

Mutual Legal Assistance (MLA) in criminal matters in the UK and in developing countries: A scoping study

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Contents

1. Assistance schemes on criminal matters: What they are and how they operate	1
1.1. Mutual assistance in criminal matters	1
1.2. MLA requests.....	3
2. MLA in the UK	5
2.1. Legal framework.....	5
2.2. Authorities involved	7
2.3. Principles and criteria.....	8
2.4. In focus: MLA requests related to economic crimes and corruption.....	9
2.5. Volume of incoming and outgoing MLA requests.....	10
2.6. What does the available data show?	12
3. Transnational organised crime and cooperation	14
3.1. Transnational crime and cooperation in West Africa.....	14
3.2. Transnational crime and cooperation in Central Africa.....	16
3.3. Transnational crime and cooperation in East Africa.....	18
3.4. Transnational crime and cooperation in Central America and the Caribbean.....	19
3.5. Other cooperation examples.....	21
4. Findings and directions for action	24
Bibliography	26

1. Assistance schemes on criminal matters: What they are and how they operate

In all States, organised crime causes a variety of issues ranging from social to economic, at both the micro and macro levels. In addition to the efforts to address crime within individual States, there is an ever-increasing need to be able to combat criminal activity that extends beyond national borders. National agencies and institutions therefore need to be in a position where they are able to cooperate with one another if cross-border crime is going to be successfully tackled. Various instruments assist States in this respect, which include extradition, mutual legal assistance (MLA), transfer of sentenced persons, supervision of offenders, international validity of criminal judgements, transfer of proceedings, or combinations of them. MLA represents only one of these instruments.

1.1. Mutual assistance in criminal matters

Mutual Legal Assistance. MLA, sometimes also referred to as 'judicial assistance' or 'international judicial cooperation', is the formal means by which States cooperate by requesting and providing assistance to each other in order to obtain evidence for criminal investigations or proceedings. MLA is designed for the gathering of evidence and the restraint and recovery of assets, not intelligence gathering or other information collection.¹

Administrative assistance. A request for intelligence should be made through administrative assistance, i.e., police to police or prosecutor to prosecutor. Administrative assistance is sometimes referred to as 'informal assistance', as it does not involve the issuing of the formal letter of request, which characterises an MLA request.²

Administrative assistance can, and should, also be used when requesting evidence in a State where no coercive power (e.g., a warrant or court order) is required for the purpose of obtaining the evidence. Such an approach reduces the risk of delay and will be generally welcomed by States, but whether this is actually possible will depend on the (legal) requirements of the requesting State. Although administrative assistance is also referred to as 'informal assistance', the material that is sought may be evidential and in admissible form, the same as if it were gathered in response to a formal letter

¹ Council of Europe, Mutual Legal Assistance Manual, 2013.

² Administrative assistance (informal) should be distinguished from MLA (formal) in respect of infringements under the jurisdiction of an administrative authority punishable under criminal/administrative law (e.g., severe pollution due to negligence, or traffic offences). See Article 1, para. 3 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, ETS No. 182, which sets out that MLA applies to both (a) proceedings in respect of criminal offences and (b) proceedings in respect of infringements punishable under criminal/administrative law.

of request, depending on the legal requirements of the requesting State.³ The word 'informal' is used simply in relation to the way in which the request is made and the route by which it is communicated.

Obtaining evidence via administrative assistance is likely to be quicker, easier, and cheaper, provided that positive and collaborative relationships have been built with key individuals in other States. Investigators and prosecutors can develop such relationships by arranging joint training courses, mutual exchanges of personnel, seminars, and regional information exchange sessions. A more formal approach involves the agreeing of a Memorandum of Understanding (MOU) between investigative agencies from two or more States. In addition, prosecutors and/or law enforcement liaison officers of one country can be appointed to other States with their agreement.

Examples of the two types of assistance – formal and informal – are below; however, variations between States will apply.

Enquiries that may require MLA requests ⁴	Types of administrative assistance
<ul style="list-style-type: none"> • Obtaining testimony from a non-voluntary witness, including transfer of witnesses and remote hearings conducted via video-conferencing; • The transfer of consenting persons into custody in order for testimony to be given; • Obtaining account information and documentary evidence from banks and financial institutions; • Requests for search and seizure, including in the context of; tracing and recovery of assets that are proceeds or instrumentalities of a crime; • Internet records and the contents of emails, cross-border surveillance, and telecommunication intercepts; • Service of documents (e.g., summons or judgment) issued by a court or authority in relation to criminal proceedings. 	<ul style="list-style-type: none"> • If the enquiry is a routine one and does not require the use of coercive powers; • The obtaining of public records, such as land registry documents and papers relating to registration of companies (such documents might even be available as open-source material); • Potential witnesses may be contacted to see if they are willing to assist voluntarily; • A witness statement from a voluntary witness, particularly if evidence is likely to be non-contentious; • Obtaining of lists of previous convictions and of basic subscriber details from communications and service providers that do not require a court order.

Joint Investigation Teams (JITs). The need for a formal MLA request can be also overcome by setting up a JIT⁵ between authorities cooperating in cross-

³ In the UK for instance, intelligence obtained via other countries' law enforcement agencies is not to be used evidentially.

⁴ Arrest of a fugitive should be handled through an extradition request, not through MLA.

⁵ A similar instrument is foreseen in Art. 19 UNTOC, Article 49 UNCAC, in the second Additional Protocol to the CoE Convention on Mutual Assistance in Criminal Matters, and in the EU Convention on Mutual Assistance in Criminal Matters.

border criminal cases, but the appropriateness of one or the other instrument will be decided on a case-by-case basis. The composition of the JIT, its scope of activities and duration are set out in a joint agreement between the parties.⁶ The JIT differs from MLA where cooperation is limited to a specific request and the information is transmitted after execution of the MLA request. The MLA involves limited participation of the requesting authority and in principle investigations only take place in the requesting State.

Each scheme (MLA and JIT) has its own advantages. In the case of a JIT, there is a single written agreement, for a limited period of time, which allows for real-time exchange of information and evidence. Partners cooperate actively on an equal footing. Since agencies from several States would run parallel investigations, coordination and agreement on prosecution strategies is essential.

