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TEMPLARS ThoughtLab

The Extra-Territorial Criminal Jurisdiction of Nigerian Courts Over Money Laundering

In today's globalized economy, the intricacies of international business transactions have resulted in a marked increase in cross-border economic crimes, including money laundering. As a result, the issue of jurisdiction over cross-border offences—particularly the extra-territorial jurisdiction of Nigerian courts—has become a critical issue in recent times. The capacity of Nigerian courts to assert jurisdiction over economic crimes committed beyond its borders presents both opportunities and challenges that require careful consideration.

In this article, we will explore the extra-territorial criminal jurisdiction of Nigerian courts particularly over money laundering against the established principles of extra-territorial jurisdiction. Understanding the implications of extra-territorial jurisdiction is crucial for mitigating legal risks in an environment where accountability can transcend national boundaries.

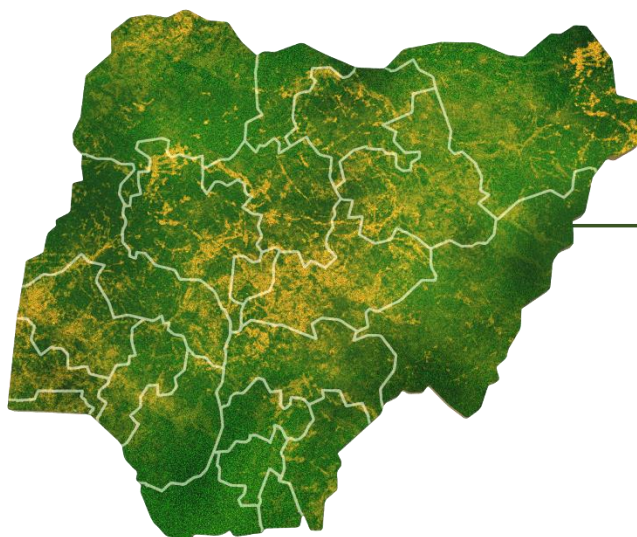
Understanding the Principle of Extra-territorial Jurisdiction

Extra-territorial jurisdiction is a legal principle that enables national courts to exercise their authorities over acts and/or omissions which violate national laws when they occur outside national borders. In practical terms, extra-territorial jurisdiction allows national courts to assume and exercise jurisdiction over the prosecution of individuals or entities for offences committed outside their geographical territory, provided there is a sufficient legal connection to the court's territorial jurisdiction. This mechanism is crucial for ensuring accountability in cases where criminal activities span different countries.

In an increasingly interconnected world, the concept of extra-territorial jurisdiction has gained significant importance, particularly in addressing economic crimes that can have far-reaching implications across multiple jurisdictions. As a result, different principles have been evolved under public international law to justify the exercise of extra-territorial jurisdiction by national courts. These principles are briefly examined below:

- ❖ **Nationality or Active Personality Principle:** This principle allows States to exercise jurisdiction over its citizen even if the criminal acts and/or omission took place outside the country. This principle is reflected in Nigeria's Cybercrimes (Prohibition, Prevention, Etc) Act, 2015 which empowers the Federal High Court to try Nigerian citizens for cybercrimes if the person's conduct would also constitute an offence under a law of the country where the offence is committed.
- ❖ **Passive Personality Principle:** This principle permits States to try a foreign national for crimes committed outside their national boundaries that affect their citizens. Nigeria's Cybercrimes (Prohibition, Prevention, Etc.) Act, 2015 also reflects this principle as it confers jurisdiction on the Federal High Court to try offences committed outside Nigeria where the victim of the offence is a citizen or resident of Nigeria.
- ❖ **Protective Principle:** Under this principle, States are allowed to prohibit and prosecute non-citizens for crimes committed outside their national boundaries, but which harms or threatens their national security or other central interests. A classic example of this principle can be found in Nigeria's Terrorism (Prevention and Prohibition) Act, 2022, which, among others, makes it an offence for any person outside Nigeria to finance terrorism in Nigeria.
- ❖ **Universality Principle:** Under this principle, States can prosecute the gravest international crimes, such as war crimes and genocides, regardless of where they are committed and the nationality of the offender.

Principles of Extra-Territorial Jurisdiction



Nationality Principle:

Nigeria can prosecute its citizens for crimes abroad (Cybercrimes Act 2015).

Passive Personality Principle:

Nigeria can try foreigners for offences abroad if Nigerian citizens/residents are victims.

Protective Principle:

Nigeria can prosecute foreigners whose external acts threaten Nigeria's security or interests (Terrorism Act 2022).

Universality Principle::

Nigeria can try the gravest international crimes (e.g., war crimes, genocide) regardless of location or nationality.

Essentially, these principles empower Nigerian courts to try offences committed outside their geographical territory. As such, it is essential for individuals and businesses operating internationally to understand the potential implications of these laws and the reach of Nigerian courts in matters of money laundering.

The Extra-Territorial Criminal Jurisdiction Over Money Laundering

The key legislation for combating money laundering in Nigeria is the **Money Laundering (Prevention and Prohibition) Act, 2022 (MLA)**. It provides for an effective and comprehensive legal and institutional framework for the prevention, prohibition, detection, prosecution and punishment of money laundering and other related offences in Nigeria¹.

