

CRIMINAL JUSTICE RESPONSE TO CORRUPTION: A CASE STUDY OF SIERRA LEONE'S LEGAL REGIME FOR INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CORRUPTION

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I. INTRODUCTION

The fight against corruption in Sierra Leone has been one of the fiercest in Africa in recent years, especially from 2018 to date. With visionary leadership and the requisite political will, Sierra Leone has succeeded in crafting a legal regime with a view to combating corruption in ways that will make corruption a non-profitable venture. The current gains in the fight against corruption in Sierra Leone have been recorded in both regional and international corruption perception indexes such as those published by Transparency International¹ and Afrobarometer.²

However, in leading the fight against corruption, we are also aware of the fact that Sierra Leone is part of the global village where transnational law enforcement cooperation is critical to ensuring that perpetrators of transnational crimes, especially economic crimes, do not avoid investigations and escape justice. This is why Sierra Leone has tailored its laws in ways that give effect to some of the key articles in Chapter Four of the United Nations Convention against Corruption dealing with combating transnational corruption and money-laundering offences. Part Seven of the Sierra Leone Anti-Corruption Act,³ as amended,⁴ creates a legal regime that provides an opportunity for mutual legal assistance between Sierra Leone and its counterparts across the globe. There is a sufficient legal framework for international cooperation and assistance through the formal channels. This cooperation broadly covers freezing, seizure, extradition, locating persons, enforcing a final order of a foreign jurisdiction and other proceedings on criminal matters. Sierra Leone also engages in other forms of international cooperation with foreign counterparts.

II. LEGAL FRAMEWORK FOR MUTUAL ASSISTANCE AMONG STATE INSTITUTIONS AND FOREIGN COUNTRIES

Section 103 of the Anti-Corruption Act⁵ (as amended) provides as follows:

Subject to section 108, where a foreign State makes a request for assistance in the investigation or prosecution of a corruption offence, the Commissioner shall, after consultation with the Minister responsible for Foreign Affairs and the Attorney-General and Minister of Justice-

- (a) execute the request; or
- (b) inform the foreign State making the request of any reason-
 - (i) for not executing the request forthwith; or
 - (ii) for delaying the execution of the request.

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¹ <https://anticorruption.gov.sl/blog/anti-corruption-commission-sl-news-room-1/post/sierra-leone-again-jumps-high-in-transparency-internationals-corruption-perception-index-cpi-2022-962>

² https://www.anticorruption.gov.sl/blog/anti-corruption-commission-sl-news-room-1?date_begin=2019-07-01+00%3A00%3A00&date_end=2019-08-01+00%3A00%3A00

³ Act No. 12 of 2008.

⁴ Amended in 2019.

⁵ Ibid.

Similarly, Section 109 (1) states that:

- [T]he Commissioner may, after consultation with the Minister responsible for Foreign Affairs and the Attorney- General and Minister of Justice, make a request to a foreign State-
- (a) which he considers may be able to provide evidence or information relating to a corruption offence;
 - or
 - (b) for the freezing and forfeiture of property located in that State and which is liable to be forfeited by reason of it being the proceeds of a corruption offence.

As clearly seen in Sections 103 and 109 of the Anti-Corruption Act,⁶ the Commissioner of the Anti-Corruption Commission, working in consultation with both the Minister of Foreign Affairs and International Cooperation and the Attorney-General and Minister of Justice, can receive and act upon a request for assistance in the investigations or prosecution of a corruption offence that has a transnational connotation or implication, and he can also make the same request for assistance where necessary. However, Section 108 provides that the Commissioner may refuse to comply with a request from another State if the request is contrary to the Constitution of Sierra Leone or it is likely to prejudice national interest, or where the grounds for refusing to comply with such a request as provided under the laws of the requesting State are substantially different in terms of constitutionality and national interest considerations. Similar international cooperation in the forms of legal mechanisms are also provided in Sections 100 to 104 of the Anti-Money Laundering and Combatting of Terrorism Act.⁷

A legal provision in our legal regime that is central to issues of mutual legal assistance and international cooperation in Sierra Leone's fight against corruption is Section 137 of the Anti-Corruption Act⁸ (as amended) which criminalizes acts of corruption committed in a foreign State. It provides as follows: "Conduct by a citizen of Sierra Leone that takes place outside Sierra Leone constitutes an offence under this Act if the conduct would constitute an offence under this Act if it took place in Sierra Leone."

