

# Analysis of Fundamental Challenges in the Combat of Transnational Crimes

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## ABSTRACT

Transnational Crimes have existed in some form and to some degree since the inception of organized societies. They have remained prominent in popular culture and policies, evolving through different eras, under different political and economic conditions. These crimes encompass various offences ranging from organized to corporate and political crimes. Specifically, some of the crimes that are transnational in nature include human trafficking, cybercrimes, drug trafficking, migrant smuggling, sea piracy, terrorism amongst others. Globalization enlarged their markets, technological advancements accelerated their trends and the internet fostered development of looser transnational criminal networks. Despite the challenges posed by state sovereignty, the International Community have been actively involved in the suppression of transnational crimes. This is evidenced in the evolution of various Suppression Conventions, principal of which is the United Nations Convention against Transnational Organized Crime (UNTOC). Several International Institutions such as the United Nations Office on Drugs and Crimes (UNODC) and the International Criminal Police Organization are also in place to combat transnational crimes. The effectiveness of these mechanisms has been clogged by democratic deficits over the development of Transnational Criminal Law, state complicity in transnational crimes, the absence of a transnational criminal justice system amongst other problems. Recommendations were made in the study for the legitimization of Transnational Criminal Law, establishment of an effective central and neutral authority to oversee international cooperation in transnational criminal matters, stronger infusion of human rights safeguards in transnational criminal justice, establishment of a multi-disciplinary team for the investigation and prosecution of transnational crimes amongst other recommendations. The doctrinal research method was adopted for the study as information contained in the research was gathered from consultation of both secondary and primary sources which are related to the subject of discourse.

## INTRODUCTION

Globalization has been accompanied by a dramatic increase in transnational crimes, posing a huge threat to the socioeconomic basis of societies and the confidence reposed in the rule of law. Transnational crimes are violations of law that involve more than one country in their planning and execution.<sup>[1]</sup> Their actual or potential effects transcend national boundaries and are hardly ever of entirely local interest.<sup>[2]</sup> This explains the very pivotal involvement of the international society in combating the upsurge and multiplicity of transnational crimes. It is feared that for every transnational offence committed, there is a knock-on effect in other states. However, the issue to be explored is whether a coherent juridical match can be found to complement the evolving nature of transnational crimes internationally?<sup>[3]</sup>

Transnational crimes encompass various crimes ranging from organized to corporate and political crimes.<sup>[4]</sup> Specifically, some crimes that are often transnational in nature include illegal drug trafficking, human trafficking, environmental crimes, money laundering, illegal weapon trafficking, smuggling of cultural

artifacts, terrorism, intellectual property theft, illegal trade in wildlife, human organ trafficking, aircraft hijacking, sea piracy and counterfeiting. Other forms of emerging transnational crimes are cybercrime, identity related crimes, sale of fraudulent medicines[5] and invention of diseases and viruses also referred to as bioterrorism. Perpetuation of these transnational crimes have been made easier, faster and cheaper by technological innovations, deregulated financial markets and more open borders which have allowed increased inflow of people and money.[6]

Two major obstacles pose a challenge to the effectiveness of aligning the processes of combating transnational crime with international law approaches. These obstacles are rooted in the principle of territorial sovereignty and cultural relativism.[7] Most countries of the world have actively defended their sovereignty, each country claiming to have more adequate and efficient legal system than the other. With this idea, no country is willing to lose its sovereignty under the influence of globalization.[8] It is however, evident that due to the cross-border status of transnational crimes, territorial jurisdiction that accrues to a state by reason of its sovereignty may not always be sufficient to resolve transnational offences.

Despite the challenges posed by states' sovereignty related issues, international protective mechanisms have been actively engaged in combating transnational crime over time. The United Nations responded to the globalization of transnational crime by developing Suppression Conventions since the 19<sup>th</sup> century and this approach has become steadily more significant.[9] The Suppression Conventions are crime control treaties concluded with the purpose of suppressing transnational harmful behaviours. They can be said to have established a system of transnational criminal law.[10] These Conventions provide a range of complex provisions for the criminalization of certain offences by state parties in their domestic law for severe penalties and for extra-jurisdictional procedural measures.[11] Although the origins of these treaties are international, penal proscriptions within them are national. The offences established by these treaties are crimes of international concern or common crimes against internationally protected interests.[12]

The efforts made towards combating transnational crime at the international realm find their basis in the significant advancements towards mutual legal cooperation as reflected in the adoption by the General Assembly of the United Nations of the 1990 Model Treaty on Mutual Assistance.[13] The instrument currently has over 130 signatory states. One of the earliest Suppression Convention related to transnational crimes is the 1988 Narcotic Drugs and Psychotropic Substances (1988 Drug Convention) which contains a standalone article on mutual legal assistance. The article provides a basis for state parties to the Convention to seek and provide a broad range of assistance in transnational crimes evidence gathering.[14] The United Nations Convention against Transnational Organized Crime (UNTOC Convention) 2000 which entered into force in September 2003 is another milestone Suppression Convention of transnational crimes amongst others. Regional suppression treaties in the area of transnational crimes also abound. Several international judicial cooperation regimes, institutions and prosecution approaches are also in place. The International Criminal Police Cooperation (INTERPOL) and regional agencies such as the European Law Enforcement Organization (EUROPOL), ASEAN Police Cooperation (ASEANPOL) also play crucial roles.[15] The prosecution approaches are by extradition, expulsion, transfer of sentenced person (TSP), Mutual Legal Assistance (MLA) in criminal matters and letter of rogatory.

The transnational Suppression Conventions in existence are basically consent based. This implies that even though they are regulated internationally, they operate by reason of treaties and agreements of states. It is often said that the modern era of international policies is characterized by the idea of the rule of law and the principle of *pacta sunt servanda*[16] (agreements must be honoured). The basis for the named principle and compliance of states with accepted rules being the shared commitment and comity of states.[17] States are therefore under an obligation to adhere or comply with international provisions or norms to which they consent while protecting their interests and exercising their rights as sovereigns.

A critical look at the existing international protective mechanisms as they currently are, reveal a high degree

of ineffectiveness occasioned by questions pertaining to their legitimacy and acceptability, a fundamentally flawed enforcement system, human rights problems amongst other challenges. Hence, the need for adoption of new measures to complement growing trends in transnational criminology.

