



APPRAISING THE UNCAC AS A TOOL FOR INTERNATIONAL COOPERATION IN CRIMINAL MATTERS IN NIGERIA

By

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ABSTRACT

In a world where crime suspects cum offenders, proceeds, evidence and instrumentalities of crime frequently change location, character and value, no nation determined to contain criminality can afford to do it alone. There is increasing need for synergy and international cooperation against international or cross-border crimes, state grafts and looting of public treasuries. One of the main instrumentalities for achieving the much-needed cooperation in both international and domestic law enforcement is the United Nations Convention against Corruption (UNCAC). This paper seeks to discuss the concept of international cooperation in criminal matters in relation to the UNCAC. By means of doctrinal approach, the research presents the conceptual framework of international cooperation in criminal matters vis-à-vis the relevant provisions of UNCAC. It is found that though a useful tool for international cooperation towards anti-corruption, UNCAC is seriously challenged and limited, hence the need for supplementary protocol or amendment followed with complementary domestic policies towards the full realization of the noble objectives of this very important treaty in the special interest of Nigeria and the developing world.

Keywords: UNCAC, Tool, International Cooperation, Criminal Matters, Nigeria.

1.0 Introduction

Criminal law and its enforcement are generally territorial. Indeed, a country may not violate the territorial sovereignty of another in order to enforce its own domestic laws. However, for crimes with international element or transnational character and consequences, there is a consensus that the countries should aggregate efforts and cooperate against such offences, hence the concept of international cooperation in criminal matters. To this end, the United Nations Convention against Corruption (UNCAC, having about 191 member States as at August 2024) was adopted to combat not only the age-long offences of bribery and embezzlement of public funds but newer species of corrupt practices such as trading in influence as well as abuse of positions and offices with special emphasis on asset recovery¹. This paper takes a look the UNCAC as a tool of international cooperation in criminal matters, its sufficiency or otherwise and recommends measures to strengthen it in the interest of Nigeria and the third world countries more especially.

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¹ Wikipedia, *United Nations Convention against Corruption* <https://en.wikipedia.org/wiki/United_Nations_Convention_Against_Corruption> accessed on 17th November 2024 at about 3: 40 pm WAT. See also UNDOC, *Learn about UNCAC* <<https://www.unodc.org/corruption/en/uncac/learn-about-uncac.html>> accessed on 17th November 2024 at about 3: 40 pm WAT. Little wonder UNCAC is more popularly embraced by developing countries where high-level corruption has plundered their national wealth.



2.0 Conceptualization

For the purposes of this research, some working definitions would be necessary, hence the need to define them for ease of comprehension and clarity. Apart from the concept of International Cooperation in Criminal Matters, Central Authority and Competent Authority are terms that will feature prominently in this paper and are thus worthy of clarification at the outset.

2.1 International Cooperation in Criminal Matters

‘International Cooperation’ is a foreign relations concept though not defined in any lexicon. The term ‘cooperation’ is broadly defined in international relations as the processes of policy coordination by which States and non-State actors tailor, adjust or modify their international behaviours and actions to actual and anticipated preferences². It connotes the interaction or response of nations in the pursuit of common goals or interests³. These goals or interest could be anything including but not limited to commerce, economics, education, culture, science, technology, defence and even law (including law enforcement). ‘International cooperation in criminal matters’ may therefore be defined as a phrase used to describe the various measures deployed by State actors to facilitate or actualize criminal justice dispensation for cross border or transnational crimes. Although States are independent and sovereign in the realm of international law, more so in matters of crime, penology and criminal justice procedure, there is a consensus that some measure of collaboration is a *sine quanon* if transnational or international crimes must be checkmated. ‘International Cooperation in Criminal Matters’ is that point where the realm of international law meets with domestic jurisdictions for purposes of criminal justice dispensation and related matters. Mathematically, it may be defined as the area of intersection between international law and domestic laws of criminal justice and procedure.

2.2 Central Authority

Central Authorities are at the center of international cooperation in criminal matters. In relation to the concept of ‘international cooperation in criminal matters’, the term is never defined in conventional or even legal lexicons. The term ‘central authority’ simply refers to a ministry, department or agency of State tasked with the responsibility of receiving requests for mutual legal assistance or other cooperation and to either execute or transmit such requests to competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance or cooperation, it may designate a distinct central authority with similar function for that region⁴. Therefore, in a given country, it might be possible to have more than a central authority for different purposes. Thus, at the point of depositing an instrument of ratification or accession to an international convention or treaty of criminal justice cooperation, State Parties are usually required to signify the designated central authority for the purposes of such treaty⁵.

² Oxford University Press, *Quick Reference*

<<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100007470>> accessed on 17^h November 2024 at about 3: 48 pm WAT

³ Reference. MD, *International Cooperation* <<http://www.reference.md/files/D007/mD007391.html>> accessed on 17^h November 2024 at about 3: 55 pm WAT

⁴ UNTOC, art.18, para 13

⁵ Ibid. Romania, for instance, signified the Prosecutor’s Office to the High Court of Cassation and Justice as central authority for MLA requests while the Ministry of Justice plays same role for matters of extradition and transfer of sentenced persons under the UNCAC. The position of Philippines is a bit intriguing in that MLA requests from countries with which it has



Central authorities are to ensure speedy and proper execution of request received or transmitted. They have a duty to follow up with relevant or competent authorities with a view to encouraging speedy and proper treatment of all requests transmitted through them and revert as appropriate. In practice, this onerous responsibility is often placed on the office of the chief law officer of a country (whatever the designation) or a relatively competent law enforcement agency. In Nigeria, central authority is domiciled in the office of the Attorney-General of the Federation (AGF)⁶ and it is practically the only central authority in Nigeria for purposes of international cooperation in criminal matters⁷.

2.3 Competent Authority

This concept is not defined in UNCAC. Neither is it defined in legal or conventional lexicons. The term is however quite familiar to experts and practitioners of international cooperation in criminal matters. It simply refers to any department or agency of government that is legally or administratively saddled with the responsibility or function that pertains to the subject matter of a particular request or requests made in the context of international cooperation in criminal matters. In the context of UNCAC, for example, if a request for assistance is made to Nigeria for financial intelligence, the Nigerian central authority will channel such request to the Nigeria Financial Intelligence Unit (NFIU) as the ‘competent authority’ to treat such request in line with its enabling law. Likewise, mutual legal assistance request will be forwarded to the ICPC (if the request is for the investigation or seizure of asset pertaining to abuse of office, influence peddling or other corrupt practices) and the EFCC (for investigation or seizure of asset resulting from the commission of economic and financial crime).

3.0 Modalities of International Cooperation in Criminal Matters

International Cooperation in Criminal Matters could basically be categorized as formal or informal. Informal cooperation has to do with direct and voluntary sharing of information and intelligence between security and law enforcement agencies via informal channels. It entails direct communications between counterparts like financial intelligence units (“FIU’s”)⁸, policing authorities, prosecutors or investigating magistrates⁹ sharing intelligence or information legally available to them through

bilateral MLAT are specially treated so they are handled by Department of Justice while other State Parties to the UNCAC should only relate with the Office of the Ombudsman.

⁶ The reason for this is not far-fetched, for it is the only office traditionally and legally empowered to exercise prosecutorial oversight and give directives (so to say) to law enforcement agencies in matters pertaining to international and transnational crimes, which are mostly domesticated as federal offences in Nigeria. This traditional power has recently been enhanced in s. 105 of the Administration of Criminal Justice Act, 2015 (ACJA) which provides to the effect that the AGF may give advice, directive or request from the Police or any other law enforcement agency case files relating to federal offences and such agency shall immediately comply.

⁷ The Authority was spearheaded by a unit in the Ministry called the Central Authority Unit which was set up in 2012 and later elevated to the status of a department known as Department of International Cooperation in 2019 as part of reforms initiated by the Federal Ministry of Justice to reposition International Cooperation in relation to law enforcement in Nigeria. To this end, desk officers or focal persons were trained and retrained on the peculiarities of cooperation for different continents of the globe.

⁸ Established in line with international conventions such as arts 14 and 58 of the UNCAC, etc., the term is mostly used to describe national agencies empowered to request or receive disclosures of financial information with a view to analyzing and disseminating same to relevant law enforcement agencies for purposes of combating financial crimes such as money laundering and terrorism financing.

⁹ This relates to civil law jurisdictions with inquisitorial system of adjudication.

domestic databases¹⁰. Such information or intelligence relates not only to offences that has been committed, but ongoing or about-to-be committed offences. In other words, it could be initiated even before investigation becomes official¹¹.

Where coercive measures are unnecessary, it is preferable, faster, cheaper and easier to obtain information or intelligence on an informal basis rather than go through formal MLA procedures¹². Similarly, where the authorities of relevant States have established a history of collaboration and/or cooperation in areas such as extradition, they can build up a relationship of trust that may ease informal cooperation which may eventually lead to increased forms of bilateral cooperation between their central authorities¹³. Thus, in 1995 for instance, Financial Intelligence Units (FIUs) across the globe convened at Egmont Aronberg Palace in Brussels, Germany to establish an informal group to stimulate or enhance of cooperation in financial intelligence. Consisting of about 121 countries, the Egmont Group meets routinely to improve methods of international cooperation, especially in the area of information exchange via the Egmont Secure Web ("ESW"), which is only accessible to member FIUs¹⁴. An Egmont member receiving a request for information from another member will share, under the terms of a Memorandum of Understanding ("MOU") providing for confidentiality and assurances of reciprocity, whatever information the parties can lawfully share within the confines of their domestic policies¹⁵. The International Criminal Police Organization (INTERPOL), International Civil Defence Organization, GlobE Network, Police Information System for West Africa and the West African Network of Central Authorities and Prosecutors (WACAP) are also handy examples of informal cooperation channels. They are considered to be informal because they are measures utilized by experts concerned via friendly consensus or Memorandum of Understandings as opposed to formal treaty frameworks between sovereign authorities.

