

CHALLENGES IN ADDRESSING TRANSNATIONAL ORGANISED CRIMES IN NIGERIA

Abstract

Transnational organised crime (TOC) is a menace to economic development and international advancement. In curbing the menace, international cooperation amongst nations is important however several factors militate against efforts aimed at curbing the menace this has led to the unfortunate thrive of the phenomenon. This paper, which rely on primary and secondary data, adopts desk-based method in discussing the challenges in addressing transnational organised crimes in Nigeria. The paper identified various forms of transnational organised crimes across nations and explored strategies to assist states in capacity building. The findings revealed that the current legal frameworks for international cooperation in Nigeria are woefully inadequate. These limitations have hindered cross-border law enforcement efforts, necessitating improvements in the existing legal structures. It is recommended not only to strengthen the legal frameworks for extradition, mutual legal assistance, and prisoner transfers but also increasing awareness and effective utilization of the concept of international cooperation in combating transnational organized crime in Nigeria. The paper therefore recommends that Nigeria should formulate a clear policy to enhance existing domestic legislation, treaties, and policy frameworks related to joint investigations, transfer of criminal proceedings, and the recognition and enforcement of foreign criminal judgments.

Keywords: Transnational organized crimes, Nigeria, INTERPOL, International cooperation, Police

1. Introduction

Transnational Organized Crime (TOC) refers to crimes that are planned and executed by coordinated groups operating across national borders. These groups engage in a variety of illegal activities, including drug and arms trafficking, human trafficking, illegal waste disposal, theft, and wildlife poaching. TOC networks utilize systematic violence and corruption to achieve their objectives, posing a significant threat to public safety, health, and the stability of democratic institutions and economies worldwide.¹ As TOC networks grow and diversify, they increasingly converge with other threats, leading to destabilizing effects. The United States has developed strategies to counteract TOC networks that threaten American interests and global security. Particularly vulnerable to TOC are developing countries with weak legal systems, where governance can be compromised, leading to further erosion of law and order. The infiltration of TOC into state mechanisms, including government, intelligence, and business sectors, poses a severe risk to economic development and the integrity of democratic institutions. In some regions, TOC groups have become intertwined with political processes through bribery, economic coercion, and even participation in elections. They establish shadow economies, compromise financial and security sectors, and sometimes provide alternative governance and services, challenging the stability of legitimate markets and alliances. The penetration of TOC into governmental structures intensifies corruption, weakens governance, and undermines the rule of law, judicial systems, the free press, and the development of democratic institutions. The situation in Somalia, where criminal control and piracy have generated substantial illicit funds, illustrates how TOC can destabilize governments. In summary, TOC is a multifaceted threat that undermines state authority and economic stability, necessitating a coordinated and robust international response to safeguard global security and promote lawful governance. Transnational Organized Crime (TOC) encompasses a range of illicit activities that cross international borders, and can be categorized into several types. This paper will address the various challenges affecting the prosecution of transnational organized crimes in Nigeria and the prosecution recommendations in curbing menace.

2. Definition of Terms

Crime

Defining ‘crime’ is a complex endeavor, as it encompasses a broad spectrum of actions and societal implications. At its core, a crime is an act deemed punishable under the law. To understand what constitutes a crime, one must first comprehend the law itself. A crime may be viewed as an act of defiance against a law that either prohibits or mandates it.² However, the concept of crime extends beyond mere legal disobedience. Various schools of thought and authors have offered differing interpretations of crime, yet no singular definition has been universally accepted. Crime is recognized as a legal transgression that incurs punishment by the state. Sir Williams³ initially described crime as an act committed or omitted in violation of a public law. He later refined his definition to describe crime as an infringement of the public rights and duties owed to the community at large. In England, a crime is a legal wrong that leads to criminal proceedings and potential punishment. It represents human behavior that the state aims to deter through the threat of penal consequences, leading to criminal proceedings and sanctions.⁴ The concept of crime is also perceived as a societal norm, a natural outcome of collective living and social evolution. For example, Cross and

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¹ Ibid.

² R.C. Nigam, *Law of Crimes in India*.

³ S. W. Blackstone, *Commentaries on the Laws of England*.

⁴ M. Jefferson, *Criminal Law*, Pearson, Education Limited Essex (2007) 8th ed. Pp. 12-13.

Jones view crime as a legal wrong punished by the state⁵, while Russell sees it as an act or omission that breaches a duty punishable by indictment in the public interest. Gledhill⁶ defines crime as conduct that the state seeks to prevent through punishment and specialized legal proceedings. Durkheim⁷ posits that the collective conscience of a society determines what is considered a crime, suggesting that moral consensus shapes legal boundaries. Some perspectives argue that legal definitions of crime are too narrow and propose that criminology should encompass all antisocial behavior detrimental to society.⁸ Adeyemi⁹ emphasizes that crime adversely affects societal progress, eroding spiritual and material well-being, compromising human dignity, and fostering a climate of fear and violence that diminishes the quality of life.

