Evaluating the effectiveness of mutual legal assistance and extradition in Africa

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Summary
This paper considers the efficacy of mutual legal assistance and extradition in African states two decades after the advent of the United Nations Convention against Transnational Organised Crime and the various regional instruments adopted at regional level in Africa to complement the Convention. It proposes criteria by which to assess the utilisation and effectiveness of mutual legal assistance and extradition in Africa. Anticipating that an immediate assessment will not produce an impressive outcome, the paper suggests some remedial frameworks.

Key points
- The utilisation and effectiveness of mutual legal assistance and extradition to curb transnational organised crime are currently not being systematically assessed.
- These assessments should be conducted at periodic intervals, as part of the review of strategies to curb transnational organised crime and related money laundering.
- Common indicators to guide such assessments should be agreed upon, initially within regional economic communities, and ultimately at the global level.
- These indicators should be aligned with those being used by the Financial Action Task Force in the mutual evaluation of anti-money laundering mechanisms.
Introduction

The last three decades have seen growing unanimity on the need to deepen collaborative cross-border approaches to the detection, investigation and prosecution of organised crime.

The adoption of the United Nations Convention Against Transnational Organized Crime (UNTOC) in 2000 is a significant milestone, as it provides the basis for collaboration.¹ To the Convention may be added the 2015 Sustainable Development Goals (SDGs). Goal 16, which addresses the need to promote peace, justice and strong institutions, specifically identifies the threat of organised crime to those objectives. Its Target 16.4 aims to ‘significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organised crime’ by 2030.²

It is universally accepted that the most pernicious organised crimes, and the illicit markets in which they thrive, transcend borders – and that their adaptability depends on their capacity to take advantage of jurisdictional sovereignty as much as it does on their dynamic opportunism. Experience has demonstrated that sovereignty is in fact ‘the main defence mechanism for transnational crime, as the latter normally structures itself through the use of different, and often conflicting, legal systems and traditions.’³

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Processes of legal and related forms of assistance and extradition by and to affected countries are central to current initiatives. Article 18 of the UNTOC focuses entirely on mutual legal assistance (MLA) infrastructure and procedures, supported by a range of instruments including regional and subregional conventions and protocols and bilateral and multilateral treaties. Collectively, they constitute the edifice for cross-border MLA and extradition processes to repress transnational organised crime.

MLA is a formal mechanism for different states to cooperate to enable the requesting state to enforce its criminal laws. The requesting state initiates the process by formally asking the requested state to take practical measures under its own laws, some of which may be coercive, to obtain and pass on evidence for use in proceedings being brought by the requesting state. MLA ‘may be required to obtain evidence during the investigation stage, for example, bank statements, or may be required to freeze assets or to enforce a final order for confiscation’. It can include the sharing of information, searches of premises, interviewing witnesses and the production of documents.

Formal international cooperation is complemented – and invariably preceded – by informal exchanges of information. Such informal international collaboration is often between law enforcement agencies or regulatory authorities. This could involve intelligence sharing (e.g. between financial intelligence units (FIUs)) or other assistance provided without the use of coercive measures.

In Africa and elsewhere, the vision encapsulated in SDG Goal 16 will not be attained by enhanced law enforcement mechanisms and measures alone. Reducing both the incidence of organised crime and illicit financial outflows will also require more than improved and effective use of MLA and extradition. However, it can be argued that, without more predictable and effective management of complex organised crime through the use of these tools for managing the threat, the prospects of achieving development will be diminished.

Various mechanisms are being used to evaluate resilience to organised crime. The Global Initiative Against Transnational Organized Crime (GI-TOC) defines resilience to organised crime as the ability to withstand and disrupt organised criminal activities as a whole, rather than individual markets, through political, economic, legal and social measures. Resilience refers to countries’ measures taken by both the state and non-state actors.

A key sub-sector of the resilience of any jurisdiction to transnational organised crime is its capacity to activate intranational cooperation. The use of MLA and extradition frameworks articulated in the UNTOC and respective regional instruments is an essential part of resilience to organised crime.

Combined with globalisation, the advent and proliferation of rapid methods of transmitting data and funds across borders have escalated the scale of the challenge to institutions and agencies mandated to collaborate with international counterparts to investigate and repress organised crime. The utility of cross-border collaboration, specifically the scope and extent of its use and the degree of effectiveness needs systematic and regular evaluation. This paper considers the feasibility of evaluating the use of MLA to repress the types of cross-border organised crime that raise the most significant threats to African economies and communities. Such threats have been indicated often enough in various assessments.

It is necessary to pay as much attention to the criminal networks, the activities in which they are involved as well as the impact of MLA and extradition treaties. For instance, whether the extent MLA arrangements transcend the differences which imperil cross-border cooperation, influenced by fluctuating political relationships, differences of legal traditions or of financial capacity.
The regularity of the use of MLA needs to be considered, with a view to recommending the enhancement of the use of existing bilateral and transnational instruments as tools for international cooperation against transnational organised crime.

This paper takes the view that, as resilience relates to the criminality to be confronted, it can be better evaluated against an appreciation of the pertinent threats. The next part presents an overview of the priority cross-border crimes in Africa.

**Priority cross-border crime types in Africa**

This section profiles the main kinds of organised crime encountered in Africa that are significant to SDG 16.4 by reason of their prevalence, potential harm and cross-border and international connectivity. Some crime types, such as forms of commodity trafficking, drug trafficking, fraud and corruption, are ubiquitous and raise common challenges across the continent. Others are of more concern in some subregions than others.

The 2021 Africa Organised Crime Index reported the largest crime markets on the continent to be human trafficking and smuggling, arms trafficking, trafficking of flora and fauna, non-renewable resource crimes, and drugs trades. These crimes remained prevalent in 2023. Organised violence committed by armed gangs and hired assassins, some with military-level training, is a major element of organised crime in West Africa and southern Africa. It feeds on the trafficking of firearms, which is the third most prevalent form of cross-border crime in West Africa. Less visible, but more prevalent, forms of transnational crime in the region are human trafficking and the smuggling of persons.

Cybercrime, which targets businesses and individuals, affects all parts of Africa. It is attributed to both African and foreign criminals. Corruption is a major enabler of most forms of organised crime, linking criminality to politicians and other public officials. The trafficking of small arms and light weapons, which particularly affects South Africa, is both a significant form of organised crime and an enabler of violent predatory crimes.

