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AN APPRAISAL OF THE LEGAL FRAMEWORK FOR COMBATING DRUG TRAFFICKING IN NIGERIA

AGBONIKA, John A. M.

Faculty of Law, Kogi State University,
Aanyigba, Kogi State, Nigeria

ABSTRACT

This article examines the legal response of the Government of Nigeria to the problem of drug trafficking. Incidentally, Nigerians have stood out as very active drug traffickers. Underdevelopment and poverty present in producer countries, which are also evident in Nigeria, are partly to blame. Economic difficulties notwithstanding, Nigeria has joined the global community in enacting legislation outlawing such acts as trafficking and possession of drugs. The ultimate objective of this Article is to appraise the legal framework for combating Drug trafficking in Nigeria, scope of Drug trafficking, Drug trafficking and factors Responsible for it, Defectiveness of the Act *visa-vis* perceived challenges of the Nigeria Drug Law enforcement agency in fight against trafficking. While supporting the conclusion that the law enforcement has not been effective, one is unable to recommend decriminalization. Rather, suggestions are made with a view to improving law enforcement and international co-operation. Alternative solutions, such as the legal approach, which can go hand-in-hand with law enforcement, are proffered.

Keywords: Crimes, Criminology, Narcotics, Drug Trafficking.

1. INTRODUCTION

The drug problem is as old as man. No society is insulated from the negative consequences of illicit drugs. Many analysts are of the opinion that apart from the genocide of Second World War, no other phenomenon has had more debilitating consequences on mankind like the pandemic drug scourge. This view is anchored on the fact that even the much dreaded HIV/ AIDS which has yet defied any known cure has narcotic drugs as one of its principal causes. Besides, drugs are known to induce social vices, civil upheavals and other forms of criminalities.

In Nigeria however, the problem of drugs began to assume very worrisome dimensions at the end of the second world war following the return of some Nigerian soldiers from mainly, Burma, India, where they had fought. One of the negative consequences of the war was the return of the soldiers with some seeds of cannabis sativa also known as Indian Hemp, which they in turn experimental and discovered that the illicit plant could do well in some parts of the country, with time the cultivation of cannabis sativa began to grow and so was the trafficking and abuse of the cannabis plant.

Drug barons soon discovered that the geographical location of Nigeria, its thick population, bustling commerce, and vibrant air transportation hold so much attraction for a

thriving drug business. This led to the experimentation with category “A” drugs such as cocaine, heroin and other psychotropic substances; a situation that has made the country a drug trafficking/transit point. In order to address this growing problem of illicit drugs, Nigeria has remained proactive in its counter-narcotic initiatives, this is seen on hand by the numerous enabling legislation since pre-independence to democratic dispensation on ground to combat drug trafficking. This Article shall extensively deal with the legal framework for combating drug trafficking in Nigeria, its scope, historical development, perceived challenges and proffer solution on ways of improving the fight against illicit drugs.

2. CONCEPTUAL FRAMEWORK

Terms connected with drug-taking are often used loosely therefore, it is important at the onset to provide fairly clear definitions of such terms such terms such as “drugs” “hard drug”, “psychotropic substances”, “narcotics” and “trafficking”, as well as to point out ways in which they are commonly used or misused. The word ‘drug’, which has been traced to the German *droge vate* (dry casks), not a scientific term¹; and therefore has no single definition. The journey of definitions could start with the shorter Oxford English Dictionary, which defines “drug” as an original simple medicinal substance, organic or inorganic, used by itself or as an ingredient in medicine. In the second Report of the World Health Organization Expert Committee on the use of Essential Drugs², “drug”, has been defined, as any substance in a pharmaceutical product, which is used to modify or explore physiological system or pathological states for the recipient. The Black’s Law Dictionary defines drug as an article for use in the diagnosis care mitigation, treatment or prevented of disease in man or other animals and any article other than food intended to affect the structure of any function of the body of man or other animals any substance used or a medicine³. Drug is also defined as any substance of vegetable, animal or mineral origin or any preparation or admixture thereof manufacture, sold or advertised for used in the diagnosis, treatment mitigation or prevention of any disease, disorder abnormal, physical state or the symptom thereof in a man or animal⁴. The definitions are not exhaustive, for instance, Obianwu⁵ defines drug as:

“... a substance which is usually administered for the treatment, prevention or diagnosis of disease or other abnormal conditions, or to control or improve any physiological conditions, or to control or improve any physiological condition in man or animal.”

The above definition shares some similarity with that offered by Reeves⁶ in which he defined “drug” as; “any chemical substance or agent that affects the physiological and/or psychological and/or social functions and is taken for comfort, stimulation or pleasure.”

Laurier⁷ prefers a definition which shows concern for society, and according to him, “drug” is; “any chemical substance that alters mood, perception or consciousness and is

¹ Chien et al, *The Road to Heroin: Narcotics, Delinquency and Social Policy*, 1964 Basic Books Inc; New York; and Kenneth Leach, *A Practical Guide to the Drug Scene*, 1974, Sheldon Press, London. P. 1.

² World Health Organization Expert Committee on Drug Dependence, W.H.O Technical Report Series No. 551, 1973

³ Gamer B. Black’s Law Dictionary. 6th Edition at p. 497.

⁴ S. 21 NAFDAC Act Cap No 1 Laws of the Federation of Nigeria 2004.

⁵ Obianwu, H. O., Department of Pharmacology and Toxicology, University of Benin, Nigeria, in a paper entitled “Drug Classification”, Narcotics law and policy in Nigeria, Federal Ministry of Justice Law Review Series, 1990 Bencoed Press, Lagos.

⁶ Charles Reeves. “motivations for changing parterns of Drug Taking”, 1972, paper presented to 30th International Congress on Alcoholism and Drug Dependence, Amsterdam, Netherlands cited in Martin A. Plant, *Drugtakers in an English Town*, 1975 Tavistock Publications, London, p. 26.

⁷ Peter Laurie, *Drugs – Medical, Psychological and Social facts*, 1984, Pengium, England, P. 11.

misused, to the apparent detriment of society”. Mitchell⁸ defines drugs as “any substance which when taken into the body is capable of effecting some changes”. The United Nation Organization defines drugs as “a substance which when taken in its natural or synthetic form affects the organism by altering its mode of behaviour”⁹. The poison and pharmacy Act of Nigeria defines ‘drug’ as including any substance of vegetable, mineral origin, or any preparation or admixture thereof, which is used for internal or external application to the human body in the treatment of disease.

All the foregoing definitions, even though they differ in their poetic expression, appear to agree on the nature of drugs and the fact that they lead to changes, either in the physiological or psychological conditions of the recipient, in this case, man. Indeed all these enumerated definitions, one may contend, are an acknowledgement of the long existing relationship between man and drugs. Drugs have been used for pleasure, social, religious and medicinal purposes; it is man’s continuing desire to find cures for all the diseases that afflict us that has led to the invention and discovery of more drugs. The importance of drugs to the human body is attributable to the fact that the body is chemically dependent, and drugs are a source of assistance or correction its biochemistry. Many people today owe their continued survival in reasonably good health to permanent dependence on prescribed drugs¹⁰. Also, when the major action of the drug or substance is exerted in the brain; it produces such effects as sedation, hypnosis, stimulation, change in mood or behavior, the substance is then said to have psychoactive or psychotropic properties. Hence, such substances are referred to as “psychoactive” or psychotropic¹¹ compounds or drugs. “These types of drugs are classified in terms of their psychological effects upon the user. They usually change the perceptions, thoughts, and the observable behavior of the user, hence the term” psychotropic”.

This term is also widely used in legislation, for example, under the interpretation parts of National Drug Law Enforcement Agency Act, 2004, defines psychotropic substances as: “any substances, natural or synthetic, or any natural materials specified in schedules I, II, III and IV of the convention on Drugs or psychotropic substances Act, 1971. The convention and schedule referred to are concerned with mind-affecting drugs.

It is important to note at this stage, that in general usage these psychotropic substances are also referred to as Narcotics. The word narcotic comes from a Greek word meaning ‘stupor’, is a state of reduced sensibility that has given rise to our familiar adjective stupid¹². Though narcotics are only those drugs which are sleep-inducing in America by legal various kinds of drugs including some which have stimulating effects. The term “Narcotics” is now a term of convenience used to designate opium, cocaine, marijuana and their derivatives and the many synthetic compounds which produce physiological results similar to those of the natural drugs. The term “dangerous drugs” (as used in the Pontish legal provisions) similarly covers various sorts of drugs¹³. At this point it would seem necessary to sound a caveat that all narcotics are drugs, but not all drugs are narcotics. So when in this article we talk of drugs, dangerous drugs, narcotics or psychotropic substances, we are dealing with that small number or class of drugs which affect central nervous system. These constitute a small proportion of the drugs in use; but their total effect, when misused or used without medical prescription,

⁸ Mitchell A.R.K, *Drugs: the parent’s dilemma*; (London: Priory Press Ltd, 1972).

⁹ U.N, Department of Peace keeping operations, UNPKO, *HIV Prevention in international military populations*, (New Yorks Pitman Publishing).

¹⁰ Education and Drug Dependence, A report Presented to the social morality Council, 1985, Methuen, London

¹¹ Iyababo, J. A., *Persectives and strategies in the control of the Traffic in Narcotic Drugs and Psychotropic substances the police viewpoint*, 1989, Narcotics LAW AND Policy in Nigeria, federal ministry of justice Law Review Series, 1990, Bencold Press, Lagos.

¹² Weib A. and Rosen W., *Chocolate to Morphine: understanding mind – Active Drugs*, 1983, Boston, Houghton Mitthin. See also Nicholas Dom and Nigel South (ed) *A Land fit for Heroin ? Drug Policies, Prevention and Practice*, 1987, Macmillam, London.

¹³ Eldridge, William Butter, *Narcotics and the Law, A critique of the American Experiment in Narcotic Drug Control*, 1967, University of Chicago Press, Chicago and London, p. 1.

could be devastating, it is their non-medical use that has brought them under legislation and control, and for our purpose, subject to the offence of drug trafficking.

2.1 Classification Of Narcotic And Psychotropic Drugs

The drugs with which we are concerned fall broadly into various categories depending on the modalities of classification. In fact, there is no generally accepted classification of psychotropic drugs. They may be grouped in terms of their chemical structure, legality, effects, medical purposes, or availability. Sometimes two, they are classified broadly as either “hard” or “soft” drugs. Definitions of “hard” and “soft” are colloquial, and admit to many differing views.