Human Smuggling

This involves the illegal transportation of individuals across borders, violating immigration laws. It's a transaction where both parties are typically willing, and once the smuggled individuals have entered the destination country, they part ways with the smugglers. Human smuggling networks often have connections to other criminal activities, such as drug trafficking and corruption, and can pose risks to national sovereignty and the safety of the smuggled persons. TIP, or human trafficking, is the act of capturing and exploiting individuals, forcing them into labor or sexual exploitation. Victims are often subjected to physical and psychological harm. While commonly associated with cross-border crimes, human trafficking can also occur within a country's borders, with victims being moved and sold internally. Illicit arms trade plays a crucial role in the arsenal of terrorists and drug traffickers. The black market for weapons, which is a fraction of the legal arms trade, contributes to violence and instability worldwide. Law enforcement agencies actively work to intercept weapon smuggling operations that can have global repercussions. TOC networks are increasingly involved in the theft of critical intellectual property, which includes unauthorized access to corporate networks and theft of digital and physical goods. This category of crime encompasses a wide range of infringements, from pirated media and counterfeit goods to stolen trade secrets and patented technologies. Intellectual property theft not only results in substantial financial losses for businesses but also undermines the competitive edge of nations in the global economy. Moreover, it can pose risks to public health and safety, especially when counterfeit medications or substandard products are involved. The surge in customs seizures related to intellectual property rights violations, particularly those originating from certain countries, highlights the scale and impact of this issue on the U.S. economy and underscores the need for robust measures to protect intellectual property rights. These categories highlight the multifaceted nature of TOC and the importance of international cooperation to combat these crimes effectively.

Mutual Legal Assistance

Mutual legal assistance involves the provision of aid in collecting and transmitting evidence or other pertinent information by one country's authority to another's in case of a request for a response to an investigation or a pending criminal case. MLAs a key tool in international law enforcement, facilitating the exchange of evidence and information across borders, it is essential for addressing crimes that have elements in multiple jurisdictions, treaties and agreements provide the framework for MLA, enabling countries like Nigeria to assist in international investigations and prosecutions. With crime now operating on an international scale, the law must adapt to this reality to ensure justice for victims. Nigeria is dedicated to supporting investigative, prosecutorial, and judicial authorities in the fight against international crime and is equipped to offer a broad spectrum of mutual legal assistance.¹⁰In the context of this study, these principles and tools will be explored to understand their application measures in the prevention of Transnational Organized Crime and Terrorism. The concept of mutual legal assistance treaties will be particularly emphasized as a mechanism for international cooperation.

3. Legal Obstacles as Precipitant of TOC

The legal framework presents significant obstacles to collaborative efforts in addressing transnational organized crime within Nigeria. In instances where neither domestic nor international law adequately facilitates certain cooperative measures, reliance must be placed on voluntary assistance, which lacks certainty. An alternative approach involves the use of memoranda of understanding (MOUs), which, however, are only honor-bound agreements.¹¹A particular issue arises in dualist nations such as Nigeria concerning the incorporation or domestication of international treaties. Failure by Nigeria, or any dualist state, to provide cooperation as stipulated by a ratified treaty—without the treaty

⁵ R. Ross and R. A. Jones, *An Introduction to Criminal Law*, Butterworths, London (1972) p. 35 11th Edition p. 1.

⁶ A. Glendhill, *the Penal Code of Northern Nigeria and the Sudan* London (1963).

⁷ E. Durkheim, *Rules of Sociological Method*, The Free Press, Illinois (1958) pp. 65-23.

⁸ T. Sellin, *Culture, Conflict and Crime*, New York Social Science Research Council Bulletin 41 (1938). pp.19.

⁹ A. A. Adeyemi, 'Economic Crime in a developing Society'. A paper presented at the Conference of Attorney Generals, 11th – 13th October, 1998), pg.1.

¹⁰ Federal Ministry of Justice's 'Request for mutual legal Assistance in Criminal Matters', *Frontlines* 1st edition, 1st edition, 1st October, 2013.

