

The Role of the Nigeria Customs Service (NCS) in the Prosecution of Smuggling Offences in Nigeria

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Abstract:-This paper generally examines the crime of smuggling in Nigeria with particular emphasis on the role of the principal agency in-charge of the administration and combating of the crime. It examines the nature of smuggling offences under the Customs and Excise Management Act (CEMA), and found that the role of the NCS in this regard and as stipulated in the CEMA cannot be overemphasized. Under the guise of collaboration, other agencies engage in this statutory role of the NCS, which ought not to be. To this end the institutional frame work for combating smuggling is analysed culminating in the discussion on prosecution of offenders under CEMA. The appropriate sanctions for offenders is put in focus anchoring on the need for this to act as deterrent, so as to reduce smuggling to its barest minimum.

LFN (Now Vol. 13 cap p3 LFN, 2004), National Drug Law Enforcement Agency Act (NDLEA) cap. N 30 LFN and the Economic and Financial Crime Commission Act (EFCC). No. 1 of 2004 which repealed the EFCC Act cap E1, LFN, 2004 that was made in 2002 deals with some aspect of the crime. Deliberately a survey of these enactments is not within the contemplation of this write up, but the emphasis is on CEMA which is the principal enactment that enforces the laws on smuggling in Nigeria.

The NCS is the Federal agency of government in charge of the administration of the CEMA. CEMA provides for the establishment of a board of customs and excise, which is established by the Nigeria customs service board Act⁵.

I. INTRODUCTION

Smuggling is defined¹ as the crime of taking, sending or bringing goods secretly and illegally into or out of a country. Although some view it merely as trading; either locally or across frontier and hence see nothing wrong with it, it is a serious crime. Kofo Olugbesan² states that the economic repercussion of smuggling and the inordinate perpetration of the act may necessarily have led to its criminalisation. Beyond this smuggling has been viewed to be a crime possessing and manifesting terroristic dynamics.³

Statutorily it is defined as the act of illegal importation or exportation of goods into or out of a country without payment of duty payable therein and evasion of prohibitions and restrictions order without legal documents required for that purpose⁴.

The CEMA is the principal enactment that seeks to enforce the laws on smuggling in Nigeria. Some other enactments like the criminal code (CC) cap 77 laws of the federation of Nigeria (LFN) 1990 (Now C. 38, LFN, 2004), penal code (PC) (Northern states) provisions Act, cap 345 Vol. xix, 1990,

II. HISTORICAL DEVELOPMENT OF THE NIGERIA CUSTOMS SERVICE

In order to have a sense of history and also to have a grasp of the dynamic nature of the NCS, its evolution comes to the fore. It is one of the oldest government departments in Nigeria. Its origin dates back to 1862 when Thomas Tickel, British vice consul in Badagry was appointed as collector of customs for the new British colony of Lagos⁶. However, by way of reform in 1891, the Department of customs Niger coast protectorate was created with Mr. T. A. Wall as the Director General. In 1900 a new head, Mr. H. L. Searle was appointed and the designation changed to collector of customs and post master general. This changed again in 1922 when Mr. F. A. Clinch was appointed as controller of Customs and Excise Federation of Nigeria. Then the Department was charged with the responsibility of collecting import and export duties and also providing postal services.

In 1933, but virtue of the excise duties ordinance No 3, new duties were created for the department, having relinquished its postal services duties. As the department's evolution continued, there was the need to create a paramilitary arm to curb the activities of smugglers. In view of this, the Customs preventive service was formed to police the nation's borders. The two parallel areas of the agency revenue (technical) and the preventive (enforcement) were however unified in 1975 under the regime of the then head of state Murtala Mohammed.

⁵ No 45 of 1992, now in cap. N100 LFN, 2004 herein after "NCSB" Act"

⁶ M. Omale, Nigeria customs services, law and practice (Cinnamon Press, International, Shomolu, Lagos, 2000)

¹ Catherine sources, Angus, Stevenson (eds) concise oxford English Dictionary (11th Edn. New York, Oxford University Press, 2004) p. 204. See also Encarta encyclopedia 2004, which sees smuggling as carrying goods into a country secretly because they are illegal or in order to avoid paying duty on them

² K. Olugbesan, smuggling, the crime, the law (Stevman law publications, Lagos 1993) P.68

³ O.B.C Nwolise " smuggling as International Economic Terrorism" a commissioned paper presented at the Nigerian customs service seminar, held at Ladi Kwali conference centre, Sheraton Hotel and Towers, Abuja, 15th to 19th Dec., 1997

⁴ Sections 46, 47,63 and 64 CEMA

Beginning from Mr. Wall's era to date thirty-four (34) officers have headed the department including Mr. Ogunbemile and Mr. Effanga who acted briefly but were not confirmed. Out of these, nineteen (19) were expatriates. The very first Nigerian head to be appointed in 1964, was Mr. A. Diyan. So far fourteen Nigerians have headed the Department, including the incumbent, Col. Hameed Ibrahim Ali (Rtd).

In 1992 as a result of government reform the Department of Customs and Excise was renamed the Nigeria customs service and its ranking realigned with that of the Nigeria police. The reform also re-named the head of Customs as the Comptroller-General (CG). The NCS is not created under the CEMA as in the cases of the EFCC, NDLEA and the police which were created in their different enactments⁷.