Generally, hard drugs are those considered very dangerous, such as heroin, morphine, cocaine, medical opium, LSD and so on. Soft drugs usually include Coca leaves, *Khat*, *Kraton*, *ganja* and hemp products, such as marijuana and hashish¹⁴. For the purpose of presenting a brief overview, it may be appropriate to adopt the Canadian Government Commission of inquiry seven-fold classification¹⁵. These are; (i) Sedatives and Hypnotics, (ii) Stimulants, (iii) Psychedelics and Hallucinogens, (iv) Opiate Narcotics, (v) Volatile Solvents, (vi) Clinical Anti-Depressants, and (vii) Major Tranquillizers. This classification distinguishes between the main types of drugs in terms of their psychological and pharmacological effects and properties. We shall take a brief highlight of the history, features, properties and effect of each of the categories of Drugs.

(a) Sedatives and Hypnotics

❖ Barbiturates¹⁶

In 1862 following the isolation of a new drug by Alfred Bayer, barbiturates replaced alcohol and cannabis as sedative-hypnotic drugs. The first barbiturate to be developed was barbitone, which was not used clinically until 1903. Other barbiturates that followed are phenobarbitone (1912), amylobarbitone (1923), phenobarbitone and quinalbarbitone (1930). In the 1950's tranquillizers were discovered. The barbiturate drugs depress the central nervous system and are used as anaesthetics. They produce a withdrawal syndrome which varies with the dose; anxiety, headache, nervousness, tremor, and vomiting after eight hours may become intense and severe. Toxic effects of barbiturates include, skin rashes, though those are rare. An overdose of barbiturates produces coma and death due to depression of respiration and Loss of reflexes.

(b) Stimulants

❖ COCAINE

Cocaine, which is a powerful stimulant, had been the first local anaesthetic used in medicine. It had been isolated by Albert Niemann in 1857 from the Coca brought from Peru it was (and may still be) used by the natives of Peru to increase endurance; this it does by stimulating the cerebral cortex of the

¹⁴ Dusan Cotic, *Drugs and Punishment: An up-to-date interregional survey on Drug Related offences*, United Nations Social Defence Research Institute, Publication no. 30, Rome February 1988, p. 1.

¹⁵ *The Non-medical use of Drugs. Interim Report of the Canadian Government Commission of inquiry, 1970*, Penguin, books, London; and Peter Laurier, *Supra*, p. 28.

¹⁶ See generally, Schur, *supra*; Leech, *supra*, p. 10

brain producing restlessness, excitement and a greater capacity for muscular activity. In medical practice the drug is used as a local anesthetic, e.g. as drops before operative treatment on the eye, when used as snuff, Cocaine can cause ulcers which penetrate the septum between the nostrils. A few people are very sensitive to Cocaine and overdose produces great restlessness, convulsion and death, it is most toxic, rapid deleterious effects, and can lead to insanity¹⁷.

❖ AMPHETAMINES

Amphetamines are stimulants of the central nervous system. The action of this type of drug is to restore energy and alertness and diminish fatigue. They were first prepared in 1887 by Edeleano, and methyl amphetamine in 1919 by Ogata in Japan. In 1932 amphetamine was introduced as a nasal decongestant in the form of the benzedine inhaler. It was used for the treatment of narcolepsy in 1935 and of depression in 1936. Generally, the drug has the effect of diminishing appetite and used to be freely prescribed for people intending to lose weight. It is widely prescribed for military personnel to combat fatigue and prolongs wakefulness (incoardi). Prolonged injection of amphetamine, like the illicit injection of all drugs, is associated with hepatitis, abscesses, collapsed blood vessels and even loss of limbs.

❖ METHTHYAMPHETAMINES

This drug is found to be especially useful for the treatment of apathetic and depressed psychopathic conditions. The injection was used first as a vasopressor agent in surgical emergencies, and this has remained its main use. Methyl amphetamine have been used in a wide range of conditions; their use in the treatment of depression is certainly obsolete and it is probable that this also applies to the treatment of certain behavioural problems in children, namely, epilepsy, aggressive psychopathy, emiresis, menstrual problems, fatigue and poisoning from barbiturates. The use of methyl amphetamine for abreaction in psychiatry is not widespread, but it is still used in anaesthesia, for restoration of blood pressure. In general practice, the prescribing of amphetamine preparations is mainly for obesity, depression, tiredness and anxiety. Overdose causes agitation, perspiration, dilated pupils, tremors excessive talkativeness and even hallucinations.

Amphetamine psychosis temporarily produces all the symptoms of a paranoid schizophrenic psychotic interlude and is sometimes not recognized because of this. The released aggression, combined with this paranoia, has been said to result in murders¹⁸.

❖ PSYCHEDELICS AND HALLUCINOGENIES¹⁹

¹⁷ See generally, schur, supra; victimology; victimless crimes and public order crime pattern criminology. PP. 4-5; Kenneth leech, supra p.8

¹⁸ S. Cohen, 'A classification LSD complications', psychosomatics, 1966, vol. 7, pp. 182-6, for a study of adverse reactions to LSD in British clinical and experimental work, see N. Malleon, British Journal of Psych. 1971, Vol. 118, pp. 229-30.

¹⁹ Kenneth Leech, Supra, p.

Psychedelics and Hallucinogenic drugs are drugs which change or widen experience - The visual hallucination are due to the presence of mescaline, and it was mescaline which provided the basis for two dominant approaches to these drugs. The first, approach sees them as “psychedelic”, enriching the mind and enlarging the vision; and perhaps capable of use in mystical and religious experience. The second approach sees these drugs as valuable models for the understanding of schizophrenia. Because they were held to bring about a “model psychosis” they became known as “psychotomimetics.”

❖ CANNABIS SATIVA

The most known drug in this class is cannabis sativa, which is the name of the hemp plant which grows throughout the world. The word Cannabis has been traced to the Assyrians, who used the drug as incense in the 7th and 8th centuries B.C. They called it “Qunubu” or “Qunnabu” from the old East Iranian “Konaba” which was identified with the Greek “Konabos” meaning noise. From the tip of the female plant, as it is about to flower, is denied a green resinous substance which ceases when the seeds have ripened, in tropical climates the resin is plentiful from the flowering tops of the plant comes the drug known as, bhang in India, ganja in the west Indies, dagga in South Africa, Kif in Morocco, takroum in Tunisia and Marijuana in Nigeria, USA and Britain. The effects of Marijuana can be related to, but are different from, those of alcohol there is usually no “hand-over”.

Cannabis is a depressant, the consumption of which usually produces a state of euphoria similar to mild intoxication. In Malaysia, ganja, as it is known, was used for various medicinal purposes, such as the relief of asthma it was also used for such purposes as maintaining the fisherman who worked overnight, and the agricultural worker during times of heavy activity. The use of Cannabis was not known in Nigeria until the end of the Second World War, this has led to the belief that Nigerian soldiers from the Second World War in Burma introduced the use of the drug to Nigeria.

❖ LYSERGIC AND DIETHYLAMIDE – 25, LYSERGIDE

The discovery of lysergic acid diethylamine (LSD), by Hofman in 1938 was the crucial event in the psychedelic revolution; various writers have claimed that LSD has been particularly valuable in the treatment of sexual disorders, anxiety states, psychoneurosis, and psychopathic conditions. The uncontrolled illicit use of LSD presents very complex problems-severe psychiatric disturbances, confusion, visual and auditory hallucination and terrifying panic.

Sidney Cohen²⁰, (perhaps the leading American authority), has classified possible LSD complications under three headings. First, psychotic disorders, including chronic intoxication, schizophrenic reaction,

²⁰ Jerome Jatte, Robert Peterson, and Ray Hodgson: Addictions – issues and Answers. 1980, Harper and Row Publishers, London, p.4.

paranoia, acute paranoid states, prolonged or intermittent LSD-like psychosis, and psychotic depressions. Secondly, non-psychotic disorders, including chronic anxiety reactions with depression, somatic symptoms and difficulties in functioning, acute panic states and dy-social and anti-social behavior. Thirdly, they cause neurological reactions including, convulsions and permanent brain damage.

❖ HEROINE

Heroin was an early derivative of morphine made by treating morphine with acetic anhydride to yield diacetyli morphine, upon discovery; it was hailed as a drug of increased effectiveness with decreased addiction liability- it was introduced into medicine in 1988 as a cough suppressant. Although its effects are similar to those of morphine, it is much more potent and a superior analgesic²¹. Heroin is usually injected, most commonly intravenously, directly into the blood stream. This leads to a sense of peace and drowsy euphoria. With heroin the signs of abstinence may include mild symptoms such as yawning, rhinorrhoea, tears, sweating, anorexia; moderate symptoms such as, trembling, goose flesh, abdominal cramps, insomnia; and severe symptoms such as, restlessness, vomiting, diarrhea and weight loss²². Many writers extolled its pain relieving qualities while assuming readers that heroin was free of addiction liability; it was a panacea.

“The prominent place held by opinion derivatives in therapeutics, the constant calls on every physician to relieve pain induce sleep with drugs, and there to stimulate the use of heroine. It was apparently the ideal preparation-potent analgesic and sedative at the same time possessing other qualities highly desirable in certain ailments, above all, freedom from the dreaded so-called” habit forming ‘qualities of the parent drug’²³.

3. A BRIEF HISTORY OF NARCOTIC DRUGS

Just before the Second World War, German Chemists discovered two new series of molecules which were chemically unrelated to morphine, yet seemed to produce similar effects. Meferidine or pethidine was the first member of one series and was introduced into medicine under the trade name Demerol. Methadine, the first member of the other family, was introduced into medicine as Dolophine or physeptone. Heroin is useful when treating those who are dying of painful, incurable disease, and pethidine is of particular use in hospitals for treating pain in the renal and biliary tracts; it is safe to use in midwifery too.²⁴ Wilker and Rasor²⁵ argued that the dominant function of the opiates is to gratify “primary” needs of hunger, fear of pain, sexual urges and so on.

²¹ Ibid.

²² Kenneth Leech, *Supra*, p. 29

²³ Terry and Pellens, *The opinion problem, 1928, the Bureau of Social Hygiene Incorporated*, pp 77-78.

²⁴ Schur, *supra*, p. 21

²⁵ A. Wilker and R.W. Rasor, *American journal of medicine*, 1953, vol. 14, p. 560.

3.1 Drug Trafficking

Drug trafficking is the distributive arm of illegal importation and exportation of narcotic drugs and psychotropic substances for purposes other than medical and scientific. Drug trafficking and money laundering are two related organized and economic crimes. Drug trafficking is defined as the illegal sale, production, transportation, and distribution of illegal drugs and controlled substances attained through unlawful means²⁶. Drug trafficking is a global illicit trade involving the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws²⁷. It involves selling drugs and drug paraphernalia, whether it is a local exchange between a user and a dealer or a major international operation.