**Cybercrime, which targets businesses and individuals, affects all parts of Africa**

In the East African subregion, the key predicate transnational crimes are human trafficking, smuggling of migrants, illegal wildlife trading and trafficking of firearms. As the United Nations Office on Drugs and Crime (UNODC) observed in 2013, most of the countries of Eastern Africa are poor and the coast, with its major container ports and numerous harbours, provides opportunities to interact with wealthier markets abroad, as a source and as a transit region. This interaction can lead to the development of domestic illicit markets.

Interceptions of contraband highlight the use of well-established transport links in the region for the smuggling of different species and parts of wildlife, such as ivory, rhino horn, snakes and pangolin scales, which are mostly trafficked to Asian destinations.

The most significant organised crimes in West Africa are:

- human trafficking across West African countries and from the subregion to the Middle East and Europe
- smuggling of migrants
- arms trafficking into and within the subregion
- trafficking in various forms of flora and fauna
• smuggling of precious non-renewable resources out of West Africa, notably diamonds from Sierra Leone through Liberia and Guinea, oil and precious stones from Nigeria, gold from Ghana and rubber and timber from Sierra Leone

• trafficking of narcotics derived from the subregion, notably cannabis, and narcotics imported into the subregion, notably cocaine and heroin, for onward transfer beyond it.¹⁰

The illicit siphoning of assets from West Africa to developed economies (for instance through over-invoicing, under-invoicing, the abuse of investment concessions, tax and duty evasion, etc.) is less visible but probably the most significant contributor to transnational criminality.¹¹

North African countries are commonly affected by three broad crime types: cannabis trafficking, migrant smuggling and human trafficking. The specific matter and range of who or what is smuggled or trafficked varies, and is dependent on opportunity, availability and the resilience of the jurisdiction concerned. A study by ENACT concluded that the most prevalent organised crime markets involved the smuggling of migrants from and through North African countries, all of which are coastal. As the subregion lies between southern Europe and sub-Saharan African sources of prospective migrants to Europe, this corridor is inevitably and regularly exploited by organised crime networks.¹²

North Africa is also ‘a consumption, production and transit hub for various illicit drugs, including cannabis, cocaine and heroin [...] and also a diversion and trafficking of several psychoactive drugs’¹³. The interminable conflict in Libya continues to feed the circulation and trafficking of weapons in the subregion and beyond: weapons, ammunition and explosives stolen from Libyan stockpiles are believed to be in use in the Maghreb, Sahel, Levant, Horn of Africa and Central Africa subregions.¹⁴

The trafficking of firearms is the most pervasive crime type in Central Africa, dominated by the Democratic Republic of Congo and the Central African Republic. Both countries are afflicted by high levels of illegal exploitation and trafficking of non-renewable resources, notably high-value minerals and timber. Human trafficking and the trafficking of wildlife products are regarded as priority crime types in Central Africa.¹⁵

Across the continent, many of these crime types feed persistent money laundering activities, with transactions camouflaged within large informal sectors and cash-dominated economies that constantly intersect with sophisticated financial institutions.

When considering the use of international cooperation to curb some of the challenges of transnational organised crime, however, it should not be assumed that every cross-border crime type evokes the same level of interest, revulsion or impact in every jurisdiction. This might have implications for formal or informal mutual assistance. The Glauco case (see box 1), which involved the smuggling of migrants from Africa to Europe, highlights the likelihood of collaboration where there is a convergence of interest between the source jurisdiction, the transit territory and the destination jurisdiction. In this instance, the migrants originated from Sudan and Eritrea and passed through Libya en route to Italy.

The case involved the dismantling of a large transnational criminal network that operated across 12 countries in Africa and Europe and was responsible for the death of more than 300 migrants. Police investigations led by Italy resulted in the identification, arrest and conviction of several high-level migrant smugglers operating from Somalia, Sudan, Eritrea and Libya. Police and prosecutors extensively deployed the legal tools provided by the UNTOC and its Protocol Against the Smuggling of Migrants by Land, Sea and Air, including the use of special investigative techniques, the protection of witnesses and international cooperation to discover and disrupt illicit financial flows.
Operation Glauco

Operation Glauco began in 2013, following the rescue of two groups of smuggled migrants in the Mediterranean region. On 3 October 2013, an overcrowded fishing boat that had set out from Libya developed engine problems just short of the Italian island of Lampedusa. The boat caught fire when migrants on board set fire to a blanket to attract the attention of the Italian Coast Guard. When passengers moved en masse to one side of the vessel it capsized, resulting in the death of 366 migrants, most of them Eritrean and Somali nationals. On 25 October 2013, another group of migrants was rescued off the coast of Italy and taken to an immigration reception centre in Lampedusa. Survivors from the first vessel recognised one of the new arrivals as a Somali organiser who had facilitated their disastrous journey. The survivors proceeded to attack the Somali, leading to a criminal investigation of those involved.

Much of the ensuing investigation focused on establishing the ways and means of the smuggling network. Relying extensively on interceptions of telephone conversations, various surveillance techniques, witness protection programmes for informants and interviews of survivors, the Italian authorities uncovered a structured and sophisticated migrant smuggling syndicate.

The investigation revealed that migrants had been kidnapped and held against their will in Libya; that armed associates of the network had used violence against the migrants to demand ransoms for their release; and that the migrants’ relatives had paid the ransoms either directly to the armed associates or by means of money transfer services. The migrants had then been taken in groups of 20 to 30 to ‘collection camps’ in Libya, where up to 600 persons were held. The smugglers demanded EUR 1,600 per person for the passage to Lampedusa. After about one month, the migrants were moved to a large boat off the coast of Libya for transport to Italy.

The organised criminal group operated in the main source countries (Ethiopia, Eritrea and Sudan), in Libya (the country of transit and embarkation) and across several disembarkation and destination countries, including Germany, Italy, the Netherlands and the United Kingdom, as well as some Scandinavian countries.