Informal cooperation is relatively speedy and seamless and most useful at the beginning of investigations when coercive measures might portend adverse human rights implication or outright compromise of such or other ongoing investigation. It is also useful for timely apprehension of offenders and/or prevention of offences. This police-to-police enquiries is as important, for such contacts (together with enquiries via the INTERPOL) will enable a State to decipher whether it will need to utilize formal means like mutual legal assistance to further its investigation or assets recovery¹⁶. It is perhaps for this reason that multilateral treaties tend to also encourage direct mutual cooperation and exchanges between law enforcement or competent authorities and lend themselves as a basis, in the absence of other

¹⁰ Fatima Waziri-Azi, 'Performance Evaluation of Mutual Legal Assistance (MLA): A General Overview' in Epiphanny Azinge & Osatohanmwen Eruaga (eds.) *Mutual Legal Assistance* (Nigerian Institute of Advanced Legal Studies, 2014), 54

¹¹ Ibe Ifeakandu, 'Trafficking in Human Beings and Mutual Legal Assistance' in Epiphanny Azinge & Osatohanmwen Eruaga (eds.) *Mutual Legal Assistance* (Nigerian Institute of Advanced Legal Studies, 2014), 217

¹² ibid

¹³ Ibid

¹⁴ Ibid, 71-72

¹⁵ Ibid, 72

¹⁶ See Ibid, 71



concrete arrangements, for countries to supply useful information to competent authorities for investigative and evidentiary purposes¹⁷.

3.1 Formal Cooperation

Formal cooperation, on the other hand, are tailor-made according to purposes. They consist of those peculiar measures of cooperation that are triggered through formal requests sent and processed through official or diplomatic channels in line with international treaties and domestic laws. In other words, details bordering on circumstances and procedure for making, processing, granting or declining formal cooperation requests between State Parties are usually stipulated in treaties, supported by local laws. So far, seven major forms of cooperation in criminal matters have been thrown up under international and domestic laws. We take the liberty to discuss them below.

a.) Extradition

The concept of extradition dates back to about 13th Century BC when Ramesses II, then Pharaoh of Egypt negotiated an extradition cum peace treaty with Hattusili III (the Hittite King)¹⁸. The term ‘extradition’ is not defined in any known extradition treaty or domestic statute. However, the combined effect of sections 1 and 21 of the Nigerian Extradition Act¹⁹ which speaks to extradition agreement could give insight as to the meaning of extradition. By section 21 of the Act, extradition agreement has the meaning assigned by section 1 of the same Act. Section 1 of the Act defines extradition agreement as ‘agreement or treaty between Nigeria and any other country for the surrender to each other of persons wanted for prosecution or punishment’. *Black’s Law Dictionary*²⁰ defines extradition as the official surrender of an alleged criminal by one State or nation to another having jurisdiction over the crime charged; the return of a fugitive from justice, regardless of consent, by the authorities where the fugitive is found. *Dictionary of Law*²¹ also defines it as the surrendering by one State, at the request of another, of a person accused of a crime or alleged to be unlawfully at large after conviction under the laws of the requesting State. Ladapo and Okebukola²² define extradition as a process by which a person accused or convicted of a crime is officially transferred to the State where s/he is either wanted for trial or required to serve a sentence. From the foregoing, extradition contemplates a situation where a sovereign State based on treaty obligation formally arrests and surrenders an offender or ex-convict to another State in line with the procedures of its domestic laws so that justice might be served at the right forum or venue, being the country having jurisdiction over the offender or ex-convict.

There is a universal consensus that it is very desirable for all criminal acts and deliberate criminal omissions to attract deterrent consequences. It is equally desirable that the process for determining and

¹⁷ See, for instance, arts 26 and 27 of the UNTOC. Likewise, art 48 of UNCAC.

¹⁸T.C.Eze, ‘Exploring the Politics and Law of Extradition in International Relations’ *African Journals Online* <<https://www.ajol.info/index.php/naujilj/article/view/215297/203049#:~:text=It%20is%20the%20reality%20of,international%20relations%2C%20law%20and%20diplomacy.&text=Historically%2C%20the%20practice%20of%20extradition,Hattusil%20III%2C%20a%20Hittite%20king..> > accessed 17th November, 2024 at about 4.45pm WAT

¹⁹ Cap. E25 LFN 2004 (as amended)

²⁰ Bryan A. Garner (ed.), *Black’s Law Dictionary* (8th edn, West Group 2004), 901

²¹ (Fifth edn, Financial Times Professional Ltd. 1998), 149

²² O.A. Ladapo and E.O. Okebukola, *Cases and Material on Extradition in Nigeria* (UNODC Country Office in Nigeria, 2016), 3.

enforcing the consequences be controlled and managed in the place where the crime was committed. This is arguably because proof of crime can best be adduced at the place where it is committed on account of proximity to sources of evidence. The injury of a crime to society can also be best measured at the place of its commission. Extradition arrangements between nations make it possible for this to happen and ensure that criminals do not go unpunished by simply moving from the territory where they commit crime(s) to another²³. Notwithstanding, there is no obligation under customary international law to extradite unless in few exceptions such as the situation relating to Commonwealth States²⁴. Thus, in *Udeozor v. FRN*²⁵, the Nigerian Court of Appeal held that the right of one State to request of another the extradition of a fugitive accused of crime and the duty of the country in which the fugitive finds asylum to surrender the said fugitive exists only when created by a treaty²⁶.

It is useful to note that extradition is distinguishable from a few concepts. For the purpose of extradition proceedings, a person is only deemed to be wanted for trial where a court of law has issued a warrant requiring that the person be brought to answer criminal allegations in court, which is quite different from where a person is wanted for questioning, for example, as a witness²⁷. Secondly, extradition is not synonymous with trial of the fugitive (who is usually the respondent in extradition proceeding)²⁸. Thirdly, extradition is not to be equated with rendition in the general sense which might entail unlawful and irregular measures. Extraordinary rendition, for instance, is nothing short of a government sponsored arrest, kidnap or abduction of persons wanted, accused or convicted of a criminal offence either to the State who sponsored the arrest, kidnap or abduction or to a willing third-party State; it denies a person the right to challenge his transfer to the requesting or receiving State, and involves the violation of international law especially where the person (s) transferred are made to undergo torture or sham criminal charges²⁹. Extradition is also different from 'transfer of sentenced persons' for the purpose of serving an outstanding term in a receiving or administering State. The latter is equally regulated by treaties under which different considerations including the consent of the person sought to be transferred would apply. In *AGF v. Anuebunwa*³⁰ the apex court confirmed the foregoing definition of extradition and observed, among others, that extradition is distinguished from other methods of forcibly removing undesirable persons from a country such as exile, expulsion and deportation. Speaking of the nature of extradition proceeding, the court stated that it is *sui generis*; that all a court needs to grant an order of extradition is a *prima facie* case founded on facts weighed on the balance of probabilities.

²³ *ibid*, 1-2.

²⁴ *ibid*, 14

²⁵ Appeal No. CA/L/376/05 as reported by Ladapo and Okebukola (n.22), 3

²⁶ In the absence of a treaty, this writer is however of the view that nothing stops a country under its domestic law from considering extradition on the basis of comity or assurances of reciprocity especially in urgent and extreme situations pertaining to international crimes. To that end, an *ad hoc* agreement or consensus can be reached if permissible in the local law. This view finds support in art 44 (7) of UNCAC recognizes that some States might not make extradition conditional on the existence of a treaty.

²⁷ Ladapo and Okebukola (n.22), 3

²⁸ *AGF v. Olayinaka Johnson (aka Big Brother), (aka Rafiu Kofoworola), (aka Gbolahan Opeyemi Akinola)* (FHC/L/16c/2013) reported by Ladapo and Okebukola (n.22), 4

²⁹ Ladapo and Okebukola (n.22), 3. The 1984 Umar Dikko's foiled abduction at the instance of Nigerian government which strained the diplomatic relationship between Nigeria and UK is a classic example in the history of 'extraordinary rendition'.

³⁰ Appeal No. SC/CV/118/2021 (decided by Supreme Court of Nigeria on the 13th April 2022).



b.) Mutual Legal Assistance

Mutual Legal Assistance as a form of cooperation in criminal matters evolved from the customary international law practice of letters rogatory³¹. Over time, the process of letter rogatory proved to be time-consuming and unpredictable, since it was merely a matter of comity between courts. Countries then thought of a way of compelling or guaranteeing evidential cooperation by way of bilateral treaties. But bilateral treaties alone became insufficient as it is nearly impossible to execute bilateral treaties with all countries of the world, taking into account time and resources, hence multinational and regional Mutual Legal Assistance Treaties (MLAT) which also has the advantage of expediting and simplifying cooperation by harmonization of the procedures and legislations of mutual legal assistance³².

Like extradition, mutual legal assistance is not defined in relevant treaties and statutes. It is equally not defined in legal dictionaries or lexicons. Broadly speaking, it is a term that might be used to describe law-related collaborations among nation-States towards global peace, development and sustainability. In fact, mutual cooperation assistance amongst nations grew from mere defence pact to security and economic gains towards mutual assistance in legal matters.³³ Thus, different dimensions of mutual legal assistance today include not only assistance in criminal matters but legislative, judicial, commercial and other matters.³⁴ Although the tendency in some literature is to apply the term to every conceivable form of cooperation in criminal matters, mutual legal assistance in criminal matters is (technically) more limited in scope though some treaties on the subject stray into other tangential areas of cooperation³⁵. The 1990 UN Model Treaty on Mutual Assistance in Criminal Matters is an illustrative guide to States as to what a mutual legal assistance treaty should address³⁶. Thus, areas of judicial cooperation such as the transfer of prisoners, transfer of criminal proceedings and the execution of foreign criminal judgements are beyond the remit of same³⁷. Similarly, policing and law enforcement cooperation (strictly speaking) are outside the scope of this instrument³⁸.