Drug trafficking is a problem that affects every nation in the world and exists on many levels. Drug trafficking and abuse are prescribed as crimes, against the society, both under domestic and international Law. In strict legal sense, a crime is a violation of the criminal law, which is subsequently followed by legal punishment. Drug trafficking, as a crime, falls into the category of what sociologists called “organized crime”. According to the United Nation adhoc Committee on Transitional organized crime (TOC) Convention, an organized crime is defined as:

“... structured group of three or more persons existing for period of time and acting in concert with the aim of committing one or more serious crimes or offences to obtain directly or indirectly, a financial or other material benefit”²⁸

Organised crime groups function like any business, ie their motivation is profit, and they operate on business principles like taking up market opportunities except that in this case, the market they exploit are illegal²⁹. According to the U.N signed Convention on Narcotic Drug (1961), drug trafficking was defined as:

“The illegal supply of drugs by means of cultivation, production manufacture, extraction, preparation, possession, offering for sale, distribution and delivery on any term whatsoever, importation or exportation declared punishable offences when committed intentionally.”

Nigeria’s NDLEA Act did not define Drug trafficking. Section 52 of the Act, adopts the definition of the convention afore cited. Drug trafficking involves the planting, growing, cultivation, extraction, processing, production, exportation, importation, selling, buying, exposing, distributing, delivery, brokerage, transporting, dispatching and supplying of drugs popularly known as Marijuana, Cocaine, heroin, LSD or ‘any other similar drugs’ or psychotropic substance³⁰. Drug trafficking is the distributive aim of illegal importation and exportation narcotic drugs and psychotropic substances for purposes other than medical and scientific.³¹

Some of the methods drug traffickers employ in concealing drugs as recently uncovered by the NDLEA include, creating false bottom of luggage, hair packing, body packing, packing inside food stuff, bolts, clothing, car dash board, Bible, Quran, Casket, inside shoes, car engine, insertion into private part of female carriers in addition to the known method of ingestion

²⁶ Miller M.F (1966). The complete medical guide. Newyork: Simon and Schuter. I. J. A.S.S. vol 2 No. 1 1999.

²⁷ www.criminal.attorney.org/drugtrafficking

²⁸ www.Unodc.org/.../index.html

²⁹ Ibid

³⁰ Ibid

³¹ Jack N.W, “Drug trafficking and the Law in Nigeria” p. 14.

among others. However, Drug trafficking is an economic crime. Economic crimes are now physical crimes committed by perpetrators with the sole aim of obtaining financial gain or pecuniary advantage or other Professional advantages from such illegal act.³² Economic crime due to its pecuniary nature has been described as the ‘mother’ of all crimes in that it gives birth to armed robbery and all other vices in the society.³³

The harmful effect of drug trafficking is multifaceted. This dangerous act of trafficking in narcotic drugs affects the individual, government, the economy and the society at large, thus the need for a concerted and collective effort in the war against the menace of trafficking in drugs. The danger drug problems pose to societies across the globe has become a source of concern to world leaders as well as concerned individuals. It is indeed very worrisome. Individual drug addicts have suffered severe health problems due to drug abuse and misuse. Unfortunately, many have met their untimely death through the weird habit. Families have also been disintegrated and thrown into a state of disarray because of illicit drug activities, when the breadwinner is either hooked on drugs or arrested in connection with drugs and imprisoned, that marks the beginning of crisis for the entire family. Many have lost the love, affection, care and protection of their families in this way.

3.1.1 Factors Responsible for Drug Trafficking

Several factors have been attributed to the menace of drug trafficking and other related offences. In order to exterminate the dread monster of drug trafficking, it would be proper for drug trafficking fighter to have basic understanding of why people engage in this shady deal. The following are some of the factors identified from the various researches conducted so far:

- (a) The get-rich-quick syndrome as another reason why people take to drug trafficking. People thus, engage in illicit drugs in a bid to make quick money. Nobody wants to go through the normal route (the path of hard work) everybody is crazy about making money whether by crook or by hook. After all, it is now deeply entrenched in the subconscious of the society today that the end justifies the means. A suspect, Osakwe Anthony, disclosed that he venture into the business when he dropped out of school. “I sell Indian hemp because I am not educated. It is also a quick way to make money³⁴.
- (b) Recent changes in the policies of government designed to allow the free flow of persons and legitimate goods across international borders have increased opportunities for smuggling.
- (c) Poverty pushes some into drug trafficking; Three suspected dealers in substance which turned out to be cannabis after being tested by operatives of the National Drug Law Enforcement Agency (NDLEA) in Lagos, say poverty drove them into the illicit business³⁵. A drug suspect arrested by the officials of NDLEA at the Murtala Mohammed Airport Lagos trying to board a flight to parts carrying 80 wraps of Cocaine which weighed 1-06kg confessed that she joined the act because she lost her husband and had to cater for six children.
- (d) Social disorganization and strain: in both the scientific and popular literature, a lot of attention has been given to the role of social changes in drug trafficking. Social disorganization and social strain theories have been proposed to identify the type of

³² Gamer B, Black’s Law Dictionary 11th Edition, p. 734.

³³ Justice M.M. Akanbi, “Corruption: Taming a national malaise – The role of ICPC”, NJI, Port-Harcourt 2004. P.4.

³⁴ www.hopeformigerianonline.com

³⁵ Ibid

changes which may lead to the use and trafficking of psychoactive substances. Social disorganization theory addresses the conditions which result in the disruption of traditional bounding structures in any society. These are the family, church and other institution. Social strain theory focuses on the changes in the way a society is organized which may result in frustration and alienation.

- (e) The relationship of peer factor to drug trafficking is not in any way surprising. At this time of development, many adolescents do experience problems in psychosocial transition which make them vulnerable to peer influence³⁶. It is therefore not questionable that people engage in drug abuse through peer orientation. This is characterized by the desire to be accepted among youths in the social arena, it is common among youths in the seventies on the need for one to be accepted into a group. This is invariably preceded by sharing certain habits in common which will include even smoking cigarette or cannabis in conclusion, is that engaging in the trafficking of drugs is a condition precedent to being accepted into these social circles, thereby accounting for one reason why people are now hardened abusers of drugs³⁷.
- (f) Another factor responsible for this ignoble act of trafficking in drugs is our culture of wealth worship. Nigerian Society is plagued by a culture of wealth worship. The average Nigerian worships and adores wealth regardless of how it has been acquired. Honors, decorations and position, which elude some of our devoted and patriotic citizens, are accorded to the rich for reason of their wealth alone. Yet, it is common knowledge that the recipients of those honours are drug pushers, armed robbers. The rich received ovations and recognition in public assemblies, get decorated with chieftaincy and other titles, occupy front or reserved places in public functions and generally are everywhere treated with unmerited respect and adulation. People in their bid to join this affluent league in the society take to drug trafficking as one of the allegedly quickest ways to make hard currencies (such as Dollars, Pounds and Euros) so that they can be recognized in the society.

4. THE DEVELOPMENT OF NIGERIA'S DRUG LAWS

The problems posed by drug trafficking and abuse to our economy can never be over-emphasized as successive administrations in Nigeria within pre and post independence have made frantic efforts against the fight of illicit drug trafficking and abuse. This is evidenced by numerous legislations on grounds which are as follows:

4.1 Pre-Independence Drug Control Legislations

4.1.1 Dangerous Drug Ordinance 1920

The first concerted and serious efforts at controlling the use and trafficking in narcotic drugs began in 1920 with the promulgation of the Dangerous Drugs Ordinance 1920, and later the Dangerous Drugs Regulation 1932. The Dangerous Drugs Ordinance was passed 'to regulate the importation, exportation, manufacture, sales and use of opium and other dangerous Drugs'. Punishment for contravention includes ten years imprisonment or a fine of ₦2,000 (£100) or both, and forfeiture of the articles used in the commission of the offence.

³⁶ Abudulkareem, A.A. "Drug use Among Adolescents" <http://www.cabastract.org>,

³⁷ Alfred B.M. "Psychoactive Substances use Among medical student in Nigeria\ University" <http://www.nchinlm.org>, visited

Section 3 of the regulations provided that no person shall supply or procure, or offer to supply or procure, raw opium or coca leaves to any person except he is licensed by the appropriate authority. Section 5 of the regulations prohibited the possession of raw opium and coca leaves, by any person who is not licensed for this purpose. The intention of the Dangerous Drugs Regulations was to control or regulate the supply of, and demand for, narcotics, and not total prohibition. Despite the provision of harsh punishment for possession and trafficking of these drugs, it is clear from the provisions of the legislation that the main concern was with the misuse, or abuse, of these drugs in Nigeria, not trafficking. The latter (especially cross border trafficking) was not a serious concern³⁸

4.1.2 Dangerous Drugs Act 1935

Perhaps, the first serious and comprehensive legislation of the Dangerous Drugs Act, promulgated as Act No. 12 of 1935. It came into effect on 1st July 1935. The Act sought to regulate the importation, exportation, manufacture, sale and use of opium, cocaine, Indian hemp and other dangerous drugs. The Act empowered the President to make regulations for controlling or restricting the importation, exportation, transmit, production, possession, sale and distribution of drugs, raw opium, coca leaves, cocaine and Indian hemp, and in particular for prohibiting their production, possession, sale or distribution except by persons licensed or otherwise authorized in that behalf. So far, about two Regulations and ten orders have been made under this provision. In addition to prohibiting or restructuring the foregoing acts for the aforementioned drugs, the issue by medical and dental practitioners, and veterinary surgeons of prescriptions containing any such drug and their dispensing was to be regulated.

The Dangerous Drugs Act 1935 made it unlawful for any person in Nigeria to trade in or manufacture for the purpose of trade any products obtained from any of the *phenanthrene alkaloids* of opium or from the *ecgonine alkaloids* of the coca leaf, not being a product which was on the 13th day of July 1931 being used for medical or scientific purposes. Adequate statutory provision was made for the control of external trade in dangerous drugs. The concept of diversion certificate, import certificate, export authorization were introduced.

4.2 Post-Independence Drug Control Laws

4.2.1 Indian Hemp Decree, 1966

Legal control of marijuana received greater attention than regulation of narcotics. This was because unlike opium and coca plants, the cultivation of marijuana plant was common in many parts of the country³⁹. The Indian Hemp Act 1966 amended certain provisions of the Dangerous Drugs Act and succeeded in narrowing the focus of attention in the struggle against abuse and trafficking of narcotics to Indian hemp. Greater attention seems to have been paid to misuse within the country rather than trafficking.