The NCS in its evolution has under gone several reforms which seems unending. As pointed out by Ango⁸, human organizations often have to undergo transformations in the form of reorganizations. Such reforms and reorganization are meant to achieve greater efficiency, transparency, accountability and effectiveness. The NCS is no exception to this assertion, and so have over the years gone through many stages by way of reforms, which is aimed at achieving greater revenue collection, transparency and accountability on the part of officers and men, and promote efficient, effective, honest and reformed customs service in order to bring sanity to ports operations in all its ramifications⁹.

The reforms have been characterized by the constant and redefining modifications in its various departments. This is in order to ensure that it meets up with modern criteria and demands, and is at par with its counterparts globally. It is also with a view to ensuring that the NCS, being a strategic agency and the foremost non-oil revenue collector for the government, is positioned for maximum delivery and effect. In the bid to achieve the above there are bound to be breaches on the part of the business community, hence the broad role of the NCS which is to enforce the customs and excise laws as contained in the CEMA.

III. THE ROLE OF THE NIGERIA CUSTOMS SERVICE

Section 4 (1) of CEMA¹⁰ empowers the NCS, subject to the general control of the minister to control, manage and administer the customs and excise laws, collect customs duties on imports and exports and collect excise duties on goods manufactured locally. The NCS is expected to account for these duties in such a manner as may be directed by the

minister. As expressed by Ango¹¹, the NCS is also responsible for the prevention of smuggling and the maintenance of social security through strict enforcement of import and export regulations affecting the health, social and economic life of Nigerians.

A former Comptroller-General of customs to this end, was quick to observe that:

*The main functions of the Department of Customs and Excise are to collect and account for import, export and excise revenues, and to prevent or arrest smuggling?*¹²

In the exercise of the above roles and as provided by the CEMA, any breach therein of the provisions can lead to setting the law in motion for prosecution.

Section 186(a) of CEMA provides that the NCS board may.

Without prejudice to the provisions of section 174 of the constitution of the federal Republic of Nigeria 1999 (which relates to the power of the Attorney General of the federation to institute, continue or discontinue criminal proceedings against any person in any court of law) and subject to such directions, whether general or special, as may be given by the Attorney General of the federation, stay or compound any proceedings, for an offence or for the condemnation of anything forfeited under the customs and excise laws.

The practice by virtue of the provisions of section 181 (2) of the CEMA was that every magistrate in any part of Nigeria had jurisdiction for the summary trial of any offence under CEMA. It is however, pertinent to note that by virtue of section 7(1) (c) of the Federal High Court Act Cap F 12 LFN, 2004, jurisdiction to try customs offences has been removed from the state high courts and magistrate courts to the Federal High Court¹³. Prosecution therefore, under this dispensation is done by the law officers sent from the Federal Ministry of Justice. Section 180 (1) (2) of CEMA however, permits any customs officer, provided he is a legal practitioner and with the consent of the Comptroller-General, to conduct criminal or other proceedings in respect of matters relating to the CEMA. This section was amplified in the case of *FRN v Osahon*,¹⁴ when the same issue arose in the case of the right of police to prosecute. The proceedings shall be instituted

⁷ Sections 1 (1), 1 and 3 respectively. Section 3 of the NCS bill 2012 now provided for the establishment of a body to be referred to as "the customs service"

⁸ SOG Ango: The role of Nigeria customs service in the realization of vision 2010 (spectrum books limited 1998) p.3.

⁹ See Nigeria customs service, monthly order Nos. 1-5 (January - May, 1996), p.4

¹⁰ First published in 1958, then as cap. 84 LFN 1990 and presently in C.45 LFN, 2004

¹¹ SOG Ango op. cit p.16

¹² B.H Mohammed, "Introductory address by the director, department of customs and excise, on the occasion of the opening of the customs and excise seminar, November 16, 1989 in Report of senior officers seminar for 1989, (Abuja, Dept. of customs and excise, 1989). P.5

¹³ See also section 251 (1) (c) constitution of the Federal Republic of Nigeria 1999

¹⁴ 2006 WRN I.

within seven years of the date of the commission of the offence¹⁵.

This article having established the role of NCS as important, shall examine the nature of smuggling offences which if breached leads to arrest and prosecution.

IV. NATURE OF SMUGGLING OFFENCES UNDER CEMA

The CEMA as stated was made to regulate the management and collection of duties of customs and excise, and for purposes ancillary thereto. In the management and collection of duties, several breaches of the enactment are likely to occur. The crime of smuggling therefore is one serious area of such breaches. The CEMA in the light of above makes several provisions which if breached will amount to smuggling¹⁶.

Improper Importation or Exportation

This is the illegal bringing or illegal taking of goods or other items from a country. It could also be prohibited or of restricted items. This is provided for in Sections 46, 47, 63, and 64 of CEMA.

