/node/18559> (accessed December 2015).

79 Hartocollis, A. and Rohter, L., 'Brazilian Politician Indicted in New York in Kickback Scheme', *The New York Times*, 9 March 2007, http://www.nytimes.com/2007/03/09/world/americas/09indict.html?_r=2& (accessed December 2015).

80 Interpol Red Notice, 'Maluf, Paulo', <http://www.interpol.int/notice/search/wanted/2009-13608> (accessed December 2015).

81 Maluf's Partida Progresista had by far the biggest share of a total of 54 indicted politicians. For full list see: Aranda, G., 'El Supremo brasileño divulga la lista política del caso Petrobras', *El Mundo*, 7 March 2015, <http://www.elmundo.es/internacional/2015/03/07/54fa4370268e3e42558b4582.html> (accessed December 2015)

82 For more information on details of this scandal see, for example: *The Economist*, 'The Big Oily: The Petrobras scandal explained', 3 January 2015, <http://www.economist.com/news/americas/21637437-petrobras-scandal-explained-big-oily> (accessed December 2015); and Segal, D., 'Petrobras Oil Scandal Leaves Brazilians Lamenting a Lost Dream', *The New York Times*, 7 August 2015, <http://www.nytimes.com/2015/08/09/business/international/effects-of-petrobras-scandal-leave-brazilians-lamenting-a-lost-dream.html> (accessed December 2015).

83 See Wedel, J., 'Beyond Bribery', *Foreign Policy*, 17 February 2015, <http://foreignpolicy.com/2015/02/17/beyond-bribery-corruption/> (accessed December 2015).

enterprise. Moreover, when these arrangements are linked to a global financial system characterized by secrecy and complexity, illicit transnational networks emerge, in which it is hard to distinguish the legal from the illegal in a host of cross-border operations.

Shadow intermediaries or brokers play a pivotal role in forging these national and international partnerships, and are reputed to have become the best-remunerated and most important players in much organized criminal activity.⁸⁴ Lawyers, for instance, often play a lead role as intermediaries between criminal and legal entities. According to one comprehensive Dutch analysis of recent organized crime trends, other key shadow facilitators include financial specialists, notaries, airport personnel, and corrupt civil servants.⁸⁵ The 2014 OECD Foreign Bribery Report shows that three out of four foreign bribery cases involve payments through such – technically legal – actors.⁸⁶ Transnational illicit networks involving a range of brokers, financiers and front companies can also play a significant part in the direct funding of armed conflicts. For instance, traders, border officials, refiners and transport companies in Iraq and its neighbouring countries, conjoined in a pre-existing network of informal oil refining and trafficking, have made it possible for the so-called Islamic State to earn millions of dollars from captured oilfields.⁸⁷

Global Financial Integrity reports that US\$991.2 billion flowed illicitly out of developing countries in 2012, a sum greater than the combined total of foreign direct investment (FDI) and net official development assistance (ODA) received by those economies in the same year.⁸⁸ China, Russia, Mexico and India top the list of countries with the highest annual illicit outflows in 2012, although it should be noted that fragile or conflict-affected states such as Iraq, Syria and Nigeria were also heavily exposed to these financial movements.⁸⁹

84 Bouchard, M. and Morselli, C. 'Opportunistic Structures of Organized Crime', in Paoli, L. (ed.), op. cit., 2014, p. 297.

85 Kruisbergen, E., van de Bunt, H. and Kleemans, E., *Georganiseerde criminaliteit in Nederland: Vierde rapportage op basis van de Monitor Georganiseerde Criminaliteit*, Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC), Erasmus Universiteit Rotterdam, Boom Lemma Uitgevers, O&B 306, 2012, pp 93-105.

86 OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, Paris, 2014(c).

87 Hawramy, F., Shalaw, M. and Harding, L., 'Inside Islamic State's oil empire: how captured oilfields fuel Isis insurgency', *The Guardian*, 19 November 2014, <http://www.theguardian.com/world/2014/nov/19/-sp-islamic-state-oil-empire-iraq-isis> (accessed December 2015); see also Hallaj, O. A., op. cit., 2015.