The Act introduced capital punishment or in the alternative imprisonment ranging from 4 to 21 years for planting, cultivating, importing and selling of Indian hemp. More lenient penalties were prescribed for possession or smoking. An early recognition of differential treatment of producers and users is an ace in the drug war. In 1975, the Indian Hemp (Amendment) Act modified the penalties set out in the 1966 Act. Imprisonment of not more than fifteen years was spelt out for the acts previously punishable with death. Both the 1966 and 1975 legislation had the common objective of protecting the citizens from the adverse

³⁸ Yemi Osinbajo, "legal and Institutional framework for the Eradication of Drug Trafficking in Nigeria, in Narcotics; Law and Policy in Nigeria, Federal Ministry of Justice (ed), 1990, Bencod Press, Lagos, p.223."

³⁹ Etaniubi E. O. Atemika, "Narcotic Drug Problem and Control in Nigeria," in Narcotics: Law and Policy in Nigeria, Federal Ministry of Justice (ed), 1990, Bencod Press Lagos, p. 118.

effects of the drugs by punishing the prohibited acts. Also, both Acts regarded the user as a social deviant requiring assistance, and on whom punishment meted out should be less severe. This recognition appears to be in furtherance of the objectives and provisions of Article 36 of the single convention on Narcotic Drugs 1961, as amended by the 1972 protocol.

4.2.2 Amphetamines and other Drugs (control) Decree 1968

In 1968 a Decree to regulate illicit traffic in amphetamine and related substances was promulgated. The Decree required that amphetamines, and other related drugs, shall be imported under licence and sold and dispensed as prescription drugs. This decree was repealed by The Food and Drugs Act 1974, now Act No. 35 of 1974, Law of the Federal Republic of Nigeria.

4.2.3 Food and Drugs Act 1974

This Act sought to control the importation, export, manufacture, sale or distribution of amphetamines, secobarbital, methaqualone and other drugs specified in schedule 2 of the Act, except as authorized by the regulation.

4.2.4 The Special Tribunal (miscellaneous offences) Decree No 20 of 1984.

By the 1983 the modern and other dimensions of the drug problem, particularly trafficking in relation to importing exporting, had assumed a worrying proportion. This was accentuated by the realization of the enormous wealth in drug trafficking. The Government's response came only with the advent of new military regime in December 1983⁴⁰. The Federal Military Government promulgated the Special Tribunal (miscellaneous offences) Decree No 20 of 1984, which, among other penal provisions, introduced capital punishment for offences connected with certain transactions in cocaine heroin and similar substances.

The Decree provided that any person who without lawful authority, deals in, buys, sells, exposes or offers for sale or induces any other person to buy, sell smoke or inhale the drug known as cocaine or other similar drug shall be guilty of an offence⁴¹ and, liable on conviction, to suffer death by firing squad⁴². The Decree was amended in two areas by the Special Tribunal (miscellaneous offences) Amendment Decree No. 31 of 1984 in the same year. First, it introduced the forfeiture of both moveable and immovable property of persons convicted of offences connected with illicit transaction in narcotics and psychotropic substances. Second, the amendment made importation or exportation of hard drugs an offence as well as punishing people for aiding, counselling, procuring, or conspiring with any person to commit any of the offences under Decree No. 20 and its amendment, No. 31 of 1984.

The people's abhorrence of drug trafficking and abuse was overwhelmed by the adverse opinion on the death penalty. Many felt that in an era when the civilized world were working towards eradicating the death penalty, and producing and consuming nations had lighter imprisonment, we had no business killing our citizens in order to uphold the morality of the west. Furthermore, it was seriously contended that in an environment of corruption, capital punishment may in fact increase the level of corruption associated with enforcing laws against illicit drug traffic⁴³ was promulgated in 1986, the death penalty was replaced by imprisonment.

⁴⁰ Following the overthrow of the civil administration of Alhaji Shehu Aliyu Shagari

⁴¹ Section 3(2) (k), The Special Tribunal (miscellaneous offences) Decree No. 20 of 1984

⁴² Section 6(3) (k), Ibid.

⁴³ The Long title is The Special Tribunal (miscellaneous offences) Amendment) Decree 1986.

4.2.5 The Special Tribunal (miscellaneous offences)(Amendment) Decree, 1986.

This Decree, also known as Decree No. 22, abolished capital punishment and replaced it with life imprisonment for offences related to importation, manufacture production, processing, planting or growing of cocaine, LSD and “similar drugs”. The illicit export, transport or traffic in these drugs were punishable with a term of imprisonment not exceeding 20 years; while the sale, buying, exposing for sale of the same drugs in an unlawful manner, attracted a term of imprisonment not exceeding 14 years. The smoking, inhalation, injection or possession of any of the drugs in any unlawful manner, was punishable by a term of imprisonment of not less than two years but not more than ten years; the provision for forfeiture of assets introduced by the 1984 Decree was maintained. In addition, convicts were liable to forfeit national passports to the government, which documents were only pronouncement of the sentence⁴⁴.

4.2.6 The National Drug Law Enforcement Agency Decree No 48 of 1989.

This decree comes into play as a result of the ineffectiveness of the 1984 Decree No 20 to reduce the increasing twin scourges of drug abuse and trafficking amidst its death penalty by firing squad. This necessitated the need for amendment of the 1984 decree, described by most concerned minds as one of the fiercest in the world. It was argued that when the stake or the risk is high as the case of capital punishment, it would succeed in raising prices of the illicit substances, this making the trade more dangerously lucrative and attractive. The succeeding government in 1989 saw reason in these arguments when it decided to amend the Decree by expunging the death penalty clause, while substituting it with imprisonment terms ranging from two years to life.

In view of the fact that the drug menace continued to rise in profile, decree No 48 of 1989, now an act of Parliament CAP NSO Laws of the federation of Nigeria 2004, established a new body, Independent of other existing Law enforcement agencies in the country called National Drug Law Enforcement Agency (NDLEA).

5. INSTITUTIONAL FRAMEWORK FOR DRUGS CONTROL IN NIGERIA

5.1 The National Drug Law Enforcement Agency

The National Drug Law Enforcement Agency is the main institution tasked with the control of drug trafficking in the country. It was established through the enactment of National Drug Law Enforcement Agency Act⁴⁵.

The establishment of NDLEA was Nigeria’s deliberate effort at evolving an institutional framework for the suppression of the drug cankerworm. This is also fulfillment of the country’s international obligation, as a signatory to the 1988 UN Convention, which recommended separate bodies to lead the onslaught against the ravaging drug menace in many parts of the world. Until the advent of the NDLEA, the Board of Customs and Excise (now Nigeria Customs Service) and the Nigeria Police were the major drug interdiction organs of government, while the federal welfare Department was charged with the counselling, treatment and rehabilitation of drug dependent persons. The agency is given several responsibilities and⁴⁶ they include:

⁴⁴ S. Cohen, “A classification LSD complications”, *Psychosomatics*, 1966, vol. 7, pp. 182-6 for a study of adverse reactions to LSD in British Clinical and experimental work, see N. Malleson, *British Journal of Psychology*, 1971, vol. 118.

⁴⁵ CAP N30LFN 2004 as amended

⁴⁶ S. 3 (a) – (r)

- (i) reinforcing and supplementing the measures provided in the convention on Narcotic Drugs 1961, as amended by the 1972 protocol, the 1971 convention on psychotropic substances and the United Nation's Convention Against illicit Traffic in Narcotic Drugs and psychotropic substances 1989 as adopted by the Nigerian domestic Law, in order to counter the magnitude and extent of illicit traffic in Narcotic drugs and psychotropic substances and its grave consequences;
- (ii) Strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international activities of illicit traffic in narcotic drugs and psychotropic substances;" Other responsibilities of the Agency in respect of prevention and detection of offences under the Act, include identification of the identities, whereabouts and activities of persons suspected of being involved in offences under the Act; the movement of proceeds or property derived from the commission of such offences; the movement of narcotic drugs and psychotropic substances; and instrumentalities used, or intended for use, in the commission of such offences; as well as the establishment and maintenance of a system for monitoring international dealings in narcotic drugs in order to identify suspicious transactions and persons engaged in them. All these are to be carried out in collaboration with government agencies both within and outside Nigeria. These functions are assigned to the General and Assets investigating unit of the Agency.

By virtue of section 7 of the Act, special units were established for the effective conduct of the functions of the agency which are as following: (a) general and assets investigation unit; (b) prosecution unit; and (c) counseling unit.

Section 7(2) states: "Notwithstanding the provisions subsection (1) of this section, the agency shall have power to set up any technical committees to assist it in the performance of its duties and functions under this Act." Their respective individual functions are set out⁴⁷. Setting out the duties of these units may go a long way to show the importance attached to the agency and the clarity of purpose; yet it may have been prudent to leave all responsibilities in a Pool for the agency to undertake. The agency should be told what to do and left to determine who should do what and how it should be done. Society is in a changing mode, what is proper today may be outdated in a few years. Similarly, the necessity for legislative changes could be avoided by laying the foundation for administrative action. Article 9 of the 1988 UN Convention which deals with matters of detection similar to those above, envisages that in appropriate cases parties should establish joint teams.

Officials taking part in such teams should act as authorized by the appropriate authorities in whose territory the operation was to take place. In all such cases, the parties involved should ensure that the sovereignty of the party on whose territory the operation is to take place is fully respected. The idea of collaboration is welcomed but the security implications should not be ignored. Equally important is ensuring that we do not hand over the realm of drug enforcement to outside bodies like the FBI or the US Drug Enforcement agency.

Part II of the Act provides for offences. Thus, by virtue of section 11, offences are constituted when any person who, without lawful authority:-

- a) imports, manufactures, produces, processes, plants or grows the drugs popularly known as Cocaine, LSD, heroin or any other similar drugs shall be guilty of an offence and liable on convictions to be sentenced to imprisonment for life; or
- b) exports, transports or otherwise traffics in the drugs popularly known as Cocaine, LSD, heroine or any other similar drugs shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life;

⁴⁷ Section 7, Ibid

- c) sells, buys, exposes or offers for sale or otherwise deals in or with the drugs popularly known as Cocaine, LSD, heroine or any other similar drugs shall be guilty of an offence and liable on conviction to be sentenced to imprisonment for life;
- d) Knowingly possess or uses the drugs popularly known as Cocaine, LSD, heroine or any other similar drugs by smoking, inhaling or injecting the said drugs shall be guilty of an offence and liable on conviction to imprisonment for a term not less than fifteen years but not exceeding twenty-five years.