Section 46 deals with forfeiture of goods improperly imported. It provides that:

- (a) *except as provided by or under this Act, any imported goods, being goods chargeable with duty of customs, are without payment of that duty landed or unloaded in Nigeria or removed from their place of importation or from any approved wharf, examination station, customs station or customs area, or*
- (b) *Any goods are imported landed or unloaded contrary to any prohibition; or*
- (c) *Any goods, being goods chargeable with any duty or goods the importation of which is prohibited, are found, whether before or after the unloading thereof, to have been concealed in any manner on board any ship or air craft or in any vehicle; or*
- (d) *Any goods are imported concealed in a container holding goods of a different description; or*
- (e) *Any imported goods are concealed or packed in any manner appearing to be intended to deceive an officer; or*
- (f) *Any imported goods found, whether before or after delivery, not to correspond with the entry made thereof*

Those goods shall be forfeited.

¹⁵ Section 176 (3) of CEMA. Section 260 (3) of the 2016 NCS Bill has however removed the limitation of time for criminal prosecution

¹⁶ Sections 19, 43, 46, 47, 50, 51, 53, 54 63, 64, 162 are all instances of breaches of the CEMA that can attract punishment accordingly.

Section 47 of the Act further provides imprisonment for the term of five years for any of the above improper importation. There is no option of fine under this provision. This, it is submitted is a reflection of the seriousness of the offence.

Section 63 deals with forfeiture of goods improperly exported.

- (a) *except as provided by or under the Act, any goods chargeable with duty on exportation are exported without payment of that duty; or*
- (b) *any goods are exported or loaded for exportation or as stores or are brought to any place in Nigeria for the purpose of being exported or loaded as stores and the exportation of such goods is or would be contrary to any prohibition; or*
- (c) *except as provided by or under this Act, any goods are loaded into any ship or aircraft for exportation or as stores, or are removed from any customs station for exportation, before entry outwards thereof has been signed by the proper officer; or*
- (d) *any goods being goods chargeable with any duty on exportation or goods the exportation of which is prohibited are found after having been loaded for exportation to have been concealed in any manner on board any ship or aircraft or in any vehicle; or*
- (e) *any goods are exported or brought to any place in Nigeria for exportation concealed in a container holding goods of a different description, or*
- (f) *any goods are exported or brought to any place in Nigeria for exportation concealed or packed in any manner appearing to be intended to deceive an officer; or*
- (g) *any goods entered outwards are found, whether before or after loading, not to correspond with the entry made thereof*

Those goods shall be forfeited.

Section 64 of the Act further provides imprisonment for the term of five years for any of the above improper exportation. There is no option of fine under this provision. This is a reflection of the seriousness of the offence.

The crime of smuggling as contained in the CEMA extends also to any person who even though is not the owner but is concerned with the carrying of the item. Section 164 provides:

- (a) *if any person knowingly and with intent to defraud the federal government of any duty payable thereon, or to evade any prohibition with respect thereto, acquires possession of, or is in any way concerned in the carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any goods which have been unlawfully removed from a warehouse or government warehouse, or which are chargeable with a duty which has not been paid or*

with respect to the importation, exportation or carriage coast wise of which any prohibition is for the time being in force; or

- (b) *is, in relation to any goods, in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon of any such prohibition as aforesaid or of any provision of this Act applicable to those goods, he shall be liable to a fine six times the value of the goods or four hundred naira, whichever is the greater or to imprisonment for two years, or to both.*

Section 46¹⁷ provides for the forfeiture of goods improperly imported while section 47¹⁸ further provides for imprisonment for five years without the option of fine for any improper importation. Our analysis will focus on section 47 as section 46 is not fraught with any conflict in that it clearly provides for forfeiture of goods improperly imported. In determining the award of punishment here which is imprisonment, with no option of fine, the question is that what will be the position of the corporation when its culpability is in issue. This is hinged on the growing use of limited liability companies or registered companies for businesses since the decision of the house of Lords in the case of *Salomon V. Salomon*¹⁹. Also by virtue of the interpretation Act²⁰ 1964 an incorporated body is a “person”. It is true that a corporation can be criminally liable as a corporation can be criminally liable as was held in *DPP.V. Kent and Sussex Contractors*²¹, and as amplified in the concept of “alter ego”²². This reasoning has been codified in Section 65 of the Companies and Allied Matters Act²³ to the effect that a company can be civilly and criminally liable for the acts of its agents. Criminal responsibility of a corporation is only asserted but does not however amount to endorsement of imprisonment. In *A.G. (Eastern Region) v. Amalgamated press*²⁴ Aimly C. J. held that a corporation could not be charged with an offence, the only punishment for which is imprisonment. A corporation being an abstract entity acting through its agents who are natural persons and if they use the name of the companies to commit customs offences shall be criminally responsible for such crimes. Depending on the law, the company used in perpetrating the customs offence may be fined or de-registered or both. Section 182(5) of CEMA to this end provides:

Where an offence under the customs and excise laws has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributed to any neglect on the part of the any director, manager, secretary or other similar officer of the body

corporate or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Since Section 47 did not provide for an option of fine, it will be difficult to bring a Corporation as a “person” under it for purposes of prosecution.²⁵ We shall now consider the position as it is in some other jurisdiction.

In Ghana Section 252 of the Ghanaian Customs Act²⁶ provides for a fine not exceeding three times the duty tax evaded or to a term of imprisonment of not less than five years and not exceeding ten years for any improper importation. The difficulty in determining the position of a corporation for purpose of punishment as against the position in Nigeria is cured by the imposition of fine in Ghana.

Any person as used in the Ghanaian Act can conveniently apply to a corporation.