## MANIFESTATIONS OF TRANSNATIONAL CRIMES

The fictionalized images of transnational crimes are far from the truth. The reality is far more about fluid organized criminal networks profiting from the sale of illicit goods on demand, provision of illicit services and infiltration of businesses and government operations. Not a day goes by without a report of various operations of transnational crime perpetrators. The US Immigration and Custom Enforcement (ICE) apprehended 67 unlawfully present non-citizens convicted of drug trafficking or possession of drugs such as methamphetamine and heroine during a nation-wide enforcement effort in January and February, 2023.[\[18\]](#)

In 2022, a Nigerian woman named Omoruyi Charity also known as Joy Jeff who played a key role in trafficking women to Italy, Spain and the Netherlands for prostitution was arrested. She was convicted and sentenced to 13 years imprisonment. The said woman lured young girls from remote Nigerian villages to Europe with the false promise of easy employment. The girls were taken through Libya to the Europe and coerced into prostitution upon their arrival. They are reportedly forced to pay between 30,000 to 35,000 Euros for being crossed over to Europe.[\[19\]](#)

In February 2021, a Nigerian business mogul, Obinwanne Okeke better known as Invictus, who was once listed on the Forbes Africa 30 under 30 was convicted and sentenced to 10 years imprisonment over internet fraud charges. He was involved in computer-based intrusion fraud scheme which caused approximately \$11 million in known losses to his victims. Through subterfuge and impersonation, Obinwanne Okeke engaged in multiyear global business email and cyber hacking schemes. According to court documents, Mr. Okeke 33, operated a group of companies known as Invictus group based in Nigeria, from approximately 2015 to 2019, Okeke and others engaged in a conspiracy and conducted various cyber frauds, email compromise schemes targeting companies one of which was Unatrac Holding Limited.[\[20\]](#) He was arrested in 2019 and is currently serving a 10-year jail term in the US.

In August 2022, three Nigeria citizens were extradited from the United Kingdom for business email compromise (BEC) fraud schemes in the Western District of North Carolina, Southern District of Texas and Eastern District of Virginia. The scams allegedly perpetrated by the defendants and their co-conspirators targeted unsuspecting victims including universities in North Carolina, Texas and Virginia, causing more than 5 million dollars in losses.

A Nigerian social media influencer called Ramon Abbas popularly known as Hushpuppi was arrested in Dubai in June 2020 for multimillion dollar fraud charges filed against him by the United States government. Abbas laundered money through various online crimes including bank cyber-heists and business email compromise, hacked into email accounts to deceive victims into wiring money to him. In 2019, he helped launder \$14.2m stolen by North Korean hackers from a bank in Malta, funneling the money through banks in Romania and Bulgaria. He also helped launder millions of pounds stolen from a British company and a professional football club in the UK, got a New York based law firm to transfer nearly \$923,000 to a criminal account and acknowledged in a plea agreement that he helped defraud someone in Qatari who sought a \$15m loan to build a school. He was subsequently convicted and sentenced to 135 months in prison. He was also ordered to pay \$922,857 in restitution to the law firm and \$809,983 in restitution to the Qatari victim. He was subsequently convicted for money laundering, business email compromise scams and other online frauds.[\[21\]](#)

Most transnational crimes may also be politically motivated, terrorist groups are good examples of politically motivated crime organizations. The word “organized crime group” is synonymous with other

words such as gang, mafia, mob, ring or syndicate. More often than not, the governments in place in most countries, where transnational organized crime groups are resident, benefit from the influence and affluence of these groups. These organized crime groups are sometimes used as instruments for the manipulation of elections processes and the actualization of other political benefits and desires. Having played such pivotal roles, it becomes obligatory on the government to reciprocate such efforts. The resultant effect is that these organized crime groups automatically gain a strong hold over the government and are able to wield governmental policies to satisfy their organizational whims and caprices.

Italy supplies the striking examples in literature as regards the said nexus.[\[22\]](#) Former Prime Minister Giulio Andreotti was accused of protecting interests of *Cosa Nostra* by intervening to fix the trials of some of its leaders. Notoriously, the Prime Minister transformed the Andreotti faction into a permanent agency providing services to *Cosa Nostra*, allowing it therefore to intervene in all areas of public life.[\[23\]](#) In exchange Andreotti enjoyed the Mafia's electoral support. Also, Former Mayor of Palermo, Vito Ciancimino served a sentence for Mafia associations and was considered to have been a member of the Corleone Mafia while he was a mayor.[\[24\]](#) Other studies reveal that Cosa Nostra openly supported between 40 and 75 percent of the Christian Democrat deputies in Italy and about 4.0 percent of all the deputies elected in Western Sicily between 1950 and 1992.[\[25\]](#) In 2007, 18 out of the 50 regional councilors in Reggio Calabria were under investigation for mafia associations and barter votes.

## **SOCIO-ECONOMIC AND POLITICAL PROPELLANTS OF TRANSNATIONAL CRIMES**

### **(a) Corruption**

Corruption is considered to be the most powerful promoter of transnational crimes. It is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to the human society to thrive.[\[26\]](#)

Organized crime groups involved in transnational crimes target and corrupt law enforcement agents whose job specifications are related to the regulation or combating of the crime such crime groups are into. The high rate of corruption is reflected in the inability of law enforcement agents and government officials to effectively carry out their sworn duties in curbing transnational crimes. It is no longer news that most law enforcement agents are on the pay roll of most crime lords and drug cartels, as such, they become highly incapacitated and unwilling to fight them. Some infiltrators even pursue employment in border control authorities solely to engage to smuggling activities. A customs officer was arrested in 2007 in El Paso Texas at her duty station for conspiracy to smuggle marijuana from 2003 to 2007. She was later convicted and sentenced to 20 years in prison.[\[27\]](#)

In 2020, Jose Irizarry who was known as the most corrupt agent in the U.S Drug Enforcement Administration pleaded guilty to 19 corruption counts which included money laundering and was sentenced to 12 years in prison.[\[28\]](#)

Law enforcement agents who refuse to be bribed are either blackmailed or intimidated into giving in to the bids of these men of the underworld. Where the organized crime groups fall out of luck and end up in jail, most of them still attempt to run their illegal businesses from prison by bribing prison officials and wardens too. There have been cases of crime lords even buying themselves presidential pardon as is evident in Peru.[\[29\]](#) Massive scale funding of politicians and their political campaigns also account for the cold feet developed by most governments who are products of such political funding to bite the fingers that fed them by setting in motion laws to combat the crimes perpetuated by these crime lords. In Honduras, President

Juan Hernandez and Ex-President Pepe Lobo were implicated as co-conspirators in a transnational crime case. The money laundering and drug trafficking alleged in the case was leveraged to ensure the co-conspirators political power. Organized crime thrives and prospers as a result of the corruption of the society as well as the fact that the issue of corruption has not been considered a government agenda by most nations.