1.2. MLA requests

Legal basis. A formal request for MLA requires a legal basis, which should be set out in the letter of request. Legal bases can be contained in regional and international treaties either dedicated to MLA generally or crime specific such as those operating in the framework of the UN⁷, the CoE⁸, the EU⁹, the AU¹⁰ etc.; bilateral agreements and treaties; schemes or voluntary arrangements, such as the Harare Scheme for Commonwealth States;¹¹ or by way of national law. Reciprocity and comity principles may also be invoked in support of MLA requests.¹²

⁶ During the interviews it was reported that the UK is party to about 50 JITs, of which about 20 concern investigations on modern slavery.

⁷ Within the UNODC three major conventions contain extensive provisions on MLA, among other forms of cooperation: *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (20 December 1988); *Convention against Transnational Organised Crime* (UNTOC) (15 November 2000) supplemented by protocols dealing respectively with trafficking in persons, smuggling of migrants and illicit manufacturing and trafficking in firearms; and the *Convention against Corruption* (UNCAC) (31 October 2003).

⁸ At the CoE level, the main instrument is the *European Convention on Mutual Legal Assistance* (ETS 030, 1959) and its two additional protocols (ETS 099, ETS 182). Other conventions cover specific criminal issues: *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (1990); *Convention on Cybercrime* (2001); *Convention against Trafficking in Human Beings* (2005); *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*; *Convention on Preventing and Combatting Violence against Women and Domestic Violence* (2011).

⁹ At the EU level, the principle of mutual recognition provides the basis for cooperation instruments included under the *EU Convention on Mutual Assistance on Criminal Matters*; the *Schengen Agreement*; and the *Council Framework Decision 2003/577/JHA* of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (Still applicable for Denmark and Ireland; for other Member States replaced by Regulation 2018/1805).

¹⁰ *African Union Convention on Preventing and Combating Corruption*, 01 July 2003.

¹¹ Scheme Relating to Mutual Legal Assistance (Harare Scheme)

https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_In_t_Cooperation.pdf.

¹² "Comity" in the legal sense, is neither an absolute obligation nor mere courtesy and good will. It is the recognition which one nation allows within its territory to the legislative, executive

Form and content of the letter of request. The letter of request is a stand-alone document compiled by the relevant authority requesting the evidence (judge, prosecutor, law enforcement officer, and authenticated by the competent national court) containing all the information needed by the requested State to decide whether assistance should be given and to undertake the relevant enquiries.

Letter of Request Checklist

- ✓ An assertion of authority by the author of the letter;
- ✓ Citation of relevant treaties, conventions, or agreements;
- ✓ Assurances (i.e., as to reciprocity, dual criminality etc);
- ✓ Identification of defendant/suspect;
- ✓ State of the criminal investigation/proceedings;
- ✓ Charges/crimes under investigation/prosecution;
- ✓ Summary of facts and how those facts relate to the request being made;
- ✓ Enquiries to be made;
- ✓ Assistance required;
- ✓ Signature of the author of the letter.

Source: CoE, Mutual Legal Assistance Manual, 2013.

Transmission of MLA requests. States usually designate a central authority (or more than one) with the power to receive and execute mutual legal assistance requests or transmit them to the competent domestic authorities for execution. This has replaced in part the traditional approach of transmitting MLA requests through diplomatic channels (i.e., the request being delivered by a State's foreign ministry to the embassy of the requested State).

Some central authorities are also competent authorities to issue a letter of request (e.g., some small States have an Attorney General who performs both functions). In some States the central authority is little more than a 'post box'; in others, it is more proactive and may, for instance, quality assure incoming and outgoing requests.

Now, to an increasing degree, even more direct channels are being used, whereby an official in the requesting State can send the request directly to the appropriate official in the other State.¹³ 'Direct transmission' is particularly important where a request is urgent, but not all jurisdictions allow the use of direct channels.

or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens. Comity and reciprocity would be the basis for the rogatory letters, i.e., the traditional way MLA is requested. A rogatory letter is a document issued by one court to a foreign court, requesting the latter (i) to take evidence from a specific person within the foreign jurisdiction or serve process on an individual or corporation within the foreign jurisdiction and (ii) return the testimony or proof of service.

¹³ If a request is made pursuant to the 1959 CoE Convention, Article 4 of the Second Additional Protocol now allows for direct transmission of requests in most instances.

2. MLA in the UK¹⁴

2.1. Legal framework

The UK legal framework. The main domestic legislation for MLA is the *Crime (International Co-operation) Act (CICA) 2003*. It creates a mechanism for dealing with incoming and outgoing MLA requests. Rather than setting out a comprehensive system for processing and handling MLA requests at all stages of the process, CICA addresses the core institutional aspects of the process and pins down some key content, with the rest of the information (including format of requests, timeframes and grounds for refusal) to be covered by the specific instrument of cooperation (e.g., international agreement, bilateral agreement, MoU etc.) or other domestic legislation such as the Proceeds of Crime Act 2002 and underlying instruments that allow for the recovery of assets through MLA.

International agreements. The UK is a party to multilateral agreements (such as those of the UNODC), regional agreements (such as those of the CoE) mentioned above, and to a number of bilateral MLA treaties.¹⁵ However, it should be noted that the UK does not need a formal treaty basis to cooperate. Also, while the UK does not generally require reciprocity, it would expect this from countries to which the UK gives assistance without a treaty or an international agreement.

Bilateral UK MLA Agreements (by December 2021)

Algeria	Guyana	Paraguay
Antigua & Barbuda	Hong Kong**	Philippines
Argentina	India	Paraguay
Australia	Ireland*	Philippines
Bahamas	Italy	Romania
Bahrain	Jordan	Saudi Arabia
Barbados	Kazakhstan	Spain
Brazil	Kuwait*	Sweden
Canada	Libya*	Thailand
Chile	Malaysia	Ukraine
China	Mexico	United Arab Emirates
Columbia	Morocco*	Uruguay
Ecuador	Netherlands	United States
Grenada	Nigeria	Vietnam
Germany	Panama	

* Signed but not in force

** Signed and suspended

Source: gov.uk website

¹⁴ The content of this section is mainly drawn from: Home Office, 'Requests for Mutual Legal Assistance in Criminal Matters: Guidelines for Authorities Outside of the United Kingdom', 12th Edition, 2015.

¹⁵ The full list can be accessed here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1042580/Treaty_List_2021.pdf.