In India penalty for any improper importation under Section 112 of the India Customs Act 1962 cap xiv is confiscation and a fine not exceeding the value of the goods or five thousand rupees²⁷, whichever is greater. It is interesting to note that there is no provision for imprisonment. This presupposes that the emphasis is on generating more revenue for the government instead of increasing the financial burden of the State in maintaining the convicts in prison custody.

Section 185 of the Kenya Customs Act prescribes for any improper importation a prison term not exceeding five years or a fine equal to three times the amount of duty and any taxes payable on the goods in respect to which the offence was committed subject to a maximum of one million five hundred thousand (sic) or to both fine and imprisonment. It is interesting to note that the name of the currency was not mentioned in the provision. It must have been an error on the part of the legislature. We however, assume it is shillings since shillings was mentioned in Section 184 of the Act which provided penalty for another offence. Under the Kenya Act, a corporation can come under the ambit of “any person” just like in the case of Ghana.

Perhaps the better provision in relation to improper importation is that of the New Zealand. The Customs Act²⁸ of New Zealand provides in section 209 (2) thereof that for any improper importation the penalty shall be:

- (a) *in the case of an individual to imprisonment for a term not exceeding 6 months or to a fine not exceeding 10,000 dollars; or*

¹⁷ Op.cit

¹⁸ Op.cit

¹⁹ (1897) A.C 22

²⁰ Now cap 123 LNF 2004

²¹ (1944) K.B. 146

²² Per Anigolu JSC in *Trenco (Nig) Ltd V. Africa Real Estate Ltd* (1

²³ Cap c. 20 LFN. 2004

²⁴ (1956 57) IE RIR

²⁵ Sections 46 and 47 of CEMA is reproduced in section 239 of the Nigeria Customs Service bill 2012 but the word smuggling is specifically used, the punishment prescribed is that if the goods are chargeable with duty, excise tax or other tax, to imprisonment for a term of the three years and to a fine of six times the true value of revenue lost and forfeiture of the item smuggled.

²⁶ Customs, Excise and preventive service (management) Act, 1993

²⁷ Rupees is the India national currency

²⁸ New Zealand customs and Excise Act, 1996

- (b) *in case of a body corporate to a fine not exceeding 50,000 dollars*

With the Act providing specifically for the position of a body corporate, the kind of problem that arose in the situation in Nigeria does not manifest here.

We submit therefore that the aforementioned problem could have been avoided if the draftsmen were a bit more careful. No wonder Stephen J. In *Recastion*,²⁹ warned

The drafting of a statue should aim at a degree of precision which a person reading in bad faith cannot misunderstand; and it is all the better if he cannot pretend to misunderstand it.

Draftsmen should always have this at the back of their minds so as to avoid the lacunae. As regards the provision of CEMA on fines as a form of sanction, discussion shall focus on the inadequacy of the various fines as provided, hence the need for a reform, and this shall be done extensively later in this presentation.

Under Declaration

This offence derives its root from the provision of section 46 (F) of CEMA which provides that it shall be an offence if any imported goods are found, whether before or after delivery, not to correspond with the entry made thereof. This often arises when there is difference in the quantity declared. The form m³⁰ may for instance contain 500 cartons but on physical examination, it may be discovered that the container contain 700 cartons. This amount to under declaration and going by section 46(f), the goods are liable to seizure and forfeiture. It is desirable however, that a cure ought to have been issuance of Demand Notice (DN) so as to recover the difference as stated.

False Declaration

This refers to a situation where the goods declared are not what is actually brought into the country. This could be for the purpose of evading payments of the correct duty. An importer may import an item that attracts duty rate of 100%, but will declare another item that attracts a duty of 40% even though the item imported may not be prohibited, the false declaration in order to pay a lesser duty amounts to a crime.

This situation is covered in section 46 as stated earlier. It follows that the use of “false bottom” containers and camouflage can easily lead to false declaration. “false bottom” is when the smuggler make additional construction to a container in order to hide the smuggled goods to avoid its

detection. It is a mode of concealment so to speak. The metal scrap case³¹ is a very good example.

Camouflage means carrying any item under the cover of another thing. Outwardly therefore it will appear as if non-offending items are being carried whereas the real items being carried are against the law. A good case is the Mercedes in container case³² where the customs stumbled on the container declared as containing cartons of milk which turned out to be a mobile garage containing a brand new Mercedes Benz car. Another dimension to the issue of false declaration is specifically the provision of section 161 of CEMA which deals with untrue declaration in relation to customs document. The section provides:

- 1) If any person:
 - (a) *Makes or signs; or causes to be made or signed, or delivers or causes to be delivered, to the board or an officer, any declaration, notice certificate or other documents whatsoever; or*
 - (b) *Makes any statement in answer to any questions put to him by an officer which he is required by or under this Act to answer. Being a document or statement produced or made for any purpose of customs and excise, which is untrue in any material particular, he shall be guilty of an offence under this section.*
- 3) *...he shall be liable to a fine of one thousand naira, or to imprisonment for two years or to both and any goods in relation to which the document or statement was made shall be forfeited.*

This provision is related to the offence of false declaration and so can conveniently be read together. The section however, extends the liability of untrue declaration to any statement in answer to any question... this suggests oral communication. It presuppose that passengers arriving accompanied with baggage can be liable here for any untrue oral declaration.