Sierra Leone is generally poised to respond to formal requests for combating transnational corruption and interdicting the corrupt from benefiting from the proceeds of crime. The Ministry of Foreign Affairs and International Cooperation (MOFA) is the central authority for processing international cooperation and extradition requests. The MOFA transmits the requests to Attorney General's Office at the Attorney-General and Ministry of Justice, where the International Division at the Attorney General's Office then reviews and transfers the requests to the appropriate authority for processing. Even though in recent years, Sierra Leone has received a limited number of enforcement cooperation, mutual legal assistance and extradition requests, issues and requests involving effective transnational cooperation are treated with utmost importance.

III. CASE STUDIES OF TRANSNATIONAL COOPERATION

Sierra Leone, over the years, has had a limited number of enforcements both as a requesting State or otherwise. The key factor to this limited number of enforcements was essentially the absence of a legal framework upon which enforcing institutions could rely. In practice, however, extradition requests, for example, are channelled through diplomatic channels (MOFA⁹) and forwarded to the Attorney-General and Minister of Justice. The Attorney-General is able to give effect to extradition requests from commonwealth countries or other foreign States, and the length of the process will depend on how soon the fugitive criminal is found. Sierra Leone is also in a position to provide uncomplicated extradition on the basis of the Agreement on Cooperation on Criminal Matters between the Police of member States of Economic Community of West African States (ECOWAS), which permits the handing over of suspects or fugitives to another member state based on warrants of arrest or court judgments. The Interpol Sierra Leone had collaborated with member states on a number of occasions and have executed arrest warrants efficiently and speedily.

⁶ Supra, notes 3 and 4.

⁷ Act No.2 of 2012.

⁸ Act No 12 of 2008.

⁹ Ministry of Foreign Affairs and International Cooperation.

For example, one of the extradition cases was in connection with tax fraud between 2016 and 2017. On 12 October 2016, correspondence was received from the Embassy of the United States of America in Freetown in respect of an Interpol Red Notice issued against fugitive MBT, an American National of Sierra Leone origin wanted for participating in a tax fraud scheme by filing fictitious tax returns and defrauding the Internal Revenue Services of the US as an employee at X Financial Services, a tax preparation business owned by one of the conspirators. On 3 November 2016, a team of personnel of NCB-Freetown located and arrested fugitive MBT. On 10 March 2017, extradition proceedings commenced at the High Court, Sierra Leone, and an order was granted to extradite the fugitive to Pennsylvania in the United States of America. NCB-Freetown successfully conveyed the fugitive to US special agents for the purpose of conveying the fugitive to the United States.

Within the region, similar cooperation was seen in *State v Solomon Katta and Others*. The facts are that the National Revenue Authority's (NRA) cheques were converted and sent to the Katta Account. Seven persons were indicted and one of them, Elizabeth King, a dual citizen, absconded to the Gambia. A red alert was placed on her. She was spotted in the Gambia. A letter was sent to Interpol and attached to the letter were, to wit: The indictment and warrant of arrest. Through networking with Interpol and the Gambia authorities, she was arrested and handed over to the ACC in Sierra Leone. She was eventually tried and convicted.

Another example is also seen in the recent EAP (a Company) case which involved a Nigerian with different pseudonyms. He had been convicted of corruption in Nigeria but fled to Sierra Leone as a businessman and investor in real estate. Properties were transferred to his name and monies were paid to his account by people in Sierra Leone who were interested in purchasing houses from his company. His criminal enterprise was eventually exposed and investigated by the Anti-Corruption Commission, and the Economic and Financial Crimes Commission sent a request to our Anti-Corruption Commission for his extradition. The Sierra Leone Anti-Corruption Commission investigated the matter with a view to prosecute, but the outcome of the investigations revealed that the transaction between the EAP company and the individuals concerned were purely private arrangements that were not within the mandate of the Commission. The matter was eventually forwarded to the Sierra Leone Police for necessary actions to be taken. The matter is presently under police custody. But something interesting and revealing about this case is that the Economic and Financial Crimes Commission of Nigeria requested extradition and even submitted a judgment to the ACC. The said judgment was delivered in Nigeria, but the name on the judgement was not the name on the Sierra Leonean passport he was carrying – Olufumulade Adeyeme was the name on passport. In fact, initially, his status as a Nigerian was only on the internet until when the EFCC intervened. Investigation is ongoing.