As noted above, bilateral treaties involve a lengthy process of negotiation and drafting and consume considerable periods of time (3-5 years in the UK¹⁶), resources and finances. From a UK perspective, they do not constitute an essential tool for the purpose of MLA but carry a political and symbolic function of strengthened cooperation in criminal matters between the States involved.

2.2. Authorities involved

The UK has three central authorities (CA's):¹⁷

- Home Office UK Central Authority ('UKCA') for MLA requests in England, Wales and Northern Ireland;
- Her Majesty's Revenue and Customs ('HMRC') for MLA requests in England, Wales and Northern Ireland relating to tax and fiscal customs matters (e.g., collection and management of revenues, payment of tax credits, etc);
- Crown Office for MLA requests in Scotland (including devolved Scottish tax matters).

The CAs receive requests from abroad and transmit UK requests to the authorities of other States. As regards incoming requests, they carry out a preliminary assessment of the existence of any grounds of refusal, and then refer the request to the relevant authority (mostly law enforcement authorities for investigations or the Crown Prosecution Office (CPS), the National Crime Agency (NCA) and the Serious Fraud Office (SFO), for restraint/freezing and confiscation orders).

Differences between legal systems (e.g., along the lines of the distinction between civil law and common law jurisdictions) and the respective powers of judges, prosecutors and investigators, constitute one of the main challenges for MLA. To reduce delays and facilitate the processing of MLA requests, UK liaison prosecutors (from the Crown Prosecution Service – CPS) are appointed in other

- **Tanzania:** CPS prosecutor supports and provides technical input to develop a Central Authority in Tanzania for extradition and MLA.
- **Nigeria:** CPS prosecutor works with prosecutors from the Central Authority Unit and Competent Authorities to facilitate MLA between the UK and Nigeria.
- **South Africa:** CPS prosecutor works within the Countering Illicit Financial Flows (Africa Facility) regional programme of the DFID Africa Regional Department by providing technical expertise and guidance, mentoring local and regional prosecutors in relation to international casework, including MLA in relation to asset recovery requests, extradition, and transnational organised crime.

¹⁶ Interviews with UKCA officers.

¹⁷ The Crown Dependencies and the Overseas Territories are wholly responsible for executing requests within their own jurisdictions. Accordingly, MLA requests for the Crown Dependencies and the Overseas Territories should usually be sent to the Attorney General of the Crown Dependency or Overseas Territory from where the assistance is required.

States, either permanently¹⁸ or on a rotational basis depending on case volumes. Similarly, NCA officers are deployed in different States, and in various instances joint teams are established. UK officials would thus have access, in accordance with the laws of the host State, to all agencies with relevant responsibilities.

2.3. Principles and criteria

A number of principles and criteria apply in respect of MLA requests. Most of these are also reflected in the text of the UK Bilateral Agreements with third countries.

<p>Reciprocity: not a requirement but assistance would be expected from parties to relevant bilateral or international agreements with the UK. Reciprocity would also be expected from countries to which assistance is provided without a treaty / international agreement.</p>
<p>Confidentiality: the usual policy for CAs is to neither confirm nor deny the existence of a MLA request, nor disclose its content outside government departments, agencies, the courts, or enforcement agencies in the UK, without the consent of the requesting authority.^{19 20}</p>
<p>No collateral use: evidence obtained pursuant to an MLA request will not be used for any purpose other than that specified in the original request, without the consent of granting authority. This applies equally to evidence required by and to the UK.</p>
<p>De minimis: requests may be refused by UK authorities if (i) the financial loss, gain or damage is less than 1000GBP, or (ii) alleged offence was more than 10 years ago (and no explanation is provided for the delay). Some CA's may not apply a <i>de minimis</i> policy (e.g., Scotland and HMRC).</p>
<p>Dual criminality: The requirement for dual criminality is limited to certain types of requests. In general, a conduct-based approach is taken, i.e., the conduct underlying the alleged offence is considered, rather than seeking to match the exact same offence category in both jurisdictions.</p>
<p>Other refusal grounds: (i) if the request is for a politically-motivated prosecution or investigation; (ii) prejudice to the sovereignty, security or other UK essential interests; (iii) double jeopardy; (iv) the request is for a discriminatory (race, gender, sexual orientation, religion, etc.) prosecution or investigation).²¹</p>
<p>Formal requirements: MLA requests should be made in English, or accompanied by an English translation, and always be made in writing. A request can be sent electronically (e.g., in a pdf format via email), but an original hardcopy may also be requested.</p>

¹⁸ For instance, in France, Italy, Spain, Greece, Romania, Switzerland, the US (Washington D.C.), Tanzania, South Africa, Nigeria, Barbados, UAE, Pakistan.

¹⁹ In some cases, complaints have been brought before the ECtHR in relation to MLA requests for violation of Art. 6 on the right to a fair trial, and specifically with regard to access to evidence and the ability to challenge the evidence against the defendant. A summary of the relevant case-law can be found here: <https://rm.coe.int/pc-oc-2011-21rev13caselawecthr-january2020/16809a4674>.

²⁰ Periodically, however, the Home Office releases anonymised statistical data on the number of MLA requests sent and received.

²¹ Supra fn. 14. Bilateral agreements as a rule would also include a section on the grounds of refusal of requests. Often, grounds are drafted very broadly, e.g., 'ordre publique', 'public security' (e.g., Treaty with [Vietnam](#) (2009), Treaty with [Kazakhstan](#) (2015)), which gives very wide discretion to the authority receiving the request.

Timeframes: they vary depending on the CA, but all authorities will consider the reasons for urgency stated in the request. Where timescales are set out (e.g., the Home Office within 30 days of receipt, or the Crown Office within three working days) they do not include the time that the relevant authorities need to process the substance of requests.²²

2.4. In focus: MLA requests related to economic crimes and corruption

Particular problems may arise when MLA is sought in relation to larger economic crimes, corruption, and asset recovery. Accordingly, there are specific legal instruments and agencies on these topics, and tailored cooperation takes place. Examples of such difficulties include the following.

Influential Target: If an investigation involves an influential person in the requested State, the requested authority may, cite “national interest” or immunities privilege (e.g., ministers or judges).

MLA Success Chances: Oligarchs and other influential persons involved in corruption and larger economic crime investigations tend to have influence and resources that enable them to hide their assets in jurisdictions where mutual legal assistance may not be successful.