Another dimension of false declaration is seen in the definition of what constitutes economic and financial crimes. Section 46 of the EFCC Act, classified false declaration as an aspect of trade malpractice³³. It is in line with this that the

³¹ The German customs in this case made a seizure of 20 tons of Indian hemp concealed behind the compartment of a container accommodating the metal scrap, the container was aboard the then Nigerian national shipping line (NNSL) refer to in K-Olugbasan, op.cit. p8

³² Sunday Times, February, 17, 1980 cited in K Olugbesan op.cit., p.12

³³ The section defines economic and financial crimes to mean: non-violent criminal and illicit activity committed with the objective of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing economic activities of government and its administration and includes any form of fraud, narcotic drug-trafficking, money laundering embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractice including counterfeiting currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods etc.

²⁹ (1891) IQB AT 167

³⁰ This is an importing document containing among other things the proper description of the goods.

then chairman of the EFCC in a paper³⁴ listed false declaration of goods as a serious smuggling offence that affects the Nigerian economy.

Forgery of Documents

False declaration by its nature tends to be an offence of forgery. The focus now is what constitutes forgery. Importation or exportation is full of documentation which is in the line with international trade practice. Right from the time an importer opens his form 'm' through the arrival of the goods to the clearance and final release from customs custody, several documentation takes place. In order to prevent any abuse of the process, the CEMA provides for sanction in case of any forgery.

Section 162 provides:

If any person –

- (a) *Counterfeits or falsifies any document which is required by or under the customs and excise laws or which is used for the transaction of any business relating to customs and excise: or*
- (b) *Knowingly accepts, receives or uses any such document so counterfeited or falsified:*
- (c) *Alters any such document after it is officially issued: or*
- (d) *Counterfeits any seal, initials or other mark of or used by any officer for the verification of such a document or for the security of goods or for any other purpose relating to customs and excise he shall be liable to a fine of one thousand naira or to imprisonment for two years, or to both.*

Forgery of Customs and Excise documents is a very serious offence. If the punishment prescribed is the yardstick and in comparison to the provisions of the general criminal law,³⁵ then we submit that the sanction as prescribed under CEMA is not punitive enough and ought to be reviewed.

The question then is, the inadequacy of the punishment as provided in the highlighted sections and others, and this is the background to further discussion in this paper.

V. INSTITUTIONAL FRAMEWORK FOR COMBATING SMUGGLING

The role of NCS in combating smuggling in Nigeria shall be the focus here and as captured in an earlier publication³⁶ reproduced herein, it cannot be overemphasized. As a principal agency in the enforcement of smuggling in Nigeria,

its role shall be considered viza-avis the other agencies whose role we submit should only be collaborative.

VI. THE ROLE OF NCS IN COMBATING SMUGGLING IN NIGERIA

The NCS is the principal agency mandated to prevent the crime of smuggling in Nigeria. The NCS is a Federal Government Agency responsible for the implementation of the administration of CEMA³⁷.

Even though the CEMA does not create the NCS, it regulates its activities. The CEMA infact provides for the establishment of the Board of customs and excise. Section 4 (1) therein empowers the NCS, subject to the general control of the minister to control, manage and administer the customs and excise laws, collect customs duties on imports and exports and collect excise duties on goods manufactured locally. It is against this background that the role of NCS in anti smuggling operations shall be considered.

The NCS is responsible for the prevention of smuggling and the maintenance of social security through strict enforcement of import and export regulations. There are several preventive measures put in place by the NCS to curb the incidence of smuggling. They include pre-shipment inspection, destination inspection, administration of manifest, scanning, automated system for customs data, 100% physical examination, taskforce/advoc duties, reconciliation, post clearance Audit and warehousing.

The various preventive measures are laudable but they are not without attendant problems in their implementation. This leads to the enforcement role of the NCS which include arrest of suspect, search, detention and seizure of goods which has become a veritable way of ensuring compliance. Under the CEMA, a customs officer can arrest any offender of the provisions of the Act. This wide power of arrest is the same as that conferred on police officers and since the CEMA gives the customs officer the powers of a police officer, it could be conveniently said that the wide powers of arrest conferred on the police is by necessary implication conferred on customs officers³⁸

Section 147 of CEMA empowers an officer to conduct search upon reasonable suspicion that an offence has been committed. The purpose of the search is to look for any material that may be used as evidence at the trial of the accused person. Under CEMA areas of search covers that of persons, premises, vehicles, ships and aircrafts. Section 167(1) of CEMA empowers an officer to seize or detain anything liable to forfeiture under the customs and excise law or which there is reasonable grounds to believe is liable to forfeiture. Seizure as an enforcement measure is believed to be a kind of deterrent to smugglers. The efficacy of it is seen

³⁴ N. Ribadu, "Implication of Economic and Financial crimes on the National Economy". Paper presented to the Defence Adviser in conference at Abuja on the September 10, 2004 (unpublished).

³⁵ Forgery as dealt with in sections 362 – 380 of the PC and 463 – 489 of the cc prescribes on the average for imprisonment ranging from 7 – 14 years.