88 Global Financial Integrity, *Global Illicit Financial Flows Report 2014*, Washington DC, 2014.

89 In 2012, an estimated \$14,649 million flowed out of Iraq; \$8,641 million out of Syria; and \$7,922 million out of Nigeria. See Ibid.

The international policy debate on corruption, driven by organizations such as the World Bank, Transparency International and the OECD, has tended to focus mostly on petty corruption, or what some scholars refer to as ‘need corruption’, referring to the everyday corruption that citizens have to deal with when trying to access basic goods and public services. In their foreign policy designs for developing countries, donor governments are also inclined to focus mostly on how to address corruption in the public sector.⁹⁰

However, whether the origins of money are commercial, corrupt or criminal, and whether the sources of the latter are tax evasion, stolen public funds, or money laundering from drug trafficking, global money now tends to flow through the same international financial institutions, blurring the lines between licit and illicit.⁹¹ Often they pass through so-called ‘tax havens’ and secrecy jurisdictions such as Panama or the British Virgin Islands, but also Switzerland, Luxembourg, Germany, the USA, Hong Kong, Japan and Singapore.⁹² According to the Tax Justice Network, “a global industry has developed involving the world’s biggest banks, law practices and accounting firms which not only provide secretive offshore structures to their tax- and law-dodging clients, but aggressively market them”.⁹³

An illustration of these trends can be found in the recent leak of HSBC files, which revealed that the Swiss subsidiary of this bank concealed large sums of money for people facing serious allegations of illegal activity, including cocaine smuggling, blood-diamond trading, money laundering and corruption. Much of this money originated in countries severely affected by armed conflict or criminal violence, including Nigeria, Angola, Ukraine and Mexico; in the case of the latter, the bank has admitted wrongdoing in laundering \$881 million in money for Mexican drug cartels.⁹⁴ This kind of facilitation has been made possible by bank secrecy norms, and the fact that financial institutions can claim to be unaware of the illicit origin of their funds since most money enters through semi-legitimizing intermediaries working beyond the borders of the original crime.

90 For example, see report Netherlands Ministry of Foreign Affairs, ‘Eerlijk zaken doen, zonder corruptie: praktische tips voor ondernemen in het buitenland’, 2012, <http://www.rijksoverheid.nl/documenten-en-publicaties/brochures/2012/10/02/eerlijk-zakendoen-zonder-corruptie.html> (accessed December 2015).

91 Baker, R., *Capitalism’s Achilles Heel: Dirty Money and How to Renew the Global Illicit Financial Flows Report 2014*, Washington DC, Global Financial Integrity, 2014.

92 For full list of secrecy jurisdictions see: Tax Justice Network, *Financial Secrecy Index 2015*, <http://www.financialsecrecyindex.com/index.php/introduction/fsi-2015-results> (accessed December 2015).

93 Tax Justice Network, *Financial Secrecy Index 2015*, Introduction, <http://www.financialsecrecyindex.com/index.php/introduction/introduction> (accessed December 2015).

94 Leigh, D., Ball, J., Garside, J. and Pegg, D., ‘HSBC files: Swiss bank hid money for suspected criminals’, *The Guardian*, 12 February 2015, <http://www.theguardian.com/news/2015/feb/12/hsbc-files-swiss-bank-hid-money-for-suspected-criminals> (accessed December 2015).

Banking laws and secrecy jurisdictions have recently come under increased scrutiny as a result of such scandals. In response to such criticism, the G-20 summit in late 2014 gave fresh political impetus to this issue by backing a transparency drive aimed at curbing the use of anonymous shell companies and trusts.⁹⁵ However, it remains the case that the global financial system is porous to flows of money whose illicit origins often go undetected, whether through design or omission.