¹¹ This appears to be the measure adopted by the Multi-National Joint Taskforce against Terrorism in the Lake Chad Basin involving Nigeria, Mali, Chad and Niger in relation to joint investigation cum military operations.

being incorporated into local law—precludes the possibility of compelling compliance through domestic courts.¹² For example, despite Russia’s ratification of the United Nations Convention Against Corruption (UNCAC) in 2006, its omission of Article 20, aimed at criminalizing illicit enrichment, hinders other State Parties, including Nigeria, from leveraging this treaty provision in dealings with Russia. Consequently, without corresponding domestic legislation—as required by Section 12 of the Nigerian Constitution—enforcement of cooperation remains unattainable through national legal mechanisms. The only recourse lies in diplomatic reprisals and other international law enforcement strategies. Presently, the Nigerian legal framework robustly supports only extradition, mutual legal assistance, and the transfer of convicted offenders. Beyond these areas, UNCAC does not serve as a definitive legal foundation for international cooperation in anti-corruption efforts. Similarly, the United Nations Convention against Transnational Organized Crime (UNTOC) primarily encourages, rather than mandates, States Parties to establish cooperative arrangements for joint investigations, the transfer of criminal proceedings, and the recognition of foreign criminal judgments. These conventions are thus contingent upon specific or future treaties addressing such matters. Both UNTOC and UNCAC have also neglected to formalise the longstanding practice of cooperation through letters rogatory. This oversight fails to safeguard the rights of suspects and defendants, particularly in the procurement of exculpatory evidence from abroad. Historically, letters rogatory—a method utilized by both states and defendants to acquire evidence or documents from foreign jurisdictions—have proven to be slow and burdensome, heavily dependent on the goodwill of foreign judiciaries. The introduction of UNCAC and related treaties aimed to provide a more efficient alternative; however, this has inadvertently disadvantaged potential suspects and defendants in corruption and other transnational crime cases. They are left with limited means to access justice under these conventions. Without provisions in these global treaties that allow suspects or defendants to submit requests to a central authority for expedited evidence gathering—requests that could potentially influence prosecutorial decisions or inform the defense—the trial process may not adhere to the ‘equality of arms’ principle inherent in adversarial legal systems. This is because defendants may lack access to exculpatory evidence located overseas.

4. Political Impediments to Combating Transnational Organized Crime

Law enforcement, predominantly an executive mandate, is subject to the broad discretion granted by law to executive authorities. This discretion can be exercised in ways that reflect political, economic, or diplomatic interests, rather than legal obligations, potentially leading to the refusal or misinterpretation of requests for cooperation. Historical precedents demonstrate such political maneuvering. A notable instance involved the establishment of the Sierra Leone Tribunal by the United Nations at Sierra Leone’s behest, to prosecute Charles Taylor and his associates. Following a series of events, Taylor found asylum in Nigeria in August 2003. Despite an Interpol red notice issued on 4th December 2003, which implied an obligation to arrest Taylor, the Nigerian government, led by President Olusegun Obasanjo, did not act until receiving a formal extradition request from Liberian President Ellen Johnson Sirleaf on 17th March 2006.¹³ President Obasanjo contended that Nigeria ‘released’ Taylor for trial in Sierra Leone, sidestepping the term ‘extradition’ on the grounds of an absent extradition treaty with Liberia. However, Taylor was extradited from Liberia and tried by the Special Court for Sierra Leone (SCSL), which, on 26th April 2012, found him guilty of war crimes, sentencing him to a 50-year imprisonment in the UK.¹⁴ This marked the first conviction of a head of state for such offenses. The initial reluctance to extradite Taylor, despite the Interpol notice, and the subsequent justification based on the lack of an extradition treaty, were politically motivated rather than legally grounded. At the time, Nigeria had ratified and incorporated the Geneva Conventions through the Geneva Conventions Act of 1960,¹⁵ which required State Parties to assist each other in criminal proceedings related to serious breaches of the Conventions or their Protocols. Although Protocol I encouraged rather than mandated extradition cooperation, a pre-existing treaty between Nigeria and Liberia, dating back to 1960 through an Exchange of Letters with the UK at Nigeria’s independence, and the Extradition (Liberia) Order of 1967, originating from an 1892 treaty between Great Britain and Liberia, was in place. These examples illustrate how political interests can lead to the strategic misinterpretation or violation of international cooperation treaties.

5. Linguistic Hurdles in International Cooperation

The diversity of official languages across nations poses a significant challenge in international cooperation against transnational organized crime. The necessity for translation or interpretation services is often indispensable to understand and process cooperation requests. For instance, France has previously declined assistance to Nigeria due to a request being submitted in English.¹⁶ When the services of an interpreter are employed, the integrity of the request

¹² C. E. Okeke and M. I. Anushiem, ‘Implementation of Treaties in Nigeria: Issues, Challenges and the Way Forward’, *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* [2018] (9) (2) confirms that as at 2015, only 10 out of 400 treaties executed by Nigeria has been domesticated by the National Assembly.

¹³ <[https://en.wikipedia.org/wiki/Charles_Taylor_\(Liberian_politician\)#Exile](https://en.wikipedia.org/wiki/Charles_Taylor_(Liberian_politician)#Exile)> accessed 9th February 2024.