³⁶ M. Omale, Trans-National Crimes (TNC) in Nigeria: focus on smuggling LPR Vol.9, (2016) p. 43

³⁷ See section 10 criminal procedure Act cap c.42 LFN, 2004 compare with section 8 of CEMA

³⁸ Cap. c. 45, LFN, 2004

in the various seizures made across the country by the operatives of the NCS. For example the NCS between the months of January 2005 to April 2006 made arrest of some arms and 40, 716 rounds of ammunition and arrested 5 persons in connection with smuggling of these dangerous weapons³⁹. Also in the month February, 2009, 190 magnum automatic pump action rifles hidden in a truck was intercepted along Ijebu-Ode/Benin express way. The arms were concealed among sacks of clothes⁴⁰. The ports and terminals multi-services limited (PTML) command of the NCS also in September, 2009 during its routine physical examination of containers intercepted a large cache of arms and ammunition hidden in vehicles packed in a container. About 10,200 pieces of ammunition were discovered in the offensive containers⁴¹.

On Wednesday, October 27, 2010 security agents intercepted 15 containers of dangerous weapons illegally imported into the country through the nation's port at Apapa⁴². The illicit cargo contained rocket launchers, mortars, bombs, small light arms and ammunition which was described on the bill of lading as building materials. In the same vein, one forty feet container cleared from Apapa port containing 661 pieces of arms (pump action rifles) concealed with other dutiable items, was intercepted by a patrol team of Federal Operations Unit (FOU) zone 'A' Lagos on Sunday, January 23, 2017. The two suspects in the illegal importation were handed over together with the arms to the department of state services for necessary action⁴³.

The Nigeria Police

The role of the police in the prevention and detection of crime cannot be overemphasized. The police play very vital role in this regard in relation to the crime of smuggling. They detect arrest, investigate and prosecute criminal case by virtue of section 4 of the police Act⁴⁴. It provides that the police shall be employed for the prevention and detection of crime, the apprehension of offender, the preservation of law and order, the protection of life and property and the due enforcement of laws and regulation with which they are directly charged, and shall perform such military duties within or without Nigeria as may be required of them by or under the authority of this or any other Act.

In the exercise of the above role the police is in the fore front among other security agencies, in the effort to tackle crime generally, and specifically smuggling as discussed in this

paper. There is therefore an interface of collaboration between the police and other security agencies within the system to ensure the safety and security of the country⁴⁵. The police acknowledged that the armed forces, immigration, customs, State Security Service (SSS), National Drug Law Enforcement Agency (NDLEA) Economic and Financial Crimes Commission (EFCC), National Intelligence Agency (NIA), Federal Road Safety Commission (FRSC) etc, are all working in synergy to ensure security within the country⁴⁶. And that international collaboration and co-operation with such agencies as FBI, metropolitan police, Interpol etc, have been of great value in ensuring security⁴⁷.

National Drug Law Enforcement Agency (NDLEA)

The NDLEA was established to enforce laws against the cultivation, processing, sale, trafficking and use of hard drugs and to investigate persons suspected to have dealings in drugs and other related matters. Section 30 (1) (p) of the NDLEA Act provides that the Agency should collaborate with other government bodies both within and outside Nigeria in carrying on functions wholly or in part analogous to those agencies. To this end, and by virtue of section 8 (b) (c), 11(a) and 41 of the NDLEA Act, the NDLEA collaborates with other agencies especially the Nigeria police and the NCS to enforce laws against crimes as the case may be.

Nigeria Immigration Service (NIS)

Since it is persons that often engage in crime especially those across national frontiers, the role of NIS becomes of importance. It controls the activities of non-Nigerians in Nigeria which gives rise to the performance of these major duties *viz*: catering for the internal security of the nation and protecting the national economy from foreign exploitation. The performance⁴⁸ of these duties deals greatly with the admission of genuine immigrants into the country, and effective vigilance to ensure that the economy is in the hands of Nigerians⁴⁹. The role of the NIS in monitoring the activities of people especially when it involves foreigners, no doubt, would assist the other agencies particularly customs in combating the crime of smuggling.

Nigeria Security and Civil Defence Corps (NSCDC)

In recent times the activities of the NSCDC becomes relevant and worthy of mention. Its role in crime prevention and enforcement cannot be overemphasized, especially in complimenting the Nigerian police and other security agencies.

³⁹ Smuggling: A threat to national security, being a paper presented by Elder J. G. Buba, former Comptroller-General of customs at the 2006 security watch lecture held on Tuesday and Wednesday, May 30th -31st at Ladi Kwali Hall, Sheraton Hotel and Towers, Abuja

⁴⁰ Punch Newspaper, Friday, February, 2009, Tell Magazine, February 23, 2009, p.15

⁴¹ Vanguard Newspaper, Wednesday, 10 September, 2008, p.2

⁴² Deadly cargo, Daily sun Newspaper, Wednesday, October, 27 2010, p.6

⁴³ Via a letter Ref: NCS/INV/083/017/ ABJ/HQ of February , 23, 2017 from the Comptroller General Customs, addressed to the National Security Adviser

⁴⁴ Cap. p19, LFN, 2004

⁴⁵ An international lecture delivered by the inspector General of Police represented by the AIG Zone 2 Head quarters Lagos, Azubuko J. Udah Esq, Npm, mni at the Nigerian Swedish chamber of commerce

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ W.O. Nwaucha; "Immigration Nigerian Experience " (Opinion Research and communications Ltd, Owerri, Imo Stat, 2007

⁴⁹ Ibid

NSCDC started as a non-governmental organization in 1967 to protect lives and properties of the civilian populace during the civil war. Its evolution culminated in being recognized statutorily in 2003 by virtue of the NSCDC Act No. 2 of 2003, and the subsequent amendment to act No. 6 2007. The core mandate of the NSCDC is to maintain twenty-four hours surveillance over Federal Government's critical infrastructures, sites and projects as well as register, train and monitor private guard companies. In the exercise of this functions and as a security agency, it could assist in preventing other criminal activities including smuggling which is our focus. They could arrest and possibly prosecute or hand over to relevant agencies.

