

AFRICA RISK CONSULTING

Country briefing – South Africa

27 September 2013

1 Summary

The South African Police Service releases annual crime statistics that show that the murder and attempted murder rate has risen. The veracity of the figures is questionable and there are calls for the statistics to be made available more regularly to help identify trends. The Securities Exchange Commission may investigate Gold Fields for violating the Foreign Corrupt Practices Act when it paid a senior African National Congress figure R28.6m (\$2.9m) in order to comply with the Black Economic Empowerment requirements. South Africa's 'strike season' continues, underscoring the breakdown of bargaining structures. Labour unrest is rising, costing South Africa's economy and its workers and lowering the overall competitiveness of the market.

2 Political dynamics

2.1 Crime statistics cast spotlight on police leadership

The **South African Police Service (SAPS)** released annual crime statistics on 19 September.¹ The figures confirm what all South Africans know – South Africa is a violent country and with the current leadership the prognosis is poor.²

“Serious and violent crime is increasing in South Africa. This shows that the government’s approach to crime is not working. We have seen increases in murder, attempted murder, car hijacking, street robbery and house robbery. These are the crimes South Africans are the most afraid of.”³

Police minister **Nathi Mthethwa** and SAPS Commissioner **Riah Phiyega** presented the statistics saying that crime in general was declining, but specific crimes remained persistently high. They specifically identified the surge in the number of public protests as straining the police’s resources and diverting attention from detecting and investigating crime.⁴

¹ The SAPS report on 17 crime categories, including: murder, attempted murder, sexual offences, assault with the intent to inflict grievous bodily harm, common assault, robbery, vehicle related crimes.

² ‘Phiyega: Crime in SA under control’, EWN.co.za, 19 September 2013

³ Gareth Newham, Institute of Security Studies, 19 September 2013

⁴ ‘Phiyega: Crime in SA under control’, EWN.co.za, 19 September 2013

The murder rate has fallen 27% over the past nine years. On average there were 45 murders a day in the period under review, up from 43 in 2011/2012⁵. A breakdown of the figures per province shows that in **Gauteng** (which includes the capital city **Pretoria** and the commercial hub of **Johannesburg**) the murder rate is down 10% year on year while in **Kwa-Zulu Natal** it is up 11% in the same period. **Limpopo** and **Mpumalanga** provinces experienced a drop in the murder rate.

The incidence of carjacking soared in the **Northern Cape** by 200%, 40% in Limpopo and 30% in the **Western Cape** (the province that includes **Cape Town**) year on year.⁶

Bank robberies and cash-in-transit heists fell 80% and 20% respectively, year on year. The improvement is attributed to better sharing of information and coordination between the SAPS, industry associations and the private security industry.

As a collation of reported crimes from 1 April 2012 to 31 March 2013 the statistics are out of date and of little tactical use. The Pretoria based **Institute of Security Studies** has called for more regular crime statistics so that communities and businesses can better address the risks.⁷ An important caveat is that the statistics cover reported crimes (some crimes such as rape are grossly under-reported) and do not reflect crimes brought to court or successful prosecutions.

Without an independent review of the SAPS statistics or availability of competing databases, the accuracy of the figures is questionable.⁸ Commissioner Phiyega talked about building trust between society and the police. Public confidence in the justice system is low with 83% of South Africans believing that the SAPS is corrupt.⁹ The SAPS shooting of 34 miners in August 2012 and video footage of a police vehicle dragging a suspect in February 2013 have raised questions about police brutality. Phiyega's predecessors, **Bheki Cele** and **Jackie Selebi** [see ARC August Briefing] both left the position in disgrace. All three commissioners were civilians appointed for their loyalty rather than their policing experience.¹⁰

3 Business dynamics

3.1 Gold Fields deal under spotlight

The **US Securities and Exchange Commission (SEC)** may investigate **Gold Fields** for possible corruption over a **Black Economic Empowerment (BEE)** deal. Gold Fields bought **South Deep** mine

⁵ 'Phiyega: Crime in SA under control', EWN.co.za, 19 September 2013

⁶ SAPS: Crime Statistics 2012/2013 presentation, 19 September 2013

⁷ Gareth Newham, Institute of Security Studies, 19 September 2013

⁸ ISS; Democratic Alliance.

⁹ Transparency International Global Corruption Barometer, www.transparency.org/gcb2013/country?country=south_africa

¹⁰ 'National Riah Phiyega: One year later and still out to sea', Daily Maverick, 5 September 2013

in 2010. After **Tokyo Sexwale's Mvelaphanda** ended its relationship with the company, Gold Fields needed a new BEE partner to comply with the mining charter and obtain a mining licence. A BEE consortium called **Invictus Gold** made up of several political luminaries agreed to partner with Gold Fields, taking a 10% stake, on condition that **Baleka Mbete**, the **African National Congress (ANC)** chair, received an equity stake worth \$2.86m. The deal was concluded in South Africa without any protests from regulators or shareholders.