Effective cooperation among law enforcement agencies in the different countries involved was facilitated in various ways. The assistance of the financial intermediator Western Union enabled the exposure of evidence from cross-border financial transactions. This in turn enabled the identification of some of the suspects and was critical to securing convictions. The support of Interpol and cooperation between law enforcement agencies in Italy and Sweden elicited additional data to identify those involved. A major milestone was a request made by Italy to Sudan for the extradition of a suspect, using the UNTOC as the legal basis. Sudan accepted and executed the request, and the person was subsequently transferred to Italy.

A court in Palermo, Italy, found six persons guilty on charges relating to the smuggling of migrants and participation in an organised criminal group and sentenced them to terms of imprisonment of between two and six years.¹⁶

Evaluating the utilisation of international cooperation: the indicators

Capacity to activate MLA and extradition needs to be assessed, in order to understand the resilience of states and the regions to which they belong to transnational criminality.

If cross-border MLA and extradition processes are intended to support the resilience of states and regions to transnational criminality, the capacity of relevant jurisdictions to activate and pursue international cooperation – and the effectiveness of such pursuits – need to be assessable and assessed. There are currently no methodologies or programmes in place specifically designed to do so.
The intergovernmental Financial Action Task Force (FATF), which has undertaken mutual peer reviews of members’ compliance with its recommendations for anti-money laundering/countering the financing of terrorism (AML/CFT) measures, provides a useful guide to evaluating effectiveness. The FATF methodology considers whether the evaluated country has an effective framework to protect the financial system from abuse, with ‘effectiveness’ being relative to the risks to which the country is exposed.

To determine effectiveness, assessment teams are guided by 11 focal areas or ‘immediate outcomes’. Immediate outcome 2 (IO.2), ‘international cooperation’, is evaluated in terms of how ‘international co-operation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets.’

It also evaluates a country’s capacity to provide ‘constructive and timely information or assistance when requested by other countries’, that is, the capacity of officials with law enforcement and/or regulatory responsibilities to respond positively to requests to retrieve proceeds of crime or to provide information (e.g. financial intelligence, evidence, details of beneficial ownership of legal entities). The FATF evaluation also considers the capacity to seek international cooperation to pursue criminals and their assets. Over time, the methodology states, such an effective, competent system ‘makes the country an unattractive location for criminals (including terrorists) to operate in, maintain their illegal proceeds in, or use as a safe haven’.

The criteria used to determine the level of attainment in IO.2 include:

- the provision of constructive and timely mutual legal assistance and extradition across the range of international cooperation requests
- the quality of assistance provided
- seeking legal assistance for international cooperation in an appropriate and timely manner to pursue domestic money laundering, associated predicate offences and terrorism financing cases with transnational elements
- different law enforcement and regulatory authorities seeking other modes to exchange financial intelligence and supervisory, law enforcement or other information with their foreign counterparts in investigating AML/CFT cases
- the provision by different competent authorities of other forms of international cooperation to foreign counterparts in a constructive and timely manner for AML/CFT purposes, whether spontaneously or on request
- competent authorities’ provision and response to foreign requests for cooperation in identifying and exchanging basic and beneficial ownership information of legal persons and arrangements.

It is critical to understand the factors that may influence the utilisation of MLA in Africa, some of which are reflected in the findings of the mutual evaluation pertaining to FATF Recommendations 37–39 and IO.2. In this regard, the observations in the 2021 Africa Organised Crime Index are apposite. The mutual evaluation reports compiled by the FATF-style regional bodies that coordinate mutual evaluations in Africa highlight the challenges of obtaining sufficient macro-level information on the use of existing regional and global instruments as the legal bases for international cooperation.

The capacity to activate MLA, whether as provider or beneficiary, implies the existence of state institutions cognisant of their responsibilities and in a position to discharge them. This entails law enforcement capabilities, which in turn depend on integrity and enforcement capacity. In other words, the responses of relevant functionaries should not be swayed by collusion, criminality, coercion, corruption or lack of resources.
Key factors that affect capacity to activate international cooperation

Several factors have a bearing on the capacity and prospects of any given jurisdiction to provide or activate MLA or extradition. They should be considered in any realistic evaluation.

Factor 1: Whether (some) law enforcement and regulatory authorities are complicit in organised crime

Central African states, with the exceptions of Rwanda and Cameroon, generally rate poorly on the facilitation of international cooperation. In its overview of the subregion, the Africa Organised Crime Index pointed to the direct or indirect complicity of some law enforcement and regulatory authorities in organised crime. This evidently hampers not only the capacity to activate or provide MLA but also its quality where it is provided. For instance, state officials who benefit from the illegal exploitation and trafficking of non-renewable resources or the illegal trade in wildlife products are more likely to impede than facilitate effective investigations.

In East Africa, complicit public officials – referred to as ‘state-embedded actors’ in the Global Initiative Against Transnational Organized Crime (GI-TOC) Global Organized Crime Index – are the most dominant type of criminal actors, either driving or significantly influencing the incidence of transnational organised crime in most of the region’s nine countries.

In North Africa, state-embedded actors have also been identified as the most influential type of criminal actors in organised crime. The same is true of the smuggling networks that mediate illegal migration and human trafficking between West African countries and the coastal states in North Africa. The movement of persons across the Sahara Desert has benefited from linkages with officials in state immigration departments.

Factor 2: Whether there are structured and organised institutional frameworks

Related to the complicity of state officials is the existence of the necessary infrastructure to activate MLA and/or extradition.

A valid request for MLA has to be prepared by an appropriately staffed central authority which is responsible for assisting the law enforcement community and prosecutors in devising strategies for an investigation and prosecution. The central authority should be able to rely on networking capabilities with counterpart authorities from other jurisdictions but also have a general understanding of the legal requirements for MLA in the states with which they interact to ensure an effective and diligent execution of the request.

The investigator seeks to identify and locate the instrumentalities and proceeds of crime

An investigation and prosecution team may require the intervention of the central authority in the investigative, judicial and asset-realisation phases. In the investigative phase, the investigator seeks to identify and locate the instrumentalities and proceeds of crime, as well as collect evidence of their ownership. This stage is invariably formal and covers several areas of investigative work, e.g., through the use of requests for MLA and financial investigations to obtain and analyse bank records. Investigation often involves verifying the information collected in the previous stage and converting it into admissible evidence.