### **(b) Poverty**

Poverty is another dominant factor which facilitates transnational crimes. Poverty is a denial of choices and opportunities, a violation of human dignity, lack of basic capacity to participate effectively in the society. The high occurrence of transnational crimes is associated with high levels of poverty and unemployment. [30] The high proportion of transnational crimes are perpetuated using young people. These young people are most affected by high levels of unemployment, hence they tend to embrace options which appear to be a fast way out of abject poverty. They readily embrace crime as a means of livelihood. [31]

### **(c) Poor Governance**

Another factor responsible for the high rate of transnational crimes is the issue of poor governance. [32] That there have been institutional vacuums, failures and inconsistencies in the fight against transnational crimes by states. [33] In most sovereign states, transnational crimes thrive as a result of weak and fragile government institutions as well as geographical closeness to transnational crime markets. [34] Bad governance does not only undermine development, it also drives violence and crime.

When a state fails in its duties and ability to meet society's basic needs and expectations, it is perceived as inherently lacking legitimacy. In such weak states where the government lacks authority and legitimacy, competing forms of government such as organized crime structures emerge to provide services, thereby entrenching themselves as capable alternatives to formal state authority. In many countries, it has become very difficult to determine where organized crime ends and government begins. In El Salvador, a large segment of the population believed gangs ruled rather than government. In Afghanistan, transnational crime networks exploit numerous mining contracts from which government actors' benefit. [35] In Colombia, it is widely alleged that various local law enforcement and local authorities are complicit in the illegal gold mining taking place in their territory. [36] Nigeria is not faring any better, even though there are governmental efforts geared towards the fight against transnational crimes.

### **(d) Geographical Position**

Another significant factor facilitating transnational crime is the geographical position of most countries. Most countries are vulnerable to transnational crime because their geographical locations make them suitable transit points for transactional crimes for example drug. [37] The geo-strategic location of a states such as Mexico and Colombia for instance act as the starting points for the routes of the global business of cocaine. The African corridors link countries like Venezuela, Guyana, Colombia and Brazil, connecting Guinea-Bissau, Togo, Nigeria and other West African countries for transporting of Cocaine to Europe. [38] South American drug cartels have also been successful in marketing their goods via the new developed West African transit nation's corridors. [39]

### **(e) Social Movement or Migration**

Social movement or migration is another propelling factor of transnational crime. One of the characteristics of globalization has been the significant population movements driven by a mix of push and pull factor ranging from ethnic conflicts and environmental degradation to the desire for economic betterment. The longing for better living, good education and exposure prompt people to leave their countries to reside in another. The increase in migration and the growth of ethnic networks that transcend national borders have



proved valuable to the operations of transnational crimes actors. Immigrants often times do not have crime commission as an intention but desperation may cause them to violate immigration rules, procedures and quota leading to illegal immigration which in turn opens them up to be exploited by criminals.[\[40\]](#)

## **IMPACT OF TECHNOLOGICAL DEVELOPMENTS ON TRANSNATIONAL CRIMES**

Technology has created a dynamic rapid and complex world. The transnational nature of transnational crimes has been corroborated by technology, due to its global outreach. Technology has offered a cooperative medium for different organizations to carry out multiple transnational crimes. It has also facilitated financial transactions inform of money laundering to achieve illegal goals. The anonymity provided by technology adds up to the security of transnational crimes.

The internet has become a space to carry out both legal and illegal ventures with huge profits, and at low. Online Platforms, Internet Applications, Soft wares, chat rooms, webcams, voice chat systems, Artificial Intelligence systems etc, have become major tools in the hands of transnational crime actors to perpetrate their enterprise. An example is that human traffickers now market their victims on internet websites and online platforms.[\[41\]](#) In transnational crimes, AI is used in management of supply chains, social media data mining and various other types of analysis and problem solving. Most transnational crime syndicates have operations on all continents of the world and AI helps them run those operations more efficiently and speedily than ever.

The encrypted phone messaging application is another form of technology, like sky ECC and Encrochat,[\[42\]](#) as well as WhatsApp exist. End to end encryption apps provide a protected channel of communication for criminal entities to network with international partners by concealing their identities and location.[\[43\]](#)

Furthermore, money is a primary motivation for virtually all transnational crimes. To hide profits made from their illegal businesses, transnational crime actors at times invest in Bitcoins and other online currencies. Some cryptocurrencies like Zerocoin and Dark coin are crafted so well, having the best encryption and protection from being traced. Some of these cryptocurrencies also enable large transactions which is visually a difficult task in physical mode. Crypto currency is a digital currency which works on the block chain technology, and featured with decentralization, and end to end encryption which adds up to the clandestine nature as well as the anonymity.[\[44\]](#)

As transnational crime actors adapt and maximize the use of technology so must international efforts towards curbing their activities embrace and incorporate adequate use of technology. These is a great need for intensive training and education of law enforcement agents technologically as well as employment of experts for specialized technological operations. Strong collaborations should exist between private players such as social media giants, service providers, companies, data protection organizations and financial institutions. There is also need for more regulatory frameworks for social media creators which should aim at entrenching an accountability and responsibility disposition.