Economic and Financial Crimes Commission (EFCC)

The EFCC, has among others, the function of investigating all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam etc.⁵⁰ Section 46 of the Act went further to define what amounts to economic and financial crimes, and among the growing list of crimes mentioned therein smuggling is one of the them.

The EFCC Act gives the agency special powers to perform the above role⁵¹.

Section 7(1) provides:

The commission has power to

- (a) Cause investigation to be conducted as to whether any person, corporate body or organization has committed an offence under this Act or other laws relating to economic and financial crimes.
- (b) In addition to the powers conferred on the commission by this Act, this commission shall be the co-ordinating agency for the enforcement of the provision of –
- (c) Any other law or regulation relating to economic and financial crimes, including the criminal code and penal code

The above provisions, no doubt makes the EFCC “Jack of all trade”. It is however contended that since economic crimes are inter-wined and usually committed across national borders, there is the need for a central agency to co-ordinate and foster co-operation among relevant enforcement agencies for intelligence gathering and collaborative measures, and that the role should however, be clearly defined so as to avoid jurisdictional conflicts with other specialized agencies⁵²

VII. INSTITUTION OF PROCEEDINGS

The discussion here is derived from another role of the NCS, which is the power to institute proceedings under the CEMA. For any breach of the CEMA there are provisions for a kind of enforcement and subsequent prosecution as the case may be. Proceedings could be criminal or civil. It is however often criminal proceedings that is mostly undertaken to curb the menace of smuggling. Under CEMA section `186 empower the NCS to compound proceedings in respect of offenders against customs law.

It then follows that all customs officers as police officers are charged with the arrest, detention and institution of criminal proceedings against offenders who break customs law as provided under the CEMA.

Prosecution therefore under this dispensation is done by the customs legal adviser or his assistants and they are law officers sent from the Federal Ministry Justice. Section 180(1)(2) of CEMA however permits any customs officer provided he is a legal practitioner and with the consent of the comptroller-general conduct criminal or other proceedings in respect of matters relating to the CEMA⁵³. The legal seat officer⁵⁴ undertakes the preliminary investigation, makes the necessary arrest, obtains statement from the accused and potential witnesses.

The success of any customs case to a large extent depends on the preparation of a good case file. A case file in simple terms is a folder or cover for keeping relevant documents or papers, which are very vital to the case. Most of the cases in customs have to do with illegal importation, which often leads to the seizure of the goods, and followed by prosecution. A complete case file is made up of the following documents:

- i) Index to the case file
- ii) Extract from the station diary
- iii) Seizure report (form c. 220)
- iv) Statements of seizing officers and that of defendant.
- v) Notice of seizure (form c.60)
- vi) Application for Bail/Bail Bond
- vii) A copy of government warehouse Dispatch Note (B.K c21)
- viii) Investigation Report
- ix) All other relevant documents in order of sequence

All the contents of the case file must be serially paginated in red ink and it's usually in four copies. The original file which must contain the original copies of documents relevant to the case, goes to the customs legal Adviser, who is represented by Assistant legal advisers in the zones. The duplicate is sent to the enforcement, investigation and inspection headquarter Abuja. The triplicate is forwarded to the zonal office for their information, the quadruplicate is retained at the legal seat in the area command and it serves as the “station copy”. In the

⁵⁰ Section 6(1) EFCC (Establishment Act 2004)

⁵¹ This is often referred to as the co-ordinating role of EFCC.

⁵² John Funsho Olorunfemi, “unbundling or merger of Nigerian EFCC with ICPC”, which way?, UBLJ (2003) vol. 14 No. 1, pp 68-90.

⁵³ See FRN v. Osahon (2006) WRN 1: Decree 14 of 1979

⁵⁴ Legal seat is a unit within the enforcement section of the NCS

case of “Abandoned seizure”⁵⁵ both the original and quadruplicate copies are retained at the station.

The NCS could also institute condemnation or forfeiture proceedings. This is the order of a court forfeiting any particular seizure that was made. Generally speaking when a person commits an offence, a cause of action arises against that person. The right therefore to prosecute the offender is a right in perpetuity. Under CEMA there is a deviation from this general principle, as it puts a time limit of seven years for any prosecution of any offence committed

Section 176 (3) provides:

No proceedings shall be instituted except within seven years of the date of the commission of the offence.

The above provision presupposes that all prosecution under CEMA not instituted within the specified time period (seven years) shall become statute barred and thus the right to action would be extinguished. Section 260(3) of the 2016 NCS Bill has however, removed the limitation of time for criminal prosecution.