The judicial phase arises where a judgment has been obtained and, where applicable, a decision on the confiscation of the proceeds and instrumentalities of crime has been determined. The realisation phase involves the actual confiscation of proceeds of crime in accordance with the law, with due regard to any international asset-sharing obligations, as well as compensation for victims and determination on what to do with the confiscated assets.
Effective MLA infrastructure to confront transnational organised crime should be supported by a reliable information management system. The FATF’s criteria for mutual evaluations on IO.2, described above, indicate some of the facets such a system requires. For organised crime specifically, the system should enable the storage and maintenance of crime intelligence analyses of organised crime markets; comprehensive statistics on the outcome of investigations emanating from referrals by FIUs; and data on the content and number of outgoing and incoming international requests for MLA. The prevailing picture in this sphere across the various subregions is uneven. The FATF’s mutual evaluation reports indicate that few countries have established case-management systems to better manage their AML/CFT regimes.

Even when handling a small number of MLA processes, effectiveness may be hampered by the lack of specific guidelines, standard operating procedures, systems for case management and prioritisation of foreign requests and dedicated staff tasked to handle MLA and extradition. Law enforcement practitioners who investigate or apprehend suspected criminals do not always get feedback about judicial outcomes or what has resulted from their efforts regarding the people they apprehended and the evidence they sought to collect and preserve. In Liberia, for instance, the Ministry of Justice has no guidelines, no standard operating procedures, nor a case-management system to handle and process incoming MLA and extradition requests.

**Factor 3: Whether the structures managing international cooperation are adequately resourced**

Funding the mandated structures is central to providing the required resources. Even in respect of the central authorities, it is the minimal prerequisite. For example, informal cooperation and formal MLA mechanisms depend on the quality of criminal intelligence available to the concerned jurisdictions. For any law enforcement agency to activate a relationship with another, the former must be aware of the potential to procure information or assistance from the latter. This can only occur on the basis of crime intelligence that is comprehensive and up to date.

Where MLA is used to combat cross-border organised crime, its utilisation is measured in part by the frequency of interactions between law enforcement or regulatory authorities from the jurisdictions impacted by the criminal markets identified. As most of these interactions are conducted secretly and in strict confidence, conclusions can only be considered and drawn from their outcomes, such as escalated interception and successful prosecution of offenders or increased recovery and forfeiture of the proceeds of the priority criminal activity.

In the case of trafficking of wildlife and wildlife products, for instance, utilisation of processes is determined by tallying the actual instances of coordination of intelligence-led field operations, the recovery of substantial amounts of illegal timber, ivory, rhino horns, big cat skins, reptile skins and live animals. It is also measured by the number of successful prosecutions of suspects at various levels, including at the higher management levels of the alleged kingpins, and any government-embedded actors who facilitate networked crime.

Resources are also required for the specialised training of the practitioners who deal with cross-border networked crime and to ensure their retention in positions for which they have been trained. Going by the mutual evaluation reports adopted since 2018, virtually all jurisdictions are impacted by inadequacies of knowledgeable personnel in the area of cross-border collaboration. This pertains to officials within the embassies in relevant countries, the central authorities and the law enforcement practitioners.

In Niger, for example, authorities make little use of mutual legal assistance. This is inconsistent with the risks to which the country is exposed, which include various activities that feed money laundering.
primarily recurrent cross-border trafficking in persons and smuggling of migrants. Niger is also confronted with terrorism committed by groups based in and funded from foreign countries but has only requested MLA for CFT cases once in five years\textsuperscript{26}.

Instead, Niger relies on various bilateral commissions for cooperation signed with neighbouring countries for a broad exchange of information on transnational organised crime, particularly those considered predicate to money laundering or terrorist financing offences, such as cross-border illicit commodity trafficking (drug trafficking, arms trafficking, migrant trafficking, etc.). These bilateral bodies include:

- the Nigeria–Niger Joint Commission for Cooperation
- the large Niger–Algeria Joint Commission for Cooperation
- commissions for joint cooperation with Burkina Faso, Mali and Chad
- the SAHEL G5 platform, which includes Niger’s Central Service Against Terrorism and Transnational Organized Crime. It disseminates operational information on terrorism and terrorist financing activities to the security services of the five member countries.

The low recourse to general MLA has been attributed firstly to the fact that the judicial authorities are not sufficiently aware of and trained in utilising mutual legal assistance. Secondly, the administrative process for the completion, transmission and follow-up of MLA cases was not efficient before the creation of the National Mutual Legal Assistance Unit in December 2018. The effectiveness of the legislation has not yet been tested.

In respect of the capacity of FIUs in West Africa, the 2021 Africa Organised Crime Index notes:

> Although many countries do have financial intelligence units, these are for the most part underfunded, and staff often lack the training required to effectively identify and track money laundering offences\textsuperscript{27}.

**Factor 4: Whether the structures managing international cooperation are accountable**

Increased focus on the tension between some multinational corporations’ pursuit of profit and the rights of local populations in host jurisdictions has underscored the significance of institutions with fiduciary responsibilities to the general public, and of holding them accountable. These include those mandated to license and regulate foreign investors and the revenue authorities responsible for corporate and personal income taxation. Questionable corporate activities include the fraudulent shifting of income between subsidiaries through transfer mispricing and under-declaration of tax. Public agencies that are accountable to the public are more likely to be vigilant and circumspect in observing their obligations to pre-empt, detect or recover illicit financial flows than those working with less transparency. The absence of accountability can lead to questionable compromises such as the 2021 deal reached between the Senegalese Revenue Authority and African Barrick Gold in which a claim for unpaid tax of USD 280 million was ‘settled’ for a mere USD 13 million\textsuperscript{28}.

The accountability of law enforcement and regulatory authorities in some African countries is either non-existent or fragile and fragmented. In general, jurisdictions affected by fragility and armed conflicts are not in a position to activate or facilitate MLA and/or extradition. The absence of effective responses to organised crime throughout Central Africa has been attributed to this factor.
Factor 5: Whether the state’s capacity to regulate the economy has been assessed

An analogy may be drawn from risk-informed responses to money laundering and terrorism financing that have been advocated by the FATF in the last decade. The capacity to regulate the economy, which is directly linked to the capacity to monitor and intercept those financial crimes, is also relevant to the capacity to provide MLA to curb cross-border organised crime. National assessments of the risks emanating from transnational organised crime can identify and evaluate governance vulnerabilities that impede resilience to such crimes.

