

TRANSNATIONAL ORGANIZED CRIME AND THE ROLE OF EXTRADITION & MUTUAL LEGAL ASSISTANCE TREATIES

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I. INTRODUCTION

Transnational organized crime will without a doubt be the yardstick by which the performance of governments and their law enforcement agencies will be judged in the 21st century. It will also probably pose the most problematic, prolific and potentially devastating phenomenon ever encountered by these institutions in the normal course of their duties. However, despite the considerable attention that the media devotes in most countries to street and organized crime given its audacious, violent and inimical activities, policy makers and law enforcement agencies appear not to have understood the sheer magnitude of the potential dangers that these nefarious acts pose to national security, the economy and society in general. The issue is all the more worrisome in the developing world, which plays host to a number of these criminal organizations, but as yet has failed to fully perceive of its dangers.

II. FORM, IMPACT & EFFECTS OF ORGANIZED CRIME

Transnational organized crime has expressed itself in many forms. The narcotics trade, money laundering, arms trafficking, in human beings, stolen vehicles and artifacts, terrorism, prostitution, international financial fraud, trade in environmentally dangerous and endangered species, counterfeiting, forged and stolen travel documents and other forms. Whichever organized crime or combination of crimes is adopted, they potentially have the same debilitating

effects on the host and targeted communities. All too familiar is the destructive influence of narcotics, but trafficking in weapons and human beings, as well as financial fraud, have an equally adverse impact on the health and financial well being of the affected countries. Arms smuggling could initiate and exacerbate regional conflicts particularly on the African Continent and in Eastern Europe where several skirmishes are on going. International prostitution and pornography rings have health and social consequences. The illicit trade in endangered species may well have environmental repercussions. To cap it all, the laundering of monetary profits derived from these activities substantially undermines the financial systems and thus the economies of the affected nations.

The impact of organized crime may vary in differing societies but is likely to be more devastating in developing societies where it may supplant or exert considerable control over the state by filling the gaps in the provision of social amenities. This has to some extent also been reflected in instances where persons of "proven" criminal background have found their way into a nation's legislature. In such vulnerable environments as is depicted by fragile infant democracies, organized crime can secure the co-operation of influential government officials in the legislature, executive and judiciary to propagate its ends. It must be realised however, that there is no government completely immune to the activities of organized crime, or justice system that can guarantee control, and certainly no financial systems that would not want to benefit from its gains.

* Nigeria

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Thus law enforcement agents of every hue must be open minded and prepared for the confrontation, which will manifest itself not only in different forms, but from different quarters. Nevertheless, for all its forms and potentials to destabilise governments, these acts are primarily criminal.

The reasons for the phenomenal "successes" of organized crime are not farfetched. Like any business enterprise where there is demand, opportunity, studied and appropriate investment, there are likely to be returns. Criminal enterprise is no exception. However, the extraordinary profits accurable to organized criminal enterprise have further been enhanced by technological advancements that have reduced the world to a global village. Communication, travel, information through computer links and thus knowledge is now available at moderate expense and the press of a button to any discerning organization or individual. With the resulting globalisation of the world economy organized crime has assumed new dimensions. Co-operative ventures between ethnically diverse criminal groups have resulted to hitherto unimaginable successes in criminal endeavours. One only needs to examine the Nigerian scam enterprise to understand this. Other examples abound. The spectacular profits derivable from transnational criminal enterprise are further used in the commission of a myriad of financial crimes, in a usually successful attempt to launder the illegitimate financial resources. The common denominator in transnational organized crimes therefore, is the involvement of financial institutions. It follows therefore that the management of these institutions has a crucial role to play in the resolution of this crisis. Non-bank financial institutions such as exchange houses, insurers, brokers, mortgagors, importers and exporters are also used to

launder funds and thus should also be targeted for assistance in this fight. All these factors have affected tremendously the ability of these unwholesome fraternities to circumvent the various legal obstacles that may well have hitherto, hindered their growth.

III. REMEDY

From the point of view of policy makers and law enforcement agents, a thorough and comprehensive understanding of organized crime - its characteristics and operational methods - is crucial. As long as emphasis is placed on its manifestation (usually at the street level), rather than its all-encompassing and pervasive influence on the entirety of society, then organized crime shall blissfully thrive for long. Unfortunately, law enforcement agencies in the developing world particularly, whose countries play host to a number of transnational criminal organizations, are least prepared to combat them. The existence of these organizations is only recently being acknowledged. Worst still however, is the fact that almost all law enforcement agents especially in the West African sub-region receive only community-based police training, and hardly any specialised training. Crime prevention strategies are almost exclusively directed to the street level, with little or no attention or realisation that more damaging activity exists beyond. The truth unfortunately, is that many countries that are havens for organized crime neither have the legal infrastructure or the law enforcement capabilities to combat these crimes.