Furthermore, a number of cases and incidents suggest that similar practices may have spread to actors and organizations operating as informal institutions of global governance, often serving as intermediaries between states, individual government officials and private business interests. As mentioned earlier, FIFA has gained notoriety as an example of a global governing body whose informal regulations and multiple stakeholders have made it allegedly complicit in corruption. The lawyer who was in charge of investigating corruption during the bidding process for the 2018 and 2022 World Cups, Michael Garcia, quit, citing a “lack of leadership” within FIFA to become more transparent in its behaviour.⁹⁶ Given the existing illicit connections to the financial system, it is a matter of concern that opaque and informal political–business linkages operating on a transnational scale are at risk of facilitating ever more complex corruption networks.

95 Smyth, J., Parker, G. and Houlder, V., ‘G20 leaders back drive to unmask shell companies’, *Financial Times*, 16 November 2014, <http://www.ft.com/intl/cms/s/0/25ae632e-6d60-11e4-8f96-00144feabdc0.html#axzz3W99sNhkn> (accessed December 2015).

96 Garcia also said: “No independent governance committee, investigator or arbitration panel can change the culture of an organization.”; cited in: Longman, J., ‘FIFA Investigator Michael J. Garcia quits in Dispute over Report’, *The New York Times*, 17 December 2014, <http://www.nytimes.com/2014/12/18/sports/soccer/michael-j-garcia-resigns-as-fifa-prosecutor-in-protest.html> (accessed December 2015).

Conclusions: new policy responses

For the reasons cited earlier, most notably the embedding of crime in certain societies and states (particularly those that can be considered fragile or conflict-affected states), the paucity and weakness of international instruments of control and regulation, and the counter-productive nature of certain interventions against transnational trafficking, public policies have so far made little progress in reducing the power and wealth of transnational illicit networks. As a result, the regulations in place have failed to address the ways in which ever more complex and business-like criminal networks are making use of the global financial and political system.

The overarching focus of much international law enforcement on the *content* of criminal activity (e.g. the flow of drugs, arms, money or, increasingly, of clandestine migrants) has distracted policy-makers from what really needs to be at the centre of attention to arrest these flows, namely the *form* of crime: the structures and networks facilitating, deepening and extending criminal activity, above all through their links to business and to states. Tackling these networks will not be easy. It requires new and creative policies and, above all, political will. However, worldwide citizen calls for transparency provide some political momentum for reform, as do initiatives recently undertaken by the United Nations, the OECD and the G-20 leaders. Above all, new policy responses against organized crime should necessarily address multiple levels of illicit activity, and should have at their core a fine-grained understanding of the networks and transactions linking local, national and international state and non-state actors that have been analysed in this paper. Without proposing detailed policies, the paper discusses below a number of important strategic areas for future interventions.

Civil society engagement. It is crucial to recognize the vital role that local populations have played in both the facilitation of, and the fight against, corruption and organized crime. Major efforts to dislodge organized criminal activity linked to state actors have depended fundamentally on the mobilization of civil society, whether in Sicily from the 1980s or Guatemala in the past year. At the same time, it is the collusion of civil society that allows criminal practices to become embedded at the local level, often in contexts of extreme economic hardship. Knowing on which of these sides – complicit or antagonistic – the public stands, or how it is divided on the subject, requires detailed knowledge of local opinion, and understanding of how these perceptions of criminal activity might alter over time. Even when the conditions for any sort of public mobilization are not in place, organized civil society can still perform a number of functions that could serve to limit the reach of organized crime in business and

the state. These include efforts to raise awareness of the developmental and democratic costs of crime and corruption through information campaigns; as ‘watchdogs’ of state actors and investigators of malpractice; and by supporting whistle-blowing through the creation of anonymous outlets.⁹⁷ In each case, the groups in question and donors must take great care to avoid the risk of any violent backlash or legal persecution of the organizations involved.