Factor 6: Whether central and competent authorities can secure and use international cooperation

As the West Africa subregion illustrates, a jurisdiction that prioritises the consolidation of territorial integrity and strong border controls is likely to have the capacity to activate and facilitate international cooperation to obtain information and evidence from other countries.

Because of the robust collaboration between countries within the subregion as well as with global partners in Europe and the Americas, the Global Organized Crime Index rates members of the Economic Community of West African States (ECOWAS) highly on international cooperation.29 The Africa Index notes, however, that the effective implementation and coordination of the legal frameworks to target organised criminal activity is an ongoing challenge.30

The next section considers mechanisms and structures that have been set up to address the complex challenges commonly raised by cross-border organised crime and thereby facilitate MLA and extradition.

Current initiatives on MLA and extradition

This section presents a brief overview of the prominent subregional tools and initiatives for coordination. While there is no explicit rivalry between the global and subregional conventions, agreements that are tied to, or developed under the auspices of, a regional organisation usually bring together countries in close proximity, with shared histories, traditions, legal systems and values and with greater levels of trust and more experience in cooperation. As a result, states appear to favour international cooperation in criminal matters on the basis of these agreements, which are more familiar and may provide for administrative and other mechanisms to effect cooperation that are not available under global treaties. There are six such instruments in Africa’s subregions, which are complemented by the continent-wide African Union Convention on Extradition that was finalised in 2001.

Great Lakes Judicial Cooperation Network (GLJCN)

The GLJCN is made up of member states, namely Angola, Burundi, Central African Republic, Congo, Democratic Republic of Congo, Kenya, Uganda, Rwanda, South Sudan, Sudan, Tanzania and Zambia. It brings together the central authorities of member states that are affected by illicit dealing and trafficking of precious minerals, including gold, coltan, cobalt and tantalum. The GLJCN includes some member states of the Southern African Development Community (SADC) and the East African Community, each of which has also constructed MLA coordinating structures.

At its 2022 meeting, the GLJCN resolved to update the Guidelines for Requesting Mutual Legal Assistance in Criminal Matters from the Great Lakes Region to the context of each member state. With a view to...
developing a common approach to the prosecution of cross-border organised crime, the GLJCN Secretariat was directed to collect the national prosecution policies and strategies of member states to inform the development of a common subregional policy to curb cross-border crimes.

**Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora**

The Lusaka Agreement, which is specifically focused on the indicated crime types, came into force on 10 December 1996 upon the ratification of four signatories. It currently has seven state parties, namely Congo (Brazzaville), Kenya, Liberia, Tanzania, Uganda, Zambia and Lesotho. South Africa, Ethiopia and Eswatini are signatories.

The Agreement provides for a permanent task force to be set up to implement its objectives. Consequently, the Lusaka Agreement Task Force was launched on 1 June 1999, with its headquarters on the edge of a game park in Nairobi, Kenya. The Task Force plays a pivotal role in intelligence-sharing and coordinating enforcement measures among member states. By providing an avenue for informal networking and liaison of law enforcement operatives, it is a useful resource for the investigator of cross-border illegal wildlife trading.

**West African Network of Central Authorities and Prosecutors Against Organized Crime (WACAP)**

WACAP was established in 2013, specifically to ‘facilitate international cooperation in criminal matters against all transnational organised and serious crime, including terrorism within the Economic Community of West African States’. The network comprises the 15 ECOWAS countries and Mauritania and Chad. It is implemented in collaboration with and enjoys broad political support from the ECOWAS Court of Justice and Commission.

Among its achievements in the last decade, WACAP has:

- established a network of contact points that facilitate requests for MLA with countries within and outside the network
- set up/strengthened (institutionalised) central authorities for MLA in Burkina Faso, Benin, Niger, Cape Verde, Ghana, Mali and Nigeria
- improved the quality of MLA requests in the region, as indicated by the increase in successful MLA and extradition requests to/from the region
- facilitated the exchange of liaison magistrates between Nigeria and Italy, and Nigeria and Spain
• supported the revision and updating of legal frameworks in Burkina Faso and Mali
• improved coordination between national competent authorities to ensure greater efficiencies in the treatment of requests for assistance
• contributed to the revision of practical tools intended to improve cooperation worldwide, including the UNODC’s MLA Request Writer tool and MLA hotline, a matrix of roles and responsibilities of central authorities and a website
• working with judicial institutions and universities, supported the teaching of transnational organised crime and international cooperation in criminal matters to prosecutors and magistrates in Mali, Chad, Mauritania, Niger and Burkina Faso. The tertiary level instruction is intended to ensure a broader base of knowledge and skills.

Southern African Development Community (SADC) initiatives

SADC, which has had frameworks for harmonised MLA and extradition since 2002, adopted an Integrated Strategy to Prevent and Combat Transnational Organised Crime in the Region in 2021. The SADC Strategy purports to be

the principal regional framework for common action and cooperation on matters relating to the prevention and combating of transnational, serious and organized crimes in the SADC region. […] (It) builds on existing measures undertaken at the national, regional and international levels including strategies, action plans, regulations, resolutions, relevant legal instruments and other policy documents adopted to regulate and control criminal conducts related to transnational organised crime, and provides an integrated framework for the prevention and combatting (of) transnational organised crime and strengthening (of) national and regional resilience.

ECOWAS initiatives

There are several cooperation frameworks within ECOWAS, which include the Convention on Mutual Assistance in Criminal Matters (1992); the Agreement on Cooperation between Police Forces in the Investigation of Criminal Matters (2002); and the Protocol Establishing the Criminal Intelligence and Investigation Bureau (adopted in 2006).

ECOWAS has sought to enhance interregional coordination and reduce fragmentation through bilateral regional cooperation on trafficking in persons with the Economic Community of Central African States (ECCAS), and on maritime crime with ECCAS and the Gulf of Guinea Commission. A Draft Agreement on Cooperation in Criminal Police Matters is also being developed. Both regional communities have innovative early warning mechanisms and information-sharing platforms, for instance, the SADC TIPNET for trafficking in persons and the West African Police Information Sharing System for multiple types of crime.