¹⁴ <<https://trialinternational.org/latest-post/charles-taylor/>> accessed on 12th June, 2024.

¹⁵ The Geneva Conventions Act is gazette as Cap. G3. LFN 2004.

¹⁶ See also for instance <<https://www.ag.gov.au/sites/default/files/2020-03/countries-which-have-an-extradition-treaty-with-the-UK-which-was-inherited-by-australia.pdf>> accessed on 12th June, 2024, containing a list of countries that had treaties with Great Britain, which were inherited by Australia. In the case of Liberia, there was an Exchange of Notes dated 16th December, 1892

may be compromised due to potential misinterpretations, leading to decisions based on secondhand information. Consequently, linguistic differences can impede the effectiveness of international cooperation efforts.

6. Deficits in Technical Expertise and Skills

Effective international cooperation in the realm of transnational organized crime demands specialized knowledge and continuous professional development in various interconnected disciplines. Mastery in this field requires not only a foundational understanding of international law but also proficiency in investigative, prosecutorial, and judicial functions. A comprehensive knowledge of international law, comparative criminal law, and procedure is crucial for practitioners within central authority units or experts in international cooperation. Additionally, skills in languages, international relations, protocols, and information and communication technology (ICT) are advantageous for initiating both formal and informal cooperation. The absence of such expertise can significantly hinder international collaborative efforts.

7. Bureaucratic Obstacles

Formal requests for cooperation in transnational organized crime typically navigate through diplomatic channels, overseen by the Ministry of Foreign Affairs. This process can be protracted, involving multiple transmissions of the request from the Foreign Affairs Ministry to the appropriate central authority, which may not be the initial competent authority to address the request. Consequently, requests often circulate among various authorities, resulting in delays and potential unfavorable outcomes on initial attempts. The extensive paperwork and procedural requirements inherent in this process underscore the bureaucratic challenges that can obstruct cooperation. Awareness of transnational organized crime and its cooperative mechanisms remains limited among law enforcement and prosecution agencies. Investigators and legal professionals often lack familiarity with the concept, leading to neglect of crimes once suspects cross national borders. Typically, requests for international cooperation from Nigeria pertain to corruption cases investigated by the Economic and Financial Crimes Commission (EFCC) and, occasionally, the Independent Corrupt Practices and Other Related Offences Commission (ICPC), as well as terrorism cases managed by the Office of the Attorney-General of the Federation. While cooperation principles apply to a broad spectrum of crimes with international elements, such as human trafficking, drug trafficking, cybercrime, cross-border kidnapping, and war crimes, informal cooperation is more commonly utilized in Nigeria. Few agencies engage regularly with these cooperation mechanisms, with the Nigeria Police Force primarily relying on INTERPOL for assistance.

8. The Quagmire of Systemic Disparities and Territorial Sovereignty

The global legal landscape is characterized by three predominant legal systems: civil law, common law, and Islamic law. Each system is underpinned by distinct procedural norms and theoretical frameworks, which, when coupled with the principle of state sovereignty, can lead to 'judicial ethnocentrism.' This term refers to a tendency among judicial authorities to favor their own legal system and exhibit reluctance in assisting legal systems that differ from their own.¹⁷ Such ethnocentrism can impede international legal cooperation and the effectiveness of transnational organized crime control. The financial burden of processing cooperation requests often falls on the requested state. This includes costs associated with material resources, expert consultations, legal and administrative fees, and travel expenses. In regions like West Africa, where nations are already struggling with debt and economic challenges, these seemingly minor costs can become significant obstacles.¹⁸ The financial strain may act as a deterrent to cooperation, particularly when the requested state has no reciprocal requests for assistance.

9. Extradition Challenges in Addressing Transnational Organized Crime

Extradition serves as a critical tool in the fight against transnational organized crime, yet it presents several challenges. The extradition process is governed by stringent timelines for the submission of documents. The complexity of coordinating legal procedures across different jurisdictions necessitates meticulous adherence to these timelines to uphold the sovereignty of the states involved and the rights of the accused.¹⁹ The extradition decision-making process typically involves a dual-tiered system, starting with the judiciary and concluding with the executive branch. Factors such as dual criminality, identity verification, evidence sufficiency, and the existence of an extradition treaty are considered. The process is subject to appeals and reviews, adding layers of complexity. Furthermore, the potential for

(extending to certain mandated territory, in the case Liberia) pertaining to the United Kingdom and Liberia for the Mutual Surrender of Criminal Fugitive.

¹⁷ L. F. Thomas, 'Letters Rogatory: Current Problems Facing International Judicial Assistance' *North Carolina Journal of International Law* [1978] (4) (3) 297.

