

PROSECUTORIAL STRATEGIES IN COMBATING ORGANISED CRIME

LECTURE 9

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Introduction

- Prosecutorial strategies to combat organised crime must be
- robust,
- adaptive, and
- transnational in outlook,
- Organized criminal enterprises are sophisticated, networked, and clandestine in nature of such criminal enterprises.
- Prosecutors must move beyond individual cases and adopt structural, intelligence-driven, and strategic approaches that target the core of criminal organisations.

A structured overview of available prosecutorial strategies

1. Prosecution under Organised Crime Legislation

a. Use of Specific Offences

- Charging under laws that criminalise:
 - Participation in an organised criminal group
 - Conspiracy, racketeering, and criminal enterprise
 - Money laundering, trafficking, or obstruction of justice
 - What are some of these statutes in the Kenyan scenario?

Cont.

b. Prosecuting Criminal Networks as Enterprises

- A corporate accountability approach: Viewing the organisation, rather than isolated acts, as the criminal subject.
- Targeting structure, hierarchy, and continuity of operations.

Contd.

2. Intelligence-Led and Multi-Agency Prosecution

- Integration of criminal intelligence into case-building.
- Collaboration between prosecutors, police, financial intelligence units, customs, and tax agencies.
- Joint investigations across borders (e.g., EUROPOL Joint Investigation Teams; INTERPOL channels).

Cont.

3. Financial Investigation and Asset Forfeiture

- **a. Following the Money**

- Targeting financial flows to dismantle the organisation's economic base.
- Use of forensic accountants and financial analysts.

- **b. Asset Seizure and Recovery**

- Criminal and civil asset forfeiture regimes, including non-conviction based models.
- Freezing and confiscating illicit proceeds, properties, vehicles, and bank accounts.

Contd.

4. Use of Immunity, Cooperation, and Plea Bargaining

a. Turning Insiders

- Offering leniency or immunity to low-ranking members or associates in exchange for information or testimony.
- Helps to expose internal operations and secure high-level convictions.

b. Plea Agreements

- Strategic use of plea bargains to avoid lengthy trials, preserve resources, and secure cooperation.

Cont.

5. Use of Special Witness Protection Programmes

- Protecting witnesses, informants, and whistleblowers who are critical to proving organised crime cases.
- Involves relocation, identity change, physical protection, and legal safeguards.

Cont.

6. Use of Specialised Prosecutorial Units

- Establishing dedicated organised crime and corruption units with cross-disciplinary expertise.
- These units are often trained in cybercrime, financial crimes, and transnational law.

Cont.

7. Electronic Surveillance and Digital Evidence

- Admissibility and use of wiretaps, intercepted communications, encrypted chats, and cyber forensic data.
- Requires legal safeguards for privacy and evidence integrity.

Cont.

8. Proactive and Preventive Prosecution

- Strategic deployment of early intervention to disrupt planned criminal activities.
- Filing charges based on inchoate offences (e.g., attempt, conspiracy) where permissible by law.

Cont.

9. International and Regional Cooperation Mechanisms

- Mutual legal assistance (MLA) in gathering and sharing evidence.
- Extradition of suspects and joint prosecutions.
- Use of international arrest warrants, INTERPOL notices, and asset freezing requests.

Cont.

10. Targeting Corruption and State Complicity

- Where organised crime is protected by public officials, prosecutors must:
 - Use anti-corruption laws to pursue enablers.
 - Apply conflict of interest, abuse of office, and obstruction of justice provisions.
 - Rely on international pressure or treaty bodies where national systems are compromised.

Cont.

11. Strategic Use of Trials and Public Interest Litigation

- High-profile prosecutions can expose criminal structures, deter participation, and rebuild public trust.
- Use of public interest cases to trigger institutional reform (e.g., police accountability, prison reform).

Cont.

12. Community and Victim Engagement

- Involving civil society, affected communities, and victims to provide evidence and narrative context.
- This promotes restorative justice where appropriate, especially in cases of human trafficking or exploitation.

GROUP ACTIVITY

- See the attached case simulation problem

THE END

THANK YOU!