The provisions cover not only the traditional aspect of drug crimes such as manufacture, export, import, or other traffic in narcotic drugs, but also include laundering. The Act provides the same punishment for criminal acts of illegal (unlawful) production as for unlawful trafficking of drugs (illegal export, import, transport, sale or offering for sale). Such an approach exists in the legislations of Austria, Denmark, Germany, Sweden, Switzerland, Turkey, United Kingdom, Union of Soviet Socialist Republics, and Yugoslavia. The Polish Drug Prevention Act, one of the most recent legal instruments, considering the growing misuse of homemade opiates, may be the only notable legislation that treats the cultivation and trafficking of opium poppy and cannabis differently from the manufacture or preparation of other drugs or narcotic substances⁴⁸. In general, the similarity of approach reflects the equal dangers posed by these mutually connected forms of drug abuse, since illegal production or manufacture of narcotic drugs and cultivation of narcotic plants are usually undertaken for the purpose of gain from illegal trafficking.

A sentence of life imprisonment is provided for a range of offences⁴⁹. They include the unlawful importation, exportation, manufacture, production, planting or transport; or traffic, selling, buying, exposure or offer for sale; or dealing in or with the drugs popularly known as Cocaine, LSD, heroin or any other “similar drug”. This area of the Act represents a good concept clouded by bad draftsmanship nowhere in the Act are the acts constituting an offence defined. Secondly, there are misuse of terminologies e.g. plant with respect to LSD. Thirdly, there is no conscious, genuine and serious effort to properly define the type and class of drugs referred to by name. By definition it shows that Cocaine is not a “drug popularly known as” but a name answering from chemical and scientific experiments. What is meant by “any other similar drug”? What is LSD? What is the basis of similarity? There are drugs which are chemically similar, but are not yet prohibited. The identical punishment of life imprisonment for these three categories is evidence that the basic act of drug trafficking is frequently treated in the same way as illegal drug production. The application of criminal sanctions calls for severe penalties for all violators. Supporters argue that the narcotic traffic is a highly developed enterprise employing skilled manufacturers who operate in the underworld to keep the traffic flowing. These individuals are comparable to key executives in a legitimate endeavour. They have experience and know how that is difficult to replace, each time one is removed from circulation, a severe blow is struck at the mechanism of drug traffic. The application of long prison terms and heavy fines disrupt the operation and renders it unprofitable⁵⁰. Unfortunately, the reality of the Nigerian situation is that it is the small couriers who get caught and convicted. So for the “big” traffickers are still behind an iron curtain beyond which we all see but are afraid to mention names.

Unlike the foregoing proscribed acts, the Act prescribes under section 19, a term of imprisonment of not less than fifteen years but not exceeding twenty five years for any person who, without lawful authority, knowingly possesses or uses the drugs popularly known as Cocaine, LSD or heroin or any other similar drug by smoking; inhaling or injecting the said

⁴⁸ Dusan Cotic, *Drugs and Punishment, An up-to-date interregional survey on drug-related offences*, 1988, United Nations Social Defence Research Institute (UNSDRI), publication No. 30, Rome, Feb. 1988.

⁴⁹ Eldridge, *Ibid*, p. 105

⁵⁰ *Ibid*, p. 105.

drugs⁵¹. The critique about bad draftsmanship applies with equal vigour in this respect. Like previously considered terminologies, nowhere in the Act are the terms, 'possess' or 'possession defined. However, in the ordinary use of the word 'possession', one has on one's possession whatever is to one's physical control. This is obviously what was intended to be prohibited in the case of dangerous drugs. The technical doctrines of the civil law about possession are irrelevant to this field of criminal law⁵².

The provision on drug possession suggest that the criminal law is not prepared to act against those who are in control of a substance, when they are not fully aware of what it is. Though the idea of knowledge meets the *mens rea* requirement of crime, it fails to satisfy some critics who argue that it removes the indirect impact on the drug trafficker, who uses unaware people as conduits for the movement of drugs. One hypothesis for the indirect impact contention might be that the conscience of the drug trafficker will twinge if he knows that his innocent conduit might be convicted of an offence, especially if this person is a friend. A more convincing argument is that if the conduit is penalized he will be more suspicious about substances or packages handed to him. Yet is it reasonable to demand that people must examine packages received 'immediately'?⁵³ Seeking to remove the mental element of 'knowing' is based on the assumption that the drug trafficker is a moralist or has a conscience. It is my considered submission that evidence of drug trafficking is prima facie evidence of lack of conscience. The present state of Nigerian Law which protects the innocent conduit is a preferred state of affairs.

Much has to be said about this particular provision which equates drug possession with drug use in relation to punishment. A basic distinction ought to be made between drug possession for supply or gain and possession for personal use. These two acts ought to be separated and different punishments prescribed. The separation of problems pertaining to punishment for illicit drug possession was due to a series of question; some of them were already present during the formulation of Article 36 of the single convention. In addition, the parties to the convention are, under the present regulation, obliged to incriminate drug possession as well as other forms of drug abuse. Some of the dilemmas and open questions have been pointed out in the commentary on the convention, especially with regard to Articles 4, 33 and 36.

From the text of the commentary it can be concluded that neither Nigeria nor any of the signatories, are bound by the convention to incriminate and punish illicit drug possession for personal use only; such cases are not serious offences in the sense of the convention. There is no doubt that most of the dilemmas pertaining to illicit possession of drug arise from the ambivalent character of this possession, which can have one of two aims: drug trafficking or personal use of drug. This results in two basic and different approaches to this form of drug abuse: more severe repression when drug possession is a preparatory phase of illegal drug trafficking, and a milder criminal-legal approach in case of possession of drug for personal use by a drug addict, who often benefits more by social and medical actions than by repressive measures, possession of cannabis for use is even, de facto, decriminalized in some Dutch cities. The Nigerian approach is shared by a majority of European countries; but not by Italy and Denmark, who incriminate and punish illicit possession of even small quantities of drugs for personal use. In Yugoslavia such cases are covered by administrative and penal proceedings. But, even in cases of severe repression for such acts, treatment and rehabilitation of drug addicts and dependents are foreseen as alternatives or parallels to punishment. Normative dispositions give different solutions to the distinction between drug possession for trafficking, or for personal use. Some leave it to the courts to solve as *quaestio facti*; while others endeavour

⁵¹ S. 19 NDLEA 2004

⁵² Bucknell and Ghodee, *supra*

⁵³ Dusan cotic, *supra*.

to solve the problem by legal determination of drug quantities considered reasonable for personal use, as opposed to those involving trafficking⁵⁴.

Decree No 38 has adopted neither approach; it is a clear repressive approach. It did not recognize drug use as a reality in the medical world is like the Ostrich hiding its head in the sand while its massive body remains exposed. During the post-war period, there has been an increasing tendency to distinguish between the drug user as 'victim', and the supplier as 'corruptor'. Act of parliament did not at first distinguish between penalties for possession and for supply, but then provided for heavier penalties for supply and possession with intent to supply and subsequently widened the gap. By the mid 1980s, supply of drugs in large amounts was defined as a major crime, and penalties extended to life imprisonment without prospect of parole, and, confiscation of all assets which the convicted person could not show to be derived from legal means. The question of whether or not such penalties are effective, and if so, how, has been obscured by populist rhetoric about the fight against a new (or rediscovered) folk devil, the pusher.

It is worth bearing in mind that increases in penalty in the past have not been notably successful in reducing the drug problem. There is little reason to think that the latest penalties (life sentence and forfeiture of assets, as high as we can go short of death penalty) will fare any better. Indeed, successive penalty increases may worsen the situation in one respect, since they frighten the amateurs out of the trade and create an enlarged role for the tightly organized and security-conscious criminal firm. One consequence is the development of the drug distribution business informs very resistant to penetration by law enforcement agents; we have a combination of high penalties in theory and virtually no penalty in practice for the big suppliers. Our moral outrage, when converted into legal form, has not exactly created the figure of the pusher; but it is fair enough to say that we have provided the environment in which he or she flourishes. In this respect the development of legal control has done little to reduce the problem, and alternative approaches need to be examined⁵⁵.

The sentences prescribed by this Act are consistent with international obligation of Nigeria to punish drug offenders. This is particularly true in the case of illegal criminal acts, although countries vary in severity of sanction and in their definitions of milder and more serious forms of these criminal acts in contradistinction some European countries differ slightly in their approaches to illegal drug possession with regard to type and amount. These approaches represent peculiar problems to the countries concerned. In the case of Turkey, illicit trafficking is the most serious problem. Yugoslavia's problems are in illegal trafficking and possession for drug consumption, for drug consumption, while Poland's problems are in cultivation, that is, production and use of drug.

Evidently, Nigeria has no problem with production, manufacture, processing etc of hard drugs. The problem is in its middleman role in importation and exportation. So our legislation should pay more attention to this problem and deemphasize the all-round tough stance and all aspects of the drug problem.

5.2 Judicial Approach: Adjudicatory And Prosecution of Procedures

The courts exist as the Last bastion of the common man. As courts of justice they must necessarily intervene in disputes between the state and the citizen. This basic concept of social contract and due process is not lost on the Government of Nigeria. Accordingly, the Act recognizes the existence of Federal High Court as having jurisdiction to try offences under the 2004 Act. This is in connection that empowering the High Courts of the state with jurisdiction

⁵⁴ Ibid.

⁵⁵ Dorn, N. and South, N., *A Land fit for Heroin? Drug policies, prevention and practice*, Macmillan Education, London p. 159.

on illicit drugs shall compound the process since matters in such courts are slow and are incapable of dispensing justice with the speed desired by the legislators.

In the process of trying suspects and accused persons, the Federal High Courts are endowed with enormous powers. Specific powers are vested in the court to make interim attachment orders on all assets and properties of a person arrested for an offence under the Act, upon an application by general and assets investigation unit of the Agency. In the case of *Akindele Ikumoluyi & Anodar V. Frn*,⁵⁶ the Federal High Court in Lagos granted an application for interim order of attachment of the properties of the accused persons pending the determination of the trial.

The Federal High Court is required to make an order of forfeiture of such assets and properties to the government if it is satisfied that there is prima facie evidence that the property concerned is liable for forfeiture. The circumstances under which such forfeiture is liable have already been highlighted above. Upon conviction, a final order of confiscation and forfeiture of the convicted person's assets and properties, already subject to an interim order under the Act, shall be made by the court upon application by the Agency. However, in the event of a discharge or acquittal, not being an acquittal on technical grounds, the tribunal may make an order of revocation or confirmation as the case may be, of an earlier interim order, whichever order is considered just, appropriate or reasonable within the circumstances⁵⁷. There is no indication on whom lies the onus and burden of proof, and the level of proof which is required at any stage of the attachment and confiscation order. Beyond the statutory jurisdiction and legalistic approach to the function of the judges, something must be said for the role of judges in the war against drug trafficking, and the type of sentence they are expected to pass. Members of the judiciary operate in an environment where the decision has already been made that the drug use with which they are confronted constitutes a social problem of sufficient magnitude to require the mobilization of the practice of criminal law, backed up by heavy maximum prison.

