Rethinking Judicial Cooperation between Africa and Europe

The Nigerian Case

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Article

Chervine Oftadeh, Annalisa Pauciullo *

ABSTRACT

In 1993, France appointed the first liaison magistrate in Italy to improve judicial cooperation between the two countries. Since then, various European, American, North African, and Middle Eastern countries have created liaison magistrate posts worldwide, but this tradition does not exist in Sub-Saharan Africa. Such deployments could be particularly useful, however, considering the challenges European countries face as regards judicial cooperation with West and Central African countries in the field of transnational organized crime. The United Nations Office on Drugs and Crime has tackled these challenges by supporting the deployment of two Nigerian prosecutors to Italy and Spain since 2018, in order to strengthen judicial cooperation in the field of human trafficking and smuggling of migrants.
This innovative approach has contributed to shortening the channels of communication between jurisdictions; to better understanding respective legal, institutional, procedural frameworks as well as the nature and type of criminal networks; and to building trust between prosecutors and law enforcement officers from different countries. Despite the encouraging results of this cooperation, further political support, adequate funding, and collaboration from all stakeholders, as well as strengthening of regional cooperation mechanisms, will be key to achieving sustainable results in the fight against human trafficking and smuggling of migrants in West and Central Africa and Europe.

AUTHORS

Chervine Oftadeh

Associate Expert
United Nations Office on Drugs and Crime

Annalisa Pauciullo

Crime Prevention and Criminal Justice Officer
United Nations Office on Drugs and Crime

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I. Introduction

The West and Central African region is facing many challenges in conjunction with transnational organized crime,[1] particularly human trafficking and smuggling of migrants, the laundering of the proceeds thereof, and the corruption that enables these phenomena to thrive. While the number of trafficking victims identified in Europe is staggering, the level of successful prosecutions and convictions still remains low in the countries of origin and in the countries of destination.

Judicial cooperation remains challenging, both within the region and with third countries.[2] In 2016, the International Organization for Migration recorded that 11,009 women and 3040 unaccompanied children from Nigeria arrived in Italy by sea, and it estimated that 80% of them were likely to be victims of trafficking for sexual exploitation.[3] For the same year, Eurojust and the National Agency for the Prohibition of Trafficking in Persons of Nigeria (NAPTIP) registered "only" 104 cases and 721 cases of human trafficking, respectively. This is partly due to the fact that a significant gap remains between the policy discourse, the legal framework for international cooperation, and the attitude of judicial, prosecutorial, and law enforcement authorities. Scepticism and distrust are factors inhibiting practitioners from working together across national borders, in particular when cases require cooperation among jurisdictions from different judicial cultures and regions.

In this context, the United Nations Office on Drugs and Crime (UNODC), as the guardian of the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols thereto, has recently begun a joint initiative with the Office of the High Commissioner for Human Rights, supporting the deployment of two Nigerian liaison prosecutors to Italy and Spain, with the aim to overcome various challenges related to judicial cooperation in the field of human trafficking and smuggling of migrants.

It has long been established that effective international cooperation mechanisms are key to responding to illicit cross-border movement of people and goods and to the increasing sophistication of criminals' *modus operandi*.[4] Recalling the overall objective of the UNTOC, which is to promote international cooperation,[5] the Conference of the Parties to the UNTOC requested States Parties to "permit direct communication and transmission of requests between central authorities, and encourages them, when appropriate and feasible, to place liaison magistrates or officers in capitals of other States parties."[6]

Indeed, the deployment of prosecutors to a foreign country to act as liaison magistrates can play a key role in removing various obstacles to judicial cooperation. With their knowledge of the hosting country's law and procedure, the liaison magistrates can clarify specific points for both the sender and the receiver of mutual legal assistance (MLA) requests, thus fostering cooperation. Moreover, a liaison magistrate will not only be able to guide his colleagues on how to efficiently draft and submit an MLA request but, more importantly, also do the necessary follow-up on the request within the hosting state.[7] To use the words of former liaison magistrate *Mr. Bernard Rabatel*[8] during a recent meeting organized by UNODC, "liaison magistrates are like electrical plug adaptors, their function is to transmit the legal current from one country to another."

While the long-term objective of the UNODC Liaison Magistrate Initiative is to involve various African countries, the pilot phase has concerned Nigeria, due to the high number of victims trafficked in Italy and Spain and to the challenges encountered in judicial cooperation between European and Nigerian authorities when launching parallel investigations and prosecutions to ensure the complete dismantling of trafficking networks in both Europe and at the country of origin (II). Eighteen months after the deployment of the first magistrate to Italy, UNODC and relevant stakeholders identified the main results achieved, the lessons learned, and the remaining challenges still to overcome (III). Building on the positive developments and increasing cooperation between both Italy and Spain with Nigeria, this initiative could contribute to further bilateral and multilateral cooperation in the fight against transnational organized crime in Africa and Europe (IV).