Ordinarily, this would have simply been another BEE mining deal. However, Gold Fields has a secondary listing in the US that gives the SEC jurisdiction. The US regulator believes that the deal merits further investigation as the payment to a senior political figure may constitute a bribe. Mbete was deputy president (2008 – 2009) and former speaker of parliament (2004 – 2008). Gold Fields commissioned the **New York** law firm **Paul, Weiss, Rifkind, Wharton & Garrison** to conduct an internal investigation into the deal. The lawyers found 'credible evidence' that Gold Fields had violated the **Foreign Corrupt Practices Act**.

The deal was unremarkable in South Africa where BEE deals over the past 20 years have become the norm creating a political oligarchy. Mbete does not bring any known mining experience to Gold Fields but her political reach would be valuable. From an outside perspective, that could very well be a simple case of corporate-political corruption.

*"It's remarkable that it has taken this long for a BEE deal to come under scrutiny for bribery. We (South Africans) have just accepted it (BEE) as normal. But for the international market, it just looks like buying political influence, or in other words, corruption."*¹¹

Jerome Brauns, a key witness in the Gold Fields BEE saga, explains why Mbete was included:

*"If you are as politically connected as she is, you would command a great deal of respect and attention and would be in a position to put pressure on a lot of people. That is the reality of the matter."*¹²

4 Strike season continues...

Petrol attendants ended their three weeklong strike on 27 September.¹³ The **National Union of Metal Workers of South Africa (NUMSA)** embarked on the strike on 9 September. The union initially rejected a 7.5% increase, demanding fewer working hours, a double-digit increase and higher overtime pay. The parties finally agreed to an 11.6% increase in 2013, a 9% increase annual increase for the next two years.¹⁴

¹¹ South African business ethics expert

¹² 'Baleka Mbete man threatened mayhem', M&G, 13 September 2013

¹³ 'Petrol attendant strike ends, but challenges remain', fin24.com, 27 September 2013

¹⁴ 'Petrol attendant strike ends, but challenges remain', fin24.com, 27 September 2013

While the strike has not had any serious impact on the economy, the duration of the strike does exemplify the difficulty of brokering an agreement. In this case it was difficult to secure collective agreements as attendants are employed directly by individual petrol stations franchisees and not by the fuel companies. Many attendants could not afford to go on strike and worked out of uniform to avoid potential confrontations. The agreement gives them an additional \$0.20c per hour.

South Africa has experienced numerous strikes in 2013, many marred by violence. The labour department calculates that there were 50% more strikes in 2012 compared to 2011 and that workers lost \$667m in wages with strikes reducing the GDP by 0.5%.¹⁵

Minister in the Presidency **Collins Chabane** has called for a review of the **National Economic Development and Labour Council (NEDLAC)**, established in 1994 as a forum for a social compact between business, organised labour, government and civil society.¹⁶ NEDLAC has largely become irrelevant as industry associations and the unions grow further apart, bypassing the forum entirely.

4.1as strikes chime with South Africa's falling competitiveness

The latest **World Economic Forum (WEF)** competitiveness report saw South Africa drop one place to 53rd from 148 countries surveyed.¹⁷ It ranks above BRICS partner Brazil in 56th position but behind Mauritius, the highest ranked African state at 45. The WEF cited South Africa's "labour market inefficiencies" (ranking 116th in the category), 144th in the flexibility of wage determination, 147th in the ease of hiring and firing and the poor quality of the education system (146th) as major constraints in its competitiveness.¹⁸

At the opposite end of the spectrum, South Africa ranked first in the regulation of securities exchange, and second in the availability of financial services and the availability of finance through local equity markets.¹⁹

5 Implications

South Africa remains a violent country with little prospect of a significant reduction in crime in the short to medium term. While policing is not the sole solution to addressing crime, it should lead the vanguard. However, the statistics offer little hope and society remains deeply distrustful of the SAPS.

¹⁵ 'Labour minister calls for end to wage talks in bad faith', Business Day, 20 September 2013

¹⁶ 'Chabane calls for NEDLAC review', EWN, 21 September 2013

¹⁷ "Global Competitiveness Report 2013/2014", World Economic Forum

¹⁸ "Global Competitiveness Report 2013/2014", World Economic Forum

¹⁹ "Global Competitiveness Report 2013/2014", World Economic Forum



Business and individuals living and working in South Africa will continue to rely on private security for the foreseeable future.

The accepted practice of appointing politically connected individuals to BEE deals may constitute bribery and fall foul of the FCPA. An SEC investigation into Gold Fields will force other international companies with exposure to the US to scrutinise their own BEE deals for compliance with the FCPA and possibly the UK Bribery Act.

Labour unrest in democratic South Africa is constitutionally protected, but the frequency of strikes and the protracted negotiations appear to suggest a widening gulf between unions and employers. Traditional forums are being sidelined and the scale and duration of strikes is hurting South Africa's economy and competitiveness.