Opaque Ownership Structures: Those subject to larger economic crimes and corruption investigations have the resources to use opaque ownership structures such as offshore companies and trusts, that allow them to hide the true ownership of assets, which renders asset recovery more difficult.

Lengthy Proceedings: Large scale corruption cases can take many years, and may get stalled because of political issues, such as regime changes. In addition, because a country may have to wait for a regime change to

The International Corruption Capacity Project is a five-year project initially funded by the FCDO Anti-Corruption Programme (ACT) and later by the Conflict, Stability and Security Fund (CSSF GIFAC fund).

The primary purpose of the project is to improve the delivery of international cooperation in the field of corruption and asset recovery to better enable states to recover the proceeds of corruption in the UK and to strengthen long term relationships between the host country and the UK. Two UKCA lawyers are assigned to upskill competent and central authorities specifically in the areas of corruption and asset recovery. There is a commitment to train for a week a minimum of 4 States a year. The lawyers also deal with any MLA requests that come to the UKCA following the training, ensuring the ability to continue to enhance relationships. The countries that have attended the workshops include Kenya, Gambia, Angola, Nigeria, Mauritius, Seychelles, Botswana, DRC, Namibia, South Africa, Malawi and Zambia.

Corruption and asset recovery are priorities for a number of States, and the UK has an extensive asset recovery system that could be used to its fullest extent to help States trace, freeze, seize and recover criminal assets.

²² Time limits in these regards are not specified in either the 2003 CICA or in bilateral agreements. Quite often the excessive time for obtaining the evidence requested reduces its usefulness for the proceedings in course in the requesting country.

investigate, some evidence may be more difficult to obtain because of age, or the assets may have moved in the meantime.

Number of Jurisdictions involved: Larger economic crimes and corruption investigations may also engage a number of jurisdictions simultaneously, which means that extra care must be taken to coordinate efforts to recover and return assets.

Sensitive Investigations and Proceedings: As financial crime and corruption become increasingly sophisticated and transnational, and as more and more cases involve a link with organised crime, investigations become extremely sensitive. In order to satisfy the requested authority, sensitive information will have to be included in a formal MLA request. However, there is a risk that disclosure of prospective witnesses and other information could be exploited by criminals, organised crime or those who are otherwise corrupt.

2.5. Volume of incoming and outgoing MLA requests

No comprehensive statistics on the volume of UK incoming and outgoing MLA requests, disaggregated by country, typology of request and crime, are made publicly available. Some information here reported was drawn from a UNODC study (for the period 2010-2012). Overall incoming and outgoing requests figures are available on the www.gov.uk/ website. Data samples were kindly provided by the UKCA for the period 2015-2019 and 2020-2021.



Source: [UNODC, International Cooperation](https://www.unodc.org/), 2013 and UKCA data. 2020 and 2021 figures show the cases accepted by the UKCA as of 28.01.2022.

MLA requests from a sample of developing countries (2015-2019 total)²³

Country ²⁵	Incoming MLA requests		Outgoing MLA requests		Service of Process ²⁴	
	Total	Accepted	Total	Accepted	Total	Accepted
Albania	245	144	14	12	7	-
Bangladesh	14	-	10	8	-	-
Brazil	86	45	15	15	53	49
Colombia	9	-	13	12	-	-
Ecuador	9	-	-	-	-	-
Ghana	17	-	17	15	-	-
Indonesia	-	-	-	-	6	-
Iran	30	-	-	-	-	-
Iraq	12	-	-	-	-	-
Jordan	15	-	-	-	-	-
Kenya	19	15	13	13	-	-
Lebanon	13	8	7	6	-	-
Nigeria	12	-	54	47	-	-
Pakistan	69	17	14	10	-	-
Philippines	-	-	8	6	-	-
Tanzania	-	-	7	7	-	-
Turkey	1798	1288	40	35	568	508
Vietnam	27	10	-	-	-	-

Source: UKCA data. *Figures for countries where 6 or more requests were received or accepted.

Disclaimer: All UKCA figures are from local management information and have not been quality assured to the level of published National Statistics. As such they should be treated as provisional.

MLA requests from EU Member States

A major part of MLA requests received by the UK has been made via the European Investigation Order (EIO's, for current investigations). In 2017, when the EIO had just been introduced, only 355 of the 6,757 MLA requests that UKCA received were made via the European Investigation Order, while in 2020 EIOs numbered 4,628 of the 6,900 incoming MLA requests.

²³ By way of comparison, in the period 2018-2020, the top five OECD jurisdictions for outgoing UKCA requests were the United States (197), the United Arab Emirates (85), Canada (61), Hong-Kong (28) and Australia (25).

²⁴ These are requests for the service of procedural documents such as a summons or judgment issued by a foreign court or authority in relation to criminal proceedings, and are reported separately from MLA requests.

²⁵ From list of developing countries adhered to by the International Statistical Institute (ISI), based on the [World Bank Atlas method](#), October 2021.

On leaving the EU on 31 January 2020, EU instruments such as the EIO and the 2000 Convention and related Protocol on Mutual Assistance in Criminal Matters no longer apply to the UK. This does not seem to have affected the overall number of MLA requests received by the UK. Although no EIO's were received (being submitted as ordinary MLA requests), overall MLA requests received by the UK Central Authority in 2021 remained steady (6,757 requests in 2017, 6,751 in 2019, 6,900 in 2020 and 6,362 in 2021).

Part of the reason for this may be the similarity between EU and Council of Europe (CoE) cooperation instruments. The EU-UK Trade and Cooperation Agreement (TCA) also contains some provisions on MLA in criminal matters that are mostly based on the CoE's European Mutual Assistance Convention of 1959 and its additional Protocols. However, there are aspects that the CoE instruments (and the TCA solution) do not cover, such as the right of the suspect or accused to also submit an application (as happened with the EIO). In addition, the funding for MLA activities previously available in the EU is no longer available under the CoE system.

A longer time period will help confirm or contradict this early finding. Although there is no specific data to confirm this, the UK departure is likely to increase the overall MLA request processing time as the EIO is an expedited process that is no longer available.