Developing nations like Nigeria for instance, are further hampered by their abysmal failure in record keeping. Where statistics are kept, they can rarely be relied upon as all too often other considerations play a role in their compilation. Swings in the trend and volume of criminal activity

are recognised through the increase in complaints and the resulting volume of work, rather than the patient recording and analysis of statistical data. Where data is recorded and analysed, it is through the painstaking and often frustrating manual method of entry and retrieval. Furthermore, information on criminal activity is almost exclusively considered the preserve of traditional law enforcement agencies, without the comprehension that monetary data is also obtainable from the Central Bank or Treasury; and that trade statistics from legitimate corporations and industries also grant an indication of the cost and extent of organized criminal activity.

IV. ORGANIZED CRIMINAL ACTIVITY IN NIGERIA

Nigeria has like most other countries had its fair share of organized criminal activity. Thankfully, what activity there is when compared to other regions in the world, is clearly in its infancy. However, as observed above, this has not given room for complacency as we fully realise our vulnerability and the potential dangers to our already struggling economy.

In the course of the last ten years, organized crime has manifested itself in Nigeria in the forms of stolen vehicles and artefacts, small-scale arms trafficking, in human beings and international prostitution, forged and stolen travel documents, and international financial frauds for which we are perhaps best known. The recorded cases of terrorism have since been discovered to be locally motivated and executed. The cases of stolen artefacts and vehicles, arms trafficking, international prostitution and financial crimes are presently the most bothersome. The methods employed in executing these crimes within Nigeria and the West African sub-region will now be briefly examined.

Vehicles are stolen off the streets of Nigeria in two principal ways. The first and less traumatic involves the theft of unattended cars using skeleton keys and "hot wiring" techniques. The second method deploys the use of violence and firearms and often results in injury, maiming and the loss of life. In both cases, the stolen vehicles, sometimes in convoy, are driven across borders to neighbouring countries where they are either cannibalised or sold holistically after few distortions.

The stealing of cultural artefacts which have great traditional and in some cases spiritual value has in recent times been on the increase. It is postulated that the end-users perhaps find a correlation between the age of the artefact and its aesthetic value. For the most part these artefacts appear to be stolen with the connivance of security guards and soon thereafter are smuggled out of the country in ingenious ways.

Instances of arms trafficking has generally been isolated and far between. However, with the recent conflicts along the West African coast an increased number of arms have found their way into the country through methods which suggest careful but unlawful planning and deliberation. Unfortunately, these weapons are subsequently used to commit felonious offences, which result in permanent impairments, mutilation and death.

In Nigeria, human trafficking and international prostitution are virtually synonymous. Italy appears to be the prime target of destination in Europe though other countries have had their fair share of the influx. This particular crime for the purpose of prostitution will be a bit more difficult to regulate principally because the "victims" are willing participants to the crime, who see the enhancement of their

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future in a foreign land through this practise and the fact that no law against prostitution exists in Nigeria.

International financial crimes, the Advance Fee Fraud scam in particular, are what Nigerians are perhaps best known for. The frauds executed by Nigerians, usually on foreigners in the western world take on diverse forms. They include, but are not exclusive to, the transfer of funds from over-invoiced contracts, contract fraud on goods and services, real estate fraud, currency conversion scams, the sale of crude oil scams, etc.

**V. EXTRADITION & MUTUAL
LEGAL ASSISTANCE TREATIES AS
A SOLUTION**

If the growth of transnational crimes is to be stemmed, it is obviously going to require the co-operation of all countries not only affected, but also concerned by its development. However, an understanding of the nature of the crime and its differing effects on various regions of the world, and divergent areas within a region must be appreciated. Attention will naturally focus on law enforcement but all sectors of society have a role to play. Law enforcement agents must be trained however to recognise organized crime, which means a departure from the more traditional and conservative approaches to crime resolution. Not only does organized crime require specialised study and training, it requires innovative thought, initiative and a disciplined will. Policy makers must also be ready to devote resources on a par with those of the criminals, and legislate appropriately if it is hoped to achieve any meaningful progress.