Although the line between creating new law and applying established principles to innovative activities is often a fine one, the judiciary has now, at least in theory, eschewed any role as policy maker in the context of the criminal trial. Yet even viewing their task solely as being one of implementing the problem definitions and legal responses developed by others, it would be naïve for us to assume that members of the judiciary will remain uncommitted to, and uninfluenced by the values explicit in the law which they must administer⁵⁸. This committal to, and influence by the values expressed in the law necessarily it is argued, ally the judges with the interest represented by the law. For, as Farrier⁵⁹ contends, law incorporates the interests of specific persons and groups in society. Rather than representing the interests of all members of society, law consists of the interests of only specific segments of the population. Law is made by men, particularly men representing special interests, who have the power to translate their interests into public policy. In opposition to the pluralistic conception of politics, law does not represent the compromise of the diverse interests in society, but supports some interests at the expense of others⁶⁰. The logic and force of this submission cannot be lost in a penological environment that still debates the merits and demerits of criminalizing acts of morality which are deemed victimless and harmless.

In the execution of its judicial functions the judges and members of any tribunal have somewhat been deprived of the element of judicial discretion by the prescription of maximum mandatory sentences e.g. life imprisonment and forfeiture of assets. Some penologists have long been fighting to discourage mandatory minima-by which lawmakers tie the hands of

⁵⁶ cited (2008) LPERLR

⁵⁷ Section 31 (1)

⁵⁸ David Farrier, *Drugs and intoxication, modern legal studies*, Sweet and Maxwell, London, 1980, p. 13.

⁵⁹ *Ibid.*

⁶⁰ Quincy R., "Toward a Sociology of Criminal Law", *Crime and Justice in Society*, (ed) R. Quincy, Little Brown, Boston, 1969, pp. 1-30 at 25.

judges so that at least a prescribed minimum sentence must be given to all persons convicted of particular offences-because they wipe out humane discretion in the sentencing function, and play havoc with modern probation and parole system⁶¹.

The fight against mandatory minima is based, among others, on the fact that judges should be accorded the right to individualize sentences. Utilizing the facts presented by the law enforcement agencies, psychiatrists, and social workers, the judge should be free to draw upon his experience to find the sentence which will afford society best protection and the offender the best chance of rehabilitation. These objectives are not antagonistic for each holds within itself the gem of the other. The judge should be able to weigh such considerations as, what is the basic problem? Is it addiction, peddling, or a background of criminality? Why must a judge punish possession by the stated maximum regardless of facts that may come to his attention? Such indiscriminate application of penalties, one cannot but admit, does increase the deterrent effect to the law but at the expense of other values. It derides the possibility of a sentence designed to effect rehabilitation of the offender. Moreover, it is patently unjust. As Aristotle declared, "there can be no greater injustice than to treat unequal things equally". Much of the narcotics legislation requires judges, against their wisdom, experience, and inclination, to pronounce judgments of such injustice upon those before the bench⁶². Notwithstanding the foregoing, there is still the equally forceful counter-argument that judicial discretion which enables a judge to make the punishment fit the crime, cannot be allowed, since all judges are not hard enough to satisfy the requirement of the system⁶³. In sum total, we are being treated to a re-run of the traditional conflict between the "rehabilitative" and the "just desert" schools of thought.

Basically, what is needed is recognition that the whole narcotics problem cannot be humped together and given to legislators, enforcement agencies, hospitals and doctors. There must be division of labour in execution of responsibilities, and an acknowledgement by all, of the diversity of the problems and possible solutions of the drug problem. It should be noted that, in applying the regulations on penalties, it is possible that the federal High court actually does adjust the punishments according to seriousness and danger of the act, enabling the pronouncement of sentences or fines, lower than the prescribed maximum in light of the quantity of drug involved, or the needs of the offender; there is no empirical evidence that such is the case. However, the Federal High court may in addition to the statutory minimum make an order requiring an offender to undergo measures such as treatment, education, aftercare, rehabilitation or social re-integration. There lies the inconsistency and contradictions of Nigeria's drug legislation.

The Federal High Court is required to come down harshly on offenders who in the court's opinion should be the subject of medical treatment, the suggested remedies are inconsistent, and the product of an undigested social and drug policy. It is only in the case of minors that the federal High court is required to make these orders as an alternative to conviction or punishment.

5.3 The Problems with the NDLEA Act, 2004

It may be claimed that the Act Cap No 30 Law of the federation of Nigeria represents the most comprehensive effort in the control of illicit narcotics operations and traffic, the statute is poorly drafted and has omissions to significant let such claims go unchallenged. The Act made efforts to correct some abnormalities encountered in the previsions legislation dating from the post independence era to present. The Act made provision for life sentence as punishment for illicit drug trafficking against the Special Tribunal (miscellaneous offences) Decree No 20

⁶¹ Inciardi, *supra*, p. 26

⁶² *Supra*

⁶³ *Supra*

of 1984 and 1986 which provided death sentence. The offences captured by the present Act for life sentence includes the unlawful importation, exportation, manufacture, production, planting or transport; or traffic, selling, buying exposure, or offer for sale; or dealing in or with drugs popularly known as Cocaine, LSD, heroin or any other “similar drugs”.

This area of the Act represents a good concept clouded by bad draftsmanship; nowhere in the Act do the acts constitute an offence defined. Secondly, there are misuse of terminologies eg plant with respect to LSD. Thirdly, there is no conscious, genuine and serious effort to properly define the type and class of drugs referred to by name. Definitions earlier in this article show that Cocaine is not a “drug popularly known as” but a name answering from chemical and scientific experiments. What is meant by “any other similar drug”? What is LSD? What is the basis of similarity? There are drugs which are chemically similar but are not yet prohibited. On a similar note, the term “drug” was nowhere specifically defined as to what constitute drug. This raises the question as to constitute drug in a real sense as to the face of the Act. Perhaps because no effort was made to define concepts, there has been a resort to tautology.

The now familiar deficiency of non definition applies to imports and transport. Despite this shortcoming, we may be right to assume that goods are imported when the ship carrying the comes within the limits of a port, when the aircraft carrying them lands in Nigeria or the goods are unloaded (presumably by parachute) whichever is the earlier, or when the goods are brought by land across the land the boundary into Nigeria. Passengers’ baggage however, is imported when the ship carrying it enters the port at which it is discharged. Though ‘sale’ is also not defined, it would normally include barter, exchange, or gift, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee⁶⁴. The prohibition against sales of narcotics by unauthorized persons is generally construed by the courts to include almost every transaction between individuals in which illegal drugs are involved. It has been held that:

“... a mere gift, a simple offer or agreement to sell, or the delivery to one who has agreed to purchase constitutes a sale of narcotics, notwithstanding the facts that no consideration is paid or that the sale is not fully completed by payment of the agreed price⁶⁵”.

The interpretations made by the courts are in accord with the apparent intention of the legislatures to reach all transactions and to score with great severity, the transfer of illicit drugs⁶⁶. However, critically x-raying the act, it seems as if the Attorney-General of the Federation is allotted with anomies powers as to control supervision of the Agency in discharge of its duties. This is seen by virtue of sections 10 and 50 of the Act. Thus “The Attorney-General of the Federation may make rules or regulations with respect to the exercise of any of the duties, functions or powers of the Agency under this Act⁶⁷.” In this particular instance, the discretionary power conferred on the Chairman of the Agency can only be exercised with the prior written approval of the Attorney-General of the federation. Critics have questioned the desirability of the Attorney-General prior authorization. They argue that the Agency should be given a free hand and be responsible on law for its actions. The objection is not helped by the fact that the authority of the president as in section 43 of the Act is required before the Agency can conduct investigations on any person whose lifestyle appears to the Agency to be beyond his source of income.

⁶⁴ Eldridge, William Butter, 1967, *Narcotics and the Law; A Critique of the American Experiment in Narcotic Drug Control*, University of Chicago Press, Chicago and London p. 56

⁶⁵ 14 ill. 2d. 325; 153 N.E. 2d. 65, 69 (1958). See also *people v. Glass*, 16 ill. 2d 325; 158 N.E. 2d. 639, 640 (1959).

⁶⁶ Eldridge, *supra*

⁶⁷ S. 10 NDLEA Act, 2004

This requirement for prior authorization could be easily misconstrued as affording opportunity for discriminatory application of the law. This line of objection appears to have jumped the gun; and is asking the wrong question. The proper issue for determination is the necessity for conferring a moralizing power on an agency, over and above the checks and balance instituted by the Constitution. Just as a society gets the police force it deserves, so do members of the Agency reflect the society they come from. In Nigeria, corruption of law enforcement officials is a permanent feature; to ask corrupt officials to act as watch dogs on the rest of the society is in itself objectionable. At this point, it is trite to state that the draftsmen initially meant to bring in efficacy legislation in the fight against illicit drugs but made no effort to define some of the words as provided in the Act. Therefore, an urgent step should be taken to ensure that the present Act is revisited and amendments made to enable the Agency to effectively fight drug trafficking.

6. THE CHALLENGES FACING THE ENFORCEMENT OF DRUG LAWS IN NIGERIA

The National Drug Law Enforcement Agency (NDLEA) said that Nigeria is making significant contribution to the fight against illicit drugs over 34 million kilograms of drugs has been taken from our society and 21,871 drug offenders convicted since the Agency began operations in 1990. Chairman/Chief Executive of the Commercial Agency, Ahmadu Giade disclosed the statistics as he officially flagged off a weeklong programme of activities in commemoration of 2013 International Day against Drug Abuse and illicit Drug Trafficking in Abuja. The efforts of the agency have not yielded the desired results in stemming the menace of the trend especially in its failure to arrest and convict major drug dealers. At this point, we shall categorically outline and conclusively explain the factors that have militated against efforts of the agency in fight of illicit drugs:

6.1 *Compliance with the Rule Of Law*

The ability to enforce the rule of law and adequately punish crime offenders is another major characteristic of a soft state. Nigeria is a paradigmatic case study of a soft state where the rule of law is almost absent. Break down in law and order is common. In Nigeria crimes are hardly punished especially when it involved certain category of persons. There have been excessive uses of force by the security agencies where they extort money and indulge in extra judicial killing with impunity, in addition, within the society itself, assassinations, ritual killings, and kidnapping are frequent and the government have not been able to resolve or react to most of these incidents. Antonio Maria Costa opined that:

“... on the part their sources to destinations, illicit drugs do not necessarily follow the most direct routes factors other than geography enter into the calculus of the most efficient trajectory to take. Weak states have a gravity of their own; law enforcement in these nations is typically under-resourced and subject to corruption. For a variety of reasons, Africa is home to some of the weakest states, in terms of their capacity to enforce the rule of law in their territories, in the world”⁶⁸.