Mutual Legal Assistance is therefore a formal way in which countries request and provide assistance to each other mainly by way of evidence gathering, asset-tracing and forfeiture in the requested State to assist or aid criminal investigations or proceedings in the requesting State. In other words, it is the provision of assistance on a formal legal basis, usually in the gathering and transmission of evidence by an authority of a country to equivalent or competent authority in another, in response to a request for assistance.³⁹ In other words, to come under the banner of a mutual legal assistance, the request must be

³¹ UNODC, 'Mutual Legal Assistance' *Education for Justice (E4J) University Module 11* (2018) <<https://www.unodc.org/e4j/en/organized-crime/module-11/key-issues/mutual-legal-assistance.html>> accessed on 17th November, 2024 at about 6:54 pm WAT

³² Ibid.

³³ Ifenyinwa Njokanma, 'Negotiating Mutual Legal Assistance' in Epiphanny Azinge & Osatohanmwen Eruaga (eds.), *Mutual Legal Assistance* (Nigerian Institute of Advanced Legal Studies, 2014), 22-23.

³⁴ ibid, 23

³⁵ See, for instance, chapters III and IV of the ECOWAS Convention on Mutual Legal Assistance which also provides for confiscation of assets and transfer of criminal proceedings respectively.

³⁶ This is summarized in article 1 thereof which only urges the widest possible measure of assistance with regards to taking evidence from witnesses, carrying out searches and seizures, serving documents and supplying documents and records.

³⁷ Ilias Bantekas and Susan Nash, *International Criminal Law* (3rd edn., Routledge-Cavendish, 2007), 359-360

³⁸ ibid, 361

³⁹ Fatima Waziri-azi (n.10), 54

formal in the sense that it must comply with laid down procedures and the purpose must be to gather evidence or related matters. The request must proceed from one sovereign State (a requesting State) to another (the requested State). It follows that the remedies of MLA requests are only available to the prosecution while the defence could explore means for obtaining evidence in criminal matters abroad, usually by the use of Letters Rogatory⁴⁰. The evidence being sought can be taken in a number of ways including search and seizure; production of documents; taking of witnesses' statements by video-conference; and temporary transfer of prisoners or other witnesses to give evidence.⁴¹ It may also be useful in tracing, freezing, seizing and ultimately confiscating criminally derived wealth.⁴² Thus, it is said that the purpose of an agreement on mutual legal assistance is to upscale the scope of assistance rendered to contracting States in criminal matters and to augment but in no way derogate from existing forms of formal and informal cooperation and to even encourage the development of enhanced cooperation arrangements in other fora⁴³. Unlike informal or traditional cooperation among law enforcement agents which enables a wider range of intelligence and information sharing on a voluntary basis, mutual legal assistance measure is such that if a witness is unwilling or uncooperative, coercive measures will be deployed in line with the due process of law.⁴⁴

c.) Joint Investigation

Similarly, this measure of cooperation is not defined in treaties. It has not been defined in any known text, dictionary or judicial authority. But as the nomenclature suggests, it is an investigative method of cooperation. Under treaty arrangements, States could come together for a collaborative investigation to burst dangerous syndicates with potential or real threats to countries concerned or to prosecute a non-conventional war and to bring criminal culprits to justice. This is the essence of joint investigation. Such arrangements mainly involve relevant law enforcement agencies of the State Parties concerned who may freely enter into each other's domestic territory and in so doing, the sovereignty of the State in which the investigation is being conducted must at all times be respected⁴⁵. In other words, clearance must be obtained from domestic authorities in all critical stages of such operation or well in advance

⁴⁰ Ifenyinwa Njokanma (n.32), 23-24

⁴¹ Izuoma Egeruoh, 'Standard Format of Mutual Legal Assistance' in Epiphanny Azinge & Osatohanmwen Eruaga (eds.), *Mutual Legal Assistance* (Nigerian Institute of Advanced Legal Studies, 2014), 1.

⁴² *ibid*

⁴³ Paul Idornige, 'Mutual Legal Assistance as A Bilateral treaty' in Epiphanny Azinge & Osatohanmwen Eruaga (eds.) *Mutual Legal Assistance* (Nigerian Institute of Advanced Legal Studies, 2014), 97. Thus, art 1(2) of the Treaty between the Government of USA and the Federal Republic of Nigeria on Mutual Legal Assistance in Criminal Matters provides that such assistance shall include:

Taking the testimony or statements of persons;

Providing documents, records and articles of evidence;

Serving documents;

Locating and identifying persons;

Transferring persons in custody for testimony and other purposes;

Executing requests for searches and seizures;

Tracing, identifying and immobilizing criminally obtained assets;

Assisting in proceedings related forfeiture, restitution and collection of fines and

Other forms of assistance not prohibited by the laws of the Requested State.

⁴⁴ Izuoma Egeruoh (n. 40), 2

⁴⁵ See art 19 of the UNTOC for example. The details of such engagements are mostly finalized in MOUs between law enforcement agencies/ States concerned



based on treaty provisions or MOU. Joint investigation is basically in 3 models – Joint Parallel Investigation (JPI)⁴⁶, Joint Investigation Team (JIT)⁴⁷ and Joint Investigative Bodies (JIB)⁴⁸. Joint investigation is different from informal or police-to-police cooperation associated with the INTERPOL in that it is formalized in treaties and domestic laws and could allow direct operations in foreign territories. It is similarly different from mutual legal assistance in strict technical sense even though there have been efforts to categorize it as such, which was rejected during the negotiation of UNTOC⁴⁹

d.) Transfer of Criminal Proceedings

Although not defined in treaties, statutes, judicial authorities or known texts, this is an arrangement whereby an ongoing or contemplated proceeding for certain offence(s) is forgone or suspended so as to transfer the record of such proceedings such alongside relevant evidence (so far admitted)⁵⁰ to another State under treaty obligation for efficient and proper dispensation of justice. Since it is not unusual for criminal acts, victims, proceeds or evidence of crime to be scattered in various jurisdictions, it might be prudent, expedient and in the best interest of justice to allow the State with the most real connection to the subject matter to carry on with the proceeding, taking into account the availability of suspect or defendant, witnesses, location of evidence, efficiency of the justice system concerned, penalty for the offence, cost of proceeding, etc. Treaties usually spell out the obligations of the parties involved towards the conduct of the proceedings, applicable laws, reports and termination of such proceedings, etc. Although there might be need for mutual legal assistance requests towards the success of such proceedings, it is not always the case, because the trial State might have all it takes to conduct and conclude the proceeding⁵¹.

e.) Recognition and Enforcement of Foreign Criminal Judgments

Generally, States are reluctant to give force to judgments from other jurisdictions, more so when the foreign procedure leading to such judgements substantially differ from theirs. The outcome of such foreign procedure might be seen as deficient, objectionable or below standard⁵² especially if (when

⁴⁶ This envisages two separate investigations running simultaneously in two different States for a common goal supported by a network of liaison officers and exchange of intelligence. The result of the investigative is then shared via mutual legal assistance requests.

⁴⁷ This is usually a short-term arrangement to carry out a specific investigation in the State(s) concerned whereby foreign law enforcement officers and/or prosecutors could actually enter into the territory of such State(s) to actively or passively exercise operational powers within the framework of domestic law(s) or technical assistance agreement or MOU. The initiative was formally introduced in article 9 of the United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

⁴⁸ This is akin to JIT arrangement except that it is a more permanent structure or a long-term initiative to combat a serious and prevailing crime of international impact such as terrorism, drugs and human trafficking, etc. It would normally last for a minimum of 5 years. This initiative was first introduced in art 19 UNTOC and replicated in art 49 of UNCAC.

⁴⁹ See generally, Working Group on International Cooperation for the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, *The Use and Role of Joint Investigative Bodies in Combating Transnational Organized Crime*, (A Background Paper prepared for the Conference of the Parties to the United Nations Convention against Transnational Organized Crime

(2020)<https://www.unodc.org/documents/treaties/International_Cooperation_2020/WG_IC_website/CTOC_COP_WG.3_2020_2/CTOC_COP_WG.3_2020_2_E.pdf> accessed on 17th November 2024 at about 7:05 pm WAT

⁵⁰ By this measure, admissibility of all evidence concerned are preserved and cannot generally be challenged.

⁵¹ A perfect example of the cooperation in form of Transfer of Criminal Proceeding is captured under the provision of chapter IV of the ECOWAS Convention on Mutual Assistance in Criminal Matters.