## **AN OVERVIEW OF SELECTED STATES' APPROACHES TO THE SUPPRESSION OF TRANSNATIONAL CRIMES**

Despite the necessity and urgency to design and realize measures to control transnational organized crime at the local levels, the timeliness and effectiveness of solutions on ground still leave much to be desired. The reasons are explainable by a number of circumstances. These fall into the following categories namely, the real state of financial and personnel resources of every state, the degree of corruption of the administrative machineries, especially law enforcement agencies and the specifics of mutual relations between criminal

groups and the political and economic systems in concrete societies.<sup>[45]</sup>

In response to the increasing threat from transnational and domestic criminal rings, a number of states passed substantial amendments that have changed into the norms of national criminal law. In the U.S, there is a certain freedom of action for law enforcement agencies. They have the right to independently start an investigation regarding a concrete person both juridical or physical or submit a final decree for the prosecution's consideration. The prosecutor has the discretion to prosecute or not.<sup>[46]</sup> In Great Britain, investigative organs reserve the right to take decisions about investigations at their discretion. Such discretion must however be exercised with a high sense of professional responsibility. However, there are more possibilities of violation of the rights of defendants.<sup>[47]</sup>

In the U.S, the Federal Bureau of investigation (FBI)<sup>[48]</sup> is the main investigative organ of crime including transnational crimes in collaboration with the Interpol. In addition, special police units comprising of experienced federal investigators are attached to these brigades. In the governmental district of Washington (District of Columbia) there is a Bureau on organized transnational crime as a part of the criminal Department of the Ministry of Justice of the US. This Bureau is manned by expert attorneys for strategic investigations. The council of organized crimes in the United States coordinates the activity of these departments. The leaders of various investigative organs and executive officials of the Department itself staff it.<sup>[49]</sup>

In Germany, the commission on organized crime coordinates transnational criminal investigations pertaining to criminal groups on a national basis. The leaders of the federal criminal service and territorial investigations brigades man this commission.<sup>[50]</sup> In Great Britain, there is a continuing collaboration between criminal investigation brigades and municipal police brigades in the investigation of criminal cases and collection of strategic information, including information about transnational organized crime. In Italy, numerous police organizations regularly coordinate their activity on the interregional and national level using a joint database which is situated in the appropriate center of the ministry of interior affairs. Responsibilities for the coordination of the preliminary and court investigations are assigned to special district attorneys. Thus, provision of close coordination of the activity of all law enforcement organs at the national level positively influence the solution of problems related to control of organized including transnational crimes.<sup>[51]</sup>

In Australia, each of its nine jurisdictions have their own institutions for dealing with transnational crimes.<sup>[52]</sup> At the federal level, the Australian Crime Commission (ACC) replaced the National Crime Authority and two other federal agencies, the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments. The ACC has a unique government model,<sup>[53]</sup> its board is comprised of all the territory and State Police Commissioners and the Commissioner of the Australian Federal Police (AFP) as well as the heads of relevant common wealth agencies such as the Attorney General's Department, Australian Customs and Border Protection Service, the Australian Securities and Investments Commission, the Australian Tax Office and the Australian Security Intelligence Organization. In addition, the ACC has a responsible minister and a dedicated parliamentary joint committee to oversee its activities. Several functions are entrusted to the ACC including Monitoring and Forecasting trends in transnational organized crime in Australia. They conduct investigations with coercive powers of questioning and provide coordinating role for the nine jurisdictions and many agencies responsible for suppressing transnational crimes.

Two other national institutions are worthy of mentioning. They are the Australian Anti-Money Laundering and Counter-Terrorism Financing Regulator and Specialist Financial Intelligence Unit.<sup>[54]</sup> It supervises industry compliance with relevant legislation and analyzes the financial transaction report submitted by businesses. It also leads Australian's role in the International Financial Action Task Force on money laundering (FAFT). The second agency is CRIMTRAL established by the Australian government as a technology development agency aimed at generating national global approaches to information sharing

between law enforcement agencies such as criminal record, finger print and DNA databases.<sup>[55]</sup>

New Zealand's Organized and Financial Crime Agency (OFCANZ) was established as a semi-autonomous unit within the New Zealand police. Its mission is to combat national and transnational crimes through multi agency action. It works with agencies such as the National Intelligence Centre (part of the New Zealand Police) the Ministry of Justice, the Serious Fraud Office, the Inland Revenue, the Customs Service, the Ministry of Social Development and the Department of Internal Affairs to mount target operations against identified targets, explore preventive options, build intelligence e.t.c.<sup>[56]</sup> New Zealand is also a member of the FAFT, an intergovernmental agency sponsored by the Organization of Economic Cooperation and Development (OECD) whose purpose is to develop and promote national and international standards of best practice on anti-money laundering and the combating of terrorist financing.<sup>[57]</sup>

Nigeria's status and role as a regional power continues to impact the entire West African sub-region. Nigeria has shown commitment to working with other countries including the international community in combating transnational crimes.<sup>[58]</sup> The threat of transnational crimes has been attacked in Nigeria through the instrumentality of legislations, policies, law enforcement measures, military measures as well as socio-economic measures. Legislation wise, several relevant Acts have been passed over the years in response to the menace of transnational crimes.

These include the Anti-Terrorism Act,<sup>[59]</sup> Anti-Piracy Act,<sup>[60]</sup> Money laundering<sup>[61]</sup> and Terrorism financing (Prohibition Act)<sup>[62]</sup>e.t.c.<sup>[63]</sup> Notable institutional mechanisms in fighting against transnational crimes in Nigeria include the National Drug Law Enforcement Agency (NDLEA),<sup>[64]</sup> empowered by its Act to investigate persons suspected to have dealing in drugs and other related matters, National Agency for prohibition of trafficking in persons and other Related Matters (NAPTIP)<sup>[65]</sup> which is a Federal Government Agency established to fight trafficking in persons using the trafficking in persons (prohibition) law; the Economic and Financial crimes commission charged with the responsibility of enforcing all economic and financial crimes laws in Nigeria amongst others<sup>[66]</sup>. Law enforcement wise, efforts have been made towards improvement of the customs and immigration services, installation of detection equipment at airports, seaports, internal security and policing, intensive training of officers, improved intelligence gathering and analysis, community policing and prosecution of suspects. Socio-economic measures such as the eradication of the root causes of transnational crimes have also been utilized though with levity. The roadblocks to effectively curbing the menace include poverty, unemployment, economic and political marginalization, human rights abuses, corruption, weak security institutions etc.