II. Challenges in Judicial Cooperation with Nigeria on Transnational Organized Crime

1. The specificities of the Nigerian legal and judicial system

During the pre-deployment assessment missions conducted by UNODC in Italy and Spain, European prosecutors and law enforcement officers reported the lack of effective judicial cooperation between their countries and Nigeria in the field of human trafficking and smuggling of migrants. Among the main challenges identified by EU Member States, there is the struggle to identify the relevant Nigerian counterpart with whom to establish contact as well as the lack of timely response and execution of MLA requests.

Nigeria is among the few federal states in Africa and the only one in the West African region. The Constitution of 1999 established 37 States,[9] coexisting federal and state jurisdictions as well as Sharia and Customary Courts.[10] Moreover, in Nigeria, various federal law enforcement agencies have jurisdiction over human trafficking and smuggling of migrants, such as NAPTIP, the Nigeria Immigration Service, the Nigeria Police Force, and specific units of the Federal Ministry of Justice. The complexity of internal coordination between these Nigerian agencies can be challenging for European practitioners to understand and can make them shy away from seeking cooperation from their Nigerian counterparts.

The difficulties caused by the differences in legal systems is one of the main reasons for the deployment of European prosecutors to foreign countries.[11] Similarly, considering the differences between the Nigerian and European systems, the deployment of Nigerian prosecutors to Europe can help foster a better understanding of Nigerian laws and procedures.

2. Nigeria, a hotspot of human trafficking and smuggling of migrants in West Africa

If West Africa is facing a multi-dimensional security crisis, the situation in Nigeria is particularly worrying, especially in the field of human trafficking and smuggling of migrants. In 2016 and 2017, Nigerians made up the highest number of smuggled migrants arriving to Italy through the Central Mediterranean Route (i.e., Libya),[12] and in July 2018, the EU estimated that close to one of three migrants in Libya was Nigerian.[13] It is estimated that approximatively 60% of these migrants come from Edo State in South Western Nigeria,[14] an area known to be particularly affected by human trafficking. Between 2014 and 2017, NAPTIP detected 3842 victims of human trafficking in the country (including 3453 Nigerians), with Nigeria presenting by far the highest number of trafficked victims in the sub-region.[15]

The scale of the phenomenon requires an understanding of not only the legal issues related to the crime but also the influence of traditional religious contexts and institutions on the trafficking process, in particular in Edo State. For example, victims of trafficking are very often bound to their traffickers by an oath by which they swear to pay back the money that traffickers gave them to go to Europe – money hundreds of Nigerian women pay back by being forced into prostitution in European countries. It has been well documented that traffickers use very popular and respected deities, such as *Ayelala*, which makes it particularly difficult for victims to break the oath taken, because they are afraid they will be punished and/or stigmatized by their families or communities. Criminals themselves respect and fear deities.[16] Without understanding the impact that these kinds of practices can have on victims of trafficking, it is difficult to assist, protect, and get a victim to cooperate with criminal justice officials in EU countries. In addition to their legal knowledge and expertise, Nigerian liaison magistrates can provide this useful contextual and socio-cultural information.

III. The Liaison Magistrates – An Innovative Approach towards Strengthening Judicial Cooperation

1. The context and objective of deployment

Considering the high number of Nigerians smuggled to Italy[17] and the involvement of Nigerian criminal networks, establishing bilateral cooperation with Nigerian counterparts has been a priority for the Prosecutor's Offices in Palermo and Catania. In response to the need expressed by the Italian authorities, a first Nigerian liaison prosecutor was deployed to Italy in February 2018 to work with prosecutors' offices in Sicily in order to facilitate the treatment of cases involving Nigerians or Nigerian criminal organizations. In June 2019, the Nigerian liaison prosecutor was transferred to Rome, to the Antimafia National Directorate (DNA), which has specific coordination functions in the investigation of transnational organized crimes nationwide. Spain is facing similar challenges;[18] in March 2019, UNODC supported the deployment of another Nigerian prosecutor to Madrid, building on the Italian experience and as requested by Spanish authorities.

The deployed prosecutors act as liaison magistrates in Italy and Spain for the Central Authority of Nigeria, facilitating MLA requests between these countries. More specifically, the role of liaison magistrates is to:

- Facilitate communication between national central authorities;
- Provide relevant information on criminal networks in Nigeria;
- Transfer files on organized crime cases between countries;
- Follow up on MLA requests; and
- Provide legal and practical advice on legal and procedural requirements.

2. Successes of the liaison magistrates' scheme

Since the deployments in Italy and Spain, the Nigerian liaison magistrates have been working closely with Italian and Spanish prosecutors on cases involving Nigerian criminal networks and/or Nigerian victims. This cooperation has already shown some encouraging results in shortening the channels of communication, in improving the understanding of respective legal, institutional, procedural frameworks as well as the nature and type of criminal networks, and in building trust between prosecutors and law enforcement officers from different countries.