⁵²Ralf Micheal, 'Recognition and Enforcement of Foreign Judgments' *Mack Planck Encyclopedia of Public international* www.mpepil.com Law (2009)



reviewed) it clearly violates domestic policy, international law or principle of natural justice. However, the need for international decisional harmony, certainty and the need to avoid double jeopardy or needless re-litigation have made it plausible for countries to think towards reciprocal recognition and enforcement of judgements handed down by foreign courts⁵³ under certain criteria. Though States are more pre-disposed towards the recognition and enforcement judgements arising from civil and commercial matters, there is no international reason against the enforcement of public or criminal law.⁵⁴ Recognition and enforcement of foreign criminal judgement is basically a transfer of the execution of such judgement delivered in the requesting State to another State; giving the requested State full responsibility to implement the punishment (though imposed by a foreign court) in line with its own domestic laws⁵⁵. Like transfer of criminal proceeding, recognition and enforcement of foreign judgement is a substitute to extradition⁵⁶ and are potentially more useful where a defendant escapes before conclusion of trial or execution of judgement. Thus, the trial may proceed in absentia and the sentence could be served wherever the fugitive is found, whether s/he is a national or merely resident in such country. However, once the request to recognize and execute such punishment is accepted, the State that imposed the sentence lacks the power to execute same unless the other State had failed to execute the sentence or relinquished that responsibility⁵⁷.

f.) Transfer of Prisoners

By transfer of prisoners, the assumption is that both State Parties have in their custodial facilities nationals of their respective countries serving various terms of imprisonment. In practice, it might not be the case. The agreement might be reached in anticipation of custodial sentences involving nationals or citizens of relevant countries so that in event of their citizens being sentenced to imprisonment or other forms of deprivation of liberty, State Parties could rely on existing framework to seek for repatriation of citizens concerned to serve such sentences in their home countries. Transfer of Offenders therefore is an arrangement whereby persons sentenced to terms of imprisonment or deprivation of liberty are released to their countries of nationality to serve the outstanding terms of such imprisonment taking into account the need for proper rehabilitation, integration, etc. in line with existing treaty agreements. The agreement is mostly in form of bilateral treaties although there is leeway in multinational treaties to equally activate such arrangements⁵⁸.

When a sentence is given, the traditional aim of sentencing is assumed to have been taken into account. This means that to the extent required by the rules that govern the exercise of sentencing discretion in the sentencing jurisdiction, the judge or court handing down the sentence must have balanced the

<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2699&context=faculty_scholarship> accessed on 17th November 2024 at about 7:12 pm WAT

⁵³ ibid.

⁵⁴ ibid. States tend to prefer extradition to enforcement of foreign criminal judgements.

⁵⁵ Anton Girginov 'Recognition and Enforcement of Foreign Criminal Judgments under the Law of Somalia' *Scholars International Journal of Law, Crime and Justice (SIJLCJ)* [2019] (2) (10), 288; also available at <https://saudijournals.com/media/articles/SIJLCJ_210_288-297_c.pdf> accessed on 17th November 2024 at about 7:15 pm WAT

⁵⁶ ibid

⁵⁷ ibid

⁵⁸ See, for instance, art 17 of UTOC.



requirements of retribution, deterrence, rehabilitation and incapacitation⁵⁹ Countries consider this measure therefore to guarantee the dignity and safety of their citizens or nationals⁶⁰, more so when they feel that they have better facilities and policy framework for the rehabilitation and reform of offenders.

g.) Letters Rogatory

Letters Rogatory, also known as letter of request, is a formal request from a domestic court to a foreign judiciary for the doing of certain acts, which would otherwise be tantamount to breach of sovereignty of the foreign State if done without the foreign court's approval.⁶¹ It is mostly used to facilitate the taking of evidence of compellable witness(es), service of court summonses, subpoena and other legal documents as well as the enforcement of civil judgment regardless of the non-existence or otherwise of treaties on judicial cooperation. In the absence of treaty agreement to the contrary, letter rogatory is normally channeled through diplomatic corridors,⁶² which regrettably is usually slow. Though a customary means of judicial cooperation, the use of letter of request must be permissible by the domestic law of the requested State⁶³. And although it varies in format depending on the country to which it is addressed, a letter rogatory must be addressed to the appropriate judicial authority providing a synopsis of the case, nature of claims and reliefs sought by the parties⁶⁴ and stating whether the case is civil, criminal or administrative, a list of questions to be asked or documents to be produced including an undertaking to offer reciprocal assistance to such court or country and to reimburse them for the expenses incurred in executing the request, number of copies of documents, signature of the judge (not clerk), translation and authentication of the request by a notary public (where a necessary requirement of the foreign country) and the payment of consular fees where the request cannot be submitted otherwise⁶⁵.

Unlike mutual legal assistance requests that are treaty-based and limited to prosecutors and law enforcement agencies, letters rogatory are also available to the defendants⁶⁶ and other 'interested party' and issued on the basis of comity⁶⁷. It is broad enough to cover civil, criminal and administrative

⁵⁹ UNODC, *Handbook on the Transfer of Sentenced Persons* (Vienna: Publishing and Library Section of United Nations office, 2012), 9

⁶⁰ Thus, during outbreak of epidemic or pandemic like Ebola Virus Disease and COVID 19 in recent past, such measure could prove particularly very useful. Likewise, in event of war or racial cum ethnic discrimination as manifested during xenophobic attacks in South Africa.

⁶¹ Thompson Reuters, 'Letters Rogatory' *Practical Law* (2024) <[https://uk.practicallaw.thomsonreuters.com/8-519-1439?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/8-519-1439?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed on 17th November, 2024 at about 8:28pm WAT

⁶² ibid

⁶³ US Department of State, *Preparation of Letters Rogatory* <<https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/obtaining-evidence/Preparation-Letters-Rogatory.html>> accessed on 17th November, 2024 at about 8:30pm WAT

⁶⁴ Ibid.

⁶⁵ ibid.

⁶⁶ Indeed, it is the primary means by which criminal defendants gather evidence abroad for purposes of their defence except where the prosecution decides to be generous with evidence that might exculpate the defendant(s) within the limits permitted by MLA treaty. Diplomacy, executive agreements and informal sharing of information, however, may equally be exploited by astute legal practitioners who have the licence and privilege of practicing in more than one jurisdiction. Leveraging on contacts and connections may also be useful means of sourcing evidence for defence in foreign jurisdiction.

⁶⁷ Federal Corrupt Practices Act (FCPA) Institute, 'Navigating the Arcane world of Mutual Legal Assistance Treaties, Letters Rogatory and Evidence-Gathering from Abroad' (2014) A Q & A Session with T. Markus Funk <<https://fcpacprofessor.com/navigating-the-arcane-world-of-mutual-legal-assistance-treaties-letters-rogatory-and-evidence->>



proceedings. But it can only be activated when proceedings have formally commenced and not during investigative and pre-trial stages⁶⁸. And since there might be no treaty compelling it, letters rogatory are treated at the pleasure or leisure of foreign judicial authorities who might have little or no diplomatic touch with the requesting authorities, hence a cumbersome and time-consuming process.

4.0 UNCAC as a Legal Framework for International Cooperation in Criminal Matters

Law (domestic and international) is the foundational basis for the various forms of cooperation extended by countries to each other for the purpose of combating cross border crimes. At the international realm, the basis of cooperation in matters of crime consists mainly in treaties and other sources of international law. States' practices and customary conventions may play supplementary role. Nigeria has entered into a number of such arrangements, both bilateral and multilateral. But this very discourse is centred on the United Nations Convention against Corruption (UNCAC).

UNCAC was conceived to tackle the global menace of corruption and opened for ratification at Merida, Mexico in December, 2003. It draws heavily from the United Nations Transnational Organized Crime Convention of 2000 (UNTOC). Recognizing the relationship between corruption and other forms of transnational crimes at its preamble, UNCAC adopts and even tends to expand the measures of cooperation stipulated in UNTOC regarding corruption offences and money laundering. The purpose of UNCAC is to promote and strengthen measures aimed at efficiently and effectively preventing and combating corruption; promoting, facilitating and supporting international cooperation and technical assistance in preventing and fighting against corruption as well as enhancing integrity, accountability and proper management of public affairs and public property⁶⁹. Thus, in terms of scope, UNCAC essentially applies to the prevention, investigation, prosecution of corruption and to freezing, seizure, confiscation and return of proceeds of offences established in line with the Convention⁷⁰

The subject of international cooperation is the pre-occupation of Chapter IV of the Convention. The forms of cooperation recognized therein include Extradition, Transfer of Sentenced Persons, Mutual Legal Assistance, Transfer of Criminal Proceedings, Law Enforcement (Informal) Cooperation and Joint Investigations. However, a special regime for cooperation is established in Chapter V for Asset Recovery⁷¹. We hereby take a closer look at the measures of international cooperation under the Convention.

a.) Extradition under the UNCAC

Article 44 of the UNCAC provides enabling framework for extradition so that State parties to the Convention may rely on it to request and grant extradition for offences established pursuant to the

gathering-from-abroad/> <https://fcpprofessor.com/navigating-the-arcane-world-of-mutual-legal-assistance-treaties-letters-rogatory-and-evidence-gathering-from-abroad/> accessed on 17th November, 2024 at about 8:38pm WAT

⁶⁸ *ibid*.

⁶⁹ Art 1 of the Convention

⁷⁰ In Nigeria, such offences include corrupt practices, money laundering, economic and financial crimes and similar offences akin to those targeted in chapter II and III of the Convention.

⁷¹ This leverages the tools of mutual legal assistance, joint investigation and recognition of foreign criminal judgments and court orders to facilitate the tracing, freezing and return of assets derived through corruption. UNCAC also offers itself as a legal basis for cooperation in this wise.



Convention, whether such offence is mutually punishable under their domestic laws or not.⁷² Offences to which the Convention relates are deemed to be extraditable under any existing extradition treaty between State Parties to the Convention⁷³ and they shall not be considered as political offences. And where offences are ordinarily not extraditable by reason of their tenure of imprisonment, a State Party may consider granting extradition request if such offence relates to at least one offence (in the request) that is extraditable under the Convention⁷⁴. Extradition is subject to conditions and procedures of domestic law⁷⁵, but such conditions or requirements should be expeditious and simplified in terms of penalty and evidentiary requirements⁷⁶.