Regulation of political financing. The increasing influence of private money in democratic politics provides multiple opportunities for corruption and criminal infiltration. In response, reforms aimed at better oversight of political financing are an essential step, especially in many ‘third wave’ democracies. For instance, measures could include policies that ban certain types of anonymous or corporate contributions, ensure equal media access, regulate private funding, document and publish party and candidate finance information, provide a better balance between private and public funding, and implement spending limits for political campaigns.⁹⁸ Strict selection requirements for party candidates are also required to prevent as far as possible the entry of criminal actors into government office.⁹⁹ At the same time, it is widely acknowledged that the problem of control over private and illicit finance in many democracies can be traced to a lack of enforcement of existing rules – especially since enforcement will often depend on judges, prosecutors or other authorities that are heavily influenced by the elected politicians of the day. Establishing more autonomous bodies of electoral and political control is far from simple, although isolated pockets of progress can be found even in heavily politicized state structures. For instance, making full use of a team of exceptional young prosecutors, and working with them to trace the networked connections between state officials, elected politicians, business figures and criminals, has been the basis of the CICIG’s most important indictments in Guatemala.

Likewise, periods of transition, and especially post-conflict periods, provide windows of opportunity for electoral reform and political financing. For instance, in post-2011 Tunisia a new electoral monitoring body was established to ensure a more inclusive electoral process. According to one observer, “this step was indispensable for building people’s confidence in the electoral process after decades of electoral manipulation and fraud”.¹⁰⁰ Similar efforts to regulate political finance have been under way in Ukraine since the

97 For instance, in Mexico such an initiative, called ‘MéxicoLeaks’, was founded in 2015 with donor support. See: <https://mexicoleaks.mx/>. For more on possibilities for protection of whistle-blowers, see G20 Anti-Corruption Action Plan, ‘Protection of Whistleblowers. Study on Whistleblower Protection Frameworks, Compendium of Best Practices, and Guiding Principles for Legislation’, Cannes, 2011.

98 International IDEA, *Money in Politics*, Policy Brief, 2015. Also see OECD, op. cit., 2014(b).

99 Also see Uribe Burcher, C., ‘Conclusions and recommendations’, in Briscoe, I. et al., op. cit., 2014

100 Boubakri, A., ‘Inclusiveness Policies in the Transitional Elections in Tunisia,’ in *Improving Electoral Practices: Case Studies and Practical Approaches*, International IDEA, 2015, pp 141-161.

country's revolution, including a new law that will introduce state funding of political parties from the start of 2016 so as to prevent capture of these organizations by the country's business oligarchy.

Strengthening the judiciary. Without a strong and stable judicial system, efforts to target organized crime, as well as any new initiatives in the area of political finance, are likely to encounter enormous obstacles. On the one side, judicial offensives against high-level crime and corruption have been vital to the process of dismantling illicit networks in countries such as Italy and Colombia. On the other, there is little doubt that the problem of the judiciary is at the heart of the difficulty in dealing with crime and corruption in many democracies: numerous surveys show that the judiciary is often the least trusted institution in developing countries.¹⁰¹

In highly corrupt states, the judiciary often lacks political independence, as many judges have ties to corrupt politicians, are intimidated by them, or depend on them for their future career advancement. As a first step, donors should be fully aware of the likelihood of such connections, and support targeted efforts to strengthen judicial independence. These could include bolstering the independent investigative capacity of the prosecution service, or supporting closer monitoring of judges' personal fortunes and the transparency of their rulings.

In many cases of developing countries, however, the possibilities for strengthening the judicial system as a whole, and reinforcing its independence, depend on the availability over the long term of scarce domestic resources. Experts in tackling organized crime have by and large failed so far to come up with a series of policies and instruments that could track and prosecute financial flows, illicit network connections and stolen assets in an economical and efficient way. Indeed, recent evidence suggests that anti-money laundering regulation, which are designed largely for the convenience of the developed West and its sophisticated financial services, starve poor countries of credit and access to money transfer facilities.¹⁰² In short, the challenge is now to come up with a feasible set of legal and institutional models to deal with illicit networks that will not depend on constant donor largesse, or rely on unrealistic expectations of local state budgets.

101 See Pew Research Center, op. cit., 2014; Latin American Public Opinion Project (LAPOP), op. cit., pp 194-198. For Ukraine, see: Razumkov Centre, 'Public Opinion on the Results of 2014', in *Ukraine 2014-2015: Overcoming Challenges*, 20 February 2015, http://www.razumkov.org.ua/eng/news.php?news_id=586 (accessed December 2015).