2.6. What does the available data show?

- The UK is a net receiver of MLA requests. The number of MLA requests received by the UKCA has more than doubled (2.24 times) in the last 10 years (2010-2021), while the number of outgoing requests shows a slight diminishing trend. The limited figures available also show that the incoming MLA requests in the UK were 6-7 times the number of outgoing requests in the period 2010-2012, going up to 29 times the number of outgoing requests in 2020.
- Two of the main forms of requests received by the UK have been MLA requests made via the European Investigation Orders (EIO's, for current investigations) and 'requests for service of process' (service of procedural documents such as a summons or judgment referring to criminal proceedings) which are reported separately from MLA requests.

Between 2017 (when the EIO had just been introduced) and 2020 (when the UK departed from the EU), the number of requests made via the EIO increased from 355 out of 6,757 MLA requests to 4,628 out of 6,900 incoming MLA requests.

The volume of requests for service of process has not changed substantially throughout the years (1,967 requests for service of process in 2017, 2,137 in 2019, 1,874 in 2020 and 1,721 in 2021).

- UK's departure from the EU doesn't seem to have affected the overall number of MLA's received by the UK. Requests previously transmitted via the EIO were submitted as ordinary MLA requests in 2021. A longer time period will help confirm or contradict the suggestion that the UK departure from the EU may likely increase the overall MLA request processing time, as the EIO is an expedited process that is no longer available.
- In the period between 2015 and 2019, the developing countries sending the highest number of MLA requests to UKCA were Albania (245) and Turkey (1798). Alongside the UK, these two countries are parties to the CoE's European Convention on Mutual Assistance in Criminal Matters. The highest numbers of accepted requests were also from Albania (144) and Turkey (1288).
- In the last five years, the highest numbers of MLA requests issued by the UK to OECD countries were directed to the United States of America and the United Arab Emirates. Among developing countries, outgoing requests were directed to Nigeria and Turkey, who accepted over 87% of the requests.
- In general, there is scarcity of data available on MLA requests, both total figures and breakdowns by country and/or crime.

3. Transnational organised crime and cooperation

3.1. Transnational crime and cooperation in West Africa²⁶

Crime and crime routes

In West Africa, with a population of over 325 million people, a number of transnational organized crime problems pose a threat to stability and development in the region. These include:

- Large cocaine shipments from the Andes, transiting West Africa and directed to Europe. The largest markets for cocaine are the UK, Spain, and Italy, constituting two-thirds of the cocaine users in Europe.
- Large-scale methamphetamine production and contraband flows of methamphetamine from West Africa to East Asia. However, regional output is modest in global terms because West African manufacturers face considerable competition in East Asia (Myanmar and China), the primary destination market.
- Smuggling of migrants to Europe, either through direct departure from West Africa (Senegal and Mauritania) to the Canary Islands, or through various departure points along the Mediterranean coast in North Africa.
- Maritime piracy in the Gulf of Guinea targeting vessels carrying petroleum products, because of a booming black market for fuel in West Africa.

A recent assessment of the level of organised criminality in 54 countries in Africa, [ENACT Organised Crime Index](#), uses two composite metrics, ranking countries both according to their levels of criminality and according to resilience to organised crime.

West Africa has the highest criminal market score of all regions in Africa, but also the highest resilience score.

Transnational organised crime in West Africa includes oil bunkering, arms trafficking, human trafficking, migrant smuggling, toxic waste dumping, fraudulent medicine, cigarette smuggling, and the looting of natural resources.

Cooperation in criminal matters

In the region, the Economic Community of West African States (ECOWAS) plays an important role in bringing States together to discuss, address and create opportunities for cooperation in criminal matters. The free movement of people and goods throughout the ECOWAS region has created opportunities for economic development, but this has also been exploited by criminal channels.

A 2013 UNODC threats assessment study recommends that regional and international coordination efforts in dealing with the drug problem should be improved (as well as with respect to all related organized crimes in the region), including through facilitating the exchange of criminal intelligence.

²⁶ This section draws mainly from: UNODC, [Transnational Organised Crime in West Africa: A Threat Assessment](#), February 2013.

Fighting impunity would also benefit from the harmonization of national legislation and from strengthening current legal frameworks to effectively sentence identified criminals. Accordingly, organised crime problems in the region are addressed in the context of the ECOWAS, through both legislative and practical cooperation tools.

- A dedicated mutual legal assistance instrument applies within the ECOWAS framework: the ECOWAS Convention on Mutual Assistance in Criminal Matters, 1992.
- Since 2008, States in the region have been engaged in a Regional Action Plan (latest version 2016-2021) to address the growing problem of illicit drug trafficking, organized crime and drug abuse in West Africa in an integrated manner. Part of this effort is also the drafting of a document aimed at harmonizing the existing national legal instruments at a subregional level to fight drug trafficking in a coordinated and more efficient manner.
- The West African Network of Central Authorities and Prosecutors (WACAP), established in May 2013, is a network of focal points of the 15 countries of the ECOWAS, plus Mauritania.

WACAP is a UNODC initiative implemented with the support of the ECOWAS Commission and the ECOWAS Court of Justice.²⁷ ECOWAS States have agreed to take specific action to promote mutual legal assistance networks among prosecutors in different States and develop a regional strategy to facilitate prosecution of persons involved in transnational organized crime.

The Network promotes the establishment and strengthening of Central Authorities (CAs) in the region through regular meetings and training, exchange information about the respective legal systems and procedures, the development of a common language and the sharing of good practices. The expected result is professionals who can more

WACAP reported impact:

- greater efficiency in handling incoming and outgoing MLA and extradition requests as well as informal requests for assistance;
- Successful MLA requests for the first time within the region and between French and English-speaking countries;
- CAs were created and strengthened;
- Focal points acting upon informal requests for assistance to ensure that the requested information is collected or that action needed to obtain such information has commenced, before the formal request is received.

Source: <https://www.wacapnet.com/>

²⁷ WACAP website:

<https://www.unodc.org/westandcentralafrica/en/newrosenwebsite/criminal-justice-system/wacap.html>

effectively draft, prepare and respond to requests for mutual legal assistance and extradition.

WACAP also strengthens the capacity of prosecutors/magistrates to address various forms of organized and serious crime, leading to successful prosecutions and cooperation at the regional and international levels. UNODC also provides international judicial cooperation tools (e.g., the UNODC Mutual Legal Assistance Request Writer tool).