Nigeria has also taken several measures towards the improvement and strengthening of their overall border management. After the 1981 clash with Cameroon, Nigeria fenced its entire international boundaries. New border posts were established and modern border patrol and surveillance equipments were procured. In 1984 border closure was designed to control widespread currency trafficking and smuggling. In 2001, Nigeria and Benin established a joint police patrol of same border to check criminal activities across it. The Nigeria Benin border police is the first of its kind in the sub-region.<sup>[67]</sup>

Unlike before, the security of Nigerian borders and borderland currently involves almost all security agencies including the intelligence agency. While the custom, immigration and other paramilitary organizations visible in the border areas, the country's security apparatus which is the Nigeria police service and the State Security Service (SSS – intelligence service) are at the forefront of the country's efforts against transnational crimes.<sup>[68]</sup> The courts are not left out as they are greatly involved in the prosecution of transnational offenders. The efforts remain ongoing and have yielded some gains. However, lack of political will, bad governance, poorly equipped and motivated security and enforcement agencies continue to inhibit real progress.<sup>[69]</sup>

The importance of effective regional – national partnership cannot therefore be overstressed neither can the



importance of the support of the international community in fighting transnational crimes be said to be overemphasized. There is a huge need to engage a network of regional and international actors as opposed to a unilateral single nation approach in order to overcome the national inhibiting factors. The powerful and empowered states of necessity ought to support regional and sub-regional initiatives by providing technical and financial resources to enable them fight transnational crimes effectively. Also, there is a crucial need for the notion of preventive diplomacy to be broadened.

## CHALLENGES IN CURBING TRANSNATIONAL CRIMES INTERNATIONALLY

### Democratic Deficit over the Development of Transnational Criminal Law

Developed states have greatly influenced the norms making up the legal field of transnational crimes. [70] Transnational crimes and the legislative responses to them in general are founded on the ideas of developed states who have greatly influenced the construction of the prohibition regimes against transnational crimes to accommodate their own domestic interest, while the developing states are convinced, induced and coerced to embrace the dictates.

The power imbalances which enable certain states to exert such influence on others are rooted in colonialism. As long as the very hegemonic power imbalances that made the specific construction of the legal regimes possible are maintained, there will always be legitimacy and acceptance issues as far as transnational criminal policies are concerned. [71]

The legal implication of the democratic deficit in the development of transnational criminal laws is that the states that influenced these laws became centers of authority in transnational criminal matters. Their approaches to curbing the menace are adopted and imposed on other states without a thought for their environmental and social peculiarities. This results in very detrimental consequences for developing states whose weak criminal justice system can be overwhelmed or distorted by unguided application of the influenced policies or laws. [72] As long as transnational criminal laws are in the light grip of political global power struggles, solutions to their hegemonic problems will remain elusive. There is therefore a great need for states to trade and neglect their pure pursuit of self-interests for collective interests. [73] Consensus of the minds of states on transnational criminal justice agenda ought to be achieved through wide consultations, strict application of democratic values and due regard for all levels of interests in order to guarantee global acceptance and legitimacy.

### Lack of a Centralized Criminal Justice System

It is strongly argued that the greatest failure of the existing systems and mechanisms for international protection against transnational crimes is that they leave enforcement, prosecution and punishment of the offences or transnational crimes solely to individual nations, leaving too many loopholes for transnational crime actors. The existing mechanisms have failed to create systems that ensure that suspected offenders are indeed arrested investigated properly charged, prosecuted and punished adequately and fairly. [74]

Transnational Crimes Conventions provide for mechanisms to enable signatories to prosecute offenders of transnational crime in their territory (*aut judicare*) or seek extradition of those offenders located abroad (*aut dedere*). Although countries have multiple bilateral and multilateral tools to seek extradition and or prosecute persons involved in Transnational Crimes, the same range of tools, including national provisions as well create great obstacles to the effective and efficient prosecution of offenders. Both domestic and international law provisions enable countries to legitimately refuse extradition, resulting in no action taken against suspects at all or at best suspects are subjected to mock trials to satisfy the *aut dedere aut judicare*

obligation.[\[75\]](#)

Transnational Crimes Conventions allows countries to refuse extradition if they have no bilateral extradition agreement with the requesting country,[\[76\]](#) if they suspect that the person will be prosecuted for reasons of gender, ethnicity, nationality, race, religion or political opinion, if their domestic laws prohibit the extradition of their own nationals etc.[\[77\]](#) These bases for refusal of extradition more often are used to frustrate the ends of justice. In effect, the current system of transnational criminal law provides a patchwork of mechanisms for judicial cooperation, it is fully dependent on domestic prosecution for results. Domestic courts therefore, enjoy a priority as regards exercising their criminal jurisdiction over transnational crimes.[\[78\]](#) However, in event of infusion of states bias during prosecution or the refusal of a state to extradite or prosecute, there is a great need for resort to a neutral court which identity and Jurisdiction is clearly defined.

The incapacity of International Organizations such as Interpol to initiate proceedings, conduct investigations or effect the arrest of persons and seize assets as a neutral body also constitutes a huge challenge. The Interpol relies on the voluntary cooperation and contribution of member states with little or no checks and balances.[\[79\]](#) It is for the foregoing reasons that the argument for a centralization of powers to investigate, prosecute and punish transnational criminals hold sway.

The argument for a strong centralized power to investigate, prosecute and punish transnational organized crime and terrorism is not without basis. The infiltration of transnational crime actors in state governance is another major reason for a neutral international agency to complement and check the activities of national authorities. This argument does not seek to overthrow the reasoning in allowing domestic investigation and prosecution of transnational crime matters rather, it emphasizes the need for a centralized power to be activated where national agencies are unable, incapable or unwilling to propagate the ends of justice.

Without the universality of investigative, prosecutorial, penal measures and strong law enforcement regimes against transnational crimes, transnational criminals will continue to take advantage of countries and territories or systems where governments are unwilling or unable to control them. The common attributes of transnational crimes make an integrated approach in the fighting transnational crimes a logical one. Rather than observe the notions of sovereignty and unending issues of trust hindering the relations of law enforcement agencies, nations should be inspired towards generalization and integration of transnational crimes principles by the level of cooperation among transnational criminal networks. The challenge posed by transnational crimes can only be combated effectively if the investigation and prosecution of transnational crimes can be effected with the same ingenuity and innovation, organizational flexibility and cooperation that characterize the transnational crime networks.[\[80\]](#)

While domestic approaches may be effective in nabbing perpetrators of transnational crimes, a neutral and centralized arrangement would serve a better tool for addressing compromised states and the involvement of governments and highly influential personalities in transnational crimes. The unwarranted political and diplomatic considerations that had stood in the way of international penal cooperation should no longer be tolerated. A strong integrated approach to the investigation and prosecution of transnational crimes will provide a way of augmenting resources, mobilizing mutual support and offering assistance for what individual states are unable to do alone.