Intergovernmental Authority on Development (IGAD) Conventions

The IGAD Conventions, on extradition and on mutual legal assistance in criminal matters, were adopted in 2009 but have yet to reach the threshold of ratifications required to bring them into force. They are expected to create a framework for the eight member states in East Africa and the Horn of Africa.

Reliance on global conventions such as the UNTOC seems to be residual and confined to instances involving collaboration between African and non-African states, as illustrated in the Glauco case above. In October 2016, Côte d’Ivoire, Malawi and Mauritius declared that they would accept the UNTOC as the legal basis for extradition (some specifying additional conditions). On the other hand, Botswana, Burkina Faso, Burundi and Lesotho declared that they would not use the UNTOC as the sole legal basis.
It must be stressed that a request for MLA or extradition can be made in terms of both the bilateral treaty between two jurisdictions and the subregional or global convention to which both are state parties, such as the United Nations Convention Against Corruption (UNCAC).

**Evaluating the utility of FIUs as structures for informal international cooperation**

The resort to formal, technical mechanisms is not always sufficient to secure MLA. Some FATF mutual evaluation reports have noted a reliance on the intervention of FIUs. Inter-FIU cooperation is possible at three levels:

- membership of the Egmont Group of FIUs
- a memorandum of understanding (MoU) for cooperation with collegiate FIUs. For instance, FIUs of the member states of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and Groupe Intergouvernemental d’Action contre le Blanchiment d’Argent en Afrique de l’Ouest (Intergovernmental Authority Against Money Laundering in West Africa, GIABA) collaborate through MoUs
- MoUs with member states of common monetary unions, such as the Union Économique et Monétaire Ouest-Africaine/West Africa Economic and Monetary Union (UEMOA) FIU Network.

Ghana’s Financial Intelligence Centre frequently requests the assistance of foreign counterparts on behalf of law enforcement agencies, other competent authorities and anti-money laundering reporting entities within the country. Mozambique’s FIU, Gabinete de Informação Financeira de Moçambique, is not a member of the Egmont Group of FIUs but has entered into bilateral information-sharing MoUs with regional trading partners and countries with which it has historical, business and tourist connections. Hence, its agreements with the FIUs of Brazil, South Africa, Namibia, Cape Verde, Uganda, Malawi, Mauritius, Botswana, Zambia, Lesotho, Angola, Zimbabwe, Ethiopia, Eswatini, Tanzania, East Timor and São Tomé and Principe.

Because of its geographical position in West Africa, Senegal is a well-established business and tourist hub. It is also one of the two largest economies in the UEMOA zone. It is a transit country not only for people, assets and services but also for all kinds of illicit trafficking. International cooperation plays a vital role in law enforcement and the regulation of financial crimes such as money laundering. Successful investigation and prosecution of significant money laundering cases in Senegal depend strongly on the quality of international cooperation that the Senegalese central authority can secure from their foreign counterparts.

The central authority responsible for managing MLA (including extradition) is the Directorate for Criminal Affairs and Pardon at the Ministry of Justice. Cooperation among the investigative authorities is active through the Interpol network and the Organization of African Gendarmeries. The FIU plays a key role in the exchange of AML/CFT-related intelligence.

The Senegalese authorities maintain a minimal level of cooperation with foreign counterparts who send requests for MLA: excessive processing delays of more than five years have been reported.

The scope for better structuring the engagement of FIUs in international cooperation cannot be fully discussed without exploring their relationship with revenue authorities. As the OECD pointed out:

> Over recent years, however, there has been an increasing recognition of the interaction between the objectives of FIUs and tax administrations and how they each hold information that might be
used by the other authority in the pursuit of shared objectives, and their worlds have therefore been brought much closer together. This in no way alters the fact that the FIUs’ primary function is to tackle money laundering and terrorism financing and that of the tax administration is to ensure tax compliance, but it acknowledges that by working more closely together each authority can better achieve their objectives.

In structuring the relationship, three broad models are feasible. As the OECD found, the first is one in which the revenue authority enjoys full unfettered access to STRs. The second model is characterised by joint decision-making on the use of STRs by the tax administration and the FIU. In the third model, the FIU has the discretion to decide on what to share with the revenue authority.

The OECD found that a minority of the jurisdictions (20%) surveyed used the first model, in terms of which they had simultaneous access to STR based data. The same proportion followed the second model. In 60% of them data sharing by the FIU was spontaneous. It also appeared that, whatever model was chosen required to be underpinned by a structured agreement between the FIU and the revenue authority. Such an agreement would necessarily clarify whether, and if so, the extent to which the revenue authority could share information derived from the FIU with foreign counterparts. It was invariably an operational framework, subject to the provisions of the law.

The OECD study offers a useful guide in evaluating the utility and effectiveness of existing mechanisms in African jurisdictions in this sphere.

The advent of the Global Forum on Tax Transparency, cooperation between tax authorities has the potential to complement the conventional infrastructure for MLA. Jurisdictions such as Eswatini and Ghana have reportedly been able to exchange information with other jurisdictions through the Forum.

The Ghana Revenue Authority relates with its international counterparts, having received and responded to 17 requests between 2013 and 2016. Ghana made four requests to foreign counterparts between 2015 and 2016 and received only one response in 2015. The capacity to use data derived from domestic STRs greatly depends on the content of the memoranda of understanding between the respective revenue authorities and their FIUs.

It is a matter of concern that, despite the exposure to tax-related offences noted in various money-laundering risk assessments, some countries such as Guinea Bissau and Zimbabwe have a low level of engagement with counterpart tax authorities beyond their subregions. The fragility of key institutions to elicit international cooperation is noted in the final section of this paper. Mozambique is in a slightly better position as its Revenue Authority has signed eight MoUs relating to tax information exchange with South Africa, Zambia, Zimbabwe, Malawi, Angola, Tanzania, Eswatini and São Tomé. Again, this is because the internal MoU is permissive of cross-border collaboration.