VIII. SANCTIONS/APPROPRIATE ORDER OF COURT

In the exercise of the roles as discussed above and as provided by the CEMA, there are likely to be breaches which comes with sanctions as the case may be. Highlight of some of those provisions includes, section 19 of the Act which deals with the control of movement of uncleared goods, and any breach therein attracts a fine of ₦200. Section 43 deals with exported goods and goods delivered free of duty, section 46 deals with forfeiture of goods improperly imported, section 47 provides imprisonment for the term of five years for any improper importation.

Sections 53 and 54 where for an offence that borders on short loading of goods without giving due notice, and loading of shipstores without permission, a fine of ₦100 and ₦40 were prescribed respectively.

Where the minister makes any regulations with respect to loading of goods for exportation and the submission of a full list of all the cargo carried in the ship to the proper officer in the prescribed form any breach of the above will lead to forfeiture and a fine of ₦200⁵⁶. Section 63 deals with forfeiture of goods improperly exported, and section 64 further provides imprisonment for the term of five years for any improper exportation.

The crime of smuggling as contained in the CEMA extends also to any person who even though is not the owner but is concerned with the carrying of the item section 164 provides:

(a) If any person knowingly and with intent to defraud the federal government of any duty payable thereon,

or to evade any prohibition with respect thereto, acquires possession of, or is in any way concerned in the carrying, removing, depositing harbouring, keeping or concealing or in any manner dealing with any goods which have been unlawfully removed from a warehouse or government warehouse, or which are chargeable with a duty which has not been paid or with respect to the importation, exportation, or carriage coastwise of which any prohibition is for the time being in force; or

(b) Is; in relation to any goods, in any way knowingly concerned in or attempt at evasion of any duty chargeable thereon or of any such prohibition as aforesaid or of any provision of this Act applicable to those goods, he shall be liable to a fine six times the value of the goods or four hundred naira, whichever is the greater or to imprisonment for two years or to both.

Section 165 (1) provides among others for capital punishment for certain offences.

It provides that any person-

- (a) Who while concerned in the commission of any offence against the customs and excise laws, is armed with any offensive weapons: and*
- (b) So armed found in Nigeria in possession of any goods liable to forfeiture under the customs laws: shall be liable to imprisonment for ten years.*
- (c) If an offender under sub-section(1) of this section is armed with any firearms and with such firearms causes injury to an officer, he shall be sentenced to death.*

The concern in the above provisions as stated is the adequacy or even the appropriateness of the sanctions as imposed under CEMA. It is submitted in respect of the fines as imposed in the above provisions, which on the average is ₦100, in today’s socio-economic realities is grossly inadequate, we had contended⁵⁷ that increase in the penalty is necessary in order that the role of the NCS in the realization of the economic potentialities of Nigeria could be enhanced. The penalty as it stands will not serve as enough deterrent in the actualization of this noble economic objective.

Another concern is the reasonableness of the capital punishment as provided by section 165(2) for just causing injury which may not lead to death. The provision may appear harsh but in view of the danger posed by smuggling and the smugglers becoming more sophisticated in their operations, it may be safe to conclude that the punishment is in order.

It is however pertinent to note that there is no equivalent of section 165 (2) of CEMA relating to causing injury to an

⁵⁵ Abandoned seizure is a seizure made without a suspect

⁵⁶ See sections 57(1) (2) and 58(1) CEMA

⁵⁷ M. Omale: Nigeria customs service law and practice (shomolu, Lagos Cinnamon press international, 2000. P. 66

officer under the English and Kenya customs and Excise Act.⁵⁸

The conclusion is that while section 165 of CEMA prescribes for capital punishment, the other jurisdictions mentioned did not. This as argued by Olorunfemi⁵⁹ may be condemned by many especially as in the situation under section 165 (2) of CEMA where death need not occur.

The cloudy areas therefore in section 165 needs amendment, especially the abolition of capital punishment which will be in line with international trend.

IX. CONCLUSION

Smuggling involves the illegal importation or exportation of goods either to evade the correct payment of duty or to undermine government policy on existing prohibition. The major effects of smuggling include huge revenue lose, money laundering, exposure of local industries to unfair competition with their foreign counterparts and insecurity of life and property. The principal legislation for combating smuggling in Nigeria is the Customs and Excise management Act and the Nigeria customs service Board has the duty of controlling and managing the administration of the law. The role of the NCS as a federal government agency in this regard is brought to the fore in order to enhance the fight against smuggling in its entire ramifications.

It is to this end, that this role is considered in this paper so that the general public will appreciate fully their rights and obligations vis-à-vis the NCS and as it affects the nation in general. The paper found that even though some other agencies engage in the fight against smuggling, the NCS however remain the principal agency in combating the crime in Nigeria. The paper submits that since the NCS is the administrator of the security of the Nigerian economy, thereby understanding the dynamics of the economy, the crime of smuggling and its enforcement should be under its full control, while the role of other relevant agencies may remain only complementary.

⁵⁸ English Customs and Excise Management Act, 1979, customs and Excise Act cap 472 Laws of Kenya, Revised edition 2000 (1996)

⁵⁹ J. F. Olorunfemi, , "When smuggling may attract death sentences in Nigeria" (2009) Vil J. vol 5 No. 1 p.120