¹⁸ L. F. Thomas, 'Letters Rogatory: Current Problems Facing International Judicial Assistance' *North Carolina Journal of International Law* [1978] (4) (3) 27.

¹⁹ M. K. Momodou, 'Extradition of Fugitives by Nigeria', *The international and comparative law Quarterly*, (1986). (35) (3) 514. <<https://www.Cambridge.org/core/journal-and-comparative-law-quarterly/article/extradition-of-fugitives-by-nigeria/9056DE766EFAC25008DE91B7>> accessed on 3rd October 2024.

extradition applications to be granted before case resolution can undermine the intent of the Extradition Act, which is designed to ensure a fair and just legal process.²⁰

Capital Punishment and Extradition Dilemmas

Capital punishment remains a contentious factor in extradition proceedings. Jurisdictions that have abolished the death penalty often condition extradition on assurances that the death sentence will not be imposed or executed.²¹ This issue is particularly prevalent in cases involving terrorism suspects. The extradition request for Henry Okah from Angola to Nigeria exemplifies this challenge. Okah, associated with the Movement for the Emancipation of the Niger Delta (MEND), faced arms trafficking charges in 2008.²² Despite Angola's initial reluctance to extradite due to the potential imposition of the death penalty in Nigeria and the absence of an extradition treaty, the Angolan President eventually consented to the extradition. However, legal appeals and government deliberations delayed the decision until Okah's eventual extradition on February 15, 2008. Diplomatic cooperation, while challenging due to deep-seated political divisions, remains a traditional mechanism for addressing global concerns, including political disputes, economic development, and the prevention of transnational crimes. The application of extradition laws is deeply intertwined with political considerations, leading to instances where jurisdictions may cite superficial reasons to resist extradition requests.²³ The case of James Ibori serves as an illustration, where he was initially detained and released on bail by a Dubai court. The Nigerian government reportedly exerted pressure on the United Arab Emirates by threatening to revoke the operational license of Emirates Airlines, allegedly due to the UAE's reluctance to facilitate Ibori's extradition to the United Kingdom. Extradition is a fundamental component of international relations among sovereign states, predating the establishment of modern governments. While bilateral and multilateral treaties regulate the extradition of criminals globally, they commonly exclude political offenses from the scope of extraditable crimes. Consequently, requests such as those for Nnamdi Kanu and Sunday Adeyemo are often rejected on the grounds that political crimes are not subject to extradition under these agreements.

Moreover, for extradition to proceed, the requesting country must establish a prima facie case against the accused. There must also be assurances of a stable judicial system that ensures fair trials and prohibits the mistreatment of detainees. Despite clear legal guidelines, the practice of extradition is still influenced by the geopolitical dynamics of power relations between nations. This is exemplified by the fact that since 1935, no U.S. citizen or resident has been extradited to Nigeria, whereas Nigeria has consistently complied with U.S. extradition requests in accordance with their treaty obligations. Extradition procedures necessitate judicial authorization, as highlighted in the case of *George Udeozor v FRN*,²⁴ which clarified that the purpose of a hearing at the discretion of the Attorney General is not to inquire about the fugitive's willingness to be extradited but to assess the validity of the extradition request. Diplomatic cooperation plays a pivotal role in the enforcement of extradition laws, involving two sovereign entities with potentially conflicting interests. The overarching goal of extradition is to ensure that criminals cannot escape justice by fleeing beyond national borders, mandating their return for prosecution under their home country's laws. Despite provisions in Chapter IV of the 1999 Constitution for the extradition of Nigerian convicts, there is a notable asymmetry in reciprocity, with other nations often reluctant to extradite individuals to Nigeria. This reluctance is frequently attributed to a perceived lack of independence and integrity within Nigeria's judicial system, affecting the willingness of other states to cooperate in extradition matters. The extradition of foreign nationals to Nigeria presents a significant challenge. There is a disproportionate number of Nigerians extradited to face prosecution abroad compared to foreign nationals being extradited to Nigeria for criminal proceedings. This disparity raises questions about the commitment of other countries to crimes that may warrant extradition to Nigeria. Extradition requests by Nigeria are commonly denied based on concerns regarding the fairness of trials and the conditions within Nigerian prisons.²⁵ Such rejections undermine the objectives of extradition treaties and highlight the need for Nigeria to address international perceptions about its criminal justice system. Additionally, the refusal of foreign courts to extradite individuals to Nigeria often stems from a lack of established prima facie cases and concerns over human rights standards in Nigerian correctional facilities. The rule of law is a foundational principle of governance that mandates all individuals and institutions, including lawmakers and leaders, to be subject to and accountable under the law. It is a concept that ensures equality before the law, the establishment of a non-arbitrary government, and the prevention of the arbitrary use of power.²⁶ However, Nigeria's reputation among the international community has been marred by perceptions of a disregard for the rule of law. Instances such as the extraordinary rendition of Mazi Nnamdi Kanu

²⁰ K. Olasanmi 'Nigerians' Trials Abroad: Need for Foreigners to face trial in Nigeria' <<http://leadership.ng/features/395050/Nigerians-trials-abroad-need-foreigners-face-trial-nigeria>> accessed 14th June 2024.