A direct response to the growth and menace of organized crime has been Extradition and Mutual Legal Assistance Treaties, the latter of which is a relatively

recent development. They are primarily agreements between consenting nations to, on the one hand deliver to justice, persons within their territories who have reasonably and legally been shown to commit acts in defiance of the law, and on the other, grant assistance in the detection of a crime. The prime objective is to improve on the effectiveness of judicial assistance and facilitate its procedures.

Communication in respect of requests for extradition and legal assistance in Nigeria is usually between the Federal Attorney General and Minister of Justice and the Central Justice Department of the country involved. The treaties usually take on a similar form and include agreements regarding the summons of witnesses, taking down the testimony of witnesses, production of documents and records, locating and identifying persons or evidence, serving documents, executing requests for searches and seizures, collection of fines and other forms of assistance not prohibited by the laws of the participating states. Generally, the advantages of these treaties are only open to the prosecution (the State); the defence is required to obtain materials to facilitate its case under the laws of the host country. The wording and implementation of these treaties however may vary given the nations involved and the type of criminal activity targeted, or indeed the criminal who is the subject of investigation.

As stated above, Nigeria is in its infancy in respect to law enforcement and organized criminal activity. It has only in the last ten years entered Mutual Assistance Treaties with other nations, the ratified number of which is not immediately clear. This list is not however exhaustive. At the time of writing this report the statistics on requests to and by Nigeria in the last ten years was not immediately available. However, there is

a consensus, that very few requests have been received. It may be that a greater number of requests will now be received as Nigeria has democratised.

VI. NIGERIA'S EXTRADITION POLICIES

Nigeria's Extradition policies have in principle remained the same since 1957, and include the following:

- i. The offence for which a fugitive is requested must not be of a political, racial or religious nature;
- ii. Request must be processed with reasonable evidence of culpability without which it may be refused.
- iii. There must be an assurance that the subject will only be tried and punished if convicted for the offence stated in the application of the requesting state.
- iv. Where the subject is already serving a jail term, he will not be extradited until the completion of the sentence.
- v. The fugitive will only be extradited to the requesting country, which does not have the right to further "extradite" him to a third country.
- vi. There must be reciprocity, otherwise Nigeria will not extradite its citizens to a country, which given the same facts would not have extradited their national to Nigeria.

A. Request For Extradition By Nigeria: Procedure

Before Nigeria makes a request to any country, the police will conduct a thorough investigation and assemble applicable evidence. On satisfactory completion of the investigation, the case will be filed in a Magistrates Court, and if in the opinion of the presiding magistrate a *prima facie* case has been established, a warrant of arrest

against the subject will be issued. The case file (in duplicate) will then be forwarded to the Ministry of Justice for vetting, and upon approval, the Minister will countersign the warrant of arrest and make formal representation to the country concerned.

B. Request For Extradition Made to Nigeria: Procedure

In the case of a request being made to Nigeria for the surrender of a fugitive, the requesting nation, (if a treaty exists), will apply for the extradition of the fugitive to the Federal Attorney General and Minister of Justice, through the Ministry of Foreign Affairs. After examination of the request, the Minister of Justice may if he deems it fit, direct the Inspector General of Police to ensure the arrest and interrogation of the fugitive with respect only to the allegation contained in the request. The suspect will subsequently be arrested and brought before a Magistrate who will determine whether there is sufficient evidence to justify his being charged with the alleged offence. If the magistrate is so satisfied, the subject will be remanded in prison, and a report sent by the Magistrate to the Minister of Justice, awaiting a decision as to whether extradition can be fulfilled or not. The subject may appeal provided the appeal is lodged within 7 days. The subject (depending on the offence in question) may also be released on bail according to laid down procedures. If his appeal fails, he must be surrendered within 30 days.

VII. NIGERIA'S POLICIES ON PROVIDING LEGAL ASSISTANCE

Nigeria has only in the last 15 years concluded agreements with various nations on Mutual Legal Assistance in criminal investigation. In most of these agreements, there is a common refrain in Nigeria's

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policies, which include inter alia:

- i. That there must be an agreement on legal assistance with the requesting state.
- ii. The object of the request must be stated. Either the procuring of further evidence for a suspect already charged to court or an exploratory investigation to gather facts and evidence against an unidentified suspect. In the case of the latter, the criminal proceedings must be open to appeal.
- iii. Precise data on the subject matter and subject will be provided. E.g. names, dates of birth, profession/occupation, known addresses, description/likeness etc.
- iv. Where the recording of testimony or the search and seizure of property is required, an elaborate questionnaire and description of evidence is necessary.
- v. An assurance that will be given that all evidence and information obtained regarding the request will only be used against the suspect in the allegation stated in the request.
- vi. The allegation so stated must not be of a political, racial or religious nature.
- vii. Requests may be refused if it could jeopardise the sovereignty, security, public order or other essential interests of Nigeria.