- The UK have implemented capacity building projects in the region to improve the MLA capabilities and capacities of West African central and competent authorities.

Following the G7 Ministerial Commitment during the French G7 Presidency in April 2019, a (one year) project was initiated by UKCA in May 2020, involving G5 Sahel countries and Cape Verde, Gambia and Senegal.

The project designed and delivered training packages to help strengthening the capacities of central/competent authorities in making MLA requests. The project enabled the targeted States to better prepare cases for prosecution and enable serious organised crimes to be better tackled through cross border evidence gathering and sharing.

3.2. Transnational crime and cooperation in Central Africa²⁸

Crime and crime routes

This section on Central Africa, covers specifically transnational organised crime in Burundi, the Central African Republic (CAR), Chad, the Democratic Republic of the Congo (DRC), Rwanda and Uganda. Examples of criminality include:

- Illicit gold and diamond trafficking taking place through air, land, and sea via Uganda, Kenya, Burundi or the United Republic of Tanzania, with destinations in the United Arab Emirates, India and Lebanon.

The transport of illicit diamonds revolves around corrupt security and customs officials. Many of Zimbabwe's illicit diamonds cross the border into Mozambique, which is not a member of the Kimberley Process,²⁹ and diamonds are sent from here to South Africa, Dubai and India.

- Wildlife crime involves the flow of ivory from CAR and DRC to the hub of demand in the far east of Asia (China and Southeast Asia).

²⁸ This section draws mainly from: UNODC, [Organized Crime and Instability in Central Africa: A Threat Assessment](#), October 2011.

²⁹ An international certification scheme for rough diamonds, ensuring that diamonds originating from a certain State do not finance a rebel group or other entity seeking to overthrow a UN-recognized government.

Despite the smaller size of the DRC's elephant population, DRC contributes disproportionately to the illicit ivory supply. A majority of the DRC-related ivory confiscations are reported to be taken in the context of large seizures, suggesting a highly organized activity. Most of the ivory is trafficked through neighbouring States to the east before being shipped from either Kenya or Tanzania.

In the [ENACT Organised Crime Index](#), Africa 2019, Central Africa shows lowest resilience to organised crime on the continent.

A 2011 UNODC study on organised crime threat assessment in the region shows a prevalence of exploitation of natural resources and trafficking of other products, including cannabis, minerals, timber, and wildlife, which are also the largest source of finance of illegal armed groups.

Central Africa is also one of the regions most affected by the trafficking of children into armed conflict.

In addition, there appears to be a parallel "ant trafficking" –small amounts of ivory transported by a large number of individuals, for either personal use or re-sale in Asia. China appears to be the largest national destination for wildlife products.

Cooperation in criminal matters

- The States of the International Conference on the Great Lakes Region (ICGLR)³⁰ have signed the Pact on Security, Stability and Development for the Great Lakes Region (ICGLR Pact, 2006), which includes a Protocol on Judicial Cooperation.
- In 2013, the 12 ICGLR Member States, together with South Africa, renewed their commitment to cooperate by signing the Peace, Security and Cooperation Framework for the DRC and the region (PSC Framework). The PSC Framework reinforces the ICGLR Pact, and key ICGLR protocols relating to judicial matters, including the Protocol on Judicial Cooperation.
- The Great Lakes Judicial Cooperation (GLJC) Network of Central Legal Authorities and Prosecutors, established in November 2016, is a regional cooperation instrument that facilitates formal/informal regional cooperation between the criminal justice actors of the 12 ICGLR Member States, and other countries in the region. It provides a forum that assists central authorities, prosecutors and others in the judicial chain to develop contacts and cooperation and strengthens capability through regular meetings and training programmes.
- Some of the states in the region are also parties to the Southern African Development Community (SADC) Protocol on Mutual Judicial Assistance in Criminal Matters (3 October 2002); and to the Southern African Police

³⁰ Angola, Burundi, Central African Republic, Democratic Republic of the Congo, Kenya, Republic of Congo, Rwanda, South Sudan, Sudan, Tanzania, Uganda and Zambia.

Chiefs Cooperation Organisation (SARPCCO) Multilateral Cooperation Agreement on Combating Crime within the Region (signed on 1 October 1997, entry into force on 29 July 1999).

3.3. Transnational crime and cooperation in East Africa³¹

Crime and crime routes

Transnational organized crime in East Africa is a product of both illicit markets that span continents and an underlying weakness in the rule of law, and both need to be addressed. In particular:

- Due to conflict and poverty, Eastern Africa produces a large and vulnerable stream of smuggled migrants, who are abused and exploited at multiple stages of their journey. The two major flows of migrants from Eastern Africa take place from Somalia and Ethiopia, into the Arabian Peninsula, especially Yemen and Saudi Arabia.
- The world's supply of opium/heroin is sourced almost entirely from poppies cultivated in Afghanistan and Myanmar. An important heroin flow affects Eastern Africa: it is produced from Afghan opium and trafficked through Pakistan and Iran. As an increasing share appears to be consumed on the continent. It may pose a great threat to public health in Africa given the prevalence of bloodborne disease in the region. The problem is concentrated mainly in Kenya and the United Republic of Tanzania.
- The rate of illicit ivory trade in Eastern Africa could threaten the local elephant population. The neighbouring area of Central Africa is also most intensively targeted, and most of its ivory is shipped through Eastern Africa (Uganda) and onward from there for processing and export. The bulk of the large ivory shipments from Africa to Asia appear to pass through the

In the [ENACT Organised Crime Index](#), Africa 2019, East Africa leads the continent regarding both overall criminality and criminal actors.

A 2013 UNODC report finds that the illicit markets that affect East Africa often originate or terminate on other continents, and accordingly urges that regional or global interventions would be strategically indicated to resolve the underlying problem.

East Africa's heroin problem is likely rooted in its use as a transit area. The rule of law in the region must be strengthened, to render the region less attractive to organised crime and anti-corruption measures would also create a genuine deterrent.

³¹ This section draws mainly from: UNODC, [Transnational Organized Crime in Eastern Africa: A Threat Assessment](#), September 2013. This section focusses on transnational organised crime in East Africa, comprising the Horn of Africa (the Republic of Somalia, Ethiopia, Eritrea, and Djibouti), the Great Lakes Region (Burundi, Rwanda, and Uganda), the Swahili Coast (Kenya and the United Republic of Tanzania), and the Indian Ocean Islands (Madagascar, the Seychelles, the Comoros and Mauritius).

container ports of Kenya and the United Republic of Tanzania, where interventions could be addressed.