However, where a country would not extradite her national to another consequent upon the limitation of its domestic law, it must take measures to prosecute such corruption offence (s) with due diligence (as any offence of grave nature within its domestic law) in collaboration with the requesting State in areas of procedure and evidence as might be necessary to guarantee efficient prosecution⁷⁷. Similar measures are to be taken for the enforcement of sentence in the domestic jurisdiction of a State Party who would not extradite her national to serve a sentence⁷⁸.

In all cases, a person regarding whom an extradition proceeding is being carried out must, at all times, be treated fairly and such person (s) shall not be extradited where there are substantial grounds for believing that s/he would be prosecuted for his/her sex, race, religion, nationality, political opinions, etc.⁷⁹. But request cannot be refused simply because the related offence has fiscal elements⁸⁰. And before refusing extradition, a State Party shall consult as appropriate with the requesting State with a view to providing the latter with ample opportunity to present its opinions and provide information relevant to its allegation.

b.) Transfer of Sentenced Persons under the UNCAC

This is provided for in Article 45 of UNCAC so that States Parties to the Convention may enter into bilateral or multilateral agreements or arrangements to allow for mutual exchange of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established pursuant to the Convention (being corruption offences) in order that such person(s) may serve or complete their sentences in their countries of nationalities or citizenship.

⁷² This is the combined effect of art. 44, paras 1 and 2. See also of art. 44, paras 5, 6 and 7. Where State(s) do not intend to rely on the UNCAC as the basis for extradition, it must seek to conclude extradition treaties for other States Parties to implement the provision of the Convention in this regard.

⁷³ And consequently, the States are under obligation to include them in such extradition treaties. See para. 4, art 44 of the Convention.

⁷⁴ Art. 44, para 7 of the Convention

⁷⁵ This will include minimum penalty requirements and grounds upon which the requested State Party may refuse extradition.

⁷⁶ Art 44, paras 8 and 9 of the Convention

⁷⁷ Art. 44, para. 11 of the Convention. Similarly, by art. 44, para 12, a State Party may extradite her national or citizen on the condition that s/he shall be repatriated to serve any punishment back home.

⁷⁸ Art. 44, para 13 of the Convention

⁷⁹ Art. 44, para 15 of the Convention

⁸⁰ Art 44, para 16 of the Convention



It is instructive to note that Article 45 of UNCAC cannot be invoked independently for purposes of exchange of prisoners without a subsisting treaty or like agreement. UNCAC merely notes the possibility and encourages same, without more.

c.) Mutual Legal Assistance under the UNCAC

Mutual Legal Assistance is the pre-occupation of Article 46 of the Convention. States Parties are therefore compelled to give the widest measure of assistance to each other with regards to investigations, prosecutions and judicial proceedings involving offences covered by the Convention⁸¹. And in the case of legal or artificial persons⁸², maximum cooperation shall equally be extended on the basis of relevant laws, treaties, agreements and arrangements established for that purpose⁸³. The scope or subject of assistance may extend to: -

- i) Taking evidence or statement from persons⁸⁴;
- ii) effecting service of judicial documents;
- iii) executing searches and seizures, and freezing;
- iv) examining objects and sites;
- v) providing information, evidentiary items and expert evaluations;
- vi) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- vii) identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- viii) facilitating the voluntary appearance of persons in requesting State Party⁸⁵;
- ix) identifying, freezing, tracing proceeds of crime for purposes of recovery of assets as well as the recovery of such assets with a view to returning same to country of origin in line with Chapter V of the Convention; and
- x) any other type of assistance that is not contrary to the domestic law of the requested State⁸⁶.

UNCAC in addition to its measures, recognizes and encourages mutual legal assistance on the basis of other treaties⁸⁷ and forbids States Parties from denying cooperation on grounds of bank secrecy⁸⁸.

⁸¹ To facilitate the objective of the art 46, para 13 thereof mandates States Parties to designate a central authority saddled with the responsibility and power to receive, execute or transmit mutual legal assistance requests to competent authorities for execution. Countries with special region or territory with separate mutual legal assistance regime must similarly designate a distinct central authority for such region. the designated central authority must be communicated to the Secretary-General of the United Nations upon the deposition of instrument of ratification, acceptance or accession to the Convention. State Parties may however require that such communications be routed through the normal diplomatic channel (and in urgent situations via the International Criminal Police Organization).

⁸² This is the focus of art 26 of the Convention

⁸³ Art 46, para 2 of the Convention

⁸⁴ By art 46, para 18, a witness or expert may be heard by way of video conferencing subject to the fundamental principles of domestic law and agreement of States Parties.

⁸⁵ This particular form of assistance is most useful for non-extraditable offences

⁸⁶ See generally, art 46 para 3 of the Convention.

⁸⁷ Art 46 para 6 of the Convention

⁸⁸ Art 46 para 8 of the Convention.

However, where States Parties are not bound by alternative treaty for mutual legal assistance, they shall apply Articles 9 to 29 of the Convention for purposes MLA requests⁸⁹.

Articles 9 to 29 of UNCAC addresses a plethora of matters. First, MLA or cooperation is to be extended on the basis of dual criminality. Where this is lacking, however, a requested State must nonetheless take into account the purposes of the Convention in responding to any request for assistance or grant assistance on the basis of alternative treaty⁹⁰. States Parties must equally render non-coercive assistance within the basic concepts of its legal system unless the subject matter is of a trivial nature⁹¹.

It is also useful to note that when an MLA request under the UNCAC is for the transfer of someone in detention or who is serving some other sentence in the requested State for purposes of identification, testimony or other investigative, prosecutorial or judicial assistance for offences under the Convention, the transfer can only be effected with the free and informed consent of the person concerned and subject to agreement of the relevant competent authorities and any further conditions imposed by States Parties concerned⁹². Unless the transferring State agrees, the person transferred for above mentioned purposes, whatever his/her nationality cannot be detained, prosecuted, punished or subjected to any other restriction of his or her liberty in the territory of the State to which s/he is transferred for acts, omissions or convictions occasioned prior to his/her departure from the territory of the State from which s/he was transferred⁹³.

In terms of format, requests are to be in recorded or written form except where oral requests are allowed by State Parties in urgent circumstances to be followed with a written confirmation. The language of communication acceptable to each State Party to the Convention are to be indicated to the UN Secretary-General at the deposition of ratification or accession instrument. And the request itself, when made, must contain:

- a) The identity of the authority making the request;
- b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- c) Summary of the relevant facts, where necessary;

⁸⁹ Art 46 para 7 of the Convention. States Parties are however encouraged to adopt paras 9 to 29 of the said art 46 in facilitating cooperation and to apply such corresponding provisions in alternative treaties executed for MLA

⁹⁰ Art 46 para 9 of the Convention

⁹¹ Art 46, para 9 (b) of the Convention

⁹² Art 46 para 10 of the Convention. And for this purpose, art 46 para 11 further provides to the effect that:

The State Party to which the person is transferred shall take responsibility to keep the person transferred in custody unless otherwise approved by the transferring State;

The State Party to which the person is transferred shall without delay implement its obligation to return the person transferred to the custody of the transferring State as might have been agreed without any need for extradition proceedings;

The person transferred shall receive from the transferring State credit for service of his/her sentence for the time spent in the custody of the State to which he/she was transferred.

⁹³ Art 46 para 12 of the Convention. Similar provision is made for experts and other classes of witness in para 27 of art 46. However, since para 27 is without prejudice to para 12, it means that such expert (for instance) may nonetheless be tried or punished upon the consent of the transferring State. This one area of departure from UNTOC.

- d) Description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- e) Where possible, the identity, location and nationality of any person concerned; and
- f) The purpose for which the evidence, information or action is sought⁹⁴.

Although States Parties are encouraged to execute MLA requests to satisfy the procedures stipulated in such requests, they are to do so only to the extent that such procedures do not offend their domestic laws⁹⁵. And in deserving circumstances, a State Party may request further information to facilitate or enable the execution of such requests in line with its domestic laws⁹⁶.

Information may be shared and requests may be granted with such confidentiality considerations considered necessary by States Parties⁹⁷. In the alternative, the requested assistance may be postponed or suspended if it tends to compromise or interfere with ongoing investigation, prosecution or judicial proceeding in the requested State⁹⁸.

When executing a request under the UNCAC, the ordinary cost of executing such request is to be borne by the requested State⁹⁹unless otherwise agreed by the State Parties concerned especially where expenses of substantial or extraordinary nature is needed to fulfill such request¹⁰⁰. And in event that the Requesting State losses interest in any given request, it must promptly be communicated to the requested State¹⁰¹.

MLA request may however be refused for specified reason(s)¹⁰². It could be that the request is not in conformity with the Convention; that it is prejudicial to the sovereignty, security, public order or other essential interest of the requested State; that it would contravene domestic law or that such assistance would be prohibited under its domestic law with regards to similar offence¹⁰³. But in any case, a request may not be refused on the only ground that the offence is similarly considered to involve fiscal matters¹⁰⁴.

d.) Transfer of Criminal Proceedings under the UNCAC

Transfer of Criminal Proceedings is provided for in Article 47 of the Convention. States Parties are mandated to consider the possibility of transferring criminal proceedings relating to the subject matter of the convention (being corruption offences). This is to be done once it is in the interest of proper administration of justice, especially where several jurisdictions are involved, so as to concentrate prosecution.

⁹⁴ See generally art 46 para 14 and 15 of the Convention

⁹⁵ Art 46 para 17 of the Convention

⁹⁶ Art 46 para 16 of the Convention

⁹⁷ Art 46 para 19 and 20 of the Convention

⁹⁸ Art 46, para 25 and 26 of the Convention

⁹⁹ This ensures that requests are processed seamlessly in the spirit of international comity, devoid of foreign exchange and such unnecessary bottlenecks.