Of particular interest is Section 23(2)(c) of the MLA which, among others, confers jurisdiction on the Federal High Court to exercise jurisdiction over offences, whether or not commenced or completed in Nigeria, **"by a... non-citizen of Nigeria if the person's conduct would also constitute an offence under a law of the country where the offence was committed"**.

Interpreted literally, the above provision of Section 23 (2)(c) of the MLA will lead to the conclusion that the Federal High Court can exercise jurisdiction over non-citizens of Nigeria for offences under the MLA committed outside Nigeria where the conduct of the non-citizen constitutes an offence under the laws of the country where it took place, without more. However, this interpretation would be unreasonable and does not accord with any of the known principles of extra-territorial jurisdiction in public international law.

The unreasonableness of a literal interpretation of Section 23 (2)(c) of the MLA stem from its practical implication, which is that the Federal High Court could exercise jurisdiction over a non-Nigerian for an offence committed abroad. To the extent that no element of the offence occurred in Nigeria, it will be, respectfully, unreasonable for the Federal High Court to invoke Section 23(2)(c) of the MLA to claim jurisdiction over the non-Nigerian offender. This will be especially true when their offence does not pose a threat to Nigeria's security or her central interests or affect a citizen or resident of Nigeria.

In light of the above, the provision of Section 23(2)(c) of the MLA may have unintentionally created a potential extra-territorial jurisdictional issue. Resolving this requires a careful examination of the legislature's intent behind this section. Prior to the enactment the 2022 MLA, the repealed MLA, 2011 did not explicitly grant the Federal High Court jurisdiction over non-citizens. It is this limitation that the legislature seemingly aimed to address with the introduction of Section 23(2)(c). However, in doing so, the legislature inadvertently omitted a key requirement from the MLA, 2011: that the victim must be a citizen or resident of Nigeria or have some connection to the country. This requirement would have expressed the legislators' intent to ensure a reasonable link between the crime and Nigeria, aligning with the **passive personality principle** of extra-territorial jurisdiction.

The English court's decision in **R v. Rogers**² offers valuable guidance. In that case, advance fee fraud schemes caused significant harm to victims in the UK. The defendant's laundering of proceeds in Spain was directly connected to these fraudulent activities, which classified the funds as criminal

¹ Section 1 (a) of the MLA.

² [2014] EWCA Crim 1680. This case involved two advance fee fraud schemes run from call centres in Spain and Turkey, targeting UK consumers through misleading websites and advertisements. Consumers were tricked into paying upfront fees with false promises of debt elimination and bank charge refunds. Although the calls seemed to come from the UK, the call centres were based in Spain. The fraudulent operation created a false impression of legitimacy, claiming authorization by the Ministry of Justice. Approximately £5.7 million was obtained through these scams, with payments funnelled to UK bank accounts controlled by a network of companies managed from Spain. The defendants were linked to several of these companies involved in the fraud. See also **Sulaiman v. France** [2016] EWHC 2868 (Admin).

property. The court held that because a substantial part of the criminal conduct occurred in England—particularly the financial harm to UK victims—it was appropriate for English courts to exercise jurisdiction. Conversely, if the criminal activity had been confined to Spain and affected only Spanish victims, the English court would likely have declined jurisdiction.

Thus, we believe that the exercise of extra-territorial jurisdiction by the Federal High Court over non-Nigerian for money laundering committed outside Nigeria should be limited to cases involving Nigerian citizens or pose a significant threat to Nigerian interests. Adhering to this approach ensures a balanced respect for international sovereignty while protecting Nigeria's national interests.

Conclusion

Based on the foregoing, it appears inappropriate for Nigerian Courts to assume jurisdiction over money laundering committed by non-Nigerians without any connecting factor with Nigeria. As such, a thoughtful and principled approach to the assertion of extra-territorial jurisdiction by Nigerian courts over money laundering is most preferred. By confining jurisdiction to situations that directly involve Nigerian citizens or significantly threaten Nigerian interests, the Nigerian legal system will remain both robust and credible. This strategic delineation not only prevents judicial overreach but also aligns with international best practices, enhancing our standing in the global legal community.

Finally, in the light of the absurdity that may arise from a literal interpretation of Section 23(2)(c) of the MLA, we recommend the following:

- **Clarification of Language:** Section 23(2)(c) of the MLA should be amended to provide clearer definitions and parameters regarding the extra-territorial jurisdiction of the Federal High Court concerning offences committed by non-citizens. It should be clarified that non-citizens are only triable in Nigeria where offences committed by them outside Nigeria affects a citizen, resident and/or national or central interest of Nigeria. This will help to ensure that the Federal High Court assumes jurisdiction only in the appropriate cases involving non-citizens.
- **Judicial Guidance:** We recommend that in the main time, the judiciary should seize any opportunity it gets to pronounce on 23(2)(c) of the MLA to provide the needed clarity and reduce uncertainty, pending its amendment by the legislature.

If you require any further clarification, do not hesitate to contact us.