Cooperation in criminal matters

The instruments and networks listed in section 3.2. on Central Africa also apply to cooperation in criminal matters among countries in East Africa.

3.4. Transnational crime and cooperation in Central America and the Caribbean³²

Crime and crime routes

Transnational organised criminality in Central America and the Caribbean stands out in relation to drug trafficking and smuggling of migrant workers.

- A UNODC study of 2012 shows that cocaine consumption in the United States has remarkably declined since 2006. Among the possible explanations, the study puts forward the intensification of the fight against drug trafficking groups in Mexico since 2006 (with extraditions of Mexican drug traffickers to the US more than doubling since then).
- Coca, the plant base for cocaine, is mainly grown in the Andes in South America, in Bolivia, Colombia, and Peru. The smuggling of cocaine from South America via Central America and West Africa (the cocaine route) is a major concern for European countries.
- The intensification of Mexican security has made it more hazardous for traffickers to ship drugs directly to Mexico, but it also augmented the importance of Central American links, with an increasing share of the flow beginning to transit the landmass of Central America. As a consequence, criminal violence has increased, and high homicide rates are concentrated along territorial borders.
- Regarding migrant smuggling, an important overland flow of irregular migrants takes place from Guatemala, El Salvador and Honduras, through Mexico, to the United States.
- Central America also serves as a global pathway to the US for irregular migrants being smuggled from China, Cuba, India and Africa. Migrants from the Horn of Africa are transported using land routes to South Africa, and then transported by air to Brazil and Colombia. Those

The ILO estimates that one in four instances of human trafficking is transnational, with some categories of human trafficking being more transnational than others (e.g., 74 percent of victims of forced sexual exploitation).

Source: ILO, 'Global Estimates of Modern Slavery: Forced Labour and Forced Marriage', Geneva, 2017.

³² This section draws from: UNODC, [Transnational Organised Crime in Central America and the Caribbean](#): A Threat Assessment, September 2012.

who can afford air travel fly to Mexico, while others proceed by land and sea to Costa Rica or Panama. Chinese nationals may reach their North American destinations via Central America and Mexico with forged passports from Japan or Hong Kong, China, which allow entry without a visa.

Cooperation in criminal matters

In the region, *ad hoc* mutual legal assistance instruments have been drawn up within the framework of the Organisation of American States (OAS). Cooperation has importantly taken place within the framework of the OAS tools but at the same time, other more incisive regional and sub-regional cooperation frameworks have developed.

- *'Inter-American Convention on the Taking of Evidence Abroad'* (1975) and *Additional Protocol* (1984).
- The *'Inter-American Convention on Mutual Assistance in Criminal Matters'* (1992) and *'Optional Protocol'* (1993) sets out a clear system of rules on MLA.
- Building blocks of the cooperation in criminal matters have been agreed at the periodical *'Meetings of Ministers of Justice or other Ministers, or Attorneys General of the Americas (REMJA)'* framework, where mutual legal assistance in criminal matters has occupied a key place.
- The *'Hemispheric Network of Information Exchange for Mutual Assistance in Criminal Matters and Extradition'* was created in 2000, on the occasion of the third REMJA. It aims to increase and enhance the exchange of information among OAS members in the area of mutual assistance in criminal matters, including through access to contact information in the other countries, and a system of secure electronic communications. The latter facilitates the exchange of information among central authorities on MLA in criminal matters and extradition. The system provides an instantaneous and secure electronic mail service, and also provides a space for virtual meetings and the exchange of pertinent documents.
- Within MERCOSUR,³³ there has been an important regulatory development in the area of legal cooperation. Examples include: the *'Protocol of Mutual Legal Assistance in Criminal Matters'*, San Luis, 25 June 1996; the *'Agreement between the States Parties to MERCOSUR and the Republic of Chile and the Republic of Bolivia on Mutual Legal Assistance in Criminal Matters'*, Buenos Aires, 18 February 2002; and the *'Framework Agreement between the States Parties to MERCOSUR and Associated*

³³ MERCOSUR is the South American trade bloc between Argentina, Brazil, Paraguay and Uruguay. Venezuela is a full member but has been suspended since 1 December 2016. Associate countries are Bolivia, Chile, Colombia, Ecuador, Guyana, Peru and Suriname. See: <https://www.mercosur.int/en/>.

States on the Creation of Joint Investigation Teams in the Area of Transnational Crime', Buenos Aires, 1 June 2006.

- The 'Treaty of Mutual Legal Assistance in Criminal Matters', Guatemala, 29 October 1993 operates within the framework of the Central American Integration System (CAIS)³⁴, between Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and Panama. Examples of legal tools on specific MLA topics include the 'Central American Convention for the Prevention and Repression of Money Laundering Offences Associated with Illegal Traffic in Drugs and Narcotics' (11 July 1997) and the 'Agreement between Central America and the Dominican Republic for the Prevention and Repression of Money and Assets Laundering Offences related to Illicit Drug Trafficking and Related Crimes' (6 November 1997).
- Within the Caribbean Community (CARICOM), note-worthy initiatives on mutual legal assistance include the 'Caribbean Agreement on Mutual Legal Assistance for Serious Crimes' (2005) and the 'Arrest Warrant Treaty' (2008). The UKCA, funded by the Conflict, Stability and Security Fund (CSSF COSIC fund), are delivering a training programme to the seven Eastern Caribbean States aimed at upskilling competent authorities in utilising mutual legal assistance.

3.5. Other cooperation examples

The list below includes other examples of legal instruments on MLA and of cooperation frameworks across the world.

South African Development Community (SADC)

- The 'Protocol on Mutual Judicial Assistance in Criminal Matters' was signed on 3 October 2002, entered into force on 1 March 2007, and was recently modified to designate the Committee of Ministers of Justice/Attorneys General to oversee the implementation of the Protocol.
- The Southern African Police Chiefs Cooperation Organisation (SARPCCO) 'Multilateral Cooperation Agreement on Combating Crime within the Region' was signed on 1 October 1997 and entered into force on 29 July 1999. As the basis of regional police cooperation, the Agreement provides for police officers to travel across borders in the region to undertake investigations or the seizure of exhibits, and the questioning of witnesses in connection with any such offence.