²¹ K. Olasanmi 'Nigerians' Trials Abroad: Need for Foreigners to face trial in Nigeria' <<http://leadership.ng/features/395050/Nigerians-trials-abroad-need-foreigners-face-trial-nigeria>> accessed 14th June 2024.

²² H. Okah, <<http://www.bbc.com/news/world-africa-21937985>> accessed on 12 June 2024.

²³ M. K. Momodou, 'Extradition of Fugitives by Nigeria', *The international and comparative law Quarterly*, (1986). (35) (3) 514. <<https://www.Cambridge.org/core/journal-and-comparative-law-quarterly/article/extradition-of-fugitives-by-nigeria/9056DE766EAC25008DE91B7>> accessed on 3rd October 2024.

²⁴ (2007) LPELR-CA/L/376/05.

²⁵ B. A. Temitayo, *Legal Stencil on Extradition Law in Nigeria: An Evaluation* (Babcock University 2016) 21.

²⁶ Rule of Law/Definition, Implications. Significance & Facts/Britannica <www.britannica.com> accessed on 9th November 2024.

from Kenya to Nigeria, allegedly facilitated by both the Nigerian and Kenyan governments, have contributed to this perception. The condition of correctional facilities is a critical factor considered by developed countries when responding to extradition requests from developing nations. The safety and human rights standards of the requested individual are paramount. The case of Mr. Ogunlowo, as referenced by D. J. Fleming of the Westminster Magistrate Court, illustrates the reluctance to extradite individuals to Nigeria due to concerns over the treatment of prisoners. Reports from credible sources, including the UN Special Rapporteur on torture, Amnesty International, the US State Department, UNDOC, Human Rights Watch, and the British High Commission in Nigeria, have documented the dire conditions within Nigerian correctional facilities. Mr. Ogunlowo's release was ultimately decided not only based on the lack of a prima facie case but also on the inability of Nigerian authorities to assure humane treatment within their penal system, aligning with international human rights standards.

10. Challenges in Effective Mutual Legal Assistance in Combating Transnational Organized Crime

Mutual legal assistance (MLA) is a critical component in the international fight against transnational organized crime, yet it faces numerous legal and practical challenges. While international and regional anti-corruption instruments establish a framework for MLA, their effective implementation is contingent upon the domestic laws of the states involved.²⁷ The execution of MLA tasks such as document provision, evidence gathering, and property search and seizure is governed by these national laws. Additionally, the broad language used in anti-corruption instruments, including terms like 'national interest,' 'public order,' and 'national security,' allows for varied interpretations across different legal systems, further emphasizing the reliance on domestic legislation.²⁸ The lack of a solid legal foundation for cooperation poses significant barriers to MLA, particularly when no bilateral treaties exist to facilitate such processes. For instance, Nepal can offer international assistance based on reciprocity but cannot enforce foreign court decisions without a treaty. The absence of MLA treaties with other states limits the scope for cooperation.²⁹ This challenge is exacerbated if the requesting and receiving states are not parties to the same agreement, such as the United Nations Convention Against Corruption (UNCAC), which mandates MLA in corruption cases. Not all members of international initiatives are parties to UNCAC, and even those that are may not consider it a sufficient basis for MLA in every situation. Moreover, the domestication principle dictates that in some jurisdictions, including Vietnam, Nigeria, and common law countries, treaties do not have the force of law until they are enacted through domestic legislation.³⁰ The execution of mutual legal assistance (MLA) is fraught with legal and procedural challenges that can impede the effectiveness of international cooperation in combating transnational organized crime. Differing legal frameworks across jurisdictions pose significant challenges for both outgoing and incoming MLA requests. For the requesting state, the intricacies involved in preparing a detailed request that aligns with the legal requirements of the assisting jurisdiction can be daunting. Misunderstandings may arise concerning. On the flip side, the jurisdiction tasked with providing assistance may encounter difficulties in delivering aid that meets the legal standards of the requesting state. This can occur if the initial request lacks clarity or if the assisting jurisdiction's due process laws prohibit the requested actions. In the worst-case scenario, efforts to fulfill the request may result in significant costs, only for the assistance to be deemed inadmissible due to the requesting state's legal or procedural stipulations. The absence of a well-defined legal framework for issuing and receiving MLA requests exacerbates these challenges. Jurisdictions with evolving laws on international cooperation, such as Nepal, which has enacted an MLA law but has yet to establish bilateral treaties, face a period of uncertainty until legal applications are clarified through practice.