¹⁰⁰ Art 46 para 28 of the Convention

¹⁰¹ Art 46 para 24 of the Convention

¹⁰² This must be communicated to the requesting party in line with art 46, para 23 of the Convention.

¹⁰³ Art 46 para 21 of the Convention

¹⁰⁴ Art 46 para 22 of the Convention



Unlike the case of mutual legal assistance, the Convention does not pretend to offer itself as a sufficient basis for such cooperation. Going by its wordings, it does appear that States Parties to UNCAC must execute a separate and detailed treaty as a basis for transfer of criminal proceedings in line with Article 47. Such treaty would then provide the modalities for such cooperation.

e.) Law Enforcement Cooperation under the UNCAC

Law Enforcement Cooperation is technically used in UNCAC in lieu of informal cooperation so that States Parties can, within their legal and administrative frameworks, promote secure and rapid exchange of information between their competent authorities and relevant law enforcement agencies towards timely and efficient containment of the corruption offences¹⁰⁵. By this means of cooperation, documents and exhibits can equally be shared for analytical and investigative purposes. This can be done by posting liaison officers¹⁰⁶ or use of electronic channels¹⁰⁷ even without any prior request where it is believed that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a formal request for any possible assistance under the Convention¹⁰⁸.

Transmission of information in this regard is however without prejudice to any inquiry or criminal proceeding by the competent authority transmitting such information and the authority receiving the information shall comply with confidentiality request or condition of use of such information (if any) except where such information is exculpatory to the accused. In such case, however, the transmitting State Party must nonetheless be informed prior to disclosure or if impracticable, immediately after such disclosure¹⁰⁹. In the absence of alternative treaty arrangement, UNCAC can thus be utilized as a legal basis for cooperation in this respect.

f.) Joint Investigations under the UNCAC

Joint Investigation measure is encouraged in Article 49 of the Convention. To establish such joint investigative bodies, however, States Parties may not solely rely on UNCAC. They must execute bilateral or multilateral treaties in that regards or proceed on a case-by-case agreement but with full respect to the sovereignty of the State Party in whose territory the investigation is undertaken. Related to Joint Investigation is Article 50 of the Convention, which encourages States Parties on terms similar to Article 49 to allow its competent authorities, within the limits of its domestic laws, appropriate use of ‘controlled delivery’¹¹⁰ and other special investigative techniques like electronic surveillance and undercover operations within its territory and to allow the admissibility of evidence derived in such process within the domestic court for the purposes of corruption offences.

¹⁰⁵ See art 48 of the Convention generally

¹⁰⁶ Art 48 para 1 (e) of the Convention

¹⁰⁷ Art 48 para 3 of the Convention

¹⁰⁸ Art 46 para 4 of the Convention

¹⁰⁹ Art 46 para 5 of the Convention.

¹¹⁰ This is defined in art 2 (i) of the Convention to mean the technique of allowing illicit or suspected consignments to pass into, through or out of the territory of state(s) with the knowledge and supervision of their competent authorities in order to unravel an offence and identify the offenders.



5.0 Practical Application of UNCAC to Anti-Corruption in Nigeria

The use of UNCAC for international cooperation in criminal matters in Nigeria is more visible in the areas of mutual legal assistance, asset recovery cooperation and perhaps joint investigation. Extradition and Transfer of Prisoners only take place within the frameworks of the Extradition Act¹¹¹(as amended) and Transfer of Convicted Offenders (Enactment and Enforcement) Act¹¹² which both preceded the UNCAC¹¹³. It is consoling, however, to note that the principles enshrined in the said Extradition Act are in tandem with UNCAC. Likewise, the Transfer of Convicted Offenders (Enactment and Enforcement) Act. UNCAC does not provide for the practice of letters rogatory. Whereas it provides for the transfer of criminal proceedings, there is no domestic law to activate same in Nigeria except the Geneva Conventions Act which applies to war crimes¹¹⁴. Under the Constitution of the Federal Republic of Nigeria (1999), a treaty between Nigeria and any country shall have the force of law only to the extent that it is enacted as an Act of the National Assembly, and where such treaty pertains to matter(s) outside the Exclusive Legislative List, it must be ratified by a majority of all the Houses of Assembly in the Nigerian federation¹¹⁵. Similar provisions are found in constitutions around the world which are given priority in domestic courts notwithstanding the international legal principle that a State Party to treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty obligation.¹¹⁶ Thus, while some member States have ratified and passed domestic legislations to give effects to their treaty obligations, others only adopt or legislate on a fraction of those treaties, while some are yet to legislate at all on such treaties.¹¹⁷ This is especially the bane of treaties in dualist countries¹¹⁸

United Nations Convention against Corruption (UNCAC) and allied treaties¹¹⁹ are domesticated Nigerian laws in a number of legislations like the Corrupt Practices and Other Related Offences Act 2000¹²⁰ , the Economic and Financial Crimes Commission (Establishment, Etc.) Act¹²¹, the Money Laundering Act 2022, the Code of Conduct Bureau and Tribunal Act¹²², the Nigerian Financial

¹¹¹ Cap. E 25 LFN 2004

¹¹² Cap. T16 LFN 2004 (as amended)

¹¹³ The Extradition Act was promulgated as a military decree since 1966 to give domestic effect to the London Scheme for Extradition within the Commonwealth while the Transfer of Convicted Offenders was similarly a decree promulgated in 1988 to give municipal effect to the Commonwealth Scheme on Transfer of Convicted Offenders between Commonwealth Countries on the basis of reciprocity. It is consoling however that both serve the purposes of UNCAC.

¹¹⁴ There is however an omnibus provision in s. 1 of the Mutual legal assistance Act 2018 to accommodate 'any other assistance'. This might well be leveraged upon to initiate a transfer of criminal proceedings.

¹¹⁵ CFRN 1999 (as amended), s. 12. See also U.O Umuozurike, *Introduction to International Law* (3rd edn, Spectrum Books Ltd, 2005), 33

¹¹⁶ See art. 27 of the Vienna Convention on the Law of Treaties (1969)

¹¹⁷ Chidiebere A. Chinweike: 'The Office of the Attorney-General and Mutual Legal Assistance' in Epiphany Azinge & Osatohanmwen Eruaga (eds.), *Mutual Legal Assistance* (Lagos: Nigerian Institute of Advanced Legal Studies, 2014), 45

¹¹⁸ In monist countries, all internal legislative measures are usually taken prior to signing up to any such treaty and thus it takes immediate effect over and above conflicting domestic laws

¹¹⁹ Such treaties include the United Nations Convention on Transnational Organized Crime (UNTOC), African Union Convention on Preventing and Combating Corruption 2003, ECOWAS Convention on Mutual Legal Assistance in Criminal Matters (Convention A/P.1/7/1992), Extradition Treaty between the Peoples' Republic of Benin, the Republic of Ghana, the Federal Republic of Nigeria and the Republic of Togo 1984 and the Economic Community of West African States Convention on Extradition 1994.

¹²⁰ Cap C31 LFN 2004

¹²¹ Cap E1 LFN 2004

¹²² Cap. C 15 LFN 2004

Intelligence Unit Act 2018 as well as the Proceeds of Crime (Recovery and Management) Act 2022 among others, where the general principles and specific provisions of the relevant treaties are given effect in several provisions of these statutes¹²³. The propriety of this method of domestication received judicial approval in *Okoyomon v. AGF*¹²⁴ where the Court of Appeal rightly upheld the partial domestication of a treaty when it cited with approval that certain clauses of the London Scheme for Extradition being in *parimateria* with the Extradition Act were enforceable in Nigeria, warning that a court should not indulge in statutory interpretations that could eventuate the breach of international obligations. It stands to reason that a wholesale domestication of a treaty is only necessary where a country has no reservation to any provision of the treaty. Otherwise, such treaty may rightly be enacted, adapted or incorporated with necessary modifications into the body of domestic law (s).

The applicability of UNCAC to the recovery and repatriation of stolen loots was confirmed by the former Attorney-General of the Federation and Minister of Justice, Abubakar Malami (SAN) on Tuesday, the 17th August 2021, when he maintained that repatriation of looted funds stashed abroad by Nigeria are based on cooperation and mutual legal assistance agreements, especially the United Nations Convention against Corruption¹²⁵. UNCAC has become the most universal anti-corruption instrument because the vast majority of the United Nations Member States are parties to the Convention¹²⁶. Nigeria has utilized the UNCAC to recover a number of stolen assets laundered abroad. Further to the Convention, Nigeria signed asset recovery agreement with the USA and its subnational state of New Jersey on 3rd February 2020 for the return of over 308 million USD (Abacha loot)¹²⁷ earlier forfeited by the US federal court sitting in Washington DC far back in 2014¹²⁸. This was the largest U.S Kleptocracy forfeiture action ever commenced at the time, more so as France and the United Kingdom had also restrained additional sums at the request of the U.S. Indeed, this singular case has been described as a watershed in the history of international cooperation in asset recovery and repatriation¹²⁹ compared to the controversies and bottlenecks associated with Nigeria's repatriation of about a billion USD of the said Abacha's loot from Switzerland¹³⁰ only after a decade (from 2004) before final closure in 2018, thanks to the trilateral agreement signed in March 2017 between Nigeria, Switzerland and the

¹²³ See for instance, ss 45 – 49 of the Corrupt Practices and Other Related Offences Act on asset seizure and forfeiture (enacted pursuant to chapter V of UNCAC), Nigeria Financial Intelligence Act 2018 (which gives effect to art 58 of UNCAC), among others.