The Commonwealth

The Commonwealth has a long history of supporting Member States in international cooperation in criminal matters. A series of cooperation

³⁴ The economic and political organization of Central American states (CAIS) was established on 1 February 1993.

schemes have been adopted over the years, providing non-binding and flexible arrangements, offering a constructive and pragmatic approach to mutual co-operation in Commonwealth States. Noteworthy examples include:

- the '*London Scheme for Extradition*' (1966), which became one of the key international instruments dealing with extradition.
- '*Mutual Assistance in Criminal Matters within the Commonwealth*' (the Harare Scheme), last amended in 2011. A Commonwealth Model Legislation on Mutual Legal Assistance in Criminal Matters is available to allow for cooperation to the widest extent possible in line with the Harare Scheme.

In 2005, the Commonwealth took further action to enhance informal cooperation in criminal matters through the establishment of a Framework for the Commonwealth Network of Contact Persons. The Network includes law enforcement officials, prosecutors, and competent authorities involved in international cooperation in criminal matters across all Commonwealth States.

The Association of Southeast Asian Nations (ASEAN)

- Treaty on Mutual Legal Assistance in Criminal Matters (MLAT), Kuala Lumpur, 29 November 2004. In April 2019, the Sixth Meeting of the Attorneys-General/ Ministers of Justice was convened to enhance cooperation among the Central Authorities of ASEAN Member States and ensure the effective implementation of the Treaty. The Attorneys-General/Ministers also endorsed the elevation of the MLAT into an ASEAN Treaty.

The Pacific Islands Forum

- In 1992, the Forum adopted the Honiara Declaration on Law Enforcement Cooperation which "calls for a range of procedural and substantive measures to provide for law enforcement cooperation, mutual assistance in criminal matters, money laundering control, asset forfeiture and banking regulation, extradition, suppression of drugs offences, suppression of environmental offences, suppression of terrorism, maritime surveillance, cooperation in respect of taxation, assistance in prison administration, and to address indigenous issues.
- Political commitments are operationalised through a series of key regional and international networks and agencies with a mandate to prevent, detect, monitor and combat transnational organized criminal threats and activities in the Pacific region. Examples include:

The Pacific Transnational Crime Network (PTCN),³⁵ provides a proactive, interconnected, and investigative capability to combat transnational crime in the Pacific region.

The Oceania Customs Organisation (OCO) is responsible for providing technological advice and support to members (i.e., national PICT Customs departments). Members submit online updates to the New Zealand Customs head office on a monthly basis, which are collated in a quarterly report and disseminated amongst OCO members, in addition to an annual report.

The Pacific Islands Chiefs of Police (PICP) is a non-profit organisation comprising police services in the Pacific (21 members and more than 75,000 serving police officers). The PICP aims to improve policing practices throughout the region by providing a 'common voice' on law enforcement and a forum to share ideas and details on criminal activities and policing approaches, in addition to coordinating training and development programs for members.

The Pacific Islands Law Officers Network (PILON) was established in 1982 as the Pacific Islands Law Officers' Meeting. It comprises senior public law officers (such as Attorney General, Solicitor General, Director of Public Prosecutions and/or Head of a Law and Justice Agency) from 19 Pacific Island Countries and focuses on common legal challenges throughout the region. PILON's current strategic plan (2019-2021) identifies three strategic priorities: corruption, cybercrime and sexual and gender-based violence.

The Pacific Transnational Crime Coordination Centre (PTCCC) carries out a series of key functions including: (i) facilitating the collection, collation, analysis and dissemination of intelligence relating to transnational crime throughout the Pacific region; (ii) providing technological and investigative support to 19 TCUs located in 13 Pacific Island countries; (iii) brokering collaboration with key law enforcement partners in the Pacific and worldwide; (iv) enhancing the capacity and professional development of members of the PTCN.

³⁵ For further information, see http://www.ptcn.ws/index.php?option=com_content&view=article&id=104&Itemid=470

4. Findings and directions for action

1. Given the complexity of the legal and institutional systems that are involved with MLA co-operation, including for example the different allocation of powers between judges, investigators, prosecutors in civil law and common law systems, familiarisation of the requesting country with the partner country's systems is critically important. Familiarisation enables informed decisions about the choice of the appropriate tool (MLA or other channels) and more successful MLA requests.

Successful MLA uses formal legal instruments and more informal schemes that allow transnational cooperation in criminal matters. These are further supported by networks of CAs, other key institutions, and officers but there is little available evidence to demonstrate the impact of such initiatives.

Improve familiarity and promote trust between the authorities involved as an essential component of the success and effectiveness of MLA schemes. A combination between formal instruments (MLA) and informal ones (administrative assistance) works best: administrative assistance reduces the risk of delays, while helping the authorities in both jurisdictions to build networks and contacts that will ensure a higher rate of success for MLA requests.

2. Overall, the UK is a net receiver of MLA requests, receiving many times more requests than it issues. Why this is the case, is not identified in this research and needs more inciteful analysis. It does imply, however, that improved capacity in Central Authorities overseas would be of direct benefit to the UK through receipt of better quality, and therefore more easily processed, requests. The technical expertise of Central Authorities in making MLA requests is an enduring challenge for the UK.

Build capacity and provide technical assistance to countries making MLA requests to the UK – e.g., by developing tailored guides to making MLA requests in the UK, providing administrative assistance to improve familiarity with the UK system, institutions and terminology, deploying personnel in the countries concerned, and creating a dedicated network or central points of contact.

3. There is a scarcity of publicly available data on MLA requests, both total figures and the breakdown by State and/or crime. Most likely this is because this kind of data is usually sensitive and may be related to ongoing investigations or judicial proceedings. MLA 'requests for service of proceedings' might be more amenable to access and analysis as they relate to concluded, and therefore most likely publicly accessible, judicial proceedings.

Early analysis of MLA requests following the UK departure from the EU suggest that there has been no impact on the overall number of formal MLA requests following the UK exit from schemes such as the European Investigation Order. But there is likely to be an increase in administrative processing time of the demands.

Improve the collection and disaggregation of data in this area and evaluate the impact of networks for an evidence-based approach to transnational legal co-operation in criminal matters.

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