A. Types of Assistance Granted

Subject to the terms of the individual agreements, the following types of assistance are usually given:

- i. Recording of statements;
- ii. Service of documents;
- iii. Execution of searches and seizures;
- iv. Surveillance physical and electronic;
- v. Provision of documents or other

records;

- vi. Collection of fines;
- vii. Location and identification of suspects;
- viii. Other requests formally agreed upon.

B. Reasons for Rejecting Requests

In some instances, it is necessary to reject requests. These rejections, few or non-existent as they may be, are usually hinged on one of the following:

- i. Lack of valid co-operation or agreement;
- ii. The lack of an equivalent offence in Nigerian criminal laws;
- iii. The offence being of a political, racial or religious nature;
- iv. Insufficient evidence;
- v. If the requesting nation does not permit the extradition of its nationals in similar circumstances;
- vi. Existence of the death penalty.

VIII. PROCEDURE FOR GRANTING LEGAL ASSISTANCE

All requests for assistance are communicated directly to the Central Authority (Federal Attorney General and Minister of Justice) through the Ministry of Foreign Affairs, where they are reviewed according to the policy guidelines above. If considered to be within the guidelines, the request is referred to the Inspector General of Police (Head Police Officer) for action. Assistance is granted only on the issues requested that are stated specifically. The Criminal Investigation Department is usually mandated to ensure assistance although other departments may assist. Where appropriate, court orders will be obtained for arrests, searches and Seizures. Finally, upon compilation of a case file, the filing of the case in a criminal court, and the issuance of warrant(s) (where applicable), the case diary is referred to the

central authority for final adjudication and request.

Where Nigeria wishes to request, appropriate evidence will be gathered and registered in a court of competent jurisdiction, which will if it sees fit, issue a warrant for the arrest of the subject. The file and warrant will then be processed to the Minister of Justice for further vetting, and upon approval a request will duly be made by the Minister.

IX. THE STRUCTURE OF THE CENTRAL AUTHORITY

The Central Authority in Nigeria is the Attorney General and Minister of Justice. For the purpose of extradition and legal assistance requests in criminal matters, the department of International Law, headed by a director reviews all requests. In the department there are several lawyers who specialise in different aspects of international law, and are assigned "tables", which indicate the area or country of their specialisation. The requests are reviewed at this level and referred with report to the Minister for appropriate action. In practice, the action of the minister is not entirely unilateral as he refers his decision to the Presidency.

X. CONCLUSION

The fight against organized crime should be a universal one with all hands on deck. It should be borne in mind that organized crime is not always violent, and quite often is clandestine in character. It is therefore difficult to analyse its effects and impact upon society as for instance would be the case in money laundering. Violent manifestations are easier to analyse, and the chance of the real threat avoiding attention is substantially reduced. Pro-active measures are necessary to contain this situation. As each region and indeed country probably has its unique

characteristics, approaches may differ but the intent should remain the same. What is needed is a holistic approach to the problem, which should include the elimination of contributing factors, in addition to dealing with organized crime in a preventive and suppressive manner. In this regard therefore, the following suggestions are postulated:

- i. Strengthening and transforming the capacity of the criminal justice system to deal with organized crime in terms of making it a more efficient and effective process;
- ii. Initiating measures aimed at changing public values and attitudes towards crime, and involving communities in crime prevention;
- iii. Improving control and management of international borders to prevent trade in illegal commodities etc.;
- iv. Creating and training specialised units and border police to handle organized crime;
- v. Legislating against organized crime and its proceeds more aggressively;
- vi. Including organized crime prevention methods in the curriculum of Detective Training Academies;
- vii. Encouraging various government Intelligence Units to focus on organized crime as it affects the security of the state;
- viii. Increasing co-operation between security agencies and Non-Governmental Organizations and the business community;
- ix. Strengthening the organizational, human and financial resources of law enforcement departments to respond to organized crime;
- x. Reducing the bottlenecks in international co-operation;

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- xi. Entrenching a universal Code of Ethics/Conduct for law enforcement agents and civil servants.

The fight against trans-national organized crime is bound to be a difficult one but not an impossible one. Reliance should be on cooperation between security agencies within a country and between countries. Only when hands are joined in common intent, mutual determination and desire will the menace of trans-national crime be defeated.