When crimes are not punished or inadequately punished that incommensurate with the offence committed, they reinforce the belief in crime commission. There are instances when drug offenders are discharged and acquitted on (flimsy) technical grounds, or a convict is given three months instead of twenty-five years jail term as stipulated or a fine of three hundred thousand naira for drugs worth three million naira. Such a punishment is too lenient and

⁶⁸ UNODEC (2008). Drug Trafficking as a security Threat in West Africa

incommensurate to the offence committed and cannot serve as a deterrent to others and has been responsible for the resurgence of illicit drug activities in Nigeria.

Davidson⁶⁹ contended that the inability of some judges to appropriately punish drug offenders usually sends a wrong signal to the public that indulging in illicit drug activities would only attract mild punishment and is obviously one of the reasons for the upsurge in the increasing number of people that are being apprehended almost on a daily basis in Nigeria. He further noted that trafficking in hard drugs is on the rise despite the efforts by antinarcotics agencies because of the country's weak justice system. For instance Yusuf Hakeem Ajibola, an Ibadan socialite based in London who was arrested with 2.2 kilogrammes of cocaine on July 8, 2008, he paid a fine of #300,000 as an option as fine rather than spending eleven months in jail. Again, Ojah Patrick Emeka was caught with 1.079 kilogrammes of cocaine and sentenced to nine months imprisonment with an option of #300,000 fines. They all paid three hundred thousand and walked away as free men in a process of less than a month trial. Also Wummi Uche and Tochi James are social celebrities that were caught and left off the hook too easily which the public alleged that the judiciary was highly compromised, with these acts, the judiciary system is wittingly or unwittingly aiding and abetting drug trafficking in Nigeria.

6.2 Ineffective Judicial System

The judiciary is a vital third arm of government and important in the fight against crimes including illicit drug activities. However, the criminal justice system in Nigeria has performed far from the expectations of most Nigerians and world standard. In most instances has produced highly questionable judgments in illicit drug cases and in other crimes. For example, a onetime governor from one of the oil rich states in Nigeria who was accused of corruption was set free in court. However, the very set of evidence that was discounted by the Nigeria judiciary was used to convict him in the United Kingdom. Similarly those involved in the Halliburton bribe scandal has been punished in the United States while the Nigeria government has continued to shield its own citizens involved. It is these types of scenarios that contribute to the resurgence of crimes including illicit drugs activities. The Nigeria judiciary has been plagued by some problems which have resulted to this state of affairs. Some of these include the shortage of the highly skilled personnel with integrity needed to assume the roles of prosecutors and judges, shortage of funds to pay them well despite large case loads, and decent working conditions. The absence of these leaves judicial staff vulnerable to corrupt practices as some of them are lured or coerced into cooperation with well resourced drug trafficking groups hence many instances of questionable judicial decisions over the years.

There are instances when drug offenders are discharged and acquitted on technical grounds, or a convict is given three months instead of twenty-five years jail term as stipulated or a fine of three hundred thousand naira for drugs worth ten million naira. Such a punishment is too lenient and incommensurate to the offence committed and cannot serve as a deterrent to others and has been responsible for the resurgence of illicit drug activities in Nigeria. For instance, Yusuf Hakeem Ajibola, an Ibadan socialite based in London who was arrested with 2.2 kilogrammes of cocaine on July 8, 2008, he paid a fine of #300,000 as an option as fine rather than spending eleven months in jail. Again, Ojah Patrick Emeka was caught with 1.079 kilogrammes of cocaine and sentenced to nine months imprisonment with an option of #300,000 fines. They all paid three hundred thousand and walked away as free men in a process of less than a month trial. Also Wummi Uche and Tochi James are social celebrities that were caught and left off the hook too easily which the public alleged that the judiciary was highly compromised, with these acts, the judiciary system is wittingly or unwittingly aiding and abetting drug trafficking in Nigeria.

⁶⁹ DAVIDSON, I. (2008) Nigeria: Hurdles Against war on Drugs Trafficking, Retrieved from [http://allafrica.com/nigeria/on October 5, 2009](http://allafrica.com/nigeria/on%20October%205,%202009).

6.3 New Dimension Of Drugs Trafficking

As the world advances in technology innovations, so do crimes take different dimensions and on increase, the NDLEA have been faced with difficulty in the act of combating drug trafficking as many drug barons have developed new trends in trafficking drugs. Previously, the method used by traffickers were hidden of the substances in the luggage, swallow of the drug into the stomach, tearing of the body, burying inside belts as well as wrist watches. The new trend of trafficking drugs are as follows: insertion into the buttocks, foodstuff, artificial hair, dashboard of vehicles, herbal containers, imported clothes, engines ceramic, private parts, shoe sole and condoms etc. The National Drug Law Enforcement Agency (NDLEA) intercepted 55.6kg of narcotics at the Murtala Mohammed International Airport Lagos in recent time. Three suspects including two licensed clearing and forwarding agents has also apprehended. The illicit shipments include 43.6kg of cannabis meant for export to China and 12kg of methamphetamine being smuggled to South Africa. The drug which was hidden inside foodstuff and artificial hair was detected by NDLEA officers during screening. The Agency should be equipped with modern sophisticated tools for detection of drugs so to make their work more efficient.

6.4 Porous And Ineffective Border Control

The Nigeria state has exhibited poor and ineffectiveness to manage its border areas within and at the frontier. Many ungoverned spaces have developed and lawlessness internally has become the order of the day with persistent violent conflicts answering from the various interest groups and the federating units. At the national frontiers, there is the free entry and exist of people and goods due to loose control system. This situation provides opportunities for criminal networks to find safe haven to facilitate all kinds of crimes and conduct black market operations that could threaten security and development efforts. Nigeria is surrounded by neighbouring states in the north, east and west, and in the south by the Atlantic oceans with seaports routes linking it to the rest of the world. It has had a long history and close tribal relationship with these states that distinction or demarcations between them are common and frequent. These factors are responsible for their understanding and cooperation even in cross-border trade and smuggling arrangements.

Cockaye and Williams⁷⁰ noted that West African States have highly permeable borders stemming partly from traditional trading practices and partly from weak borders-control system. Similarly, Olawale and Hassan⁷¹ observed that an extensive level of permissiveness in border crossing answering from ethnic and religious contiguity is common that the Nigeria authorities are unable to contain. Gail⁷² printed that the vast and porous land borders, seaports, and corruption among government officials provide an ideal environment for drug trafficking. There are vast expanses of unprotected, unfenced and porous lands borders stretching to other countries. Nigeria equally has hundreds of miles of unpatrolled coastal lines vastly stretched from the high sea to the delta communities. There are hidden bays, islets, islands and marshy swamps in these areas too numerous to dictate and difficult to patrol. Due to the porous nature of the Nigeria borders most of the smuggled contrabands goods such as rice, textiles, cigarettes, gin, frozen food, and oil pass through various points of entry and with only a few occasionally being confiscated most of the smugglings are conducted in the hinterlands that are remote and obscure and lack easy accessibility for the law enforcement officers.

⁷⁰ Cockye, *supra*

⁷¹ Olawale, R. And Hassan, I. (2011). "How porous borders aid religious extremists, Ethnicity religion compromise security, why illegal immigrants cannot be expelled FG plans High Tech Surveillance", *The Punch*, 18 September, 2011.

⁷² *Supra*.

Drug traffickers take advantage of poorly protected border and weak authority to ferry hundreds of million dollars worth of cocaine from Latin America to Europe which is a short distance to the north. The stringent and effective monitoring of drug trafficking in premiere routes which led to using Nigeria as alternative routes would not be possible for a number of reasons. First, Nigeria lack effective control mechanism due to the corrupt competing securing organizations. Second, the absence of coast guards and effective airspace control system. Third, the exploitation of Nigeria route was not only because of its accessibility but due to the interstate cooperation among the Caribbean states to improve maritime and aerial interrelations which exacted increasing pressure are lacking in West African states. Nigeria has proved a perfect way station or transshipment point for drugs because the factors and methods that resulted in the achievement of interdiction in the Caribbean states are not likely to be repeated here in West African region Besides, the character, competence, commitment, and compassion necessary for effective drive against illicit drug activities are lacking by Nigeria officials. The borders are loosely policed; movement forth and back is mostly free except for occasional efforts by the Nigeria Immigration Service (NIS) who sometimes faced mob action when they attempt to enforce strict control. However, the governmental has not been able to respond to the threats.

6.5 Corruption And Policing Of Illicit Drugs

The problem in Nigeria is not the existence of corruption because it exists in most nations of the world but the inability of the government to deal with it is the major issue. The High levels of corruption conducted with impunity especially among political class, law enforcement agents, judicial and military officials is particularly due to economic and institutional weaknesses. The lack of political will on the part of government to tackle head-on the pervasive corruption is responsible for the development and growth of crime including drug trafficking. Most crimes are committed or supported by the elites and government officials that the destructions between activities of government official and criminal elements are so diffused and blurred. It is difficult to distinguish where official functions ends and where criminal activities begins, Myrdal (1968) opined that reduces government effectiveness by undermining the legitimacy of public authority; it generates political, instability, disrupts public planning and policy making and aggrandizes an incompetent and corrupt bureaucracy which further reduces government effectiveness.

Even top NDLEA's officials saddled with the responsibility of apprehending drug offenders have in most instances been implicated in drug trafficking and corrupt practices when such happens they are only relieved of their appointments which however do not prevent them from getting another hence they are have led to the growth of drug trafficking in the country. Any state that exhibits social indiscipline, lawlessness, and public impropriety can be termed as a soft state. Professor Hamid Ghode noted that the main reason for the flourishing of illicit drug trade is corruption among the leaders. That corruption undermines global efforts in the fight against the illicit drug problem. Powerful and wealthy organized crime groups corrupt and intimidate public officials who facilitate the illicit drug trade. There are many examples where violence and corruption are deeply entrenched in illicit drug markets. He further affirmed that without addressing this vicious circle of corruption and the illicit drug trade, international drug control efforts will never be fully successful⁷³. It is not only the antinarcotics agency that is weak and lack the capacity to carry out its function effectively. Avertedly or inadvertently the government have allowed the anti-corruption units to be weak and ineffective. Therefore, the scourge of illicit drug trade continues on the increase despite all efforts of the agency.