IV. CHALLENGES AND SHORTCOMINGS OF INTERNATIONAL COOPERATION

Sierra Leone is generally leveraging international networks such as the Asset Recovery Inter-Agency Network for West Africa (ARINWA), the West African Network of Central Authorities and Prosecutors (WACAP) and various arrangements with foreign counterparts to facilitate international cooperation. Most African states, Sierra Leone inclusive, have domesticated UNCAC, but mutual legal assistance has not been operative especially in circumstances where African states make requests to the West. Where it involves a non-African, compliance with mutual legal assistance becomes extremely difficult and, in most cases, impossible. Take for instance a pending case in the High Court of Sierra Leone touching and concerning the Sierra Leone's Chancery Building in the United States. The contractor for the said renovation is an American. A whopping sum of Four Million dollars amounting to 85 per cent of the contract price was paid, and not much was done with regards the renovation, and the Anti-Corruption Commission (ACC) wants to know if the Government lost money. The matter is ongoing and the American contractor is being tried in absentia. As recently as in April instant, there was a locus visit, and the American contractor was invited, but failed and/or neglected to honour the invitation. Most cooperation seems to exist only in legislation, but it has not been effectively utilized, and where it has been, it is mostly on the basis of reciprocity or comity.

Quite obviously, collaboration between and among state institutions has not been equally effective. This makes prosecutorial processes cumbersome. There is too much bureaucracy in the process of ascertaining

evidence, and where collaboration is impeded, the quick flow of justice is hindered. In instances where evidence is obtained informally, its admissibility becomes questionable. In most cases, law enforcement institutions like the police, Law Officers' Department, FIU,¹⁰ ACC,¹¹ etc. will commence investigations and half-way through, they make a referral especially with cases not within their remits, as happened in the Nigerian's case, *supra*. Where these cases are transferred, investigations are mostly commenced afresh, thereby prolonging prosecutorial procedures. It is also expected that where collaboration is required, classified documents ought to be transferred on demand and on time, but this is mostly not the case.

With extradition, it becomes more complex to observe mutual assistance. This is so because extradition comes with its own laws. That apart, every country has its own format for mutual legal assistance even where the procedure is formally complied with, especially from the West. Quite recently, the Polish Government requested the consent of the Sierra Leone Government to cross-examine a Polish national through videoconference. When asked about the nature of the offence committed, they responded a year later with a request for extradition.

Non-compliance with formality in the application for administrative assistance is another bottleneck. Connections among investigating institutions are mostly established on personal networks, which are built in conferences, seminars, etc. It is observed that requests among these institutions for international cooperation and exchanges among the heads of these institutions are mostly informal: Sometimes through phone calls by the head of the requesting State to his/her counterpart. The short- and long-term implications, respectively, are thus: It is difficult to trace among these institutions official correspondence requesting mutual legal assistance. Over and above this, when once the head of one institution is replaced, cooperation becomes moribund because it was one built on personal basis – between friends – and not institutions. Arguably, the practice tends to yield more dividends and seems to be faster and more civil/friendly in terms of obtaining information or documents, but the downside of it is that, adducing such evidence becomes contentious when its admissibility is challenged.

V. RECOMMENDATIONS AND AREAS FOR IMPROVEMENT IN THE CURRENT COOPERATION FRAMEWORK

International cooperation the world over has its challenges, and these challenges are more conspicuous in developing countries. For instance, among the bottlenecks for international cooperation in developing states is lack of experienced personnel with the requisite networks and tools to facilitate the global fight against corruption. This could best be tackled by creating opportunities that can capacitate young and brilliant minds from developing countries. A case in point is this sort of training provided by JICA. Developing states in turn have to open their doors and make use of these opportunities. Quite recently, a similar opportunity has availed itself to the Commissioner of the Anti-Corruption Commission, a young fellow in his late thirties. He has been offered a huge scholarship package to pursue an LLM at Harvard Law School. We are hopeful that he will be empowered with connections and the tools in combating corruption globally. We are forward looking, as JICA's international cooperation trajectory to the rest of the world, and especially Sierra Leone, gives a beacon of hope.

VI. CONCLUSION

Sierra Leone is poised to fight corruption fiercely, and it is a fight we must win in collaboration with the rest of the world. Over the years, we have struggled with the legal frameworks and law enforcement institutions. Thankfully, the stage is now set with appropriate legal tools, institutions and the like. Our contemporary challenge in the fight against corruption is insufficient; experienced personnel with the required tools and connections are needed to fight corruption at the global stage. It is imperative, therefore, that we extend our quest to international cooperation thereby exploring the opportunities made available by countries

¹⁰ Financial Intelligent Unit.

¹¹ Anti-Corruption Commission.

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considered to be the paradigm in the successful fight against corruption. In the light of this, I consider this programme to be timely and I am hopeful of making the best out of it.