102 Center for Global Development, *Unintended Consequences of Anti-Money Laundering Policies for Poor Countries*, Washington DC, 2015.

Increase financial transparency. International agreements to increase the transparency of the financial system, and facilitate the detection, investigation and prosecution of transnational corruption and of money laundering, and the recovery of stolen assets should be fully respected, in practice as well as in theory. This means that the implementation of targets under Goal 16 in the post-2015 UN Development Agenda,¹⁰³ aimed at reducing illicit financial flows, corruption and bribery, as well as combating organized crime, must be monitored closely, as should the G-20 commitment to bring about a halt to the use of anonymous shell companies and trusts by demanding transparent registers of beneficial ownership. Existing state commitments to anti-corruption agreements, such as FATF and UNCAC, must also be closely monitored, and should be subject to some form of sanction when it is clear that they are not respected. That said, these sanctions should vary according to whether or not the state in question is able to pay, and should always take into account the full range of actors and bodies involved in any illicit transactions, including financial and legal facilitators in developed countries.

Rethink the multilateral approach to crime. The main international body that currently focuses on efforts to combat organized crime is the United Nations Office on Drugs and Crime (UNODC), whose work focuses on initiatives to combat corruption and transnational organized crime, especially international criminal flows involving narcotics, endangered wildlife and arms, as well as human trafficking and migrant smuggling. However, an emphasis on criminal form rather than content, with the aim of diagnosing and addressing the international structures and illicit networks that facilitate crime and corruption, requires a radical new approach. In particular, the multilateral system needs a body devoted to crime and corruption that is stronger and more legitimate than the UNODC at present, but which addresses the issues from a far more interdisciplinary basis and with a much greater diversity of participants and interlocutors.

Serious thought should therefore be given to the reform of this UN body. To ensure effectiveness and reach, its member base would feature all nation-states as it does now, but with a greater emphasis on the voice of countries from the Global South, which tend to be most affected by crime. The body would be devoted exclusively to crime and corrupt networks, thereby forsaking its controversial and, for certain states, legitimacy-sapping association with the failed 'war on drugs'. Its novelty, however, would be the inclusion of a core civil society involvement. The ideal, in fact, would be to establish a tri-partite body, similar to that of the International Labour Organization (ILO), where

103 Goal 16 is to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, and inclusive institutions at all levels". Of particular interest are goals 16.4 ("by 2030 significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organized crime") and 16.5 ("substantially reduce corruption and bribery in all its forms").

the governments of member states, representatives of their judiciaries and civil society actors could come together at a UN level to debate and elaborate new policies on transnational crime that correspond to the real possibilities for action and prosecution in each country. This sort of body would not be captured exclusively by state actors, and would in fact have a margin in which to be openly critical of states' willingness to act on embedded organized crime. Moreover, it could devote far more attention and energy to dealing with the socio-economic factors that are conducive to the spread of criminal activities, and which tend to be neglected by an exclusively law-enforcement approach.

Most importantly, this reformed, and potentially far more legitimate, UN agency should be able to back its agreements with sanctions, or even criminal prosecution, when they are violated. For example, it should push for international criminal jurisdiction for serious international crimes that are not classified as a violation of human rights, but which have major connotations for governance and stability. It is by now obvious that the signing of agreements alone will not stamp out the international facilitation of organized crime and corruption. While the establishment of a legal regime placing organized crime under universal jurisdiction could not be done overnight, for Kemp and Shaw "the very existence of a criminal court that could deal with cases involving organized crime would shatter the sense of impunity of corrupt leaders who are complicit in illegal activity."¹⁰⁴

It is unlikely that the suggestions made above could all be backed by the international community and civil society at one and the same time. But they do represent the bases for a more comprehensive approach – even if they leave to one side valid concerns over the links between criminal activity and the nature and effects of economic globalization, notably the rise of inequality and youth unemployment. The proposals, however, acknowledge the very real threats now posed by organized criminal activity as it works through and inside democratic states, progressively hollowing them out as it does so.

104 See Kemp, W. and Shaw, M., op. cit., 2014, pp 25-29.

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