11. Practical Challenges in the Implementation of Mutual Legal Assistance

The implementation of mutual legal assistance (MLA) is a multifaceted process that extends beyond mere information exchange, involving collaboration between states with diverse legal systems to share evidence and combat crime. The challenges in this process include. The application of MLA requires states to navigate differences in legal systems, particularly in how evidence is obtained and utilized. Coercive measures, for instance, may be treated differently across jurisdictions, adding complexity to the investigative and prosecutorial processes.³¹ The United Nations Convention Against Corruption (UNCAC) recommends the establishment of central authorities to handle MLA

²⁷ UNODC Report: Informal Expert Working Group on Mutual Legal Assistance Case Work Best Practice (2001).

²⁸ ADB/OECD Anti-Corruption Initiative Denying Safe Haven (2006) 34.

²⁹ Notably, UNCAC only requires state parties to 'afford one another the widest measure of MLA in investigations, prosecutions and judicial proceedings in relation to the offenses covered by [that] Convention' – not to extend the same privileges to states that are not party to UNCAC (art. 46.1, emphasis added). UNCAC (art. 46.23) also sets forth specific requirements regarding the form and substance of any MLA request submitted under its authority, as well as the types of assistance that may be rendered. A state party that denies a request for MLA that is governed by UNCAC is required to provide the requesting party with adequate reasons. Similar provisions are provided in treaties such as the 1997 OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions (OECS Convention) and the 2004 Association of Southeast Asian Nations Treaty on Mutual Legal Assistance in Criminal Matters (ASEAN Treaty).

³⁰ A treaty is 'self-executing' in jurisdictions where its ratification automatically gives it the force of law. In other jurisdictions, a treaty is not self-executing, which means that it does not have force of law until implementing legislations is passed. Vietnam, has expressly declared that UNCAC is not self-executing in its jurisdiction.

³¹ M. Joutsen 'International Cooperation against Transnational Organized Crime: Extradition and Mutual Legal Assistance in Criminal Matters' 119 *International Training Course Visiting Experts*' Paper No. 59.

requests. While this is a positive step, the effectiveness of such authorities is contingent upon having skilled personnel trained in MLA principles and procedures.³² Developing countries often face difficulties due to a lack of such expertise. Moreover, the independence of these authorities is critical, as influential figures involved in MLA cases may attempt to interfere with the process. Financial constraints also pose a challenge, as executing MLA can be costly. The practice of MLA has faced criticism for a perceived lack of cooperation, especially from developed countries, which are less affected by the consequences of non-cooperation. Conversely, developed nations express concerns about the reliability of legal systems and human rights protections in developing countries. Additionally, the right to appeal against MLA requests in countries like Luxembourg, Liechtenstein, and Switzerland, while protective of individual rights, can be exploited to delay proceedings. Corruption's impact varies across states, with some benefiting from corrupt proceeds. This dynamic affects the willingness of developed countries to engage in global anti-corruption efforts, as they may benefit economically from the status quo, thus hindering the fight against transnational organized crime.³³

Language barriers constitute a significant challenge in international MLA. While the use of widely understood languages like English is intended to mitigate these barriers, difficulties may still arise if the receiving jurisdiction lacks proficiency in such languages. Poor translations and insufficient explanations in MLA requests can exacerbate these issues, leading to delays as clarifications become necessary. It is essential for outgoing requests to be accurately translated into the official language of the receiving state to facilitate understanding and action. Delays in MLA can originate within the requesting state due to the need for coordination between various authorities. Factors contributing to delays include resource limitations, inter-agency cooperation, the nature of the evidence sought, and procedural prerequisites. In complex corruption cases, such delays can be particularly detrimental as they allow time for the destruction or concealment of evidence. The 'black hole' phenomenon, where requests seem to vanish once sent abroad, underscores the importance of follow-up by requesting states to ensure the progress and execution of MLA requests.³⁴ The provision and acquisition of mutual legal assistance (MLA) are significantly hampered by resource constraints, a challenge that is expected to intensify with the globalization of crime. The construction of supportive infrastructure for MLA is a paramount challenge, necessitating substantial resource allocation, as observed in Nepal's efforts to build its MLA framework. The escalation of international crime necessitates a strategic approach to managing the finite resources available for MLA. This includes prioritizing requests, refining drafting processes, and leveraging technology to enhance efficiency. Countries like Nigeria are considering these changes to better engage with domestic agencies and explore both formal and informal assistance avenues. Resource limitations often impact central authorities, but they can also extend to investigative and prosecutorial offices, particularly in jurisdictions where these entities are already operating at full capacity. An influx of MLA requests can lead to delays due to insufficient staffing. For instance, the Financial Action Task Force's 2023 evaluation of Nigeria highlighted the understaffing of its Central Authority, recommending an increase in well-trained personnel to handle the volume of daily requests. Beyond the sheer number of staff, the issue also pertains to the expertise and retention of personnel. Frequent turnover among officials can erode institutional memory regarding the preparation and execution of MLA requests, undermining the effectiveness and success of the MLA process. Mutual legal assistance (MLA) is subject to various traditional grounds for refusal, which can pose significant challenges to international cooperation. The most commonly cited obstacle to MLA is the need to satisfy the evidentiary requirements of the assisting state. Practical difficulties arise when requests lack necessary information or supporting documentation, potentially rendering them inexecutable. Efforts to resolve these issues through consultation are beneficial but can slow down the process. In some cases, the requesting state may lack the resources or knowledge to provide the required information, leading to impasses.