The content of the information provided is another important issue. In financial cross-border crimes, requesting states that are tracking proceeds of crime might need to establish the beneficial ownership (BO) of legal entities suspected of being used in transferring or receiving such proceeds or tainted assets. In most jurisdictions, the overall capacity to share BO information with foreign counterparts is quite low, as they have neither the legal frameworks nor the logistical mechanisms for documenting, verifying and updating it. In the absence of reliable databases, the requested state may have to rely on entities such as commercial banks to access BO information. Banks will generally only release the information if they are served with a subpoena, which can cause delays of several weeks – just to access the first level of legal (shareholder) ownership information.
In Mauritius, BO information for legal entities that are registered in the Global Business Centre is regarded as confidential and access to such information is only accessible with a court order. However, such orders take an average of two days to be issued to law enforcement authorities.

Collaborative practitioners’ networks

At the global level, the International Association of Prosecutors (IAP) was established in 1995, with a membership that spans every region. The IAP provides a forum for discussing issues of practical concern to prosecutors, and opportunities for frontline prosecutors to network with and get to know colleagues from other states. Annual conferences take place in different venues around the world. Regional conferences of its Africa/Indian Ocean, Asia/Pacific, Central and Eastern Europe/Central Asia, Europe, Latin America, Middle East/North Africa, North America/Caribbean and Pan-European regions are regular events.

Among other resources, the IAP has produced Prosecutorial Guidelines for Cases of Concurrent Jurisdiction for the benefit of members. The IAP shares information and guidance through specialist sister websites, such as the Global Prosecutors E-Crime Network for prosecutors dealing with cybercrime; the Forum for International Criminal Justice for prosecutors confronting war crimes, crimes against humanity and genocide; and the Trafficking in Persons Platform, a specialist forum for prosecutors of human trafficking.40

The oldest network for inter-prosecution collaboration in Africa is the West African Central Authorities and Prosecutors (WACAP). Under the aegis of ECOWAS and with the WACAP’s facilitation, several cooperation frameworks enable member state signatories to the relevant regional agreements to implement informal procedures to extradite fugitives. For instance, the ECOWAS Multilateral Agreement, signed in Accra, provides for the surrender of any individual, a simplified and less formal form of extradition procedure referred to as ‘police-to-police surrender’. It enabled Benin to secure the transfer of 10 Beninois cybercriminals and a suspected criminal known to be an international fraudster from Togo in 2018.41

Prosecutors have activated continent-wide collaborative frameworks in the last thirty years. The African Prosecutors Association (APA), which periodically brings together ‘national, regional and international criminal-justice practitioners to discuss the most pressing emerging and transnational crimes that plague Africa’, provides a channel ‘to share best practices and to network’.42 The APA includes African attorneys-general, prosecutors-general and directors of public prosecutions who have the authority to develop joint strategies for national prosecuting authorities in Africa to effectively cooperate in prosecuting transnational organised crime.
In Namibia, the competent authorities exchange information through membership in various international cooperation mechanisms such as Interpol’s National Central Bureaus, Action Against Prohibited Conduct, the APA and the Asset Recovery Inter-Agency Network for Southern Africa.

### Contribution of existing MLA to mitigating organised crime impacts

The question remains of whether the extensive infrastructure that exists is working to mitigate the exposure of African communities to cross-border organised crime. Do the systems in place ensure the appropriate investigation and prosecution of transnational organised crime through comprehensive, efficient, effective, multi-agency and flexible international cooperation?

Regular reports from crime experts and the media point to a negative answer. This suggests a lingering misalignment between what exists and what is required. The key factors discussed above highlight some required attributes. Beyond them, and underlying all of them, is the issue of securing the integrity of infrastructure created to detect, investigate and prosecute crime. Activating effective international cooperation assumes the existence of credible and competent institutions in the countries involved. If the integrity of investigators or prosecutors in any of them is questionable, the effectiveness of the entire network is imperilled. Corruption in parts of the regulatory framework hampers effective cross-border collaboration.

*The Profiteers*, an Africa Uncensored investigative documentary on the plunder of resources from South Sudan, illustrates the fault lines. The laundering of proceeds from illicit harvesting of timber and other resources in South Sudan goes undetected in the economies of Ethiopia, Kenya and Uganda because there are no national property and business registers in which to document assets and companies owned and operated by South Sudanese politically exposed persons (PEPs), their family members and associates. The purchase of real estate outside South Sudan by government-connected elites continues to be a primary money laundering concern, yet the acquisition of vast real estate empires by PEPs implicated in corruption, even if detected, is not threatened in any way by criminal justice processes. The existence of international instruments, such as the African Union Convention, the UNTOC or the UNCAC has not made any difference.

In a similar vein, *Gold Mafia*, an Al Jazeera documentary released in April 2023, revealed suspicious dealings in gold mined in Zimbabwe. Their investigation exposed the alleged involvement of high-ranking Zimbabwean officials in smuggling and money laundering, ostensibly to get around trade sanctions imposed by some European countries and the United States. This highlights the global nature of these crimes, in which gold smuggled from one nation turns into cash deposits in the offshore accounts of front companies halfway across the world. In the scheme, smugglers are used to procure semi-refined gold in Zimbabwe and carry consignments by air to Dubai, where it is sold. The funds are either handed over to the couriers or transferred to their bank accounts, to be passed on to Zimbabwe government officials, including the president. The investigation also discovered that the scheme replicates others used elsewhere in Africa to assist PEPs in acquiring wealth. In July 2023, after initially expressing a determination to probe the illicit dealings and announcing the freeze of assets of some of the individuals implicated, the FIU in Zimbabwe stated that there was no basis for further action. There is no indication that any proceedings are underway in any of the other countries mentioned in the documentary, such as South Africa and the United Arab Emirates.

For a third example, a mutual evaluation report for Kenya produced by the ESAAMLG – a regional FATF-style AML body – observed that professionals offering legal, accounting and other financial
services were not subject to anti-money laundering obligations in the country. Legal professionals, for instance, are often hired to establish ‘legal persons’ in the form of shell companies that can then purchase assets without revealing beneficial ownership, as was also done in the Gold Mafia schemes.

Lastly, the plunder of natural resources in the Central African Republic (CAR) through illegal logging and firewood trafficking for charcoal is well publicised. It is fuelled by weak law enforcement, porous borders and the increasing demand for its commodities. At the bottom of the criminal chain are traffickers from the Democratic Republic of the Congo, Congo-Brazzaville, Cameroon, Chad, Sudan and South Sudan, according to findings from a recent ENACT assessment. The networks are directed by nationals from Asian countries, who traffic the illicit timber and its products through neighbouring countries using multiple road and waterway transit corridors.