¹²⁴ Appeal No. CA/A/ 260/2015 (delivered by the Abuja Division of the Court of Appeal on the 6th day of June 2016); reported by Ladapo and Okebukola (n.22), 427-444

¹²⁵ He however added that there is a Global Forum on Asset Recovery (GFAR) Principles on the Repatriation of Stolen Assets to complement the UNCAC as well as the African Union and ECOWAS treaties on recovery of illicit funds as relating to Nigeria's role to foreign partners.

¹²⁶ Wikipedia & UNODC (n.1).

¹²⁷ 318 million USD was the actual figure reported by Victoria Ojeme, 'FG signs Tripartite Agreement to Repatriate \$318m Abacha Loot' *Vanguard News* (5th February 2020) <<https://www.vanguardngr.com/2020/02/fg-signs-tripartite-agreement-to-repatriate-318m-abacha-loot/>> accessed on 17th November 2024 at about 10: 35 pm WCAT

¹²⁸ 'Breaking: US, Nigeria Agree to Return \$308m Loot by Abacha' *Vanguard News* (4th February 2020) <<https://www.vanguardngr.com/2020/02/breaking-us-nigeria-agree-to-return-308m-loot-by-abacha/>> accessed on 17th November 2024 at about 10: 35 pm WCAT

¹²⁹ *ibid*.

¹³⁰ 'No More Abacha's Loot in Our Country, says Swiss Govt' *Vanguard News* (28 June 2018) <<https://www.vanguardngr.com/2018/06/1012620/>> accessed on 17th November 2024 at about 10:42 pm WCAT



International Monetary Fund (IMF) for repayment of the money through the Bank for International Settlements in Basel, Switzerland¹³¹.

Between 2006 and 2012, British authorities recovered and returned over 5 million Pounds stolen by Dipreye Alamieyesiegha (former Governor of Bayelsa State) directly to the Bayelsa State Government¹³². The money was majorly laundered through Solomon & Peters Ltd registered in British Virgin Islands¹³³. Agreement was also signed in 2017 with the government of USA for the repatriation of other monies within the US looted by the former Governor alongside the Abacha loot back to Nigeria¹³⁴. Dariye's loot were equally returned to the Plateau State Government following court-ordered forfeiture in the UK¹³⁵. Indeed, pursuant to international cooperation within the framework of UNCAC, the London Metropolitan Police in collaboration with the EFCC had conducted a joint investigation against at least three former governors in Nigeria, including, Joshua Dariye, Dipreye Alamieyesiegha and James Ibori¹³⁶.

UNCAC was also useful in repatriation of Ibori's loot, following his conviction and consequential confiscation of his laundered asset by Southwark Crown Court in the U. K¹³⁷. The MOU for the repatriation of the funds was signed between Nigeria and U.K on 9th March 2021¹³⁸, generating controversy as to who is entitled to the recovered loot as between the Delta State Government and the Federal Government of Nigeria¹³⁹. The first school of thought with whom the Federal Government aligned maintained that since the then Money Laundering Act 2011 (as amended) violated by Ibori in laundering the recovered asset was a federal legislation, Federal Government was entitled to the stolen asset, especially since the Delta State Government had earlier submitted that it had no case against Ibori and that its monies were not lost¹⁴⁰. The second school of thought believed that Delta State Government was entitled to the recovered loot nonetheless, going by the Court of Appeal decision in *David v. FRN*¹⁴¹ which decided that since the owner of stolen monies is the victim of the crime, such is the person entitled

¹³¹ Reported by BBC News, 5th December, 2017 <<https://www.bbc.com/news/world-africa-42237752>> accessed on 17th November 2024 at about 10:45 pm WCAT

¹³² The Rainbow, 'UK Ready to Return \$900m Alamieyesiegha's Loot to Bayelsa' *The Voice Nigeria* (29th November, 2017) <<https://www.thenigerianvoice.com/news/260459/uk-ready-to-return-900m-alamieyesieghas-loot-to-bayelsa.html>> accessed on 17th November 2024 at about 10:45 pm WCAT

¹³³ ibid

¹³⁴ 'US Agrees to Return Abacha, Alamieyesiegha's Loot' *Nigerian Tribune* (8th December 2017) <<https://tribuneonlineng.com/us-agrees-to-return-abacha-alamieyesieghas-loot/>> accessed on 17th November 2024 at about 10:50 pm WCAT

¹³⁵ One-Minute World News, 27th September, 2007 <<http://news.bbc.co.uk/2/hi/africa/7015765.stm>> accessed on 17th November 2024 at about 10:50 pm WCAT

¹³⁶ ibid.

¹³⁷ Chukwudi Enebeli, 'Who Legally Owns £4.2m Repatriated Ibori Loot?' *The Guardian* (16th March 2021) <<https://guardian.ng/features/law/who-legally-owns-4-2m-repatriated-ibori-loot/>> accessed on 17th November 2024 at about 10:55 pm WCAT

¹³⁸ ibid. The Daily Trust of 9 March 2021 at <<https://dailytrust.com/just-in-fg-to-repatriate-fresh-4-2m-ibori-loot-from-uk>> accessed on 17th November 2024 at about 11:00 pm WCAT however maintains that an MOU had already been signed to that effect since 2016.

¹³⁹ The controversy was against the backdrop of the fact that Delta State government had earlier denied that their monies were missing.

¹⁴⁰ Ibid. This submission is often supported with s. 7 of the Interpretation Act as well as ss 80 cum 162 of the CFRN 1999 (as amended).

¹⁴¹ (2018) LPELR – 43677 (CA)



to the repatriated funds. In support of this position was the fact that the monies looted were public funds meant for the welfare of the people of Delta State. Fortunately, the dilemma has today been laid to rest in the light of section 70 of the Proceeds of Crime (Recovery and Management) Act 2022 so that the president may, upon approval of the Federal Executive Council, authorize payment from the Confiscated and Forfeited Properties Account to any State or person who must have suffered pecuniary loss in consequence of any offence or conduct that led to the forfeiture or recovery of the asset. I dare add that the ‘may’ in this context should be interpreted as ‘shall’ in order to place a mandatory duty on the President to do the needful where the monies were originally taken from a State or a Local Government purse¹⁴².

6.0 Limitation of UNCAC as Tool of International Cooperation in Criminal Matters in Nigeria

As useful as it appears, UNCAC is not without limitations. Firstly, given its nomenclature and purpose, UNCAC is only applicable to corruption related offences and is therefore narrow in scope compared to its predecessor UNTOC (United Nations Convention against Transnational Organized Crime). Secondly, as a treaty - being contractual in nature, UNCAC depends largely on the political will of States Parties to thrive. Beyond the signature of Member States to UNCAC, concrete steps must be taken to give force and effect to same in domestic jurisdictions. Thus, where domestic legislation is needed as in section 12 of the Nigerian Constitution, the provisions of UNCAC can only be enforceable in local courts to the extent that it has been adopted or enacted into local legislation. Such principle(s) of the Convention that are not part of the domestic law cannot therefore be relied upon in domestic jurisdictions however plausible¹⁴³. The only redress would lie in diplomatic retaliation and any other available means enforcement at the international realm.

Thirdly, except for extradition, mutual legal assistance, law enforcement cooperation and asset recovery, UNCAC does not offer itself as a sufficient legal basis for other forms of cooperation. It only encourages States Parties to conclude arrangements for cooperation with regards to joint investigations, transfer of criminal proceedings as well as the enforcement of foreign criminal judgements. The plenitude of non-mandatory provisions in the Convention can potentially encumber domestic law enforcement in relation to international cooperation in that States could simply ignore such provisions of the Convention that are qualified or worded in non-mandatory terms.¹⁴⁴ To this extent, UNCAC is seriously limited.

Fourthly, UNCAC is criticized for vagueness and imprecision¹⁴⁵. Lack of clarity and ambivalence could lead to interpretational discrepancies, giving States the latitude to adopt interpretations that suit their narrow interests rather than the true intentions of the convention. This challenge is compounded by the fact that the generality of the member-States to the convention are unwilling to submit to arbitration in event of interpretative disputes.

¹⁴² Any cost expended by Federal Government to facilitate such recoveries should however be recovered.

¹⁴³ Russia, for instance, ratified the UNCAC in 2006, but failed to include art 20 of the Convention, which is targeted at illicit wealth.

¹⁴⁴ Cecily Rose, ‘the Limitations of the United Nations Convention against corruption’, *International Anti-Corruption Norms: Their creations and Influence on Domestic Legal Systems* (Oxford Scholarship Online, 2015) <<https://doi.org/10.1093/acprof:oso/9780198737216.003.0004>> accessed 18th November 2024 at about 11:26 am WCAT

¹⁴⁵ Ibid.



The fifth challenge in leveraging UNCAC for international cooperation is the fact of its eurocentrism and western posturing. Apart from the fact that the convention is worded in alien languages, it fails to factor in the peculiarity of African or third world countries where Non-Governmental Organizations (NGOs) including faith-based and traditional institutions could play significant roles in policing and law enforcement¹⁴⁶. Exclusive reliance or emphasis on western-styled institutions with little or no regards to native or traditional institutions of law enforcement is a huge oversight in the context of law enforcement or informal cooperation in Africa.