⁷³ UNODC, (2008). Drug trafficking as a security Threat to West Africa.

A prevailing high level of unemployment means there is an educated, active and market – oriented workforce, ready to ferry drugs between the producer and consumer nations for a profit. The existence of an unemployed force means that there is little the law can do when there are hungry mouths to feed. The picture of narcotic traffic is comprised of myriads of interacting forces and interests. It will be readily seen that it is impossible to approach any aspect of the problem from the point of view of a single discipline like the law, and that any effort, if it is to be realistic, must be a concerted action of all the people whose professional and public interests bear on the problem⁷⁴. Despite the surge of objections by competent, sincere and conscientious people to tackling the drug problem through law enforcement, there are still those who hold that the status quo severe penalties are not only effective against narcotic problems, but are also the only approach which can be considered by intelligent and informed people. There seems to be a general agreement among medical, enforcement, and legislative authorities that narcotics traffickers, among others, must be removed from society for a long period of time as a deterrent so as to bring about possible rehabilitation and to prevent the contamination of others⁷⁵. They respond to attacks which claim that present policies are inhumane and ineffective by saying that humanity is a matter of subjective opinion and that effectiveness is a question of fact⁷⁶. The fact remains that since the Shanghai conference, drug trafficking has assumed a wider dimension than envisaged, and in recent times Nigerians have continued to play an infamous role in drug distribution. The solution lies in adopting such other measures that take into consideration the prevailing reality and the deficiencies of Law enforcement.

Allocation of resources of law enforcement must be seen in the broader context of the total resources available to the drug problem. Margaret Thatcher's optimism about the unlimited resources for the customs battle against smuggling may make good press, but it belies the complexity of the task. Law enforcement alone is unlikely to have a major impact on the availability of drugs through trafficking. Many will be asking for a broader consideration of the right balance between public expenditure on education, prevention and treatment, as well as enforcement. The money spent on the education and information campaigns, and on local treatment and rehabilitation projects while welcome, begins to look small in comparison with expenditure on enforcement.

7. CONCLUSION

Nigeria's drug problems in the 1980's to date have grown out of changes in structural circumstances-increasing unemployment, factors in international trade, developments in the economy of western countries, lack of industrialization, etc, and the response to these circumstance by a range of social groups who have become variously involved in distribution and consumption. Enforcement measures being pursued nationally and internationally may cause variations in supply between and within countries and from year to year, but are most unlikely to extinguish the trade. The persistence of social deprivation in many localities will continue to encourage small – scale distribution, to magnify the negative consequences of drug trafficking and consumption and to undermine community and professional responses.

The question then is whether or not the Nigerian government should adopt a free market solution – legalize the product, save expenditure currently wasted on inefficient enforcement and make consumer and producing countries responsible for checking export and import from and into their nations. Such free-market radicalism is unlikely to be adopted, partly perhaps because commitments entered into in opposing the legislation of drugs. Today,

⁷⁴ Eldridge, *supra*, p.11.

⁷⁵ Speer, "Documentation of the Narcotics Addiction Problem in the U. S." in Hocha and Zubin (ed), *Problems of Addiction and Habituation*, New York, Grune and Stratton 1958, P. 149. See also Eldridge, *supra*.

⁷⁶ *Ibid*

Nigeria is committed to law enforcement against drugs, supporting international conventions aimed at suppression of the trade, not its liberalization.

8. THE WAY FORWARD

The NDLEA Act represents Nigeria's obligation, as a contracting party, within the bounds of her constitution and national criminal and penal codes, to punish to an adequate degree, offences committed intentionally in the field of illegal cultivation, production, manufacture, extraction and preparation, illicit possession, and illicit trafficking. In the case of more serious offences, this injunction calls for adequate punishment through imprisonment or other deprivations of liberty for drug abusers, the conventions make it possible for the parties to opt for measures for treatment, education, aftercare, rehabilitation and social reintegration as alternatives to imprisonment or to run concurrently with imprisonment. The conventions permit the ascendancy of national law in certain matters. This applies particularly to definitions of crime and legal regulations on prosecution and punishment, the sole condition being that seizure and confiscation of drugs and raw materials, substances, and equipment for their production are included in the embrace of such actions. The Act has been promulgated in the light of new international recommendations, new developments in the medical and scientific fields, and the experience of countries in the application of legislation. Incidentally, while some countries have focused more on improved measures for prevention, treatment and rehabilitation, especially with regard to the young, Nigeria has addressed, in general, a firmer, global differentiation of approach vis-à-vis manufacturers smugglers, traffickers and peddlers of drugs through intensification of repression and increasing international collaboration in the more efficient prosecution of such persons. However, within the legal framework of the Nigerian approach, there is also no differentiation by type of substance. In this sense, heroin, morphine, cocaine, opium, cannabis and other drugs and psychotropic substances are these are refinements only, the desirability of global approaches being clearly recognized⁷⁷.

This global approach should, it is submitted, involve the classification of drugs into appropriate schedules based on potential for use and dependence and the presence of currently accepted safety standards for using the drug under medical supervision. In considering offences relating to drugs, no effort is made to differentiate in quantity. Law enforcement officers argue that the distinction of quantities could jeopardize the entire enforcement operation as traffickers could resort to carrying smaller quantities below the legal minimum. This practice, if it develops, could impede efforts to control the traffic and create a morale problem. A statutory distinction based on amount possessed has also been criticized as being unrealistic, while it is designed to provide a more lenient and sympathetic treatment for the user, it results only in shielding the very peddlers who are victimizing the user. Part of the difficulty of this distinction may also lie in the fact that every possessor of narcotics has the power to dispense and, therefore, constitutes a potential source of illegal traffic⁷⁸.

The foregoing reservations notwithstanding, it is suggested that drug quantity be emphasized as the basic criterion for differentiating criminal policy approaches towards various forms of drug abuse (ie 'small', 'trafficable', indictable, or 'commercial quantity'). Even though drug quantities are not explicitly referred to in the Act, they represent a very important object element for differentiation between more serious and tighter drug-abuse/traffic offences. The quantity of drug found can be and should be used by the courts as the basis for determining whether the drug is destined for trafficking or for personal use.

In Malaysia, there is a set distinction between quantities for personal use and that which may be regarded as commercial quantity. That difference determines who goes to jail or dies by hanging. Beyond these major deficiencies there are other shortcomings which it is important

⁷⁷ Ibid

⁷⁸ Eldridge, *supra*

to rectify, in order to give the Act a humane and reasonable face. These suggestions should not be viewed as an endorsement of law enforcement as the only option in combating drug trafficking. Rather it is a way of saying that anything worth doing is worth doing well, even if the best performance is not successful. An ingredient of good and morally justifiable law is specificity of the conducts prohibited. The Act suffers a major deficiency which may be abused by law enforcement agencies and also leave the citizenry in a Limbo. The use of the phrase “any similar drug” lacks specificity and does not give notice of any particular drug. In a country with a high level of illiteracy it is expecting too much to ask the citizens to know what drugs are similar to cocaine and heroin. In the same vein, there is a need to define drug for the purpose of the Act, it is not enough to define a drug by reference to the numerous UN conventions; these are not within the physical and educational reach of the people.

The Act is not drafted with elements of flexibility. There is no provision for bringing newly discovered drugs with addiction forming or addiction-sustaining liability within the control of the Act. On the other hand, it fails to recognize the incalculable value of narcotic preparations to everyday health and comfort. For example, there is no provision for exemption of many household remedies which contain narcotics in such small quantities as to create little danger. If the Act is comprehensive, it is to the extent of the severity and exclusiveness of punishment. In the rush to prohibit it failed to make provision for the legitimate use of narcotic drugs and psychotropic substances, and for checks on legitimately acknowledged possession and use. I am of the considered opinion that the Act ought to make provision for who may sell and possess narcotics and under what conditions. Equally, it falls short of curbing the unavoidable flow of legitimate or controlled drugs. This means that there must be regulation of the handling of drugs by professional practitioner.

Finally, it is not enough to ban drugs; instruments of use should be banned too. Hypodermic needles and other paraphernalia for the administration of narcotic ought to be added to the list of items the possession and sale of which are regulated. Despite the severity of punishment and the tough stance of the Nigerian government on the issue of drug trafficking, the problem refuses to go away. Incidence of drug trafficking has continued to rise. Present statistics has it that over 3.4 million kilograms of drugs has been taken from our society and 21,871 drug offenders convicted since the Agency began operations in 1990⁷⁹. This increase corroborates the claim that no amount of law enforcement can stop the trade in drugs. The total elimination of access to drugs through suppression of smuggling, illicit traffic, and diversion from legitimate channels, it is agreed, must be recognized as an unrealistic, impossible, and visionary goal. Strict enforcement can cut down severely on the amount of drugs coming into the country, yet no law enforcement agency anywhere in the world can credibly claim more than a ten percent interception. What happens to the traffic which does get through, especially if the security on export makes it difficult or impossible to complete the journey to Europe or America;⁸⁰ is another matter. What the law, however intimidating, can do against drug trafficking appears to be limited; it can stop or change routine functions. It can tighten up methods of making, transporting, storing and selling licit but potentially dangerous drugs. It can curtail supplies. In so far as it does this, it will increase their value penalties go up for trafficking, and so does the price of the wares. That is an inexorable law of the black market⁸¹.

Failure of law enforcement to either curb or eliminate drug production in, and trafficking from, the developing world to the developed countries, has been attributed to many reasons. It has something to do with the underdevelopment, poverty and political instability of the third world countries. Their geo-economic background show how third World Production

⁷⁹ NDLEA nabs man with cocaine in arms at Lagos airport. Nigerian Tribune Tuesday, 06/25/2013 – 13:09

⁸⁰ Bernard A. Gropper, “probing the Links Between Drugs and Crime”, National Institute of Justice Research in Brief, February 1985.

⁸¹ William Deedes, RT. Hon. M.P., *The Drug Epidemic*, Tom Stacey Ltd, London, 1970, p. 108

of opium fits into the economic and political positions of these countries vis-à-vis the international order. A colonial history of cash-cropping for export to the more developed countries, the current countries, the current debt crisis, and the adverse balance of trade, provide the conditions in which narcotic drug production is an attractive option for many Third World nations who lack other means of subsistence and advance⁸². Key participants in the drug traffic business come from third world countries; just as all the countries producing narcotic drugs illicitly on a large scale are underdeveloped. The evidence from seizures indicates that 85% of the heroin currently coming to Britain originates in Afghanistan and Pakistan, with the rest coming from South-East Asian countries such as Thailand, Burma and Laos, and from the Middle East. Nigerians are mere couriers.

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