Where the evolution of a centralized system to oversee transnational criminal issues prove challenging, the International Criminal Court can play a complementary role in this regard. The International Criminal Court's (ICC) jurisdiction over transnational crimes will ensure greater certainty of arresting, prosecuting and punishing transnational crime actors. The ICC would make international law enforcement more efficient, adding another layer of criminal justice and forum for prosecution in addition to established national systems.

## State Complicity in Transnational Crimes

Many states have tolerated, sponsored and partnered with transnational crime organizations throughout history. In fact, some state governments, are in themselves a criminal organization, directly conducting drug trafficking, counterfeiting, money laundering and other criminal enterprises. Governmental and State complicity in transnational crimes occur along a spectrum.[\[81\]](#) Political actors within the state may be passive participants at one end or active protagonists within the transnational crimes' networks. Partial state involvement in transnational crimes entail systemic complicity of higher-level officials confined to some institutions such as the military, the law enforcement agencies e.t.c. Full state involvement entails the highest officials of the state running or sponsoring transnational crime activities.

Drug smuggling and arms trafficking remain some of the widely reported forms of states involvement in transnational crimes. France actively engaged in opium smuggling to support its colonization of Indochina. [\[82\]](#) Smuggling of illicit arms was very visible in the Iran-contra Affair, where in the US executive branch violated domestic and international laws to provide weapons to Iran as well as funding smuggling of weapons to the contra insurgency in Nicaragua. [\[83\]](#)

An extreme and most prominent instance of a state actively operating as a transnational crime organization is the Democratic People's Republic of Korea (DPRK). The state's involvement in transnational crimes purportedly acts across a wide portfolio of crimes including drug manufacturing, drug trafficking, weapons' trafficking, counterfeiting of goods, pharmaceuticals, endangered species trafficking, insurance fraud, human trafficking which are linked to the current regime than others. [\[84\]](#)

Another very prominent instance of state involvement in transnational crime is the case of Guinea – Bissau. Internationally, Guinea Bissau is regarded as a cocaine gateway and transitional point for narcotics trafficking from South America to West Africa and into Europe. It is asserted that the country is crumbling under the pressures posed by drug trade which is threatening to turn the territory into an epicenter of lawlessness and instability. The country was awarded the dubious distinctions of becoming Africa's first Narco State. [\[85\]](#)

The ascendances of transnational criminals partnering with states pose a significant threat to democracy and state stability. [\[86\]](#) The legal implication being that efforts to tackle transnational crimes menace in such an environment will require the collaboration of a wide range of neutral actors with necessary expertise to advance initiatives across multiple domains to strengthen accountability. [\[87\]](#) The intervention of an external authority is highly necessary as a compromised state will grossly try to sabotage every attempt from within to undo its stronghold over the state.

## Weak Inclusion of Human Rights Safeguards in Suppression Treaties

The manner of safeguarding of human rights in the suppression of transnational crimes has been very limited. The eagerness of states to enter into agreements for cooperation to suppress crime was completely disconnected from the extension of procedural protections for the individuals to face investigations and prosecutions. [\[88\]](#) Most state practices indicate that while some progress has been made, the above position is still extant, particularly outside the more robustly protective regime under international law.

The challenge is the very weak nature of human rights provisions in transnational crimes suppression treaties. States have resisted injecting human rights protection into the transnational criminal law system. This is very reflective in the suppression treaties themselves. The Vienna Narcotics Convention of 1988 merely made vague reference to protections that may or may not exist within the constitutional order of the party states. [\[89\]](#) The UNTOC [\[90\]](#) saw only slight improvements on this with a watery reference to due

regard for the rights of the defence and in the extradition provisions, specifically an obligation to provide fair treatment in keeping with all the rights and guarantees provided by the domestic law of the state party in the territory of which the person is present.<sup>[91]</sup> In all, the moribund level of protection in transnational suppression treaties which at their highest oblige states to adhere to their already existing international human rights law obligations when engaged in inter-state cooperation does not truly provide adequate protection at all.<sup>[92]</sup>

### **6.1.5 Vulnerability of the Interpol and the Crucial Problems faced in their operations.**

Interpol is the most influential actor in transnational policing matters. Regrettably, the organization is vulnerable to cases of misuse and abuse. It is no longer in doubt that certain states manage to exploit the tools of the organization to persecute and track political dissidents and non-aligned members of the media outside their borders. Despite the declared neutrality of the Interpol, there is still risk of the use of Red Notices and Diffusions by individual member states as an instrument of repression against political opponents.<sup>[93]</sup> The above is easily perpetuated by influential states because Interpol has little or no investigative powers but rather relies on and acts based on investigations carried out by the national police. In contrast to national police, Interpol is not a uniformed formation neither is it armed.<sup>[94]</sup> There are no executive powers such as the right to inspect, identify documents, detain and question suspects or control baggage etc. They are merely qualified to support and co-ordinate operational activities carried out by national police forces of member states through actions in the field of criminal intelligence. Noninvolvement of the Interpol in investigation processes makes it easy for states to manipulate their operations since they often cannot verify the evidence presented to them.

Furthermore, the effectiveness of an institution such as Interpol, which operates in a transnational dimension, depends on the possession of a proper legal status. The Interpol in the opinion of most scholars lacks legal basis for its functioning as the establishment of the Interpol constitution was not preceded by any diplomatic agreement.<sup>[95]</sup> The constitution was signed by a random selection of police delegates without being in any way approved by competent authorities of member states nor does it have any provision regarding the need for its ratification.