The lesson which emerges is that effective international cooperation against cross-border criminality is threatened by state-sponsored corruption.

Towards more effective utilisation of collaborative cross-border law enforcement

The UNTOC sets out provisions for judicial cooperation, such as extradition and mutual legal assistance, and law enforcement cooperation, such as joint investigations and the use of special investigative techniques, as it seeks to bridge differences among national legal systems, set standards for domestic laws and establish mechanisms for international cooperation so that States parties can effectively combat transnational organized crime. By becoming parties to the Convention, States commit themselves to taking a series of measures against transnational organized crime, including measures to ensure compliance with the criminalization requirements of the Convention, as well as effective and efficient criminal justice and law enforcement responses to the criminal activities of organized criminal groups; the promotion of international cooperation mechanisms, including extradition, mutual legal assistance and other forms of international cooperation in criminal matters; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities to deal with related challenges.

Compliance with and implementation of international instruments such as the UNTOC and the UNCAC depend on the capacity of state parties. The capacity to exchange information is well developed and has been significantly enhanced as a result of lessons learned in developing responses to the COVID-19 pandemic. These highlighted the advantages and added value of the electronic transmission of international cooperation requests, videoconferencing and the need for enhanced international cooperation to disseminate evidence around the globe.

The extent to which international cooperation mechanisms have been developed seems to be uneven. Some subregional formations have taken these lessons on board, but others are lagging. The International Conference of the Great Lakes Region (ICGLR) is a case in point. It has taken steps to produce a Great Lakes regional model law on MLA that reflects regional good practices and is aligned with international standards, and to establish a pool of regional specialists on matters such as cybersecurity and forensics. It is working closely with the UNODC to establish a regional training plan to train criminal justice actors on judicial cooperation matters.
At the minimum, training should enable practitioners to use proactive investigations to uncover evidence about financial links between the leadership of crime networks and other parts of the network and to substantiate racketeering and money laundering charges. It should equip them to employ a combination of financial intelligence and threat analyses to identify key persons in organised crime and to home in on targets for investigation and prosecution by pinpointing the financial activity of crime network members.

The institutions dealing with MLA and extradition have to be strengthened. This includes ensuring that sufficient human and financial resources are dedicated. There should also be sufficient capacitation of the personnel involved. This is to ensure that commerce and the movement of people are not restricted and, at the same time, that the relevant competent authorities are able to deal with any criminality brought about by the new dispensation. This can be coupled with the streamlining of procedures and processes for dealing with MLA and extradition requests in the relevant jurisdictions. Beyond that, the relevant competent authorities have to have regular contact, physically or virtually, to update each other on new trends within their sphere of work or even on each other’s pending requests. This could assist with regard to the non-response or delayed response to requests. The effectiveness of the relevant institutions will be a deterring factor to criminals and, at the same time, promote deeper regional integration.50

The need to establish mechanisms to identify and exchange information on beneficial ownership of legal entities and arrangements has been stressed above.

Evaluations of the utilisation and effectiveness of international cooperation need to be conducted at more than one level. The first level is that of the multilateral organisation the given jurisdiction(s) may be part of. As noted above, some of these are crime-specific. The general inquiry in the evaluation is the efficacy of the framework(s) created by the multilateral organisation, such as the Lusaka Agreement Task Force. The second evaluation level is at the level of regional and global conventions for state party jurisdictions. The third level, which is combined with the second, is that of the jurisdiction itself.50
Notes


7 Ibid., 51–52.


9 Beri R Coping with the Small Arms Threat in South Africa Strategic Analysis Volume XXIV No 1 (April 2000)


13 Ibid., 5.


15 Ibid., 60–61.


18 Ibid.

19 Ibid.

20 These include the Eastern and Southern Africa Anti-Money Laundering Group; Groupe Intergouvernemental d’Action contre le Blanchiment d’Argent en Afrique Centrale (GIABA); and Groupe d’Action contre le Blanchiment d’Argent en Afrique Centrale/Intergovernmental Authority against Money Laundering in West Africa; Middle East and North Africa Financial Action Task Force; and Groupe d’Action contre le Blanchiment d’Argent en Afrique Centrale/Intergovernmental Authority against Money Laundering in Central Africa.


24 Ibid.


26 See generally the report on the mutual evaluation on Niger conducted by GIABA, and the more recent report from the US State Department available at https://www.knowyourcountry.com/niger.


28 Facts as presented at a Public Interest Litigation strategy workshop held in Nairobi, 3 – 5 October 2023.


33 Both the SADC Protocol on Extradition and the SADC Protocol on Mutual Legal Assistance in Criminal Matters were adopted in 2002 and have since come into force.

34 Integrated Strategy to Prevent and Combat Transnational, Serious, and Organised Crimes (TSOCs) in the SADC Region, 2020.


36 The IGAD Conventions have been criticised as not being aligned to the rationale for the existence of IGAD, in that they extend beyond common security

37 Improving Co-operation between Tax and Anti-Money Laundering Authorities: Access by tax administrations to information held by financial intelligence units for criminal and civil purposes (September 2015).

38 Ibid., 15.

39 No African country was included. The surveyed jurisdictions were Australia, Austria, Belgium, Canada, Chile, Colombia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Korea, Latvia, Malaysia, the Netherlands, New Zealand, Portugal, Singapore, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the United States.


46 Ojawake O Conflict and organised crime are ruining the CAR’s rainforests ISS Today 1 August 2023 available at https://issafrica.org/iss-today/conflict-and-organised-crime-are-razing-cars-rainforests.


49 The author is indebted to Bryan Magagula, principal crown counsel in Eswatini for some of the suggestions set out in this part.

50 The current ESAAMLG MERs appear to be confined to just two levels, which might be because they are intended to focus only on AML/CFT mechanisms.
About the author

Charles Goredema has amassed extensive experience in researching and analysing transnational organised crime since 2000. He has worked with, and in support of, various public institutions and practitioners in developing strategies and mechanisms to curb, and to track and recover the proceeds of organised crime. Over the past 20 years, Charles has published books, articles and papers on organised crime, money laundering and illicit financial flows.

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