Dual criminality, a principle requiring the offense to be criminal in both the requesting and assisting states, presents another significant challenge. While international instruments like UNCAC mandate assistance for certain offenses, the optional nature of some offenses, such as unjust enrichment and private-to-private corruption, complicates matters. Jurisdictions like Nigeria adopt a conduct-based approach, considering the nature of the conduct rather than the specific legal label, which can help overcome the dual criminality barrier. However, strict interpretations of dual criminality or the absence of criminalization for certain corrupt practices can hinder MLA. This is particularly problematic when prosecuting legal entities, as some jurisdictions do not recognize corporate criminal liability. Law enforcement officials can facilitate the process by clearly articulating the criminal conduct to align with the legal frameworks of both jurisdictions. On the receiving end, if the legal requirements of the requesting state are not clearly articulated, or if the responding state's due process laws prohibit certain actions, the assistance provided may be rendered unusable. This is particularly challenging in jurisdictions without a clear framework for MLA, where laws are evolving and practices are yet to be established, as seen with Nepal's recent development of MLA legislation without corresponding bilateral treaties.

³² UNODC Report: Informal Expert Working Group (2001) 9.

³³ A. Y. Shehu 'International Initiative' *Journal of Financial Crime* 225-26.

³⁴ OECD (2012) for a discussion of these and other issues leading to delay.

12. Conclusion and Recommendations

This paper has fulfilled its objective by providing a comprehensive analysis of the legal frameworks governing formal cooperation in transnational organized crime, delineating their strengths and weaknesses. It has illuminated practical applications of these frameworks and discussed the challenges and prospects associated with them. The implementation of the proposed solutions is anticipated to enhance international cooperation in combating transnational organized crime, ensuring that criminal justice in Nigeria is not impeded by geographical boundaries or national sovereignty. Moreover, the research underscores the borderless nature of criminal activities and corruption, necessitating mechanisms that transcend national jurisdictions. Mutual legal assistance, as prescribed by international and regional instruments, has proven its worth through practical applications, enabling countries to apprehend criminals and recover assets lost to corruption. Despite its limitations, it remains one of the most effective tools for international cooperation against criminal activities, with Nigeria having leveraged this practice in several instances.

To bolster the awareness and practical application of international cooperation in transnational organized crime in Nigeria, the study recommends the following strategies; Incorporate international cooperation in transnational organized crime into the training and operational manuals of law enforcement agencies to enhance awareness and practical application. Introduce amendments to the Extradition Act 1966 to expedite extradition processes. This includes the adoption of provisional warrants of arrest for suspected fugitives within or transiting through Nigeria. Consider the inclusion of a dedicated chapter on international cooperation in transnational organized crime in the forthcoming amendments to the Administration of Criminal Justice Act (ACJA). This would not only elevate the concept to national prominence but also encourage sub-national entities to establish units focused on interstate and international cooperation in transnational organized crime, mirroring provisions found in the criminal codes of countries like Egypt and France. The Nigerian Central Authority Unit should focus on recruitment and training that specifically addresses the identified skills and knowledge gaps. Emphasizing linguistic proficiency in major global languages and providing access to official translators from embassies can streamline international cooperation. Additionally, staff should be educated in comparative criminal law and procedures to navigate the legal systems of civil, common, and Islamic law jurisdictions effectively. Invest in the training of law enforcement and judicial personnel to effectively handle cases involving transnational organized crime, mutual legal assistance, and extradition. Implementing technical aid schemes and exchange programs with other central authorities can enhance understanding of foreign legal systems and establish best practices for international cooperation. Implement a robust monitoring and evaluation mechanism to assess the effectiveness of mutual legal assistance and extradition agreements, making-adjustments as necessary to improve outcomes.