Another weakness to the effectiveness of the Interpol is the large number of members, resulting in the organization having a limited ability to respond speedily to new threats. The said large number of states also implies multiplicity and diversity of legal regimes under which member states act and which often makes cooperation difficult.<sup>[96]</sup>

The legal implication of the misuse of the Interpol by states is that the integrity of the institution is eroded and human rights violations are occasioned by their activities as significant reputational damage is suffered by suspects against whom red notices are wrongfully put up. A suspect may have to suffer loss of freedom of travelling, loss of ability to rent properties, open bank accounts and search for jobs on account of such red notice. The legal implication of lack of a legal status upon which the Interpol can function is that the legitimacy and acceptability of the institution is baseless, rendering their operations and benefits emanating there from null and void.

## **RECOMMENDATIONS**

### **a. Establishment of an Effective Centralized Authority for International Cooperation**

There is no doubt that transnational crimes investigations and prosecution often engender clashes and conflicts of interests between states. National laws are geographically specific and by implication internationally constrained.<sup>[97]</sup> The territorial reach of international law is also limited by national law<sup>[98]</sup>



however the transnationality of transnational crimes necessitated a meeting point between the two jurisdictions. The state monopoly of defining crime has been weakened strongly by the transnational spread of criminal jurisdiction, necessitating ideas to curb such spread irrespective of national boundaries.

Transnationalization of crimes constitute an impediment to homegrown criminal justice systems, thereby occasioning gaps in judicial cooperation among countries which enables transnational criminals to escape prosecution.<sup>[99]</sup> There is a huge necessity for the establishment of a central authority or institution to coordinate and oversee matters relating to requests for mutual legal assistance, extradition and the success of international cooperation generally. This approach will serve as an alternative to diplomatic channels, ensure a balance of states' interests where conflicts arise and promote the ends of justice in transnational crime cases.

#### **b. Legitimization of Transnational Criminal laws**

International policies on transnational crimes face serious legitimacy issues especially in the eyes of developing states due to the substantial influence of developed hegemonic states on the construction, content and enforcement of these policies.<sup>[100]</sup> The power imbalances which enable certain states to exert power and influence on transnational crime policies negatively affect the will power of states to embrace, own and enforce these policies. As far as this unidirectional normative transfer remains, it can be argued that there is a specific democratic deficit<sup>[101]</sup> in the development of transnational crimes policies. There is therefore an urgent need for the legitimization of these policies through wider consultation of states, taking into cognizance states' interest and balancing same through democratic participation.

#### **c. Establishment of Anti-Government Complicity Initiatives**

There exists a higher tendency for government complicity in transnational crimes in states where the rule of law is weak, criminal activities are complex and illicit money is concentrated in fewer hands and represents a greater share of national income.<sup>[102]</sup> Efforts to tackle this problem will entail a wide range of actors and expertise. Strong support for investigative journalism will be of very high necessity as a first step. Relations flowing from this initiative will foster awareness and mobilization of the populace against powerful interests. Such social pressure coupled with international support will greatly engender a positive impact.

Public disclosure of the involved public officials and other persons, the extent of their involvement, backgrounds as well as links to the private sectors must be ensured as a form of deterrence to others. Prosecution of such influential perpetrators must be taken away from the domain they are familiar with in order to erase chances of compromise and bias. Thus, necessitating the need for a central and neutral criminal justice system for transnational criminal justice.

#### **d. Stronger Infusion of Human Rights Safeguards in Transnational Criminal Justice**

Despite the undeniable impact of transnational crimes on human rights, the transnational criminal justice system and human rights legal agenda are still largely disengaged.<sup>[103]</sup> Transnational crimes pose direct and indirect threats to human rights; policies designed to address transnational crimes also pose notable difficulties to human rights by not providing adequate protection of rights for victims of transnational crimes as well as suspects.<sup>[104]</sup>

The criminal justice instruments designed to combat and promote international cooperation in transnational crime matters tend to be limited in languages that safeguard human rights. The UNTOC<sup>[105]</sup> for instance uses soft human rights languages as found in provisions relating to border measures, mutual legal assistance,

extradition and the protection of victims and witnesses. It does not contain specific and mandatory reference to human rights instruments nor does it confer certain procedural rights to suspects or accused persons.

Human rights and transnational crime are not concepts that should be at odds. [106] Infact, the transnational crimes regimes should adequately reflect and be informed by the human rights instruments. The advantage of infusing human rights perspective to the analysis of transnational criminal justice is that it offers solution beyond the traditional criminal justice system. Under the UNTOC and its Protocols, those who perpetrate transnational crimes are held accountable and face criminal charges in domestic courts. However, they may not necessarily be held accountable therefore human rights violations. Also, enforcing human rights obligation through human rights bodies and courts can be very complicated are theoretically only activated to evaluate the responsibility of states in human rights violations. Thus, the promotion of the integration of the crime prevention and human rights agenda is therefore very crucial. The infusion can be achieved through changing the understanding of the impact of transnational crimes on economic, social and cultural rights, fostering safe spaces, trust building, transforming the approach to combating transnational crimes and injecting human rights safeguards prominently in transnational crimes instruments for the protection of both victims and accused persons.

#### **e. Establishment of a Legitimate, Centralized and Specialized Multi-disciplinary Team for the Investigation and Prosecution of Transnational Crimes**

International cooperation needs to migrate from being an articulation of research to becoming practical and real. This can be achievable through reinforcing merely persuasive provisions on international cooperation with mandatory wordings and sanctions. States holding on to the traditional notions of sovereignty must be made to understand that their said sovereignty is likely to be eroded by transnational crimes. What they give up in the acceptance of an integrated of investigative prosecutorial and penal measures will be potentially regained if the threats of transnational crimes are diminished or totally eliminated.

Given the legal and material complexities of the investigation and prosecution of transnational crime as well as the many weaknesses of the Interpol which is one major international law enforcement mechanism for transnational crimes, there is an urgent need for the establishment of a more legitimate and specialized agency for the investigation and prosecution of transnational crimes. The creation of another special multi-disciplinary anti-corruption squad with high neutrality and professionalism will greatly impact the fight against transnational crimes positively. [107] The said team shall be established following due processes, to ground its legal basis. Strategic selection of law enforcement agents such as specialized police, custom officers, lawyers, investigators, prosecutors, technology experts from various countries with requisite trainings embarked on to constitute the team and system. The team should be empowered to take on investigation to complement, substantiate and confirm state submissions. The team should also operate regional systems to support the efforts at the international level.

