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Apart from the disadvantage of encouraging commission of crime, compounding offences if not abused, is in line with civilized criminal justice and should therefore be practiced. The NCS apart from reducing the numerous litigations in court will stand to gain more in revenue if the penalty in compounding the offences can be made to be like that of the EFCC and Kenya.

## **6.0 Limitation Of Time For Prosecution**

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, that is, the offender can be prosecuted at any time.

Under the CEMA there is a deviation from this general principle, that the offender can be prosecuted at anytime. The CEMA puts a time limit of seven years for any prosecution of any offence committed under it.

Section 176 (3) provides

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

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<sup>89</sup> Op.cit

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

There are some other instances where time limit is set for prosecution in Nigeria.

- (i) Proceedings in respect of the offences of treason, must be instituted within two years of the alleged commission of the offences<sup>90</sup>
- (ii) Proceedings for the offence of sedition must be instituted within six months of the alleged commission of the offence<sup>91</sup>
- (iii) Proceedings against any person alleged to have had unlawful carnal knowledge of a girl over 13 but under 16, and a person knowing a woman or girl to be an idiot or imbecile, who allegedly had or attempted to have unlawful carnal knowledge of her, must be instituted, within two months of the commission of the offence<sup>92</sup>
- (iv) Prosecution against a public officer for an offence committed in the course of executing his duty must be instituted within three months of the commission of the offence<sup>93</sup>

Criminal proceedings shall not be instituted under the Ghana customs Act in respect of an offence after four years from the date of the offence.<sup>94</sup> While in Kenya proceedings for an

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<sup>90</sup> Op. cit section 43 CC

<sup>91</sup> Ibid section 52 (1)

<sup>92</sup> Ibid section 221

<sup>93</sup> Section 2 (a) public officers protection Act cap, p. 41 LFN 2004 see *Egbe .v. Alhaji & Other* (1990) 1 NWLR (part 128) 546. A person relying on this section must establish that he is a public officer. See *Apampa .v. The State* (1982)ALL NLR (PT.1) 122; *Aiyetan .v. Nigerian institute for oil palm Research* (1984) 6SC 36

<sup>94</sup> Section 301 Ghana Act; Ibid

offence under the customs Act may be commenced, and anything liable to forfeiture may be seized within five years of the date of the offence.<sup>95</sup>

We submit in respect of the above provision that, though it is not unique in view of the other instances of exceptions to the general principle of no time limit to prosecution, there should have been no need to create the seven, five and four years time limit in Nigeria Kenya and Ghana respectively. This is because of the sophistication of the crime of smuggling, therefore there should be no bar to prosecution.

## **7.0 Conclusion**

The importance of CEMA as the principal enactment that combat the crime of smuggling in Nigeria cannot be overemphasized. Smuggling is a crime and if not tackled is capable of destroying the economy of the nation. The broad role of the NCS is to enforce the customs and excise laws as contained in the CEMA. In the exercise of this role and as provided by the CEMA, any breach therein of the powers can lead to setting the law in motion for possible prosecution. The paper has shown that, the practice by virtue of the provision of section 181 (2) of CEMA was that every magistrate in any part of Nigeria had jurisdiction for the summary trial of any offence under CEMA. It found however, that by virtue of section 7(1) (c) of the Federal High court Act, such jurisdiction has been removed from the state high courts and magistrate courts to the federal high court. This position is also amplified by section 251 (1) (c) of the 1999 constitution that gave the federal high court exclusive jurisdiction on matters pertaining to customs. It is however our submission that the matters contemplated in the section are only civil matters and causes, hence holding that since it is not reasonable for all customs criminal case s to

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<sup>95</sup> Section 207 Kenya Act; Ibid

go to the federal high court, they should go to the other courts. This will allow for quick dispensation of justice as practiced in other jurisdiction like Brunei, India and New Zealand. The paper postulates that even though the CEMA does not make provision for bail, the NCS should in line with section 35 (4) (b) of the 1999 constitution and section 27 of the police Act, treat the issue of bail as very fundamental and as a right to the suspect. With respect to condemnation and forfeiture proceedings wherein there seems to be no dividing line, because of the wordings “condemned as forfeited” used in paragraph 5 of the third schedule to the CEMA. It is therefore suggested that the NCS should desist from the practice of going to court *ex parte* to declare goods forfeited, even where there is no notice of claim. This we contend is not necessary as paragraph 5 aforementioned automatically makes the goods duly condemned and forfeited where there is no notice of claim. It is only in case of where there is a notice of claim, as held in the case of *Celestine Opara .v. NCSB*,<sup>96</sup> that a claimant must be a party to and be served the originating process in a condemnation proceeding. Under the CEMA there is a time limit of seven years for any prosecution. This however will not augur well in the fight against smuggling, hence the paper aligns itself to the modification in section 260 (3) of the 2016 NCS Bill that removed the limitation.

The paper hereby conclude that a proper application of the advocated solution to the issues as raised, will improve on the present enforcement machinery, thereby strengthening prosecution to cope with the growing wave of smuggling and its attendant results.

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<sup>96</sup> Op. cit