Thanks to their deployment, there is now a channel of communication between actors in the penal chain that was previously completely missing. Italian and Spanish prosecutors now have direct contact to identified focal points in relevant Nigerian law enforcement agencies, facilitating the exchange of information, e.g., on national legislation.

The establishment of liaison magistrates reactivated, and in some cases launched, judicial cooperation between Nigeria and Italy and Spain mostly on human trafficking cases. Currently, around 35 cases are ongoing, and concrete examples related to the translation of documents or receivable testimonies before Nigerian courts illustrate the crucial role that liaison magistrates can play in making international judicial cooperation effective.

In one specific case, Italian authorities shared information with Nigerian counterparts in order to prosecute an alleged trafficker before Nigerian Courts. However, the original statement from the victim – requested under Nigerian law – was missing. The Nigerian liaison magistrate played a key role in transmitting the Nigerian central authority's request to the Italian counterparts and being in charge of transmitting the statement to Nigerian authorities.

IV. Strengthening South-South and South-North Judicial Cooperation

1. The increasing interest of African countries in deploying liaison magistrates

The UNODC Liaison Magistrate Initiative is particularly innovative in the sense that, for the first time, prosecutors from Sub-Sahara African countries are being deployed to European countries as liaison magistrates, building on a two-way exchange principle. Building on the results observed in the Nigerian context, Italy decided to replicate the experience in Eastern Africa, recently hosting two additional prosecutors from Eritrea and Ethiopia. These deployments, as well as the interest shown by several countries from West and Central Africa (e.g. Niger and Mali), confirm the relevance of such initiatives for smuggled migrants and victims of trafficking, both for countries of origin and for countries of destination. This is further confirmed by the Partnership Declaration signed in 2018 between several West African countries and the Italian government, which amongst other issues also refers to the deployment of prosecutors from the West African region to Italy.[19] Also, in June 2019, African members of the International Association of Women Judges who gathered in Côte d'Ivoire stressed the importance of judicial cooperation in Africa and discussed the possibility of creating an African agency of liaison magistrates.[20]

The Liaison Magistrate Initiative is an important tool by which to overcome some of the challenges to effective international judicial cooperation, through both formal and informal channels. Above and beyond the specific requests sent through the liaison magistrates, the initiative could potentially encourage the opening of new investigations and cases in origin countries, upon transmission of relevant information from the host country. In this sense, the information transmitted could become *notitia criminis* and trigger parallel investigations in the receiving state (i.e., a notice conveying that a crime is alleged to have occurred). This innovative element could open the door to effective international cooperation in criminal matters and deserves to be further explored.

2. Integrating the Liaison Magistrate Initiative into regional cooperation mechanisms

Given the fact that transnational organized crimes often affect more than two countries, the work of the liaison magistrates should also be further supported by existing regional cooperation mechanisms, such as the West African Network of Central Authorities and Prosecutors (WACAP) or Eurojust.

The WACAP network was established in 2013 to tackle challenges identified in judicial cooperation in West Africa, such as the lack of an office serving as a central authority on international cooperation in criminal matters, the lack of knowledge about other countries' legal systems and the legal requirements of other countries for MLA and extradition, the lack of knowledge on how to draft an effective MLA request, and direct cooperation.

At the interregional level, while the first two Nigerian liaison magistrates are deployed in Italy and Spain, other EU Member States have approached them on specific cases, through their magistrates and diplomatic channels in Rome and Madrid. This highlights the expansion potential of the initiative within the EU and the important role Eurojust could play, as the EU agency in charge of judicial cooperation between Member States, when more than two EU countries are affected by a crime. In fact, the role of Eurojust was already highlighted in a specific case prosecuted in Spain. As this case involves over twenty alleged traffickers in various European countries, Eurojust is playing an active role in coordinating judicial cooperation, in close collaboration with the Nigerian prosecutor deployed in Madrid.

V. Conclusions

In line with the UNTOC and the Protocols thereto, the deployment of Nigerian liaison magistrates in Italy and Spain illustrates how African and European countries can benefit from a two-way exchange in judicial cooperation. Smuggling of migrants, human trafficking, and other transnational organized crimes are complex, constantly evolving, and they impact numerous countries from both sides of the Mediterranean Sea. Cooperation between judges, prosecutors, and law enforcement officers in origin, transit, and destination countries is crucial to conducting successful investigations, bringing the perpetrators to justice, effectively supporting the victims, and confiscating the proceeds and assets generated from these criminal activities.

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8. Bernard Rabatel served as a French liaison magistrate in the United States of America (1996–2001) and in the United Kingdom (2002–2007).↩
9. 36 states and The Federal Capital Territory, which has a specific status.↩
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17. In 2016, Italian authorities registered close to 80,000 arrivals by sea in Sicily alone. See UNODC, *op. cit.* (n. 12), p. 146.↩
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* Authors statement

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