#### **f. Evolving and Maintaining of Strategic, Current, Coherent and Comprehensive International Legislations against Transnational Crimes**

Transnational crimes come in diverse forms and manifest at multiple levels. It follows therefore that legislative responses against them need to be nuanced and multisectional in nature. [108] In effect, specific, current and comprehensive legislations dealing with the existing and emerging forms of transnational crimes ought to be set in place. These legislations ought to be clear about their aims, defining the changes that are desired with overarching principles which encompass prevention of transnational crimes, protection of rights emanating from transnational crimes matters and promotion of partnerships and cooperation at all levels. While these regimes are relatively universal, their application, balance of effort and resources will need to be adapted with regional and national circumstances and characteristics and be birthed by acceptable

legal processes to ground their basis.

Existing treaties and law should be reviewed periodically and amended often to keep pace with rapidly evolving notions, practices and transnational crimes trends. They should provide maximum flexibility to enable broad and expeditious assistance as well as inject the force of law and firmness to their provisions.

#### **g. Fortification of Structures, Systems and Institutional Mechanisms in the Fight against Transnational Crimes**

There is a great need to initiate substantial reform and fortification of institutions and agencies carrying out functions in relations to the eradication of transnational crimes. Redesigning the initiatives for their operation, in line with emerging trends and realities of transnational crimes. Also, setting up of mechanisms within these institutions to check issues of bureaucracy, corruption [\[109\]](#) and to ensure accountability.

The institutional mechanisms against transnational crimes should build capacity and sustainable efforts towards engaging political commitment and effective law enforcement as well as criminal justice capacities on a global scale. Nations that have the will to fulfill their international commitments as far as transnational crime is concerned but lack the necessary means should be partnered with by these institutions to develop stronger initiatives and measures towards combating transnational crimes. The said partnership should yield political capital and resources towards actualizing the initiative. The expertise and infrastructure of committed governments can be maximized to effect positive changes in states that are handicapped in those respects.

Strengthening of institutional structures and mechanisms at international level will foster capacity for more effective cooperation and contribution to international initiatives. Capacity development programmes, trainings and systematic evaluating mechanisms ought to be in place in transnational crimes fighting institutions to evaluate the effectiveness of new and innovative practices. [\[110\]](#) Also, research units are highly imperative within the institutional frameworks to enable them keep abreast of emerging trends in transnational crimes.

#### **h. Building of Capacity to Prevent Corruption and Preservation of the Integrity of the Investigative and Prosecutorial Bodies**

Corruption within a system compromises the chances of achieving best results and should always be a source of concern especially in relation to transnational criminal justice. Preservation of the integrity of criminal investigations and prosecution processes is highly crucial to combating transnational crimes. Corruption does not only affect the credibility and effectiveness of a justice system but can also compromise international cooperation, defeat coordination efforts, condemn international initiatives to failure and place witnesses, victims and justice officials at risk. [\[111\]](#) It is therefore highly pertinent that the international legislation against corruption in transnational crimes cases be given utmost regard and enforcement. Law enforcement agents should be carefully selected and adequately remunerated. In addition, creation of special anti-corruption units and other specific measures be set in place to offer some security and protection to the transnational criminal justice process.

#### **i. Building Capacity to Effectively Use Modern Investigative Techniques**

Proactive law enforcement strategies and the complexities of investigating transnational crimes entail the use of special investigative techniques. The relevance of these special investigative techniques which include undercover operations, surveillance and controlled deliverances cannot be over emphasized. Legislations and domestic arrangements for the use of these techniques must be reviewed to incorporate

international interventions, recent technological developments<sup>[112]</sup> as well as according recourse to human rights implications.

For example, not all jurisdictions have legislations which allows the use of analytical tools such as DNA Analysing tools as part of their criminal investigation. Most states have the legislations but do not have the forensic analysis capacity to collect, analyze and make use of that kind of evidence. International cooperation is therefore highly necessary in this regard to exchange expertise and to share analytical capacity regarding scientific and technological developments in the area of forensic sciences.

## CONCLUSION

Transnational crimes are currently challenging the preconceptions of their nature thereby necessitating more pragmatic and proactive approaches to combating them. The need to balance various interests that often arise in transnational crime matters necessitate an identifiable neutral criminal justice system with set of rules that comprehensively regulate transnational criminal cases. While there exist clear notions of national criminal law as well as international criminal law *stricto sensu*, including punishable violations of international humanitarian law, there is no commonly shared definition of transnational criminal law currently.<sup>[113]</sup> There is no coherent and comprehensive set of transnational crime rules with respect to coordination of competing jurisdictional claims, fair trial standards, determination of personal guilt where different legal systems clash and determination of punishments for transnational crimes. Provisions on transnational offences, their constitution, elements on *actus reus* and *mens rea* as well as the applicable range of penalties, jurisdictional rules and mutual legal assistance in criminal matters are greatly state oriented which in most circumstances generate clashes of interests.<sup>[114]</sup> The purview of criminal justice has traditionally been limited to the territory of states. States' criminal justice systems are not interlinked, resulting in potential protective gaps either for the alleged offender or the supposed victim. The legal implication of the foregoing being that balancing all the interests at stake in transnational crimes prosecution become highly difficult.

The state centric understanding of criminal justice has become outdated. Since crimes now transcend national borders, reliance on national action creates the greatest obstacles towards effective actions against transnational crimes. The opportunities offered by globalization have enabled sophisticated criminal organizations to take advantage of the gaps and discrepancies in different legal systems and the non-cooperation attitude of many nations thereby necessitating a strong neutral criminal justice system with prosecutory powers to complement the activities of national authorities. The said agency would be activated only when national agencies have proven to be compromised, or where they are unwilling, unable and incapable to intervene, or for appeal purposes. Giving an international authority jurisdiction over transnational crimes will mean greater certainty of arresting, prosecuting and punishing of transnational crime perpetrators as well as help foster or build the needed structure for transnational criminal law as an autonomous branch of law. There is therefore, a crucial need to establish a well-defined transnational justice system not only for the protection of the interests of the individuals involved in transnational crimes but also in order to safeguard common and collective interests as well as uphold political and judicial accountability.

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