Next is the fact that UNCAC is potentially prejudicial to the rights and interests of suspects and defendants. For instance, experience has shown that letters rogatory (mostly used by defendants to obtain evidence, documents, etc. from foreign jurisdiction) is slow, time-consuming and cumbersome, being majorly reliant on sheer ‘goodwill’ of foreign judiciaries¹⁴⁷. In committing to a faster and proactive alternative under UNCAC, the United Nations Member States practically conspired against potential suspects and defendants of corruption charges (who are presumed innocent by the law), leaving them little or no room to equally access justice through the instrumentality of the Convention. In the absence of a provision under the UNCAC permitting suspects or potential defendants to also submit request (even upon a fee) to the central authority and compelling the authority to transmit such request with similar dispatch for purposes of accessing potentially exculpating evidence (which might also influence the prosecutorial decision or discretion), corruption trials might not meet the ‘equality-of-arm-principles’ of our adversarial criminal justice system, since the defendant may not otherwise have access to potentially exculpatory evidence stashed abroad. This subtracts substantially from the presumption of innocence guaranteed under domestic and international laws, including the Nigerian constitution.

Above all, UNCAC is challenged by a multitude of reservations and adverse declarations filed by numerous State Parties against the operation of some of its very strategic provisions. For instance, a significant number of the member-States have filed reservations against paragraph 2 of article 66 of the convention which compels arbitration of dispute (and ultimate intervention of the International Court of Justice) at the behest of any State Party when negotiation fails. This alone is worrisome and tends to suggest that such countries are not committed to optimal implementation of the Convention. Besides, Mauritius, Malta, El Salvador, Cuba, Lao’s People Democratic Republic, Nepal, Bolivia, Pakistan, Yemen and Saudi Arabia declared that the Convention is not a sufficient legal basis for them to extradite offenders¹⁴⁸. Mozambique and The Holy See (acting for the Vatican City State) will not extradite or

¹⁴⁶ African societies are closely knitted. Everyone has more than a passing interest in the affairs of their kinsmen and neighbours. They can quickly identify someone who has helped himself to public resources and have credible intelligence that could lead to recovery of stolen loots if properly integrated into modern law enforcement structures.

¹⁴⁷ A suspect or potential defendant may only be allowed to initiate a letter of request when charge(s) are filed in court. And given the fact that the request would usually be treated by the trial court through its administrative hierarchy to the foreign affairs and then to foreign embassies down to the judicial hierarchy of the foreign court amidst the known bureaucracy, awaiting the outcome of the request most often tends to slow down the trial and the court may not condone that delay, more so as there is usually no guarantee that such requests will be honoured, especially if the subject matter of the request is classified or has the potential of exposing or painting the requested State or its administration in bad light.

¹⁴⁸ United Nations Secretariat, ‘United Nations Convention against Corruption’ *United Nations Treaty Collections (Chapter XVIII)* <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&clang=_en> accessed 19th November 2024 at about 8:20 pm WCAT



grant MLA request for criminal investigations and/or prosecution that will lead to imposition of death penalty¹⁴⁹. Mozambique, Honduras, Lithuania and Venezuela may only extradite non-national under the framework of the Convention¹⁵⁰. Canada and the Socialist Republic of Viet Nam declared they have no crime of illicit enrichment or equivalent, and as such cannot grant any cooperation towards such offence¹⁵¹. Viet Nam further declared the entire provisions of the Convention non-self-executing and particularly added that the Convention shall not constitute a legal basis for extradition¹⁵². Russian Federation has declared against law enforcement cooperation and joint investigation that may lead to active investigative or procedural activities on the Russian territory¹⁵³. Also, the mandatory provisions of article 55, paragraphs 1 and 2 of the Convention shall not operate as a legal basis for Russia's cooperation towards asset identification, tracing, freezing and/or confiscation of proceeds or instrumentality of corruption¹⁵⁴. The USA also filed reservation against the use of the Convention as legal basis for cooperation except in matters of MLA¹⁵⁵. Kenya and St. Lucia do not also consider the Convention as a sufficient legal basis for extradition¹⁵⁶. Isreal is however flexible and may consider *ad hoc* agreement depending on the circumstances and seriousness of the offence. And where there is no subsisting bilateral extradition treaty, she may consider extradition on the basis of the convention or consider a special agreement pursuant to its domestic law¹⁵⁷. Belgium will also consider the convention in the absence of other bilateral or multilateral treaty¹⁵⁸.

The plethora of reservations against the critical provisions of the Convention is a huge setback. Netherlands brought the point home when registering her objection to the USA thus:

It is in the common interest of the States that treaties which they decide to ratify or accede to be fully complied with by all parties and that States be prepared to adapt their national legislation to their obligations under such treaties. Reservations such as the ones made by the United States, which declare that obligations under the Convention will be assumed to the extent consistent with its fundamental principles of federalism or national law, undermine the basis of international law of treaties. The Government of the Kingdom of the Netherlands therefore objects to these reservations¹⁵⁹.

On her part, the Netherlands demonstrated good faith and went as far as declaring the Convention a legal basis for cooperation even for her dependent territory (the Kingdom of Europe – the Caribbean part of the Netherlands)¹⁶⁰. Similarly, UK extended her ratification of the Convention to her dependent territories of Cayman Islands, Bermuda, Gibraltar and the Virgin Islands¹⁶¹. South Africa, Cote d'Ivoire,

¹⁴⁹ *ibid*

¹⁵⁰ *ibid*. Mozambique and Honduras however replace the word 'national' with 'citizen'.

¹⁵¹ *ibid*

¹⁵² *ibid*

¹⁵³ *ibid*

¹⁵⁴ *ibid*

¹⁵⁵ *ibid*

¹⁵⁶ *ibid*.

¹⁵⁷ *ibid*

¹⁵⁸ *ibid*

¹⁵⁹ *Ibid*.

¹⁶⁰ *ibid*

¹⁶¹ *ibid*



Mali, Ireland, Ukraine, Georgia, Estonia, Croatia, Czech Republic, Cyprus, Belarus, Albania, Poland, Uzbekistan, Azerbaijan, Kuwait, Kazakhstan, Paraguay, Guatemala, Panama, Latvia, Luxembourg, Costa Rica, Chile, Canada and Republic of Macedonia expressly declared their adoption of the Convention as a sufficient legal basis for extradition between them and other States Parties to the Convention¹⁶². Russia did same for extradition and MLA and even went further to undertake to receive MLA requests via the INTERPOL in urgent situations¹⁶³. In this regard, these countries are (to say the least) the shining champions of the UNCAC. This is however not taking for granted the fact that countries who wish to take advantage of the Convention in seeking cooperation must equally be prepared to reciprocate whether or not they expressly declared the Convention as sufficient legal basis for the cooperation they seek.

7.0 Conclusion and Recommendations

In conclusion, this paper succinctly discussed the concept of international cooperation in criminal matters in relation to the UNCAC. It has also demonstrated that UNCAC is an indispensable tool for international cooperation in criminal matters with particular reference to anti-corruption. It has been utilized by Nigeria more than any other country so far to facilitate the repatriation of stolen loots, mutual legal assistance and joint investigation of money laundering. James Ibori's and Alamieyeseigha's cases are classical in this regard. Likewise, the ongoing investigation of Diezani-Alison Madueke. However, as anti-corruption treaty, UNCAC is not without shortcomings. Apart from its limited scope, vagueness and the numerous reservations by member-States (among other challenges), it relies heavily on the political will of States Parties and domestic policies to thrive, and does not guarantee sufficient access to justice for suspects and potential defendants where their exculpatory evidence are outside the domestic jurisdiction.

It is recommended that leveraging on Article 69 of the Convention, a supplementary protocol or amendment to the UNCAC should be piloted by Nigeria (the greatest beneficiary of Convention so far) at the instance of African or the third world countries¹⁶⁴ factoring in the advantage of African traditional justice cum law enforcement mechanisms and recognizing, adopting and improving upon the concept of letters rogatory as a form of cooperation in criminal matters. In the alternative, a mechanism should be fashioned out for suspects and potential defendants to access evidential cooperation within the framework of the Convention and hold States Parties accountable to it. UNCAC should equally constitute a legal basis for joint investigations, transfer of criminal proceedings and other conceivable forms of cooperation among States Parties. In this wise, robust provisions on such aspects of the cooperation should be made in the proposed supplementary protocol or amendment in such a way that States Parties can readily adopt and ratify as appropriate.

¹⁶² *ibid*

¹⁶³ *ibid*

¹⁶⁴ Art 69 of UNCAC empowers State Parties to propose any amendment to the convention and transmit same to the Secretary-General of the United Nations 5 years after the coming into force of the convention, for further necessary actions. This condition has since been met even as it is overdue to propose salient amendments to the UNCAC.



Domestically, Nigeria should take urgent legislative steps to give effect to all the mechanisms of international cooperation under the UNCAC. Joint Investigation¹⁶⁵, Transfer of Criminal Proceedings as well as Recognition and Enforcement of Foreign Criminal Judgement as modalities of international cooperation in criminal matters are a great potential for anti-corruption in Nigeria, ECOWAS subregion and the world at large. There should be domestic laws and policies further to the UNCAC to give force to them. UK, for instance, though a common law country signed up to the Schengen countries arrangements on police and judicial cooperation towards joint investigation as well as mutual recognition of foreign judgements (even from civil law jurisdictions)¹⁶⁶. Section 76 of the Regulation of Investigatory Powers Act 2000 permits law enforcement agents from other member States of the Schengen agreement to conduct surveillance operations in UK territory for an agreed period. This example should be emulated by State Parties to UNCAC with necessary measures to protect States' sovereignty. Meanwhile, the Chief Justice of Nigeria (CJN) should come up with a policy framework on letters rogatory for the Nigerian judiciary so as to complement existing and proposed legislative measures on the subject matter.

¹⁶⁵ This is apt, especially for Joint Parallel investigation (JPI) and Joint Investigative Bodies (JIBs) which must, at all times, be led or coordinated by personnel from States in which the investigation is taking place.

¹⁶⁶ Bantekas and Nash (n. 36), 366